

On-Site Energy Manager Participation Agreement

This Participation Agreement (the "Agreement") is made and entered into this _____ day of _____ by and between DTE Electric and DTE Gas, Michigan Corporations ("DTE") and _____ a _____ company ("Participant").

Each of DTE and the Participant may be referred to as a "Party" and, collectively, the "Parties".

RECITALS

WHEREAS, Participant owns one or more Facilities and desires to have DTE provide energy management and consulting services through the placement of an on-site Energy Manager at one or more of those Facilities; and

WHEREAS, the Participant reasonably expects that it can implement Projects that meet the Simple Payback Threshold of five years or less; and

WHEREAS, DTE is willing to provide certain Services upon the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

In this Agreement, the following terms will have the following meanings:

"Agreement" means this Participation Agreement, including all Schedules, as it or they may be amended, restated or supplemented from time to time.

"Annual Report" means the report of energy management activities of a Participant, including documentation to substantiate Energy Savings, completed by the Energy Manager and delivered to DTE within thirty (30) days before the end of each Funding Period, in the form made available by DTE.

"Applicable Law" Any statute, treaty, common law, ordinance, building code, regulation, rule, decree, final judicial or administrative order of a Governmental Authority (a) having jurisdiction over any part of this Agreement.

"Business Day" means a day, other than a Saturday or a Sunday or statutory holiday in the State of Michigan are not open for the transaction of business.

"Commercially Reasonable Efforts" means all efforts which may be required to enable a Person, directly or indirectly, to satisfy, consummate, complete or achieve a condition, transaction, activity, obligation or undertaking contemplated by this Agreement and which do not require such Person to expend any funds or assume liabilities other than expenditures and liabilities which are reasonable

in nature and amount in the context of the purpose of, and the condition, transaction, activity, obligation or undertaking contemplated by, this Agreement.

“Confirmed Annual Energy Savings” are the Energy Savings confirmed by DTE Program staff and approved by DTE as in-service during the applicable Funding Period.

“Customer” means an electricity or natural gas consumer whose Facility or Facilities are directly connected to, or behind the meter of another electricity or natural gas consumer connected to the DTE-controlled grid.

“DTE Program Staff” The individual(s) designated and authorized by DTE (such delegation to be communicated to Participant in writing) to supervise Energy Managers, and to receive, review and approve Reports.

“EM&V Protocols” means the methods and processes that DTE develops for the evaluation, measurement and verification of Energy Waste Reduction programs and initiatives, as such methods and processes may be amended from time to time.

“Energy Manager” means an energy manager, provided at DTE’s expense, who meets the Energy Manager Eligibility Criteria that is employed by DTE and engaged by a Participant and whose primary responsibility is to propose and lead methodologies and processes to reduce energy consumption in a Facility.

“Energy Manager Duties” means the minimum duties of the Energy Manager, substantially as set out in Schedule A of this agreement.

“Energy Manager Eligibility Criteria” means the eligibility requirements the Energy Manager must meet, as set out in Schedule A of this Agreement.

“Energy Savings” means the estimated, determined or actual kilowatt hour or MCF reduction in electricity or natural gas consumption from a Project or Projects initiated and/or implemented during a Funding Period.

“EWR” means energy waste reduction.

“Facility” or “Facilities” means the building(s), premises or lands, or part thereof, owned or occupied by the Participant and in respect of which such Participant is participating in the On-Site Energy Manager Program. All Participant Facilities included in the On-Site Energy Manager Program shall be metered separately for each DTE provided gas or electric service.

“Funding Period” means the 12-month period, defined in Section 8, in which DTE will fund an Energy Manager to provide Services for the benefit of the Participant. The Funding Period may be extended for an additional 12-month funding period or shorter only by DTE, acting in its sole discretion.

“Measures” means: (i) any activity undertaken for the primary purpose of obtaining or effecting, directly or indirectly, EWR, including the installation, retrofit, replacement, modification or commissioning of equipment, systems, processes or behaviors that consume or result in the consumption of electricity or natural gas; or (ii) any equipment, system or product related to the foregoing.

“On-Site Energy Manager Program” means the EWR program designed to provide an Energy Manager to a Participant for the purpose of establishing a Strategic Energy Plan and to propose and lead methodologies and processes to reduce electric or natural consumption in a Participant’s facilities.

“Program Eligibility Criteria” means the eligibility criteria the Participant must meet to the satisfaction of DTE to be eligible to receive an Energy Manager, as set out in the Program Requirements.

“Program Requirements” means the program requirements for the On-Site Energy Manager Program as defined in Schedule D, as updated from time to time.

“Project” means one or more Measures, which, when implemented in respect of a Facility, are expected to deliver Energy Savings.

“Reports” means, collectively, the set of reports to be submitted to DTE, including the Strategic Energy Plan, monthly updates to the Strategic Energy Plan, and the Annual Report.

“Safety Program” means those Participant activities that:

- a) Implement management, leadership, and employee involvement;
- b) Implement procedures for identifying and controlling workplace hazards;
- c) Develop and communicate safety plans, rules and work procedures; and
- d) Conduct or provide for training for all employees in safe and healthful work practices.

“Safety Training and Orientation” means instruction in safety and/or health and includes, but is not limited to, videos, audio tapes, books, brochures, handouts, slides, classroom instruction or lectures, and in-service training.

“Simple Payback” is the time it would take to recover the initial investment in a Project in Energy Savings.

“Simple Payback Threshold” is five years or less.

“Strategic Energy Plan” or “SEP” means the documents, substantially in the form made available by DTE completed by the Energy Manager describing the activities and plans required to reduce energy consumption or demand in such Participant’s Facility or Facilities and detailing how the Participant is demonstrating leadership in the area of energy conservation by, among other things, developing conservation policies and establishing employee, community and peer-to-peer awareness programs. These include the Energy Management Handbook and the Energy Management Toolbox as described in Schedule C.

2. Services

DTE will provide the Services as set forth in the Energy Management Services in Schedule A of this Agreement (“Services”).

DTE will provide the Services in the Facilities set forth in the Customer Facilities List in Schedule B of this Agreement or other location mutually agreed upon (“Facilities”).

DTE will provide Services to facilitate the activities of the Participant’s energy team as described in the Strategic Energy Plan guide in Schedule C of this Agreement. These activities may include Facilities outside of DTE’s service territory, however, activities associated with these Facilities cannot exceed 20% of the Energy Manager’s total hours worked.

3. Manner and Time of Performance of Services

DTE will perform, or cause to be performed, the Services in accordance with the terms of this Agreement.

DTE will ensure that the Energy Manager meets the Energy Manager Eligibility Criteria and has demonstrated technical ability to perform the Energy Manager Duties as defined in Schedule A.

DTE may subcontract some or all of the Services, or, to the extent required by any law, regulation or licensing requirement, cause some or all of the Services to be provided through an affiliate of DTE duly certified to perform such Services. For purposes of this Agreement, no contractual relationship will exist between Participant and any such subcontractor or any affiliate of DTE. DTE will remain responsible for the performance of its obligations hereunder.

4. Participant Responsibilities

In addition to all other obligations contained in this Agreement, the Participant will fulfill the following obligations:

- a. Allow the Energy Manager, to complete, at a minimum, the Energy Manager Duties on a full- or part-time basis for a minimum term of 12 months unless this agreement is terminated early under the terms of section 8 of this Agreement;
- b. Cooperate with, and assist and support, DTE in connection with its performance of the Services, including but not limited to providing the necessary access to specifications, records, Facilities, personnel, equipment, or material therein, that are necessary to provide the Services;
- c. Provide suitable operational support and work supplies to the Energy Manager to allow the Energy Manager to perform the Energy Manager Duties including a suitable workspace and network access;
- d. Provide Safety Training and Orientation as required on the Participant’s site and Facilities. The Energy Manager will work under the Participant’s Safety Program.

5. Participant Performance

During the term of this Agreement, the Participant is expected to engage with the Energy Manager to identify and support the implementation of Projects. During the term of this Agreement, Participant representatives will participate in reporting, as outlined in the Reporting

Requirements of the Agreement, of any Energy Savings resulting from initiated or in-service Projects. All savings must be supported with engineering calculations.

In each Funding Period, the Participant will endeavor to implement Projects that meet the Simple Payback Threshold, as evidenced by initiated or in-service Projects, documented in the Reports and confirmed by DTE program staff. Participant has control over any final decisions as to the scope and implementation of Projects.

6. Reporting Requirements

- a. The Participant will ensure that the Energy Manager prepares and delivers the following documents to DTE:
 - i. Draft Strategic Energy Plan for the Participant, no later than three (3) months after the Energy Manager's employment start date;
 - ii. Monthly updates to the Strategic Energy Plan during the Funding Period;
 - iii. An Annual Report within (30) calendar days before the end of each Funding Period; and
 - iv. Any other information requested by the DTE, including information or documentation confirming Project Energy Savings and/or in-service dates.
- b. DTE program staff will review the Strategic Energy Plan, monthly updates and the Annual Report (collectively, the "Reports") to ensure timely filing and completeness and to assess Project Energy Savings and progress from the previous Reports. If DTE does not approve a Report, they will provide comments and such document must be revised by the Participant in order to address the noted deficiencies and obtain DTE's approval of such revised Report.

7. Compensation

DTE will pay any and all costs incurred to provide an Energy Manager to perform Services for the Participant for a period of one year provided that Participant fully meet its responsibilities and performance under the On-Site Energy Manager Program as defined in this Agreement.

8. Term, Termination and Survival

- a. The Term of this Agreement shall commence as of _____, ____ and shall continue until _____, _____, unless earlier terminated pursuant to the terms of this Agreement. This term shall be known as the Funding Period.
- b. Either Party may at any time and for any reason terminate this Agreement at either Parties' convenience. DTE will provide a termination notice, in writing, [30 days] in advance of the termination of services. If the notice is related to failure of the Participant to perform, as described in this Agreement, Participant shall have [30 days] to cure the performance failure to the sole satisfaction of DTE. Participant shall provide written notice of termination and, upon receipt of such notice, DTE shall, unless the Participant's notice directs otherwise, immediately discontinue the Services in connection with the performance of this Agreement.
- c. The Funding Period may be extended by DTE, acting in its sole and absolute discretion, upon written notice to the Participant. Any extension is subject to the Participant being

in compliance with its obligations herein, and provided the On-Site Energy Manager program remains available. The Participant acknowledges that the Funding Period may not extend past December 31, 2022.

9. Evaluation, Monitoring and Verification

- a. The performance and administration of this Agreement will be subject to DTE EWR EM&V Protocols, which will include evaluation of the effectiveness of this Agreement in meeting the objectives of the On-Site Energy Manager program. In furtherance of DTE EWR EM&V Protocols, the Participant will cooperate with DTE and their respective designates and will make available such information in the form and with the frequency as may be reasonably prescribed, including with respect to historical electric and natural gas consumption. Participant hereby acknowledges and agrees that by its participation under this Agreement and its agreement to the terms herein, it grants its consent to DTE, its subcontractors, agents, and employees, including but not limited to its EM&V contractors, as well as the Energy Managers, to use, manage, store, share, study, and otherwise, possess its customer information and data.
- b. The Parties will keep complete and accurate books, accounts and records and all other data required by each Party respectively for the purpose of proper administration, monitoring and verification of this Agreement and all such records and data will be maintained during the Term of this Agreement and for the period of time thereafter which is the greater of seven years and the period of time specified under Applicable Law. On reasonable notice, at any time during normal business hours, the Participant will provide reasonable access to DTE, and/or their respective designates to such books, accounts, records and data and:
 - i. at the request of DTE, make available to DTE and/or their respective designates, the personnel of the Participant and its subcontractors involved in the operation of the Participant's business and the maintenance of such books, accounts, records and data; and
 - ii. permit DTE and/or their respective designates to examine and audit and take copies and extracts from such documents.

10. Confidentiality

- a. The parties agree that all information exchanged between the Parties, or made available by either Party during the term of this Agreement shall be considered confidential information ("Confidential Information") and, except as otherwise set forth herein, or as required under the Michigan Freedom of Information Act, shall not be disclosed to any third party without the prior written consent of the non-disclosing party. In recognition of the other Party's need to protect its legitimate business interests, each Party hereby covenants and agrees that it shall regard and treat each item of information or data as strictly confidential and wholly owned by such other Party and that it will not
 - i. distribute, disclose, reproduce or otherwise communicate any such item of information or data to any person or entity or

- ii. use any such item of information or data for any purpose other than in accordance with the terms of this agreement or other agreements between the parties and in connection with its performance thereof.

Notwithstanding the foregoing, Confidential Information shall not include information which:

- iii. At the time of disclosure to the receiving Party is in the public domain or thereafter enter the public domain through wrongful act or omission of the receiving Party;
 - iv. is already known by the receiving Party at the time of disclosure by the disclosing Party and such information is not otherwise subject to confidentiality obligations of the receiving Party;
 - v. is available to the receiving Party at the time of disclosure by the disclosing Party from a third party who, to the receiving Party's knowledge, may disclose such information without violation of any confidentiality obligation or;
 - vi. is required to be disclosed or made public by "posting" or other procedure by law or regulation.
- b. Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party to those of its officers, directors, employees, agents, independent contractors and advisors who need to know such Confidential Information in order to carry out the purposes and intent of this Agreement. Each Party shall be responsible for ensuring the continued confidentiality of all Confidential Information of the other Party known by, disclosed or made available to such of its officers, directors, employees, agents, independent contractors and advisors in connection with this Agreement, including, without limitation, instructing its officers, employees, independent contractors, agents and advisors to maintain the confidentiality of such Confidential Information.
 - c. If a Party becomes legally compelled to disclose any Confidential Information of the other Party (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), or to the extent disclosure of Confidential Information directly related to the rates, terms or conditions of the performance of the Services is required in the context of any regulatory proceeding, such Party will use all reasonable efforts to provide the other Party with prior notice thereof so that the other Party may seek a protective order or other appropriate remedy to prevent such disclosure. If such protective order or other remedy is not obtained prior to the time such disclosure is required, such Party will only disclose that portion of such Confidential Information which it is legally required to disclose.
 - d. Notwithstanding anything herein to the contrary, except as reasonably necessary to comply with applicable securities laws, each party to this Agreement (and each employee, representative, or other agent of such party) may
 - i. consult any tax advisor regarding the U.S. federal income tax treatment or tax structure of a possible transaction, and
 - ii. disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of any such possible transaction and all materials of any kind (including opinions or other tax analyses) that are

provided to the taxpayer relating to such tax treatment and tax structure; provided that clause (ii) shall not apply until the earliest of (x) the date of the public announcement of discussions relating to a possible transaction, (y) the date of the public announcement of a possible transaction or (z) the date of the execution of an agreement, with or without conditions, to enter into a possible transaction. For this purpose, "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

- e. Upon termination or expiration of this Agreement, or promptly upon receipt of written notice from the other Party, each Party shall return to the other Party all copies, versions or abstracts of written or descriptive materials of any kind that contain or discuss any Confidential Information of such other Party and the confidentiality obligations of this Agreement shall continue in full force and effect for a period of three years.
- f. Each Party expressly understands and agrees that the covenants and agreements set forth in this Section 9 are special, unique, and of an extraordinary character, and in the event of any default, breach or threatened breach hereof by such Party, the other Party shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either at law or in equity, and shall be entitled to such relief as may be available to it pursuant hereto, at law or in equity. All such rights and remedies shall be cumulative, and none of them shall limit any other rights or remedies of either Party.

11. Liability

- a. NEITHER PARTICIPANT NOR DTE SHALL BE LIABLE HEREUNDER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF BUSINESS OR PROFITS, WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT DTE OR PARTICIPANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. IN NO EVENT, OTHER THAN ONE INVOLVING DTE'S WILLFUL MISCONDUCT, WILL DTE BE LIABLE TO PARTICIPANT FOR ANY CLAIMS, DAMAGES, LIABILITIES, COSTS OR EXPENSES RELATED TO OR ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OF THE SERVICES. UNDER NO CIRCUMSTANCES WILL DTE'S LIABILITY TO PARTICIPANT FOR ANY AND ALL CLAIMS RELATED TO OR ARISING OUT OF THIS AGREEMENT.

12. Independent Contractors

The Parties hereto acknowledge and agree that in the performance of their respective duties and obligations hereunder they are acting as independent contractors of each other, and neither Party shall represent that an employer/employee, partnership, joint venture, or agency relationship exists between them, nor shall either Party have the power nor will either Party represent that it has the power to bind the other Party hereto to any contract or agreement.

13. Force Majeure

Neither DTE nor the Participant shall be liable for any delay in the performance of work resulting from acts or circumstances beyond such party's control, including, but not limited to, acts of God, fire, and acts of civil or military authorities, governmental priorities, strikes, floods, war or riot.

14. Compliance with Laws

The Parties will comply with all federal, state, and local laws and regulations. DTE shall obtain any necessary permits and licenses required for the Services.

15. Intentionally Omitted

16. Warranty/ Limitation of Remedy

DTE provides a twelve-month (12) warranty for the Services provided under Schedule A. This warranty period starts running upon completion of the term of this Agreement. The Participant's sole and exclusive remedy for failure of the work to perform as stated in Schedule A is to have DTE re-perform the work so as to conform with the requirements of DTE Energy's Strategic Energy Plan, such re-performance will commence as soon as practicable but in no event less than [30 days] after receipt of notice of failure.

17. Notices

Any notices provided for in this Agreement shall be in writing and shall be sent registered mail to the respective address on the Purchase Agreement or to such addresses as may have been changed by written notice.

18. Representation and Warranties

The Parties each represent and warrant that:

- a. it has full corporate or public, as applicable, power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement;
- b. the execution and delivery of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate or public, as applicable, action required on the part of such party; and
- c. this Agreement constitutes a legal, valid, and binding agreement of such party.

19. Miscellaneous

- a. No party other than DTE and the Participant, and their respective successors and assigns, shall have any rights to enforce or rely upon this Agreement, which is binding upon and made solely for the benefit of DTE and the Participant, and their respective successors, and assigns, and not for the benefit of any other party.

- b. Failure of either Party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by such party of any of its rights hereunder. No waiver by any party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.
- c. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.
- d. This Agreement shall be governed by the laws of the State of Michigan.

IN WITNESS WHEREOF, DTE and Participant have caused this Agreement to be signed by their respective personnel as of the date first above written.

DTE Electric and DTE Gas

By: _____

Name: _____

Title: _____

Participant

By: _____

Name: _____

Title: _____

Schedule A: Energy Management Services

Energy Manager Duties

- Identify and analyze energy conservation opportunities, with the objective of optimizing energy utilization.
- Provide assistance resolving billing issues, power quality issues, momentary outage resolution and any other utility-related concerns.
- Provide energy waste reduction technical support for Participant. Energy sources include, but are not limited to, electricity, natural gas, steam, compressed air, and water.
- Understand existing and new products, services and technologies to optimize energy usage in a cost-effective manner.
- Develop and implement energy management programs and awareness activities.
- Support Participant development of annual energy budgets.
- Provide project management support in implementation of energy related projects including: conducting energy assessments, performing feasibility studies, developing project business cases, promoting DTE EWR programs, and completing DTE EWR applications.
- Assist in driving Participant energy reduction targets.
- Follow all health and safety procedures and requirements of DTE Energy and Participant.
- Lead and advise Participant energy teams.

Energy Manager Qualifications

- Minimum: Associate degree in engineering/engineering technology, or a related technical discipline, & knowledge/capabilities typically acquired through 3-plus years of job-relevant experience, such as experience in energy management.

- Preferred: Bachelor's degree in engineering/engineering technology, or related technical discipline; Professional Engineer's license or Certified Energy Manager certification from the Association of Energy Engineers.
- Intermediate-to-advanced analytical and project management skills, including scheduling, estimating and budgeting.
- Communicates effectively (verbally & in writing) with individuals at all levels.
- Analytical & problem-solving skills consistent with the ability to identify key energy improvement-related issues and recommend optimal solutions for various situations.
- Ability to conduct efficacious meetings and manage the meeting process with optimal results.
- Ability to initiate new ideas and approaches; challenges prevailing practices & approaches with feasible alternatives.
- Familiarity with ISO50001, Energy Star Portfolio Manager, DOE Energy Star 50001 Ready, LEED, Lean Manufacturing, Continuous Improvement, Visual Factory, etc., and ability to help Customers implement Energy Management Systems based on these programs.
- Knowledge of utility Energy Waste Reduction programs and Michigan Energy Measures Database.
- Ability to evaluate Building Management System data to seek opportunities to incrementally improve operations and maintenance practices.

Schedule B: Participant Locations

Location of facilities and/or campuses served by Energy Manager (location name, square footage, and utility information)

Location Name	Square Footage	DTE Electric Customer	DTE Gas Customer

Schedule C: Strategic Energy Plan Guide

(Attached separately to this document)

Schedule D: Program Requirements

The following are the program eligibility criteria for the Participant and Participant Facilities to participate in the On-Site Energy Manager Program:

- 1- Each of the Participant's Facilities included in Schedule B shall be individually metered or sub-metered.
- 2- The sum total square footage of the Participant's Facilities included in the On-Site Energy Manger Program must be greater than or equal to one million square feet.
- 3- The Participant must be a DTE Electric or Gas customer.