

Electric Choice Supplier Handbook
APPENDIX B: AES Agreement

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APPENDIX B: AES Agreement

This Alternative Electric Supplier Agreement for Detroit Edison's Electric Choice Program ("AES Agreement"), is made and entered into as of the last date signed below by either Party by The Detroit Edison Company, a Michigan Corporation, One Energy Plaza, Detroit, Michigan 48226 ("Detroit Edison") and ("Alternative Electric Supplier"). The Alternative Electric Supplier is identified in the signature block below by name, type of entity, and business address. Detroit Edison and Alternative Electric Supplier are sometimes referred to individually as "Party" or collectively as "Parties."

Witnesseth:

WHEREAS, Detroit Edison has established an "Electric Choice Program," for Retail Access service as described in its Retail Access Service Rider ("RASR") and its Customer Choice Plan, both of which are on file with the Michigan Public Service Commission ("MPSC"); and

WHEREAS, the Alternative Electric Supplier desires to enroll Customers into the Electric Choice Program; and will participate in the Electric Choice Program in accordance with the terms and conditions of this AES Agreement and the RASR.

WHEREAS, the Alternative Electric Supplier desires to purchase certain additional services from Detroit Edison and Detroit Edison is willing to provide such services in connection with providing Retail Access service; and

WHEREAS, Detroit Edison has agreed to render Distribution Service in conjunction with Customer's participation in its Electric Choice Program in accordance with the terms and conditions of this AES Agreement, the RASR, and the Marketer Agreement.

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, Detroit Edison and the Alternative Electric Supplier agree as follows:

1. Definitions

- 1.1 Terms not defined in this AES Agreement will have the meaning defined in the RASR or the Marketer Agreement.

2. Term

- 2.1 This AES Agreement is effective as of the last date executed by the Alternative Electric Supplier or Detroit Edison.
- 2.2 This AES Agreement will remain in effect unless canceled pursuant to Section 12, or terminated without cause by either Party with 30 days prior written notice. Detroit Edison reserves the right to replace or amend this AES Agreement as appropriate to reflect changes required by regulatory agencies.

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3. Distribution Service

- 3.1 Distribution service will be provided to the Alternative Electric Supplier's Customers pursuant to Detroit Edison tariffs, the RASR and any agreements between the Customer and Detroit Edison relating to Retail Access service.
- 3.2 All other services provided to the Alternative Electric Supplier's Customers by Detroit Edison will be provided pursuant to the terms of other agreements between the Customer and Detroit Edison.

4. Customer Enrollment

- 4.1 The Alternative Electric Supplier shall enroll Customers electronically with Detroit Edison using:
 - 4.1.1 A Customer Enrollment Form on the Supplier Website; or
 - 4.1.2 An XML 814 Transaction Set with standardized data fields through a File Transfer Protocol (FTP) Server as described on the Supplier Website. Current standards and protocols are described in Attachment B (**Electronic Business Transactions**) and may be changed from time to time by 30 days written notice from Detroit Edison.
- 4.2 Detroit Edison may discontinue the use of the FTP Server and/or the Supplier Web Site enrollment, upon 30 days notice to Alternative Electric Suppliers, and require the use of the remaining method identified in Section 4.1 or a different method.
- 4.3 The Alternative Electric Supplier must enroll the Customer's entire Load served through any meter or group of meters where the Loads can be served through more than one (1) meter. Loads through any meter or group of meters cannot be split between bundled tariffs and Retail Access service, among Alternative Electric Suppliers, or among Marketers.
- 4.4 Customers eligible for Retail Access service are defined in the RASR.
- 4.5 When an Alternative Electric Supplier enrolls a Customer, Detroit Edison will electronically notify the Alternative Electric Supplier acknowledging the enrollment.
- 4.6 Detroit Edison will electronically notify the Alternative Electric Supplier of the effective date for Retail Access service. The effective date for Retail Access service for the Customer shall be on the next scheduled meter reading date for the Customer occurring at least one (1) business day after the Customer's site is prepared for service under the Electric Choice Program as determined by Detroit Edison.
- 4.7 If the Customer requires new metering, Detroit Edison will install metering in accordance with the terms and conditions detailed in the RASR.

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- 4.8 Detroit Edison will disable any control equipment previously installed for Customers on interruptible tariffs.
- 4.9 Detroit Edison will cancel an enrollment request if the Customer disputes an enrollment prior to the effective date for Retail Access service.
- 4.10 The Alternative Electric Supplier may cancel an enrollment request by submitting an electronic cancel request prior to the effective date for Retail Access service.

5. Switching Alternative Electric Suppliers

- 5.1 A Customer may switch Alternative Electric Suppliers by authorizing the new Alternative Electric Supplier to submit a new electronic enrollment as described in Section 4, not less than one (1) business day before the effective date for switching.
- 5.2 When the new Alternative Electric Supplier enrolls a Customer, Detroit Edison will electronically notify the new Alternative Electric Supplier acknowledging the enrollment.
- 5.3 Upon confirmation of the enrollment from the new Alternative Electric Supplier, Detroit Edison will electronically notify the new and former Alternative Electric Supplier and the new and former Marketer of the effective date of the switch request.
- 5.4 The effective date for switching Alternative Electric Suppliers shall be the next scheduled meter reading date for the Customer occurring at least one (1) business day after the new Alternative Electric Supplier submits an electronic enrollment as described in Section 4.
- 5.5 Detroit Edison will cancel the enrollment switch upon receipt of an electronic cancel request from the new Alternative Electric Supplier prior to the effective date for switching Alternative Electric Suppliers.
- 5.6 Detroit Edison will cancel the enrollment switch if Detroit Edison receives notice from the Customer that the Customer disputes an enrollment prior to the effective date for switching Alternative Electric Suppliers.
- 5.7 When an enrollment switch is cancelled, Detroit Edison will electronically notify the new and former Alternative Electric Supplier and the new and former Marketer of the cancellation.

6. Switching Marketers

- 6.1 To switch Marketers, the Alternative Electric Supplier:

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- 6.1.1 Must provide an executed Alternative Electric Supplier-Marketer Notice identifying the new Marketer that is fully qualified to participate in the Electric Choice Program; and
- 6.1.2 Must provide the Alternative Electric Supplier-Marketer Notices to Detroit Edison at least 30 days prior to the effective date of service by the new Marketer; and
- 6.1.3 Must submit an electronic modify request for all Customers to be served by the new Marketer at least one (1) day prior to the effective date of service by the new Marketer. The effective date of service by the new Marketer will be the first day of the calendar month following the submission of the electronic modify request; and
- 6.1.4 Must comply with all of the provisions of this AES Agreement regarding the new Marketer; and
- 6.1.5 Must provide the new Marketer it has identified as being responsible for its Customers in the Alternative Electric Supplier–Marketer Notice all information concerning such Customers necessary for the Marketer to perform its obligations.

7. Termination of Retail Access Service

- 7.1 Termination of Retail Access service to a Customer can be initiated by the Alternative Electric Supplier, the Customer, Detroit Edison or by the termination of the relationship between the Alternative Electric Supplier and its Marketer as described below:
 - 7.2 Termination by the Alternative Electric Supplier.
 - 7.2.1 The Alternative Electric Supplier may terminate service to its Customer(s) by submitting an electronic drop request not less than one (1) business day before the next scheduled meter reading date.
 - 7.2.2 The effective date for termination of Retail Access service to the Customer by the Alternative Electric Supplier shall be the next scheduled meter reading date occurring not less than one (1) business day after the submission of the electronic drop request to Detroit Edison.
 - 7.3 Termination by the Customer.
 - 7.3.1 The Customer may terminate Retail Access service by contacting its Alternative Electric Supplier who can submit an electronic drop request not less than one (1) business day before the next scheduled meter reading date.
 - 7.3.2 The Customer may also terminate Retail Access service by notifying Detroit Edison in writing or by calling the Electric Choice Customer Center not less one (1) business day before the next scheduled meter reading date

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- 7.3.3 The effective date for termination of Retail Access service to the Customer by the Customer shall be the next scheduled meter reading date occurring not less than one (1) business day after the submission of the notice to Detroit Edison .
- 7.4 Termination by Detroit Edison
 - 7.4.1 Detroit Edison may terminate Retail Access service to the Alternative Electric Supplier's Customer(s) if any of the following occur:
 - 7.4.1.1 An Event of Default by the Alternative Electric Supplier has occurred; or
 - 7.4.1.2 An Event of Default by the Marketer identified with the Customer has occurred under its Marketer Agreement with Detroit Edison; or
 - 7.4.1.3 The Customer fails to meet the requirements and obligations as set forth in the RASR.
 - 7.4.2 The effective date for terminating Retail Access service to the Alternative Electric Supplier's Customer by Detroit Edison shall be the business day after the date of the notice referred to in Section 7.6.
- 7.5 Termination of the relationship between the Alternative Electric Supplier and its Marketer
 - 7.5.1 Retail Access service to the Alternative Electric Supplier's Customer(s) will be terminated if the Alternative Electric Supplier does not submit an electronic modify request pursuant to Section 6.1.3 following the termination of the relationship between the Alternative Electric Supplier and the Marketer.
 - 7.5.2 The effective date for terminating Retail Access service to the Alternative Electric Supplier's Customer shall be the first day of the calendar month which occurs at least 45 days after the termination notice is received by Detroit Edison.
- 7.6 Notification of termination will be made electronically to the Alternative Electric Supplier and Marketer(s).
- 7.7 For Customers with Interval Demand Meters, actual meter readings on the effective date of termination will be used.
- 7.8 For Customers with Energy Meters, meter readings on the effective date of termination will be on a prorated basis based on the next actual meter reading.

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8. Metering

- 8.1 Detroit Edison will meter a Customer's use of electric energy with meters as described in the RASR.
 - 8.1.1 The meters will be used to obtain data to determine Customer and Marketer bills.
 - 8.1.2 Detroit Edison will use reasonable efforts to repair or replace a malfunctioning meter within five (5) business days of the time when Detroit Edison becomes aware that such meter is malfunctioning.

9. Alternative Electric Supplier Billing (Complete Billing Option Only)

- 9.1 Detroit Edison will provide the Alternative Electric Supplier bills for services rendered.
- 9.2 The Alternative Electric Supplier will receive one bill from Detroit Edison per month for any applicable charges, and applicable Complete Billing monthly charges for its Customers with scheduled meter readings in the preceding calendar month. Detroit Edison will also bill the Alternative Electric Supplier for all applicable non-exempt taxes. Detroit Edison will render the Alternative Electric Supplier bill within the first ten (10) business days of each calendar month.
- 9.3 Payment in full is due from the Alternative Electric Supplier to Detroit Edison 21 days from the date of the bill ("Due Date").
- 9.4 The Alternative Electric Supplier will be assessed a late payment charge of 2% per month on the unpaid balance of any bill for which full payment was not received by Detroit Edison on or before the Due Date.

10. Customer Billing

- 10.1 Detroit Edison will provide two (2) Customer Billing options-Complete Billing by Detroit Edison and Separate Billing by Detroit Edison and the Alternative Electric Supplier (AES). It is the responsibility of the AES to identify on the Customer Enrollment Form which of these options the Customer has requested.
- 10.2 Complete Billing by Detroit Edison (see Chapter 6 Customer Billing & Payment Processing Sec. 6.5)
 - 10.2.1 Under Complete Billing, Detroit Edison will provide the Customer with a single bill, which includes Detroit Edison charges and the AES charges. Due dates to the Customer for AES charges will be the same as Detroit Edison's charges. Under this option, Detroit Edison will process payments from the Customer and remit the AES'

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- billed revenue to the AES electronically within ten (10) business days after the receipt of funds from the Customer as described in Section 11.
- 10.2.2 For Customer(s) enrolled with the Complete Billing option, the AES may not change the Customer's Billing option to the Separate Billing option until after 12 months have elapsed from the date on which the Complete Billing began.
- 10.2.3 The AES must submit its rate structures and billing determinants (Rate Ready Schedule) using the Supplier Web Site, not less than ten (10) business days prior to enrolling its first Customer with the Complete Billing Option.
- 10.2.4 The AES must select one or more of the following pricing structures defined as follows:
- 10.2.4.1 Daily Flat Rate means a fixed daily charge for energy. This rate applies to Customers with single-phase service only.
- 10.2.4.2 Monthly Flat Rate means a fixed monthly charge for energy. This rate applies to Customers with single-phase service only.
- 10.2.4.3 Fixed Energy Rate means a fixed rate (expressed in cents/kWh) applied to the metered use of the electric energy. This rate applies to Customers with either single-phase or three-phase service.
- 10.2.4.4 Simple Two Step Rate means an inclining/declining block rate based on a given calculated average energy usage amount in kWh per day with a corresponding rate and the excess energy usage at a different rate. This rate applies to Customers with three-phase service only.
- 10.2.4.5 Combined Energy and Demand Rate means one energy rate with one on-peak demand charge. This rate applies to Customers with three-phase service only.
- 10.2.5 The AES may not submit more than 60 prices to the Rate Ready Schedule but may use any combination of the pricing structures described in Section 10.2.4.
- 10.2.6 Detroit Edison will provide the AES with a Product Offering Identification Number to correspond with the billing determinates referenced in Section 10.2.3.
- 10.2.7 The AES must submit any changes to it Rate Ready Schedule not less than 30 days prior to the next scheduled meter reading date after which they are to be used. Changes must be made using the Supplier Web Site.
- 10.2.8 Other pricing structures, at a fee to be negotiated, may be used if acceptable to Detroit Edison. Detroit Edison's acceptance shall not be unreasonably withheld.
- 10.3 Separate Billing by the Alternative Electric Supplier

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- 10.3.1 Under the Separate Billing Option, Detroit Edison will not bill Customers for AES charges or applicable taxes.
- 10.3.2 Under the Separate Billing Option, the AES is responsible for all state and local tax collection and remittance associated with its service to its Customers.
- 10.4. With Complete Billing or Separate Billing, Detroit Edison will use reasonable efforts to supply the necessary billing determinants to the AES electronically within one (1) business day after the Customer's meter is read.
- 10.5. The data required to support all Complete Billing or Separate Billing, will be acquired in accordance with Detroit Edison's normal meter read schedules and billing cycles which are published on the Supplier Website.
- 10.6. With Complete Billing or Separate Billing, billing based on data acquisition errors will be credited or debited in the billing period following discovery and correction.

11. Processing of Customer Payments under the Complete Billing Option

- 11.1 Detroit Edison will act as the AES' agent for receiving payments from the AES' Customer(s) enrolled with the Complete Billing Option.
- 11.2 Detroit Edison will not remit to taxing authorities any applicable taxes received from the AES' Customer(s) related to the AES' charges. Any such amounts will be forwarded to the AES along with energy payments. The AES is responsible for the collection of all state and local taxes not collected and forwarded by Detroit Edison, and the remittance to taxing authority of all state and local taxes (both those forwarded and collected) associated with its service to its customers.
- 11.3 Detroit Edison will only forward payments received and will not pursue collections for any AES. However, Detroit Edison will print past due amounts on the bill details for AES' Customers enrolled with the Complete Billing option.
- 11.4 If the Customer makes less than full payment, the funds received will be applied in the following order:
 - 11.4.1 First, all past due and current distribution service charges and energy or bundled service charges to Detroit Edison;
 - 11.4.2. Second, past due and current Energy and Demand charges, including any taxes, to the AES';
 - 11.4.3 Third, other charges (non energy or non delivery-related, e.g., appliance repair programs, etc.) to Detroit Edison; and

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- 11.4.4 Finally, other charges (non energy-related) to the AES.
- 11.4 If the AES pursues and takes collection of any revenues from any of its Customers enrolled with the Complete Billing option, the AES shall inform Detroit Edison immediately with the appropriate information in order to update past due amounts referenced in Section 11.3 for such Customers.

12. Representations and Warranties

- 12.1 The Alternative Electric Supplier represents and warrants to Detroit Edison upon execution of this AES Agreement and each time it enrolls a Customer that:
 - 12.1.1 No material changes in the data contained in Alternative Electric Supplier's filing with the MPSC for its license.
 - 12.1.2 The Alternative Electric Supplier will at all times have sufficient energy supply, transmission service, ancillary services, emergency service, and backup service resources available to it including any reserve requirements, either by contract or through ownership of generation, to provide Customers with their energy requirements.
 - 12.1.3 This AES Agreement and the transactions contemplated hereby constitute the legal and binding obligations of the Alternative Electric Supplier and are valid and enforceable in accordance with its terms except as may be limited by laws of general application concerning creditors' rights.
 - 12.1.4 This AES Agreement is not in conflict with organizing documents of the Alternative Electric Supplier or the provisions of any agreement or indenture to which Alternative Electric Supplier is a party or is otherwise bound, nor violates any provisions of law applicable to the Alternative Electric Supplier, or any order, judgment or decree by which the Alternative Electric Supplier is bound.
- 12.2 The Alternative Electric Supplier represents and warrants to Detroit Edison that each time it enrolls and begins service to a Customer that:
 - 12.2.1 The Alternative Electric Supplier has a valid, enforceable agreement with each of the Customers that it has enrolled.
 - 12.2.2 The information in the Customer Enrollment Form and any other information provided by the Alternative Electric Supplier is correct, and Alternative Electric Supplier will promptly inform Detroit Edison of any changes in such information.
 - 12.2.3 The Alternative Electric Supplier is in compliance with all of the requirements of this AES Agreement and the RASR and will continue to be in compliance with such requirements throughout the term of this AES Agreement.

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- 12.2.4 Each of its Customers to be served has a Marketer, as identified in the Customer Enrollment Form and Alternative Electric Supplier - Marketer Notice, as its agent to obtain appropriate transmission service, ancillary services and back-up service.
- 12.2.5 The Marketer identified by the Alternative Electric Supplier has authorized the Alternative Electric Supplier to obligate the Marketer to perform the Marketer's obligations with respect to such Customer(s) under the Marketer Agreement with Detroit Edison.

13. Events of Default

- 13.1 An "Event of Default" shall mean with respect to a defaulting Party:
 - 13.1.1 Failure by the defaulting Party to make, when due, any payment required if such failure is not remedied within ten (10) business days after written notice of such failure is given to the defaulting Party.
 - 13.1.2 Any representation or warranty made by the defaulting Party shall prove to have been false or misleading in any material respect when made, deemed to be made or repeated.
 - 13.1.3 Failure by the defaulting Party to perform any other covenant or satisfy any condition set forth in this AES Agreement if such failure is not remedied within ten (10) business days after written notice of such failure is given to the defaulting Party. The occurrence of an Event of Default with respect to a Marketer under its Marketer Agreement with Detroit Edison will be deemed under this Section a failure by the Alternative Electric Supplier to perform.
 - 13.1.4 The defaulting Party is subject to a bankruptcy, insolvency or receivership proceeding.
 - 13.1.5 Failure to comply with the terms and conditions of the RASR.
 - 13.1.6 Failure of the Alternative Electric Supplier to maintain an Alternative Electric Supplier License.

14. Remedies

- 14.1 If an Event of Default occurs with respect to a defaulting Party at any time during the term of this AES Agreement, the non-defaulting Party may: (a) cancel this AES Agreement; provided, however, upon the occurrence of any Event of Default listed in Section 11.1.4 or
 - 14.1.2 This AES Agreement shall automatically end unless contrary to law, without notice, as if it had been immediately canceled prior to such event; (b) exercise any remedy

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available at law or in equity to enforce payment of any amounts owing together with interest and attorney fees and costs, or (c) both.

15. Limitation of Liability

15.1 The defaulting Party's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages including but not limited to, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive.

16. Regulatory, Legislative, or Judicial Changes

16.1 If any modifications, changes, additions or deletions to any of the provisions of this AES Agreement are imposed by regulation or law, then the Party adversely affected may terminate this AES Agreement upon 30 days written notice, provided such notice is given within 30 days of the effective date of such imposition.

16.2 If any adverse modification, change, addition, deletion, or ruling regarding (1) any of the provisions of the Customer Choice Plan, (2) an applicable MPSC or FERC approved tariff, (3) an applicable Michigan Public Act, or (4) an applicable MPSC order including but not limited to the orders in Case Nos. U-11290, U-11449, U-8789, U-11726 or U-12489 is imposed by a regulatory order, law, regulation, or court order, the Party adversely affected may terminate this AES Agreement upon 30 days written notice to the other Party. In the case of legislation or regulation this written notice must be given prior to 30 days after the effective date of the legislation or regulation. In the case of a regulatory order or court order the written notice must be given prior to the date 30 days after all appeal periods have expired and no appeal has been taken or stay has been granted.

17. Exclusion of Third-Party Beneficiaries

17.1 No entity is intended to be a third-party beneficiary under this AES Agreement.

18. Force Majeure

18.1 Neither Party shall be liable if it is rendered unable to fulfill any of its obligations under this AES Agreement by reason of Force Majeure. A Party shall exercise due diligence to remove such inability with all reasonable dispatch.

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18.2 “Force Majeure” means earthquake, storm, lightning, flood, backwater caused by flood, fire, explosion, act of the public enemy, epidemic, accident, failure of facilities, equipment or fuel supply, acts of God, war, riot, civil disturbances, strike, labor disturbances, labor or material shortage, national emergency, restraint by court order or other public authority or governmental agency, interruption of synchronous operation, institution of emergency electrical procedures or other similar or dissimilar causes beyond the reasonable control of the Party affected, which causes could not have been avoided by exercising due diligence. Nothing contained herein shall be construed to require settlement of any strike, lockout, work stoppage or other industrial disturbance or dispute in which it may be involved or to appeal from any judicial, regulatory or administrative action.

19. Non-Waivers

19.1 No waiver by any Party of any default of the other Party under this AES Agreement shall operate as a waiver of a future default whether of a like or different character.

19.2 Failure or delay of Detroit Edison to insist upon strict performance of any of the terms and conditions of this AES Agreement, or to exercise any rights or remedies provided in this AES Agreement or by law, or to properly notify the Alternative Electric Supplier in the event of breach, or Detroit Edison’s provision of services or acceptance of payment for services provided in this AES Agreement, shall not release the Alternative Electric Supplier from any of the warranties or obligations of this AES Agreement and shall not be deemed a waiver of any right of Detroit Edison to insist upon strict performance of the Agreement in the future or constitute a waiver of any rights or remedies related to performance of the Alternative Electric Supplier pursuant to this AES Agreement.

20. Changes in Rates, Charges, Classifications, Service, Rules, Regulations

20.1 Nothing contained in this AES Agreement shall be construed as affecting or limiting in any way the right of Detroit Edison to unilaterally file with any appropriate regulatory authority, or make application for, changes in rates, charges, classifications, or service, or any rule under other applicable law or regulation.

21. Assignment

21.1 The Alternative Electric Supplier may assign its rights and obligations only with the written consent of Detroit Edison, which will not unreasonably be withheld. Detroit Edison may assign this AES Agreement to an affiliate or successor entity without the Alternative Electric Supplier’s consent. In the event of an assignment by either Party, any assignee shall be required, pursuant to a written agreement, to assume all of the obligations of the assignor under this AES Agreement.

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22. Notices

- 22.1 All notices required under this AES Agreement shall be made electronically, unless otherwise specified in this AES Agreement, to the Party to be served at such address as the Parties may designate from time to time.
- 22.2 The following person shall be the representative of Detroit Edison for all purposes under this AES Agreement:
- Manager, Electric Choice
The Detroit Edison Company
One Energy Plaza
Detroit, MI 48226
FAX (313) 235-0531
Email Address: suppliers@dteenergy.com
- 22.3 Notice information for the representative of the Alternative Electric Supplier for all purposes under this AES Agreement is provided in Attachment A.
- 22.4 Notice information may be changed by written notice to the other party.

23. Governing Law

- 22.1 The formation, validity, interpretation, execution, amendment and termination of this AES Agreement shall be governed by the laws of the State of Michigan without regard to conflicts of law, and any actions with respect thereto may be brought only in a court of competent jurisdiction located in Michigan, if jurisdiction is not with a regulatory agency.

24. Warranty Exclusion and Limited Remedy

- 24.1 DETROIT EDISON EXPRESSLY NEGATES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

25. Entire Agreement and Amendments

- 25.1 This AES Agreement, including all associated Attachments thereto, constitutes the entire agreement of the Parties concerning the subject matter hereof and supersedes all prior agreements or understandings.
- 25.2 This AES Agreement and its Attachments may be amended only by written notification executed by the Parties that specifically refers to the Section(s) being amended.

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25.3 The Alternative Electric Supplier warrants that this agreement has not been altered from its original form as provided by Detroit Edison electronically or otherwise.

26. Authorization Acknowledgment

26.1 The parties agree to be bound by the terms and conditions of this AES Agreement and have caused this AES Agreement to be executed by their respective authorized officials.

Detroit Edison:

By: _____ Manager, Electric Choice _____
Signature

Print Name Date: _____

Alternative Electric Supplier:

_____ By:
Alternative Electric Supplier Name Signature

Type of Entity (a Michigan Corporation, etc.) _____ Print Name
Date: _____ Title: _____



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Alternative Electric Supplier Specific Information
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Electronic Funds Transfer

All payments to Detroit Edison will be made by the Alternative Electric Supplier by Electronic Funds Transfer to Detroit Edison's financial institution as specified below:

Detroit Edison's Financial Institution Name: J P Morgan Chase

Address: 611 Woodward Avenue

City: Detroit

State: Michigan

Zip: 48232

ACH Coordinator Name: _____

E-Mail: _____

Phone: _____

Fax: _____

* Batch Number: _____

*ACH Routing Number: _____

*Account Number: _____

All payments to the Alternative Electric Supplier will be made by Detroit Edison by Electronic Funds Transfer to the Alternative Electric Supplier's financial institution as specified below:

Alternative Electric Supplier's Financial Institution Name: _____

Address: _____

City: _____

State: _____

Zip: _____

ACH Coordinator Name: _____

E-mail: _____

Phone: _____

Fax: _____

ACH Routing Number: _____

Account Number: _____

***Note:** This information is **CONFIDENTIAL**. The Detroit Edison ACH Coordinator will provide the Batch Number, ACH Routing Number and Account Number.

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The following person shall be the representative of the Alternative Electric Supplier for all purposes under this AES Agreement:

Name: _____

Title: _____

Street Address: _____

City, State,

Zip: _____

Phone Number: _____

Fax: _____

Email Address: _____

The signature above acknowledges acceptance of the following:

DTE Energy and/or its subsidiaries are authorized to make deposits into the account at the bank identified above. Both parties agree to be bound by the Operating Rules of the National Automated Clearinghouse Association (NACHA) for ACH transactions. This authorization to remain in effect until written notice of termination is given to the Company.

If the Complete Billing option is elected, all payments will be made by Detroit Edison by Electronic Funds Transfer to the AES' financial institution as specified below:

Financial Institution

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone: _____

Fax: _____

*ACH Routing Number: _____

*Account Number: _____

*Note: This information is Confidential. Detroit Edison's ACH Coordinator, will provide the Batch Number, ACH Routing Number and Account Number.

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Electronic Business Transactions

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- 1.1** It is the intent for all commerce to be conducted electronically whenever possible. Only in case of the failure of electronic communication and commerce, or when authorized otherwise by Detroit Edison, will other means of communication and commerce be undertaken. Electronic commerce will be by transaction of data sets using Extensible Markup Language (XML). Some electronic commerce may be transacted over the Internet.
- 1.2** XML is the transmission, in standard syntax, of unambiguous information between computers belonging to the Parties. The schema in a transaction set defines the types of data which the specified transmission must contain and the format in which the data must appear.
- 1.2.1 All XML Schemas that are used will be listed on the Supplier Site. These Schemas may be changed by Detroit Edison from time to time upon 30 days notice to the Alternative Electric Supplier posted on the Supplier Site.
- 1.2.2 Any transmission of XML data using a transaction set or schema which is not posted on the Supplier Site shall have no force or effect between the Parties unless justifiably relied upon by the receiving Party.
- 1.2.3 All transactions shall be transmitted in accordance with the standards and the published industry guidelines set forth in the Supplier Site.
- 1.2.4 For all XML transactions, whether subject to prior content agreement of the Parties or otherwise, the recipient of an XML transmission shall promptly report to the originator any error in syntax, format, or data, but in no event later than one business day after receipt, by use of the XML functional acknowledgment transaction.
- 1.2.5 In the event of a complete XML communications failure the notification will be by fax, telephone or e-mail. In the absence of such notice the originating Party's records of the contents of the transaction shall control. Each Party agrees to take reasonable efforts to resolve implementation and application problems of XML transactions.
- 1.3** Alternative Electric Suppliers are expected to transmit XML transaction sets with Detroit Edison via an FTP (File Transfer Protocol) server provided by Detroit Edison. Detroit Edison will provide a unique user ID and password for each Alternative Electric Supplier for secure communication and confidentiality of each supplier's data. Each FTP login account will have 2 sub-directories from their home directory: Inbound and Outbound. The Alternative Electric Supplier/Marketer will have 'write' access to the 'Inbound' directory and will write files to this directory that Detroit Edison will read and process. The Alternative Electric Supplier will have 'read' access to the 'Outbound' directory under their 'home directory'. Detroit Edison generates outbound transaction sets to Alternative Electric Suppliers which can be downloaded from the outbound directory.

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- 1.4** To communicate using XML, the Alternative Electric Supplier must obtain software capable of generating PSA 1024 and RSA 1026 encryption and decryption. The software must be Pretty Good Privacy (PGP) compatible .
- 1.5** XML transaction sets will be transmitted electronically to each Party, either as specified in Section 1.2 or through a third-party service provider ("Provider") with which either Party may contract.
- 1.5.1 Either Party may modify its election to use or change a Provider upon 30 days prior electronic or written notice.
- 1.5.2 Each Party shall be responsible for the costs of any Provider with which it contracts, unless stated otherwise.
- 1.5.3 Each Party shall be liable for the acts or omissions of its Provider while transmitting, receiving, storing or handling transactions, or performing related activities for such Party; provided, that if both Parties use the same Provider to effect the transmission and receipt of a transaction set, the originating Party shall be liable for the acts or omissions of such Provider as to such transaction set.
- 1.6** Each Party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive XML transactions.
- 1.6.1 If for any reason the Alternative Electric Supplier's system for communicating XML transactions is inoperable, Detroit Edison's liability is limited to notifying the Alternative Electric Supplier that there is a communications problem. Detroit Edison will not handle XML transactions until the system is back in service.
- 1.6.2 Each Party shall properly use those security procedures as specified in Section 1.4 to ensure that all transmissions of transactions are authorized and to protect its business records and data from improper access.

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1.7 Data Transmissions

- 1.7.1 Transactions shall not be deemed to have been properly received, and no transaction shall give rise to any obligation, until accessible to the receiving Party at such Party's receipt network.
- 1.7.2 Upon proper receipt of any transaction, the receiving Party shall promptly and properly transmit a functional acknowledgment in return, unless otherwise agreed upon.
- 1.7.3 If acceptance of a transaction is required, any such transaction, which has been properly received, shall not give rise to any obligation until and unless the Party initially transmitting such transaction has properly received in return an XML functional acknowledgment.
- 1.7.4 If any properly transmitted transaction is received in an unintelligible or garbled form, the receiving Party shall promptly notify the originating Party (if identifiable from the received transaction) in a reasonable manner. In the absence of such notice, the originating Party's record of the contents of such transaction shall control.
- 1.7.5 Information contained in any transaction or otherwise exchanged between the Parties shall be confidential information ("Confidential Information").
 - 1.7.5.1 Each Party agrees that, unless specifically authorized in writing by the other, it will use such Confidential Information solely for the purpose of performing this AES Agreement.
 - 1.7.5.2 Each Party agrees to receive the Confidential Information in confidence. Each party agrees that it will treat such Confidential Information in the same manner as it treats like information of its own, but in all events it shall exercise at least a reasonable degree of care for preventing unauthorized disclosures of the Confidential Information. Each party further agrees not to distribute, disclose or disseminate the Confidential Information, to anyone, except to its employees or consultants who have a need to know only upon obtaining such employee's or consultant's agreement to be bound to the terms of this AES Agreement.
 - 1.7.5.3 The obligations imposed herein shall not apply to Confidential Information:
 - 1.7.5.3.1 which becomes available to the public through no act of the receiving Party; or
 - 1.7.5.3.2 which may be published prior to the date hereof; or
 - 1.7.5.3.3 which is received from a third party without restriction and without breach of this AES Agreement; or

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- 1.7.5.3.4 which is independently developed by the receiving Party; or
 - 1.7.5.3.5 which is disclosed pursuant to a requirement or request of a government agency; or
 - 1.7.5.3.6 which is already known by the receiving Party.
 - 1.7.5.4 Notwithstanding any termination or cancellation of this AES Agreement, the provisions with respect to nondisclosure of Confidential Information shall remain in full force and effect for a period of five (5) years thereafter.
- 1.8** If electronic communication or commerce is conducted over the Internet, the following subsections to this Section 1.8 will apply.
- 1.8.1 Although Detroit Edison attempts to ensure the integrity and accuracy of the Supplier Site, Detroit Edison makes no guarantees whatsoever as to the correctness or accuracy of the Supplier Site. It is possible that the Supplier Site could include inaccuracies or errors, and that unauthorized additions, deletions and alterations could be made to the Supplier Site by third parties. In the event an inaccuracy is discovered by the Alternative Electric Supplier, the Alternative Electric Supplier shall inform Detroit Edison so that it can be corrected.
 - 1.8.2 Alternative Electric Supplier agrees:
 - 1.8.2.1 To use compatible equipment to conduct electronic commerce with Detroit Edison.
 - 1.8.2.2 To keep confidential and not publish, broadcast, retransmit, reproduce, commercially exploit, or otherwise disseminate or use the data, information, or services provided by the Supplier Site or provided by third parties through their software or their linked sites, except in participating in the Detroit Edison Electric Choice Program or any successor plan.
 - 1.8.2.3 To keep confidential its password(s) and other security data, methods, and devices.
 - 1.8.2.4 To be solely responsible for all information and data transmitted, or use of any data, information, or services obtained using its passwords and other security data.
 - 1.8.2.5 Not to use the Supplier Site for any purpose except to participate in the Detroit Edison Electric Choice Program or any successor plan.
 - 1.8.2.6 To notify Detroit Edison immediately if it does not receive confirmation of the receipt of data or information by Detroit Edison.

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- 1.8.2.7 To notify Detroit Edison immediately if it receives confirmation of the receipt of data or information it did not send to Detroit Edison.
- 1.8.2.8 To notify Detroit Edison immediately if it becomes aware of any unauthorized use of its password(s) or other security data.
- 1.8.2.9 To notify Detroit Edison immediately if the security of its password(s) has been compromised in any respect.
- 1.8.2.10 To notify Detroit Edison if there is a discrepancy in any information or data sent to or received from Detroit Edison.
- 1.8.2.11 To accept full responsibility for the monitoring of all transactions with Detroit Edison.
- 1.8.2.12 To be liable for any and all charges or expenses incurred in connection with the use of the Supplier Site by it or any other person through the use of its security codes, equipment, or otherwise.
- 1.8.2.13 That Detroit Edison may discontinue Supplier Site services in whole or in part, or may modify or change the terms of the Supplier Site services at any time and from time to time upon reasonable notice.
- 1.8.2.14 That Detroit Edison may terminate access to the Supplier Site if the Alternative Electric Supplier has jeopardized the proper and efficient operation of the Electric Choice Program or successor program or its related services.
- 1.8.2.15 That any unauthorized use of Detroit Edison's services provided on the Supplier Site whatsoever shall result in automatic termination of the Alternative Electric Supplier's right to use the Supplier Site services.
- 1.8.2.16 That Detroit Edison shall not be under any duty to inquire as to the authority or propriety of any instructions given to Detroit Edison by the Alternative Electric Supplier, and Detroit Edison shall be entitled to act upon any such instructions.
- 1.8.2.17 That to the extent Detroit Edison utilizes internet services to transmit data or information, Detroit Edison will take reasonable security precautions, but Detroit Edison disclaims any liability for interception of any such data or information. Detroit Edison shall not be responsible for, and makes no warranties regarding, the access, speed, or availability of internet or network services.

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- 1.9** The Alternative Electric Supplier’s ability to electronically communicate and transfer data must be successfully demonstrated prior to enrolling Customers and shall be maintained throughout the term of this AES Agreement.
- 1.9.1 Before using the FTP Server to transmit data, the Alternative Electric Supplier must demonstrate its ability to electronically transfer data using the FTP Server by successfully completing a test conducted by Detroit Edison. The testing procedure is described on the Supplier Site.
- 1.9.2 Before using the internet to transmit data the Alternative Electric Supplier must demonstrate its ability to electronically transfer data by successfully completing a test conducted by Detroit Edison during the 30-day notification period. The testing procedure is described on the Supplier Site.
- 1.10** This AES Agreement evidences the Parties’ mutual intent to create binding obligations and transactions pursuant to electronic transmission and receipt of data and information.
- 1.10.1 Any transaction properly transmitted pursuant to this AES Agreement shall be considered, in connection with any transaction or any other requirement for a written agreement, to be a “writing” or “in writing”; and any such transaction shall be deemed for all purposes to have been “signed” and to constitute an “original” when printed from electronic files or records established and maintained in the normal course of business.
- 1.10.2 The conduct of the Parties pursuant to this AES Agreement including the use of transactions properly transmitted pursuant to this AES Agreement shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the Parties in furtherance of this AES Agreement.
- 1.10.3 The Parties agree not to contest the validity or enforceability of communications or transactions under the provisions of any applicable law relating to whether certain agreements are to be in writing, or signed by the Party to be bound thereby, or based on the authority or lack of authority of any employee of the Party to enter the transaction. Documents printed from electronic files or records established and maintained in the normal course of business, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall contest the admissibility of copies of such documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the documents were not originated or maintained in documentary form.

