

Purchase Order



Marshall University
Office of Purchasing
One John Marshall Drive
Huntington WV, 25755-4100
Direct all inquiries regarding this order to: (304) 696-2823

Purchase Order #
MU20NATGAS

TO:

Direct Energy Business Marketing LLC
PO Box 32179
New York, NY 10087-2179

FEIN: 980079816 PH: 330-832-3860

Vendor Code:
VC0000000412

Ship to:

N/A

Room #

THIS ORDER IS SUBJECT TO THE
GENERAL TERMS AND
CONDITIONS AS SET FORTH
HEREIN

WVFIMS Account #:

P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #
5/14/19	2020	BN			Net 30	MU20NATGAS

CONTRACT ACCEPTANCE

On behalf of the Governing Board, MARSHALL UNIVERSITY
hereby accepts the quotation of Direct Energy Business Marketing LLC
For Natural Gas and Transportation Service Contract

signed by Chris Feucht
Title Senior Account Manager

Date April 29, 2019

Approved as to sufficiency of form and manner of execution
this ____ day of _____, 20__.

Attorney General of the State of West Virginia
By: N/A
Chief Counsel

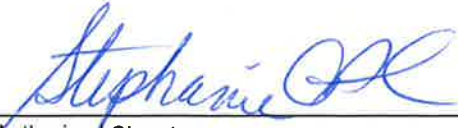
Effective: 11/1/2019 - 10/31/2020
Four (4) Optional Renewals

THIS ORDER IS EXEMPT FROM ALL SALES TAX
LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER

Line No.	Fund	Org.	Account	Encumber Amount
1.	VARIOUS	VARIOUS	VARIOUS	OPEN END
2.				
3.				
4.				

Total: **OPEN END**

Mail Original Invoice and 1 Copy to:
Marshall University Accounts Payable
One John Marshall Drive Huntington,
WV 25755-4500


 Authorized Signature Date **7-8-19**

1. SCOPE OF WORK

The Vendor will provide the following services:

1.1. Facility Supply

At all times, natural gas should be supplied to each facility identified herein. (*Historical Usage section*)

1.2. Balancing

Nominate and balance gas volumes by meter location daily.

1.3. Fixed Pricing

Pricing is stated under the Pricing Section within the contract.

1.4. Transportation Discount

Utilize natural gas production and provide supporting documents approved by Mountaineer Gas Company to receive the transportation discount allowed for produced natural gas.

1.5. Cost Maintenance

Maintain total costs to each facility at Marshall in years one, two, and three of the contract at a rate below the Mountaineer Gas Company's GS tariff rate.

1.6. Third Party Transportation

Arrange any necessary third party transportation of natural gas provided under this contract and pay all normal costs and expenses associated with the transportation of such gas to the city gate of the LDC for each Marshall facility.

1.7. Compliance

Deliver natural gas of such quality that meets the pipeline standards of the West Virginia Public Service Commission for Pipeline Quality for Natural Gas and contained in the tariffs of Mountaineer Gas Company.

1.8. Title Hold

To hold title to all natural gas purchased under this contract to the point of delivery at Mountaineer's city gate and be responsible for and indemnify the institutions against any claim for damage or injury caused thereby.

1.9. Failure to Deliver

Failure to deliver gas under any circumstance other than force majeure, the supplier will pay any difference in cost to Marshall in the replacement of gas. Also, the supplier will be responsible for continuing its services stated in the contract at the agreed price in the contract.

1.10. Open Inspections

All contracts, papers, correspondence, copies, books, accounts, and other information in the Vendor's care relating to the business of Marshall University must be open to inspection and examination by an authorized representative of Marshall University at all reasonable business times.

1.11. Invoicing

Supplier will invoice each facility for the actual volume of natural gas consumed each month – not the nominated volume.

1.12. Notification

Notify each institution within 24 hours of any change in the availability of natural gas purchased against this contract.

1.13. Operating Environment

Contract administration is located:
Marshall University
Physical Plant Sustainability Manager
Sorrell 204B One John Marshall Drive
Huntington, WV 25755
Phone: (304) 696-2946

1.14. Historical Usage

Monthly Usage – Telemetry January 2018 - December 2018

Natural Gas

January	28,245
February	26,565
March	19,747
April	13,002
May	13,076
June	9,824
July	9,983
August	10,561
September	10,223
October	15,197
November	19,013
December	23,303

2. Proposal Response

DELIVERY HUB: We are utilizing Columbia Gas Transmission to deliver to the Mountaineer City Gate for Marshall

COMPANY REPS: Chris Feucht has been managing the Marshall account since 2007 and she will continue to be the main point of contact for Marshall. Office phone: 330-832-3860, Cell Phone: 330-607-7284, email: Christine.feucht@directenergy.com

ALTERNATIVE SERVICES: Direct Energy can offer a Gas Portfolio Service free of charge. Our Strategic Services team gives you personalized support, market intelligence and reporting to help you manage your energy strategy. Throughout your contract the team will have calls with you to give market updates and information to help you decide the best strategy for your natural gas buys. This type of service is for customers who buy basis and then trigger the Nymex.

We also have a very comprehensive website where customers can access usage, invoices, market information, and much more.

We offer Demand Response which Marshall has been with Direct Energy for many years.

We offer services to help you minimize your electric spend, and we sell electricity if WV would deregulate and open for transportation service.

BALANCING FEES: Direct Energy has a scheduler assigned only to Mountaineer Gas. That scheduler schedules for our customers daily. She will dial in to all accounts with telemetering daily to update her spreadsheets on usage. She then compares the usage to what she is delivering and will make adjustments as needed. The Mountaineer system is typically on a two-day lag time to receive usage.

During the winter Mountaineer will FREEZE banks. This means on a daily basis we need to deliver exactly what the customer is using. If we are under delivered on any day the customer buys tariff gas at an extremely high rate. So, during this time we try to over deliver to avoid excessive costs for under deliveries. This does create an imbalance, but the imbalance fee is only \$.29 for each dth out of balance, and we figure that is a small cost compared to paying \$10 for each dth not received.

If a customer is a process load, the scheduler will analyze the load trends and schedule accordingly, for weekday versus weekend schedules. Our scheduler also has emails and phone numbers of many accounts to get shift information and work schedules, so she can increase or decrease deliveries.

Direct Energy also has a meteorologist on staff who puts out weather forecasts which also helps her with changes to deliveries for customers like Marshall whose usage is very weather dependent.

3. PRICING

It is mutually agreed upon approval of the contract, the vendor and the Director of Purchasing at Marshall University will determine, in writing, the appropriate date and NYMEX price to lock-in a contract for the annual delivery of natural gas to Marshall University LDC's city gate for the year beginning November 1, 2019 and subsequently thereafter each successive year of this contract, should it be renewed.

NYMEX PRICING on 4/29/19

#	Item	Unit of Measure	Unit Price	Notes
1	Mountaineer Gas	/DTH	\$ 2.608	This is total price at the city gate with 100% swing
2	Profit	/DTH	\$ 0.02	included in price above
3	Transportation	/DTH	-\$ 0.15	included in price above
4	Shrinkage	/DTH	\$ 0.04177	included in price above
5	Other	/DTH	\$ 0.02	Fee for 100% swing and is included in price above.
6	Imbalance Fee	/DTH	\$0.29	

NYMEX PRICING OPTIONS:

- Fixed Price at the City Gate: \$2.588/dth at the Mountaineer City Gate with 0 Swing

Fixed Price at the City Gate: \$2.608/dth at the Mountaineer City Gate with 100% Swing Basis only Price: Nymex minus \$.17/dth with 0 Swing

Basis only Price: Nymex minus \$.15/dth with 100% Swing

- Zero Swing or 100% Swing is being offered
- On a zero swing contract any extra gas will be priced at the Gas Daily Index GD Columbia Gas Appalachian plus \$.35/dth. If the gas is not used Direct Energy would buy the gas back at the Gas Daily Index GD Columbia Gas Appalachian flat.

Direct Energy is offering 100% swing which means any extra gas would be priced at the contracted rate, and if there is any gas not used Direct Energy will absorb that gas at no penalty to Marshall. This is the swing Marshall has always had with Direct Energy.

If a basis price is chosen we will offer Gas Portfolio and have an analyst assigned to your account to assist with market updates and triggering. There is no charge to trigger with us and we will help you determine how much to purchase and at what prices. You can trigger all at once or any portion of the monthly volumes.

4. LIFE OF CONTRACT PAGE

LIFE OF CONTRACT: This contract becomes effective on 11/1/2019 and extends for a period of **one (1) year** or until such reasonable time thereafter as is necessary to obtain a new contract. Such "reasonable time" shall not exceed twelve (**12**) months upon expiration of one (**1**) year from the effective date of this contract by giving the Director of Purchasing thirty (**30**) days written notice.

RENEWAL: This contract may be renewed upon mutual written consent, submitted to the Director of Purchasing thirty (30) days prior to the date of expiration. Such renewal shall be in accordance with the terms and conditions of the original contract and shall be limited to four (4) successive one (1) year periods.

CANCELLATION: The Director of Purchasing reserves the right to cancel this contract immediately upon written notice to the vendor if the commodities or services supplied are of an inferior quality or do not conform to the specifications of the bid and contract herein.

OPEN MARKET CLAUSE: The Director of Purchasing may authorize a spending unit to purchase in the open market, without the filing of a requisition or cost estimate, items specified on this contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work).

TIME: Time consumed in delivery or performance is of the essence.

ORDERING PROCEDURE: Departments shall submit a requisition for commodities covered by this contract to the Purchasing office. Purchasing will then issue a purchase order to the vendor as authorization for shipment. If the vendor accepts credit cards, purchases may also be made using the P-card up to the established transaction limit for the department.

FUNDING PARAGRAPH: Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

INTEREST: Should this contract include a provision for interest on late payments, the agency agrees to pay the maximum legal rate under West Virginia Law. All other references to interest charges are deleted.

CONTRACT PRICING: Unless otherwise allowed by the Director of Purchasing, price increases will be approved only at the beginning of each renewal period. All adjustments will be made in dollars, not per cent. Requests for price increases must be received in writing by the Director at least thirty (**30**) days in advance of the effective date. Vendors may add products throughout the term of this contract when it is in the best interest of the University. The Director at Marshall University will determine which products will be added. Price decreases will be "passed through" to Marshall University.

5. Vendor's Contract Agreement

The following Direct Energy Agreement is updated to reflect current pricing subject to the MU96 Agreement Addendum



**Direct Energy Business Marketing, LLC
d/b/a Direct Energy Business**

194 Wood Avenue South, Second Floor,
Iselin, NJ 08830

Phone: 1-888-925-9115
business.directenergy.com

Proposal Id 54946767

Marketer Name Feucht, Chris	Date 4/29/2019	Time 11:11:42AM
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CUSTOMER INFORMATION

Customer Name Marshall University	<input type="checkbox"/> New <input checked="" type="checkbox"/> Renewal
Contact Name Stephanie Smith	Billing Contact
Address 1 John Marshall Drive HUNTINGTON, WV 25755	Billing Address
Telephone 304-696-3333 Fax 304-696-3333	Telephone Fax
Email	

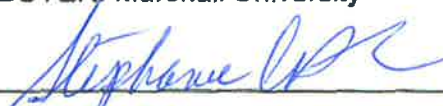

NATURAL GAS TRANSACTION CONFIRMATION

This Transaction Confirmation confirms the terms of the Gas Transaction entered into between Direct Energy Business Marketing, LLC d/b/a Direct Energy Business ("Seller"), and the customer above ("Buyer" or "Customer") pursuant to the terms of the Commodity Master Agreement ("CMA") between Buyer and Seller dated April 25, 2019 as may be amended. The Purchase Price excludes Utility distribution charges and Taxes that are or may be the responsibility of Buyer. Gas volumes will be adjusted for Utility line loss, where applicable. The prices listed below are based on market conditions as of the time, stated above, that this Transaction Confirmation was issued and may be adjusted by Seller to reflect market conditions as of the date it is executed and returned by Buyer. THIS TRANSACTION CONFIRMATION WILL NOT BE EFFECTIVE UNTIL SIGNED BY BOTH PARTIES.

Service Locations (Additional pages may be attached if necessary)	Service Address	Utility Account No	Rate
	400 Hal Greer Blvd	543080-637295	Unknown
	400 Hal Greer Blvd	543083-637298	Unknown
	400 Hal Greer Blvd	543084-637299	Unknown
	400 Hal Greer Blvd	543087-637302	Unknown
	400 Hal Greer Blvd	543094-637309	Unknown
	400 Hal Greer Blvd	543095-637310	Unknown
	400 Hal Greer Blvd	543096-637311	Unknown

	400 Hal Greer Blvd	543097-637312	Unknown
	400 Hal Greer Blvd	543098-637313	Unknown
	400 Hal Greer Blvd	543133-637348	Unknown
	400 Hal Greer Blvd	543137-637352	Unknown
	400 Hal Greer Blvd	543169-637384	Unknown
	400 Hal Greer Blvd	543170-637385	Unknown
	1275 15th Street	543277-637492	Unknown
	927 Third Ave	516034-621562	Unknown
	2560 Fifth Avenue	516033-621561	Unknown
	2211 3rd Avenue	520749-648999	Unknown
	1676 3rd. Avenue	520748-649000	Unknown
Delivery Period	<p>Begin: 11/01/2019 End: 10/31/2020</p> <p>The service start date hereunder will be the date that the Utility enrolls Customer for Seller's service. Seller will request the Utility to enroll Customer on the first meter read date within the Delivery Period.</p> <p>Upon the expiration of the Delivery Period, this Transaction shall continue for successive one month terms (collectively the "Renewal Term") until either Party notifies the other Party in writing of its intention to terminate, at least 15 days prior to (1) the end of the Delivery Period or (2) during the Renewal Term, the earlier of the end of each successive month Renewal Term or the next cycle read date. After notice is given as contemplated in the previous sentence, the date of termination ("Termination Date") shall be the next effective drop date permitted by the Utility. The Purchase Price for delivery to the Delivery Point during the Renewal Term or for any period outside of the Delivery Period, shall be the then Market Price for delivery to the Delivery Point, unless otherwise agreed to in writing.</p>		
Delivery Point	Mountaineer Gas Co./MGC 27-16 POINT		
Contract Quantity (Dth)	<p>Buyer and Seller agree that the Contract Quantity purchased and received means a positive volume up to or greater than the estimated quantities listed below, provided, that for purposes of determining whether a Material Usage Deviation has occurred and for purposes of calculating Contract Quantities remaining to be delivered under Section 12 of the Agreement, Contract Quantity shall be determined by reference to the applicable estimated quantity(ies) listed below.</p> <p>_____ Daily <u> x </u> Monthly</p>		

	<table border="0"> <tr> <td>November</td> <td>19,013</td> <td>May</td> <td>13,076</td> </tr> <tr> <td>December</td> <td>23,303</td> <td>June</td> <td>9,824</td> </tr> <tr> <td>January</td> <td>28,245</td> <td>July</td> <td>9,983</td> </tr> <tr> <td>February</td> <td>26,565</td> <td>August</td> <td>10,561</td> </tr> <tr> <td>March</td> <td>19,747</td> <td>September</td> <td>10,223</td> </tr> <tr> <td>April</td> <td>13,002</td> <td>October</td> <td>15,197</td> </tr> </table>	November	19,013	May	13,076	December	23,303	June	9,824	January	28,245	July	9,983	February	26,565	August	10,561	March	19,747	September	10,223	April	13,002	October	15,197
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<p>Purchase Price</p>	<p>Fixed Price: \$2.608 /Dth</p>																								
<p>Special Provisions</p>	<p>Change in Utility Account Numbers: The account number for a Service Location shall be the Utility Account Number set forth in the Service Locations section above or as attached, as applicable, or any replacement account number issued by the Utility from time to time.</p> <p>Fixed Price: The Purchase Price for the Contract Quantity, unless otherwise specified in this Transaction Confirmation is \$2.608 /Dth.</p> <p>Buyer acknowledges that it is acting for its own account, and that it has made its own independent decisions with respect to this Transaction Confirmation and that Seller is not acting as a fiduciary, financial, investment or commodity trading advisor for it in connection with the negotiation and execution of this Transaction.</p> <p>Full Plant Requirement – No GSA</p>																								

Tax Exemption Status	[<input type="checkbox"/>] Non-Exempt [<input type="checkbox"/>] Exempt (e.g. Residential, Non-Profit Organization, Manufacturing, Small Business, Agricultural, Resale, etc.) <u>If exempt, must attach certificate.</u>
PLEASE SIGN AND RETURN THIS TRANSACTION CONFIRMATION LETTER BY FACSIMILE TO	
BUYER: Marshall University By: <u></u> Print Name: <u>Stephanie Smith</u> Title: <u>Interim Director/CPO</u> Date: <u>7-3-19</u>	SELLER: Direct Energy Business Marketing, LLC By: <u></u> d/b/a Direct Energy Business Print Name: <u>DAVID SOBICO</u> Title: <u>SALES MANAGER - MIDWEST</u> Date: <u>4/29/19</u>



This Commodity Master Agreement ("CMA") among Direct Energy Business, LLC, Direct Energy Business Marketing, LLC d/b/a Direct Energy Business (Collectively "Seller"), each a Delaware limited liability company, and Marshall University ("Buyer" or "Customer") (each a "Party" and collectively, the "Parties") is entered into and effective as of 04/25/2019 .

1. Transactions: The terms of this CMA apply to all end-use sales of electric power ("Electricity") and/or natural gas ("Gas") as applicable (each a "Commodity" and collectively, the "Commodities"), by the applicable Seller party to Buyer (each sale a "Transaction") which will be memorialized in a writing signed by both Parties (each a "Transaction Confirmation"). Each Transaction Confirmation shall set forth the Seller party providing service to Customer for such Transaction. If a conflict arises between the terms of this CMA and a Transaction Confirmation, the Transaction Confirmation will control with respect to that particular Transaction. This CMA, any amendments to this CMA and related Transaction Confirmation(s) (together, a single integrated, "Agreement") is the entire understanding between Parties with respect to the Commodities and supersedes all other communication and prior writings with respect thereto; no oral statements are effective.

2. Performance: The Parties' obligations under this Agreement are firm. Buyer is obligated to purchase and receive, and Seller is obligated to sell and provide, the Contract Quantity of Commodity specified in a Transaction Confirmation in accordance with the terms of this Agreement. Buyer will only use the Commodity at the listed Service Locations in the applicable Transaction Confirmation and will not resell the Commodity or use it at other locations without Seller's prior written consent.

3. Purchase Price: Buyer will pay the Purchase Price stated in each Transaction Confirmation. If the Purchase Price incorporates an index and the index is not announced or published on any day for any reason or if the Seller reasonably determines that a material change in the formula for or the method of determining the Purchase Price has occurred, then the Parties will use a commercially reasonable replacement price that is calculated by the Seller. If Seller concludes that a change in any Law(s) increases Seller's costs, the Purchase Price may be adjusted by Seller to reflect such costs. "Law(s)" mean all tariffs, laws, orders, rules, decisions, taxes, regulations, transmission rates, and Utility changes to Buyer's monthly capacity and/or transmission obligations.

4. Billing and Payment: Seller will invoice Buyer for the Actual Quantity of Commodity and for any other amounts incurred by Buyer under this Agreement. Payment is due within fifteen (15) days of the date of the invoice. If an invoice is issued and the Actual Quantity cannot be verified by the time, the invoice will be based on Seller's good faith estimate of the Actual Quantity. Seller will adjust Buyer's account following (i) confirmation of the Actual Quantity, (ii) any Utility discrepancy or adjustment or (iii) any other corrections or adjustments, including adjustments to, or re-calculation of, Taxes. Buyer will pay interest on late payments at 1.5% per month or, if lower, the maximum rate permitted by law ("Interest Rate"). Buyer is also responsible for all costs and fees, including reasonable attorney's fees, incurred in collecting payment. "Actual Quantity" means the actual quantity of Commodity that is either delivered or metered, as applicable, to Buyer's account. "Utility" means a state regulated entity engaged in the distribution of Gas or Electricity.

5. Taxes: Buyer is responsible for paying any Taxes associated with the Actual Quantity of Commodity sold under this Agreement that may become due at and after the Delivery Point. The Purchase Price does not include Taxes that are or may be the responsibility of the Buyer, unless such inclusion is required by Law. Buyer will reimburse Seller for any Taxes that Seller is required to collect and pay on Buyer's behalf and will indemnify, defend and hold Seller harmless from any liability against all Buyer's Taxes. Buyer will furnish Seller with any necessary documentation showing its exemption from Taxes, if applicable, and Buyer will be liable for any Taxes assessed against Seller because of Buyer's failure to timely provide or properly complete any such documentation. "Taxes" means all applicable federal, state and local taxes, including any associated penalties and interest and any new taxes imposed in the future during the term of this Agreement. Liabilities imposed in this Section will survive the termination of this Agreement.

6. Disputes: If either Party in good faith disputes amounts owed under Sections 3, 4, 5 and 8, the disputing Party will contact the non-disputing Party promptly and pay the undisputed amount by the payment due date. The Parties will negotiate in good faith regarding such dispute for a period of not more than fifteen (15) Business Days. In the event the Parties are unable to resolve such dispute, the disputing Party will pay the balance of the original invoice and either Party may exercise any remedy available to it in law or equity pursuant to this Agreement. In the event of a dispute other than for an invoiced amount, the Parties will use their best efforts to resolve the dispute promptly. Actions taken by a Party exercising its contractual rights will not be

construed as a dispute for purposes of this Section. "Business Day" means any day on which banks are open for commercial business in New York, New York; any reference to "day(s)" means calendar days.

7. Title and Risk of Loss: Title to, possession of and risk of loss to the Commodity will pass to Buyer at the Delivery Point specified in the applicable Transaction Confirmation.

8. Buyer's Usage Obligations

A. Material Usage Deviation: If there is a Material Usage Deviation, Buyer will be responsible for the losses and costs, including the costs of obtaining and/or liquidating the applicable volume, based upon the difference between the applicable Contract Quantity and Actual Quantity. Buyer will pay the amount of such losses and costs to Seller within fifteen (15) Business Days of Seller's invoice. "Material Usage Deviation" means any deviation in Actual Quantity at the Service Location(s) stated in the related Transaction Confirmation from Contract Quantity (or, as applicable, estimated Contract Quantities) stated in that Transaction Confirmation of +/- 25% or more, which is not caused by weather..

B. Balancing Charges: For Transactions involving the purchase and sale of Gas only, Buyer will be responsible for Balancing Charges unless Prior Notice of a material variation in usage is provided to Seller and actual usage is consistent with that Prior Notice. "Balancing Charges" means Utility fees, costs or charges and penalties assessed for failure to satisfy the Utility's balancing and/or nomination requirements. "Prior Notice" is defined as forty-eight (48) hours before the start of the Gas Day for which the material variation in usage will apply. "Gas Day" means a period of 24 consecutive hours as defined by the Utility. Buyer will make any payment due pursuant to this Section within five (5) Business Days of the date of Seller's invoice.

C. Curtailments: For Transactions involving the purchase and Sale of Gas only, if Buyer is directed by its Utility to curtail its usage, in whole or in part, Buyer will curtail as directed. If Buyer fails to curtail as directed, Buyer will pay or reimburse Seller for all Balancing Charges assessed by the Utility. Payment by Buyer of any Balancing Charges will be due within five (5) Business Days of the date of Seller's invoice.

9. Force Majeure: A Party claiming Force Majeure will be excused from its obligations under Section 2 as long as it provides prompt notice of the Force Majeure and uses due diligence to remove its cause and resume performance as promptly as reasonably possible. During a Force Majeure, Buyer will not be excused from its responsibility for Balancing Charges nor from its responsibility to pay for Commodity received. "Force Majeure" means a material, unavoidable occurrence beyond a Party's control, and does not include inability to pay, an increase or decrease in Taxes or the cost of Commodity, the economic hardships of a Party, or the full or partial closure of Buyer's facilities, unless such closure itself is due to Force Majeure.

10. Financial Responsibility: Seller's entry into this Agreement and each Transaction is conditioned on Buyer, its parent, any guarantor or any successor maintaining its creditworthiness during the Delivery Period and any Renewal Term. When Seller has reasonable grounds for insecurity regarding Buyer's ability or willingness to perform all of its outstanding obligations under any agreement between the Parties, Seller may require Buyer to provide adequate assurance, which may include, in the Seller's discretion, security in the form of cash deposits, prepayments, letters of credit or other guaranty of payment or performance ("Credit Assurance").

11. Default: "Default" means: (i) failure of either Party to make payment by the applicable due date and the payment is not made within three (3) Business Days of a written demand; (ii) failure of Buyer to provide Credit Assurance within two (2) Business Days of Seller's demand; (iii) either Party, its parent or guarantor, becomes Bankrupt or fails to pay its debts generally as they become due; (iv) failure of a Party to satisfy any of its representations and warranties; or (v) failure of a Party to fulfill its material obligations. The Parties will have 15 Business Days following written demand to cure any failures under (iv) or (v), provided that no cure period or demand for cure applies to a default arising under (iii) or any early termination of this Agreement. "Bankrupt" means an entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent, however evidenced, (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (e) has a secured party take possession of all or any substantial portion of its assets or (f) is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

12. Remedies: In the event of a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance; (ii) upon written notice, provided that no notice is required with respect to Section 11(iii) or a breach of Section 13A(c), accelerate any or all amounts owing between the Parties and terminate any or all Transactions and/or this Agreement; (iii) calculate a settlement amount by calculating all amounts due to Seller for Actual Quantity and the Close-out Value for each Transaction being terminated; and/or (iv) net or aggregate, as appropriate, all settlement amounts and all other amounts owing between the Parties and their affiliates under this Agreement and other energy-related agreements between them and their affiliates, whether or not then due and whether or not subject to any contingencies, plus costs incurred, into one single amount ("Net Settlement Amount"). Any Net Settlement Amount due from the defaulting Party to the non-defaulting Party will be paid within three (3)

Business Days of written notice from the non-defaulting Party. Interest on any unpaid portion of the Net Settlement Amount will accrue daily at the Interest Rate. "Close-out Value" is the sum of (a) the amount due to the non-defaulting Party regarding the Contract Quantities (or, as applicable, estimated Contract Quantities) remaining to be delivered as stated in the applicable Transaction Confirmation(s) during the Delivery Period or, if applicable, the current Renewal Term, calculated by determining the difference between the Purchase Price and the Market Price for such quantities; and (b) without duplication, any net losses or costs incurred by the non-defaulting Party for terminating the Transaction(s), including costs of obtaining, maintaining and/or liquidating commercially reasonable hedges, Balancing Charges and/or transaction costs. "Market Price" means the price for similar quantities of Commodity at the Delivery Point during the Delivery Period or Renewal Term, as applicable. For purposes of determining Close-out Value, (I) Market Price will be determined by the non-defaulting Party in good faith as of a date and time as close as reasonably practical to the date and time of termination or liquidation of the applicable Transaction(s), and (II) Market Price may be ascertained through reference to quotations provided by recognized energy brokers or dealers, market indices, bona-fide offers from third-parties, or by reference to commercially reasonable forward pricing valuations. The Parties agree that the Close-out Value constitutes a reasonable approximation of damages, and is not a penalty or punitive in any respect. Seller may, but need not, physically liquidate a Transaction or enter into a replacement transaction to determine Close-out Value or Net Settlement Amount. The defaulting Party is responsible for all costs and fees incurred for collection of Net Settlement Amount, including, reasonable attorney's fees and expert witness fees.

13. Representations and Warranties: Each of the following are deemed to be repeated each time a Transaction is entered into:

A. Each Party represents that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform to this Agreement; (b) the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; and (c) it is not Bankrupt.

B. Buyer represents and warrants that: (a) it is not a residential customer; (b) it will promptly notify Seller of any merger or acquisition of Buyer where Buyer will not be the surviving legal entity; (c) execution of this Agreement initiates enrollment and service for the Delivery Period and any Renewal Term; (d) no communication, written or oral, received from the Seller will be deemed to be an assurance or guarantee as to any results expected from this Agreement; (e) if it is executing this Agreement in its capacity as an agent, such Party represents and warrants that it has the authority to bind the principal to all the provisions contained herein and agrees to provide documentation of such agency relationship, and (f) (i) it will provide, to Seller, information reasonably required to substantiate its usage requirements, including information regarding its business, locations, meter/account numbers, historical/projected usage, time of use, hours of operation, utility rate classes, agreements, schedules, which in substantial part form the basis for the calculation of charges for the transactions hereunder; (ii) acceptance of this Agreement constitutes an authorization for release of such usage information; (iii) it will assist Seller in taking all actions necessary to effectuate Transactions, including, if requested, executing an authorization form permitting Seller to obtain its usage information from third parties; and (iv) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Agreement.

C. Each Party acknowledges that: (a) this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code ("Code"); (b) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodity; (c) Seller is not a "utility" as defined in the Code; (d) Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by the Buyer's Utility; and (e) Buyer's Utility, and not Seller, is responsible for responding to leaks or emergencies should they occur.

14. Other:

(a) This Agreement, and any dispute arising hereunder, is governed by the law of the state in which the Service Locations are located, without regard to any conflict of rules doctrine. (b) Each Party waives its right to a jury trial regarding any litigation arising from this Agreement. (c) No delay or failure by a Party to exercise any right or remedy to which it may become entitled under this Agreement will constitute a waiver of that right or remedy. (d) Seller warrants that (i) it has good title to Commodity delivered, (ii) it has the right to sell the Commodity, and (iii) the Commodity will be free from all royalties, liens, encumbrances, and claims. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED. (e) Buyer will be responsible for and indemnify Seller against all losses, costs and expenses, including court costs and reasonable attorney's fees, arising out of claims for personal injury, including death, or property damage from the Commodity or other charges which attach after title passes to Buyer. Seller will be responsible for and indemnify Buyer against any losses, costs and expenses, including court costs and reasonable attorneys' fees, arising out of claims of title, personal injury, including death, or property damage from the Commodity or other charges which attach before title passes to Buyer. (f) NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER THE

AGREEMENT FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, LOST PROFITS OR SPECIFIC PERFORMANCE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT. (g) All notices and waivers will be made in writing and may be delivered by hand delivery, first class mail (postage prepaid), overnight courier service or by facsimile and will be effective upon receipt; provided, however, that any termination notice may only be sent by hand or by overnight courier service, and, if sent to Seller, a copy delivered to: Direct Energy Business, Attn: Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222, Phone: (888) 925-9115; Fax: (866) 421-0257; Email: CustomerRelations@directenergy.com. (h) If Buyer and Direct Energy Business Marketing, LLC entered into Commodity transactions prior to the execution of this Agreement ("Existing Transactions"), the Parties agree that these Existing Transactions shall be Transactions governed under the terms of this Agreement. This Agreement supersedes and replaces any other agreement that may have applied to the Existing Transactions. Note that this subsection (h) shall not apply to any Commodity transactions or agreements entered into between Buyer and Direct Energy Business, LLC (i) No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties. (j) Seller may assign this Agreement without Buyer's consent. Buyer may not assign this Agreement without Seller's consent; which consent will not be unreasonably withheld. In addition, Seller may pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds of this Agreement in connection with any financing or other financial arrangements without Buyer's consent; in which case Seller shall not be discharged from its obligations to Buyer under this Agreement. (k) This Agreement may be executed in separate counterparts by the Parties, including by facsimile, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. (l) Any capitalized terms not defined in this CMA are defined in the Transaction Confirmation or shall have the meaning set forth in the applicable Utility rules, tariffs or other governmental regulations, or if such term is not defined therein then it shall have the well-known and generally accepted technical or trade meanings customarily attributed to it in the natural gas or electricity generation industries, as applicable. (m) The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement. (n) Any executed copy of this Agreement and other related documents may be digitally copied, photocopied, or stored on computer tapes and disks ("Imaged Agreement"). The Imaged Agreement will be admissible in any judicial, arbitration, mediation or administrative proceedings between the Parties in accordance with the applicable rules of evidence; provided that neither Party will object to the admissibility of the Imaged Agreement on the basis that such were not originated or maintained in documentary form. (o) Where multiple parties are Party to this Agreement with Seller and are represented by the same agent, it is agreed that this Agreement will constitute a separate agreement with each such Party, as if each such Party had executed a separate Agreement, and that no such Party shall have any liability under this document for the obligations of any other Parties. (p) This CMA may be terminated by either Party upon at least thirty (30) days' prior written notice; provided, however, that this CMA will remain in effect with respect to Transactions entered into prior to the effective date of the termination until both Parties have fulfilled all of their obligations with respect to the outstanding Transactions. (q) Buyer will not disclose the terms of this Agreement, without prior written consent of the Seller, to any third party, other than Buyer's employees, affiliates, agents, auditors and counsel who are bound by substantially similar confidentiality obligations, trading exchanges, governmental authorities, courts, adjudicatory proceedings, pricing indices, and credit ratings agencies; provided that if Buyer receives a demand for disclosure pursuant to court order or other proceeding, it will first notify Seller, to the extent practicable, before making the disclosure.

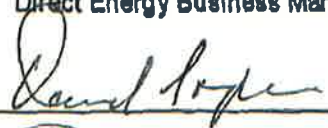
IN WITNESS WHEREOF, this CMA is entered into and effective as of the date written above.

Marshall University

BUYER: _____

SELLER: Direct Energy Business, LLC
Direct Energy Business Marketing, LLC

By: 

By: 

Name: Stephanie Smith

Name: DAVID SOPPKO

Title: Interim Director/CPO

Title: SALES MANAGER

WV-96
1/1/2019

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

WV-96
1/1/2019

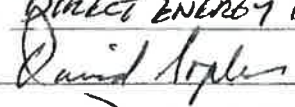
- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: Marshall University
 By: 
 Printed Name: Stephanie Smith
 Title: Interim Director/CPO
 Date: _____

Vendor: DIRECT ENERGY BUSINESS
 By: 
 Printed Name: DAVID SZKO
 Title: SALES MANAGER - MIDWEST
 Date: 4/29/19

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: DIRECT ENERGY

Authorized Signature: Chris Feucht Date: 3-11-19

State of Ohio

County of Stark, to-wit:

Taken, subscribed, and sworn to before me this 11 day of March, 2019.

My Commission expires NO EXP., 20 .



BRENDA J. REA
Attorney At Law
Notary Public for the State of Ohio
My Commission Expires No Expiration Date
Sec 147.03 R C

NOTARY PUBLIC

Brenda J. Rea
Purchasing Affidavit (Revised 01/19/2018)

WV-73
Approved / July 7, 2017



**State of West Virginia
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
West Virginia Code §21-1D-5**

**STATE OF WEST VIRGINIA,
COUNTY OF STARK, TO-WIT:**

I, CHRIS FEUCHT, after being first duly sworn, depose and state as follows:

1. I am an employee of DIRECT ENERGY; and,
(Company Name)
2. I do hereby attest that DIRECT ENERGY
(Company Name)

maintains a written plan for a drug-free workplace policy and that such plan and policy are in compliance with **West Virginia Code** §21-1D.

The above statements are sworn to under the penalty of perjury.

Printed Name: CHRIS FEUCHT
 Signature: Chris Feucht
 Title: SENIOR ACCOUNT MANAGER
 Company Name: DIRECT ENERGY
 Date: 4-26-19

Taken, subscribed and sworn to before me this 26th day of April, 2019.

By Commission expires NO EXP.

(Seal)



BRENDA J. REA
Attorney At Law
Notary Public for the State of Ohio
My Commission Expires No Expiration Date
Sec 147.03 R.C.

Brenda J. Rea
(Notary Public)