

Electric Choice Supplier Handbook
APPENDIX C: Marketer Agreement

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APPENDIX C: Marketer Agreement

This Marketer Agreement for Detroit Edison’s Electric Choice Program (“Marketer 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 (“Marketer”). The Marketer is identified in the signature block below by name, type of entity, and business address. Detroit Edison and Marketer are sometimes referred to individually as “Party” or collectively as “Parties.”

Witnesseth:

WHEREAS, Detroit Edison has established an Electric Choice Retail Access Program (“Electric Choice Program”) as described in its **Retail Access Service Rider (“RASR”)** on file with the Michigan Public Service Commission (MPSC); and **WHEREAS**, the Marketer desires to participate in the Electric Choice Program in accordance with Detroit Edison’s **RASR. NOW THEREFORE**, in consideration of the mutual promises contained in this Marketer Agreement, Detroit Edison and the Marketer agree as follows:

1. Definitions

- 1.1 The terms “Marketer’s Customer” or “Customer” refer to the retail Customer enrolled in the Electric Choice Program by the Alternative Energy Supplier.
- 1.2 Terms not defined in this Marketer Agreement will have the meaning defined in the **RASR** or the **Alternative Energy Supplier (AES)** Agreement.

2. Term

- 2.1 This Marketer Agreement is effective as of the last date executed by the Marketer or Detroit Edison.
- 2.2 This Marketer Agreement will remain in effect unless canceled pursuant to Section 9, or terminated by either Party with 30 days prior written notice. Detroit Edison reserves the right to replace or amend this Marketer Agreement as appropriate to reflect changes required by regulatory agencies.

3. Notices

- 3.1 All notices required under this Marketer Agreement shall be made electronically, unless otherwise specified in this Marketer Agreement, to the Party to be served at such address as the Parties may designate from time to time.
- 3.2 The following person shall be the representative of Detroit Edison for all purposes under this Marketer Agreement:

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Manager, Electric Choice - Supplier Transactions
The Detroit Edison Company
One Energy Plaza
Detroit, MI 48226
FAX (313) 235-0531
Email Address: suppliers@dteenergy.com

3.3 Notice information for the representative of the Marketer for all purposes under this Marketer Agreement is provided in Attachment A.

3.4 Notice information may be changed by written notice to the other party.

4. Conditions Precedent for Marketer Participation in the Electric Choice Program

4.1 Note: On April 1, 2005, the Midwest Independent Transmission System Operator (MISO) began operation of the Midwest Markets, a “Day-2” hourly Locational Marginal Price (LMP) energy market. Market operations include centralized unit commitment and dispatch, a Day-Ahead Energy Market, a Real-Time Energy Market, and a Financial Transmission Rights (FTR) Market.

4.2 The Marketer shall be duly certified with the Midwest Independent Transmission System Operator (MISO) prior to providing Retail Access service as evidence by being listing on the MISO Certified Market Participants List <http://www.midwestiso.org/publish> (Documents Tab – Certified Market Participants).

4.1.4 An executed Marketer Agreement.

4.1.5 An executed Alternative Electric Supplier-Marketer Notice evidencing the Marketer’s Agreement to provide Transmission Services, Ancillary services, and backup services to Customers for at least one Alternative Electric Supplier. If a Marketer is also serving as a qualified Alternative Electric Supplier, an Alternative Electric Supplier-Marketer Notice must still be forwarded to Detroit Edison showing the same entity as both the Alternative Electric Supplier and Marketer. If a Customer is serving as its own Marketer and Alternative Electric Supplier, an Alternative Electric Supplier-Marketer Notice must be forwarded to Detroit Edison showing the same entity (the Customer) as both the Marketer and Alternative Electric Supplier. The Alternative Electric Supplier-Marketer Notice is included as Attachment C.

4.1.7 Where applicable, an executed Michigan Sales and Use Tax Certificate of Exemption. A sample of this certificate is shown in Attachment E.

4.2 In addition to the documentation listed above, prior to being allowed to serve Customers, the Marketer must:

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- 4.2.1 Demonstrate electronic communications and commerce capability that meets Detroit Edison's standards and protocols as defined on the Detroit Edison web site and in tariffs approved by the Commission.

5. Marketer's Obligations as a Participant in Electric Choice Program

- 5.1 The Marketer agrees to serve all Customers enrolled by an Alternative Electric Supplier for which there is an Alternative Electric Supplier-Marketer Notice on file with Detroit Edison that has not been terminated. A Marketer acting as an Alternative Electric Supplier must fulfill all requirements of both a Marketer and an Alternative Electric Supplier.
- 5.2 The Marketer will reserve transmission and schedule energy for all of its Customers, in an amount sufficient to satisfy the energy requirements of its Customers including losses associated with transmission and distribution.
- 5.3 The Marketer will use the sink identification code provided by MISO when reserving transmission and scheduling energy.
- 5.4 The Marketer will pay Detroit Edison for all services provided by Detroit Edison to the Marketer for the Marketer's Customer(s).
- 5.5 The Marketer will notify Detroit Edison immediately of any material adverse change in Marketer's financial condition.

6. Marketer Billing, Reconciliation and Payment

- 6.1 Detroit Edison provides MISO with hourly kWh consumption data by Commercial Pricing (CP) nodes. Detroit Edison also resubmits the consumption data on day 7, day 14, day 55 and one final time at day 105 when the MISO settlement period closes. By day 105 estimated consumption data should have been replaced with actual data as more actual reads replace estimated reads. If a customer is rebilled beyond the 105 day period there is a chance that the rebilled kWh will be different than the originally billed kWh. If the rebilled kWh is greater than what was originally billed then the marketer owes Detroit Edison; if the rebilled kWh is less than what was originally billed then Detroit Edison owes the Marketer. The marketer reconciliation process addresses the difference between what was billed by MISO to the Marketer versus what should have been billed.
- 6.2 Billing and payment activities between the Marketer and Detroit Edison shall be done electronically per the Electronic Business Transactions procedures outlined in Attachment F, unless otherwise approved by Detroit Edison.
- 6.3 Payment in full is due from the Marketer to Detroit Edison twenty (20) days from the date the bill issued ("due date").

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- 6.4 The Marketer shall pay a late payment charge for any unpaid balance reflected on the account after the due date.

7. Events of Default

- 7.1 The Marketer will be in default if the Marketer:
- 7.1.1 Fails to maintain its **MISO qualifications and certifications**.
 - 7.1.2 Fails to maintain qualification or perform its obligations as a Marketer pursuant to Section 4 and fails within ten (10) business days of written or electronic notification from Detroit Edison to reestablish qualification and resume performance of its obligations.
 - 7.1.3 Is found to have misrepresented a material fact or other representation in any document submitted to Detroit Edison in connection with this Electric Choice Program and fails within ten (10) business days of written or electronic notification from Detroit Edison to correct the misrepresentation while remaining qualified.
 - 7.1.4 Is subject to a bankruptcy, insolvency or receivership proceeding.

8. Remedies

- 8.1 If an Event of Default occurs with respect to a defaulting Party at any time during the term of this Marketer Agreement, the non-defaulting Party may: (a) cancel this Marketer Agreement; provided, however, upon the occurrence of any Event of Default listed in Section 7, this Marketer 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 available at law or in equity to enforce payment of any amounts owing together with interest and attorney fees and costs, or (c) both.

9. Retail Access Service Commencement and Termination

- 9.1 The Marketer is responsible for all obligations and liabilities with respect to services provided by Detroit Edison to the Marketer on behalf of its Customers, until terminated pursuant to the provisions of Section 10.
- 9.2 All Customer enrollments must be performed by a qualified Alternative Electric Supplier. Detroit Edison shall have no obligations to the Marketer pursuant to this Marketer Agreement until an Alternative Electric Supplier enrolls a Customer whose services are to be provided by the Marketer.
- 9.3 Retail Access Service Commencement
- 9.3.1 Unless otherwise agreed to by the Parties, Retail Access service to a Customer pursuant to this Marketer Agreement shall commence at the beginning of the day of the Effective Date as defined in the **RASR**.

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- 9.3.2 For Marketers serving Customer(s) resulting from a Marketer switch, the new Marketer will commence serving the Customer(s) at the beginning of the first day of a calendar month following an electronic modify request by its Alternative Electric Supplier for all Customer(s) to be served by the new Marketer.
- 9.4.1 Unless otherwise agreed to by the Parties, Retail Access Service to Customers pursuant to this Marketer Agreement terminates at the beginning of the day of the effective date of termination of the Marketer's obligation to serve the Customer. The effective date of termination of the Marketer's obligation to serve the Customer shall be:
- 9.4.1.1 The first day of a calendar month which occurs at least 45 days after a Marketer or an Alternative Electric Supplier submits to Detroit Edison an Alternative Electric Supplier-Marketer Notice with the termination section executed, if the Alternative Electric Supplier does not select a new Marketer to serve the Customer(s).
- 9.4.1.2 The Customer's next scheduled meter read date pursuant to the Alternative Electric Supplier Agreement, if the Customer's participation in the Electric Choice Program is terminated by the Alternative Electric Supplier, Detroit Edison or the Customer.
- 9.4.1.3 On the day following the date of the notice of an Event of Default by the Marketer, Alternative Electric Supplier or the Customer. Notification of termination by Detroit Edison will be made electronically to the Marketer and applicable Alternative Electric Supplier(s) and by mail to the Customer(s).

10. Representations and Warranties

- 10.1 The Marketer represents and warrants to Detroit Edison that:
- 10.1.1 The Marketer will not knowingly schedule generation significantly different from the expected Customer loads served.
- 10.1.2 The defaulting Party's liability shall be limited to direct actual damages only, and 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 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. Limitations imposed on remedies and the measure of damages will 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.

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11. Dispute Resolution

- 11.1 Detroit Edison will have no duty or obligation to resolve any complaints or disputes between Alternative Electric Suppliers and Marketers, related to but not limited to Alternative Electric Supplier or Marketer notices, or switches or enrollment terminations.
- 11.2 In the event of a dispute between Detroit Edison and the Marketer, including but not limited to “Events of Default,” Detroit Edison and the Marketer may attempt, in good faith, to resolve the dispute amicably and promptly. If the dispute is not resolved in five (5) business days, Detroit Edison and the Marketer shall attempt to resolve the dispute by promptly appointing a senior representative of Detroit Edison and the Marketer to attempt to mutually agree upon a resolution. The two (2) senior members shall meet within ten (10) business days. If the two (2) senior representatives cannot reach a resolution within a 30-day period, the dispute may, on demand of Detroit Edison or the Marketer, be submitted to arbitration as provided herein.
- 11.3 The dispute will be submitted for resolution in accordance with the American Arbitration Association (“AAA”) Commercial Arbitration Rules. The judgment rendered by the arbitrator may be enforced in any court having jurisdiction of the subject matter and Detroit Edison and the Marketer.
- 11.4 If the parties are unable to agree on an arbitrator, the arbitrator shall be determined by AAA.
- 11.5 The findings and award of the arbitrator shall be final and conclusive and shall be binding upon Detroit Edison and the Marketer, except as otherwise provided by law. Any award shall specify the manner and extent of the division of the costs between Detroit Edison and the Marketer.
- 11.6 Nothing in this Section shall restrict the rights of either Detroit Edison or the Marketer to file a formal complaint with an appropriate regulatory agency regarding any issue, the adjudication of which lies within the exclusive jurisdiction of such appropriate regulatory agency.

12. Regulatory, Legislative, or Judicial Changes

- 12.1 If any material modifications, changes, additions or deletions to any of the provisions of this Marketer Agreement are imposed by regulation or law, then the Party adversely affected may terminate this Marketer Agreement upon 30 days written notice. Either Party shall give the other Party such notice within 30 days of such imposition.
- 12.2 If any adverse modification, change, addition, deletion, or ruling regarding (1) any of the provisions of the Electric 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

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affected may terminate this Marketer 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.

13. Exclusion of Third-Party Beneficiaries

13.1 No entity is intended to be a third-party beneficiary under this Marketer Agreement.

14. Force Majeure

14.1 Neither Party shall be liable if it is rendered unable to fulfill any of its obligations under this Marketer Agreement by reason of Force Majeure, but such Party shall exercise due diligence to remove such inability with all reasonable dispatch. This provision shall not apply to any obligations controlled by the applicable **RASR** or other tariff or agreement that contains force majeure provisions.

14.2 “Force Majeure” when applicable 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 electric procedures, or other similar or dissimilar causes beyond the reasonable control of 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 appeal from any judicial, regulatory or administrative action.

15. Non-Waiver of Defaults

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

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

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

16.1 Nothing contained in this Marketer 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 of service, or any rule under other applicable law or regulation.

17. Assignment

17.1 The Marketer may assign its rights and obligations only with written consent of Detroit Edison, which will not unreasonably be withheld. Detroit Edison may assign this Marketer Agreement to a successor entity that acquires all or substantially all of Detroit Edison's assets without the Marketer's consent. In the event of an assignment by either Party, any such assignee shall be required to assume all of the obligations of the assignor under this Marketer Agreement pursuant to a written agreement.

18. Governing Law

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

19. Warranty Exclusion and Limited Remedy

DETROIT EDISON EXPRESSLY DISCLAIMS 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.

20. Entire Agreement and Amendments

20.1 This Marketer 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.

20.2 This Marketer Agreement and its Attachments may be amended only by written notification executed by the Parties that specifically refers to the Section(s) being amended.

20.3 The Marketer warrants that this agreement has not been altered from its original form as provided by Detroit Edison electronically or otherwise.

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21. Authorization Acknowledgment

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

Detroit Edison:

By: _____ Manager, Electric Choice Supplier Transactions
Signature

_____ Date _____

Print Name

Marketer:

_____ By: _____

Marketer Name Signature

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

Date _____ Title _____

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Marketer Specific Information
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Electronic Funds Transfer

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

Detroit Edison's Financial Institution Name: JP Morgan Chase

Address: 611 Woodward Avenue

City: Detroit State: Michigan Zip: 48232

ACH Coordinator Name: **Contact Supplier Support Center**

E-mail: suppliers@dteenergy.com

Phone: **(888) 830-2170**

Fax: **(313) 235 - 0531**

* Batch Number:

*ACH Routing Number:

*Account Number:

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

Marketer's Financial Institution Name:

Address:

City: State: Zip:

ACH Coordinator Name: _____ E-mail: _____

Phone: () _____ Fax: () _____

* Batch Number:

*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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Notices

The following person shall be the representative of the Marketer for all purposes under this Marketer Agreement:

Name:

Title:

Street Address:

City, State, Zip:

Phone Number:

Fax:

Email Address:

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Attachment B
Sample of Midwest ISO – Certified Market Participants Listing



Certified Market Participants as of January 7, 2009	NERC ID
330 Fund 1, LP	FICP
Acciona Wind Energy USA, LLC	AENA
Alcoa Power Generating Inc	APGT
Alliant Energy Corporate Services, Inc.	ALTM
Alliant Energy Neenah, LLC	7FA
Altius Power Fund LP	ALTF
Ameren CIPS	AMCP
Ameren Energy	AME
Ameren Energy Marketing Peoria Wholesale	AEMP
Ameren Energy Resources Generating Company (AERGC)	AERG
Ameren Union Electric	AMUE
AmerenEnergy Marketing	AMEM
American Electric Power Service Corporation	AEPM
American Municipal Power-Ohio	AMPO
American PowerNet Management, L.P.	APN5

To ensure all Marketers maintain their qualifications with the Midwest Independent Transmission System Operator (MISO), DETROIT EDISON – Electric Choice management will perform periodic reviews of the (MISO) Certified Market Participants Listing (see above example).

This Marketer Agreement, dated as of _____, is entered into by and between The Detroit Edison Company (“Company”) and _____.

Each transaction hereunder shall be carried out under terms and conditions as agreed upon by the Company and **Marketer** in accordance with the terms and conditions of the Tariff.

IN WITNESS WHEREOF, Company and **Marketer** have caused this **Marketer** Agreement to be executed by their respective authorized officials as of the date first above written.

THE DETROIT EDISON COMPANY

MARKETER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

* This is only a sample document for illustrative purposes. The actual agreement and associated Retail Access Service Rider can be downloaded from the Detroit Edison web site.

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[A signed copy must be sent with agreement to DTE Energy – Electric Choice]

Attachment D

Sample of Michigan Sales and Use Tax Certificate of Exemption

Michigan Department of Treasury, SUW
 3372 (Rev. 11-01)

Michigan Sales and Use Tax Certificate of Exemption

TO BE RETAINED IN THE SELLER'S RECORDS - DO NOT SEND TO TREASURY.

This certificate is invalid unless all four sections are completed by the purchaser.

SECTION 1: CHECK ONE OF THE FOLLOWING

- One time purchase
- Blanket certificate (Note: A blanket certificate is valid for four years from the date of signature unless an earlier expiration date is listed below)
 Expiration date, if less than four years: _____.

The purchaser hereby claims exemption on the purchase of tangible personal property and selected services made under this certificate from _____ and certifies that this claim is based upon the purchaser's proposed use of the items or services, or the status of the purchaser.
 (vendor name)

SECTION 2: ITEMS COVERED BY THIS CERTIFICATE

- All items purchased
- Limited to the following items:

SECTION 3: BASIS FOR EXEMPTION CLAIM

- For Resale at Retail - Sales Tax Registration Number:
- For Resale at Wholesale - No Number Required
- For Lease - Use Tax Registration Number:
- Agricultural Production - No Number Required (Describe)
- Industrial Processing - No Number Required
- Government Entity, Nonprofit School, Nonprofit Hospital, and Church (Circle type of organization.)
- Nonprofit Internal Revenue Code Section 501(c)(3) and 501(c)(4) Exempt Organizations (Attach copy of IRS letter ruling).
- Nonprofit Organizations with an Exempt letter from the State of Michigan (Attach a copy of State's letter)
- Other (explain):

SECTION 4: CERTIFICATION

I declare, under penalty of perjury, that the information on this certificate is true, that I have consulted the statutes, administrative rules and other sources of law applicable to my exemption, and that I have exercised reasonable care in assuring that my claim of exemption is valid under Michigan law. In the event this claim is disallowed, I accept full responsibility for the payment of tax, penalty and any accrued interest, including, if necessary, reimbursement to the vendor for tax and accrued interest.

Purchaser	Street Address
Area Code / Telephone No.	City State Zip Code
Signature and Title	Date Signed
Name (Print or Type)	

Note: This is only a sample document for illustrative purposes. The actual certificate can be downloaded from www.michigan.gov/documents/taxes/3372_216612_7.pdf

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Attachment E

Electric 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 Extensible Markup Language (XML) transaction sets. 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. 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 transaction sets that are used will be listed on the Supplier Site. These transaction sets may be changed by Detroit Edison from time to time upon 30 days' notice to the Alternative Electric Supplier/ Marketer posted on the Supplier Site.
- 1.2.2 Any transmission of XML data using a transaction set 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 Transactions 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.
- 1.3.1 Either Party may modify its election to use or change a Provider upon 30 days' prior electronic or written notice.
- 1.3.2 Each Party shall be responsible for the costs of any Provider with which it contracts, unless stated otherwise.

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- 1.3.3 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.
- 1.4 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.
- 1.4.1 If for any reason, the Alternative Electric Supplier/Marketer's system for communicating SML transactions is inoperable, Detroit Edison's liability is limited to notifying the Alternative Electric Supplier/Marketer that there is a communications problem. Detroit Edison will not handle XML transactions from the Alternative Electric Supplier/Marketer until the Alternative Electric Supplier/Marketer's system is back in service.
- 1.4.2 Each Party shall properly use those security procedures which are reasonably sufficient to ensure that all transmissions of transactions are authorized and to protect its business records and data from improper access.
- 1.5 Data Transmissions
- 1.5.1 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.
- 1.5.2 Upon proper receipt of any transaction, the receiving Party shall promptly and properly transmit a functional acknowledgment in return, unless otherwise agreed upon.
- 1.5.3 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.

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- 1.5.4 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.
- 1.5.5 Information contained in any transaction or otherwise exchanged between the Parties shall be confidential information ("Confidential Information").
- 1.5.5.1 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 Marketer Agreement.
- 1.5.5.2 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 Marketer Agreement.
- 1.5.5.3 The obligations imposed herein shall not apply to Confidential Information:
- 1.5.5.3.1 which becomes available to the public through no act of the receiving Party; or
- 1.5.5.3.2 which may be published prior to the date hereof; or
- 1.5.5.3.3 which is received from a third party without restriction and without breach of this Marketer Agreement; or
- 1.5.5.3.4 which is independently developed by the receiving Party; or
- 1.5.5.3.5 which is disclosed pursuant to a requirement or request of a government agency; or
- 1.5.5.3.6 which is already known by the receiving Party.

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- 1.5.5.4 Notwithstanding any termination or cancellation of this Marketer 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.
- 1.6 If electronic communication or commerce is conducted over the Internet, the following subsections to this Section 1.6 will apply:
- 1.6.1 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/Marketer, the Alternative Electric Supplier/Marketer shall inform Detroit Edison so that it can be corrected.
- 1.6.2 Alternative Electric Supplier/Marketer agrees:
- 1.6.2.1 To use compatible equipment to conduct electronic commerce with Detroit Edison.
- 1.6.2.2 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.
- 1.6.2.3 To keep confidential its password(s) and other security data, methods, and devices.
- 1.6.2.4 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.
- 1.6.2.5 Not to use the Supplier Site for any purpose except to participate in the Detroit Edison Electric Choice Program or any successor plan.

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- 1.6.2.6 To notify Detroit Edison immediately if it does not receive confirmation of the receipt of data or information by Detroit Edison.
- 1.6.2.7 To notify Detroit Edison immediately if it receives confirmation of the receipt of data or information it did not send to Detroit Edison.
- 1.6.2.8 To notify Detroit Edison immediately if it becomes aware of any unauthorized use of its password(s) or other security data.
- 1.6.2.9 To notify Detroit Edison immediately if the security of its password(s) has been compromised in any respect.
- 1.6.2.10 To notify Detroit Edison if there is a discrepancy in any information or data sent to or received from Detroit Edison.
- 1.6.2.11 To accept full responsibility for the monitoring of all transactions with Detroit Edison.
- 1.6.2.12 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.
- 1.6.2.13 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.
- 1.6.2.14 That Detroit Edison may terminate access to the Supplier Site if the Alternative Electric Supplier/Marketer has jeopardized the proper and efficient operation of the Electric Choice Program or successor program or its related services.
- 1.6.2.15 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/Marketer's right to use the Supplier Site services.
- 1.6.2.16 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/Marketer, and Detroit Edison shall be entitled to act upon any such instructions.

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- 1.6.2.17 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.
- 1.7** The Alternative Electric Supplier/Marketer'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 Marketer Agreement.
- 1.7.1 Before using the **file transfer protocol (FTP)** to transmit data, the Alternative Electric Supplier/Marketer must demonstrate its ability to electronically transfer data using the **FTP** by successfully completing a test conducted by Detroit Edison. The testing procedure is described on the Supplier Site.
- 1.7.2 Before using the internet to transmit data the Alternative Electric Supplier/Marketer 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 will be described on the Supplier Site.
- 1.8** This Marketer Agreement evidences the Parties' mutual intent to create binding obligations and transactions pursuant to electronic transmission and receipt of data and information.
- 1.8.1 Any transaction properly transmitted pursuant to this Marketer 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.
- 1.8.2 The conduct of the Parties pursuant to this Marketer Agreement including the use of transactions properly transmitted pursuant to this Marketer Agreement shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the Parties in furtherance of this Marketer Agreement.

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- 1.8.3 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.