

Marketer Agreement

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Marketer Agreement

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

Witnesseth:

WHEREAS, DTE 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 Marketer desires to participate in the Electric Choice Program in accordance with the terms and conditions of this Marketer Agreement, the RASR, and the 10% Cap on Electric Choice participation procedures pursuant to the MPSC's Order in Case No. U-15801.

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, DTE and the Marketer agree as follows:

1. Definitions

- 1.1 The term "Marketer" refers to a Federal Energy Regulatory Commission ("FERC")-authorized power Marketer responsible for Midcontinent Independent System Operator ("MISO") Market Participant ("MP") responsibilities related to providing open access transmission, and energy and operating reserve services to Retail Access customers.
- 1.2 The term "Alternative Electric Supplier" refers to an entity that has obtained all the necessary legal approvals to sell retail electricity to Retail Access customers in Michigan, as is licensed by the MPSC. An Alternative Electric Supplier ("AES") does not physically deliver electricity directly to retail customers in the state.
- 1.3 The term "Customer" refers to the retail Customer enrolled in the Electric Choice Program by the Alternative Electric Supplier.
- 1.4 The term "10% Cap Procedure" refers to the procedure governing Electric Choice Program cap allocations issued pursuant to the September 29, 2009 MPSC Order in Case No. U-15801 and as amended from time to time.
- 1.5 Terms not defined in this Marketer Agreement will have the meaning defined in the RASR or the AES Agreement.

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2. Term

- 2.1 This Marketer Agreement is effective as of the last date executed by the Marketer or DTE.
- 2.2 This Marketer Agreement will remain in effect unless canceled pursuant to Section 9, or terminated without cause by either Party with 30 days prior written notice. DTE reserves the right to replace or amend this Marketer Agreement as appropriate to reflect changes required by regulatory agencies.

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

- 3.1 The Marketer shall be duly certified with the Midcontinent Independent System Operator (“MISO”) prior to providing open access transmission, energy and operating reserve services as evidenced by being listed on the MISO Certified Market Participants List as published by MISO on its Web site, www.misoenergy.org.
- 3.2 An executed Marketer Agreement.
- 3.3 An executed Alternative Electric Supplier-Marketer Notice evidencing the Marketer’s Agreement to provide open access transmission, energy and operating reserve services 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 DTE 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 DTE showing the same entity (the Customer) as both the Marketer and Alternative Electric Supplier. The Alternative Electric Supplier-Marketer Notice is included as Attachment B.
- 3.4 In addition to the documentation listed above the Marketer must:
 - 3.4.1 Demonstrate electronic communications and commerce capability that meets DTE’s standards and protocols as defined in Attachment C, on DTE’s Supplier Web site (“Supplier Site”), and in tariffs approved by the MPSC.

4. Marketer’s Obligations as a Participant in Electric Choice Program

- 4.1 The Marketer agrees to provide open access transmission, energy and operating reserve services for all Customers enrolled by an Alternative Electric Supplier for which there is an Alternative Electric Supplier-Marketer Notice on file with DTE 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.

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- 4.2 The Marketer shall be responsible for the provision of open access transmission, energy and operating reserve services associated with the energy requirements of all Customer meters behind its MISO-designated Commercial Pricing (“CP”) node, including applicable transmission and distribution losses.
- 4.3 The Marketer must maintain its qualifications and certifications with MISO.
- 4.4 The Marketer will notify DTE immediately of any material adverse change in Marketer’s financial condition.
- 5. Commencement and Termination of Marketer Open Access Transmission, Energy and Operating Reserve Services**
- 5.1 All Customer enrollments must be performed by a qualified Alternative Electric Supplier. DTE shall have no obligations to the Marketer pursuant to this Marketer Agreement until an Alternative Electric Supplier enrolls a Customer(s).
- 5.2 Open access transmission, energy and operating reserve services provided by the Marketer to the Alternative Electric Supplier’s Customer(s) pursuant to this Marketer Agreement shall commence at the beginning of the day of the Effective Date as defined in the RASR.
- 5.3 In the event of 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.
- 5.4 Open access transmission, energy and operating reserve services provided by the Marketer to the Alternative Electric Supplier’s Customer(s) pursuant to this Marketer Agreement shall terminate at the beginning of the day of the effective date of termination of the Marketer’s obligation to serve the Alternative Electric Supplier’s Customer(s). The effective date of termination shall be:
- 5.4.1 The first day of a calendar month which occurs at least 45 days after a Marketer or an Alternative Electric Supplier submits to DTE an Alternative Electric Supplier-Marketer Notice with the termination section executed.
- 5.4.2 The Customer’s next scheduled meter read date pursuant to the AES Agreement, if the Customer’s participation in the Electric Choice Program is terminated by the Alternative Electric Supplier, DTE or the Customer.
- 5.4.3 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 DTE will be made electronically to the Marketer and applicable Alternative Electric Supplier(s) and by mail to the Customer(s).

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6. DTE's Obligations to Marketer for MISO Settlement

- 6.1 If designated as the Marketer's Meter Data Management Agent ("MDMA"), DTE agrees to provide MISO with hourly kilowatt-hour (kWh) consumption data by CP node(s). DTE shall submit the consumption data on day 7, day 14, day 55 and one final time at day 105, the final MISO settlement period. Changes to Marketer CP node consumption data, including applicable distribution losses, shall be settled between the Marketer and DTE. Increases in Marketer CP node consumption data will likely result in amounts due to DTE from the Marketer and decreases in Marketer CP node consumption data will likely result in amounts due to the Marketer from DTE. The marketer reconciliation process ultimately addresses the difference between what was billed by MISO to the Marketer and/or DTE versus what should have been billed.
- 6.1.1 For standard energy-metered Customers, DTE will convert monthly metered consumption to hourly kilowatt-hour (kWh) consumption, using MPSC-approved load profiling methodology, based on average actual metered kilowatt-hour (kWh) consumption from twelve Standard Load Profile ("SLP") customer groupings.
- 6.1.2 For Customers with no available metering data, DTE will estimate hourly kilowatt-hour (kWh) consumption, using the Customer's enrollment capacity in megawatts (MW) and the MPSC-approved load profiling methodology, based on historical CP node consumption adjusted for average daily temperature.
- 6.1.3 DTE will apply applicable distribution losses associated with the delivery of power to the Customer's meter using the real power loss factors for distribution service specified in the RASR.

7. Representations and Warranties

- 7.1 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.

8. Events of Default

- 8.1 The Marketer will be in default if the Marketer:
- 8.1.1 Fails to maintain its MISO qualifications and certifications.

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- 8.1.2 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 DTE to reestablish qualification and resume performance of its obligations.
- 8.1.3 Is found to have misrepresented a material fact or other representation in any document submitted to DTE in connection with this Electric Choice Program and fails within ten (10) business days of written or electronic notification from DTE to correct the misrepresentation while remaining qualified.
- 8.1.4 Is subject to a bankruptcy, insolvency or receivership proceeding.

9. Remedies

- 9.1 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 8 or
 - 9.1.1 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.

10. Dispute Resolution

- 10.1 DTE 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.
- 10.2 In the event of a dispute between DTE and the Marketer, including but not limited to “Events of Default,” DTE 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, DTE and the Marketer shall attempt to resolve the dispute by promptly appointing a senior representative of DTE 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 DTE or the Marketer, be submitted to arbitration as provided herein.
- 10.3 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 DTE and the Marketer.
- 10.4 If the parties are unable to agree on an arbitrator, the arbitrator shall be determined by AAA.

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- 10.5 The findings and award of the arbitrator shall be final and conclusive and shall be binding upon DTE and the Marketer, except as otherwise provided by law. Any award shall specify the manner and extent of the division of the costs between DTE and the Marketer.
- 10.6 Nothing in this Section shall restrict the rights of either DTE 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.

11. Regulatory, Legislative, or Judicial Changes

- 11.1 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.
- 11.2 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, U-12489, or U-15801 is imposed by a regulatory order, law, regulation, or court order, the Party adversely 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.

12. Exclusion of Third-Party Beneficiaries

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

13. Force Majeure

- 13.1 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.
- 13.2 “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

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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.

14. Non-Waiver of Defaults

- 14.1 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.
- 14.2 Failure or delay of DTE 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 DTE'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 DTE 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.

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

- 15.1 Nothing contained in this Marketer Agreement shall be construed as affecting or limiting in any way the right of DTE 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.

16. Assignment

- 16.1 The Marketer may assign its rights and obligations only with written consent of DTE, which will not unreasonably be withheld. DTE may assign this Marketer Agreement to a successor entity that acquires all or substantially all of DTE'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.

17. Notices

- 17.1 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.

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

Manager, Electric Choice Program Office
DTE Electric Company
One Energy Plaza
Detroit, MI 48226
Fax (313) 235-0531
Email Address: suppliers@dteenergy.com

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

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

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

19.1 DTE 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 DTE 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.

DTE Electric:

By: _____ Manager, Electric Choice Program Office
Signature

Print Name
Date: _____

Marketer:

Marketer Name
By: _____
Signature

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

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Attachment A
Marketer Specific Information

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 Number: _____

Email Address: _____



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Attachment B
Alternative Electric Supplier-Marketer Notice

This is a notice to DTE Electric that on ___/___/___ the Alternative Electric Supplier and Marketer entered into a contract where the Marketer agrees to provide MISO MP-related services.

Alternative Electric Supplier Name _____ Marketer Name _____

Alternative Electric Supplier Duns No. _____ Marketer Duns No. _____

Alternative Electric Supplier:

By: _____
Signature Title Date

Print Name

Marketer:

By: _____
Signature Title Date

Print Name

Effective ___/___/___, the Alternative Electric Supplier or Marketer terminated its contract with:

Alternative Electric Supplier Name _____ Marketer Name _____

Alternative Electric Supplier Duns No. _____ Marketer Duns No. _____

Alternative Electric Supplier:

By: _____
Signature Title Date

Print Name

Marketer:

By: _____
Signature Title Date

Print Name

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Attachment C

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 DTE, 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 DTE from time to time upon 30 days' notice to the Marketer 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** Marketers are expected to transmit XML transaction sets with DTE via an FTP (File Transfer Protocol) server provided by DTE. DTE will provide a unique user ID and password for each Marketer 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 DTE will read and process. The Marketer will have 'read' access to the 'Outbound' directory under their 'home directory'. DTE generates outbound transaction sets to Marketers which can be downloaded from the outbound directory.

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- 1.4** To communicate using XML, the Marketer must obtain software capable of generating RSA 1024 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 Marketer's system for communicating XML transactions is inoperable, DTE's liability is limited to notifying the Marketer that there is a communications problem. DTE 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.
- 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.

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- 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 Marketer 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 Marketer 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 Marketer Agreement; or
- 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

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- 1.7.5.3.6 which is already known by the receiving Party.
- 1.7.5.4 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.
- 1.8** If electronic communication or commerce is conducted over the Internet, the following subsections to this Section 1.8 will apply.
- 1.8.1 Although DTE attempts to ensure the integrity and accuracy of the Supplier Site, DTE 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 Marketer, the Marketer shall inform DTE so that it can be corrected.
- 1.8.2 Marketer agrees:
- 1.8.2.1 To use compatible equipment to conduct electronic commerce with DTE.
- 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 DTE 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 DTE Electric Choice Program or any successor plan.
- 1.8.2.6 To notify DTE immediately if it does not receive confirmation of the receipt of data or information by DTE.

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- 1.8.2.7 To notify DTE immediately if it receives confirmation of the receipt of data or information it did not send to DTE.
- 1.8.2.8 To notify DTE immediately if it becomes aware of any unauthorized use of its password(s) or other security data.
- 1.8.2.9 To notify DTE immediately if the security of its password(s) has been compromised in any respect.
- 1.8.2.10 To notify DTE if there is a discrepancy in any information or data sent to or received from DTE.
- 1.8.2.11 To accept full responsibility for the monitoring of all transactions with DTE.
- 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 DTE 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 DTE may terminate access to the Supplier Site if the Marketer 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 DTE's services provided on the Supplier Site whatsoever shall result in automatic termination of the Marketer's right to use the Supplier Site services.
- 1.8.2.16 That DTE shall not be under any duty to inquire as to the authority or propriety of any instructions given to DTE by the Marketer, and DTE shall be entitled to act upon any such instructions.
- 1.8.2.17 That to the extent DTE utilizes internet services to transmit data or information, DTE will take reasonable security precautions, but DTE disclaims any liability for interception of any such data or information. DTE 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 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.
- 1.9.1 Before using the FTP Server to transmit data, the Marketer must demonstrate its ability to electronically transfer data using the FTP Server by successfully completing a test conducted by DTE. The testing procedure is described on the Supplier Site.
- 1.9.2 Before using the internet to transmit data the Marketer must demonstrate its ability to electronically transfer data by successfully completing a test conducted by DTE during the 30-day notification period. The testing procedure is described on the Supplier Site.
- 1.10** This Marketer Agreement evidences the Parties’ mutual intent to create binding obligations and transactions pursuant to electronic transmission and receipt of data and information.
- 1.10.1 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.
- 1.10.2 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.
- 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.