

Application: _____

Master Distributed Energy Resource Interconnection Agreement

This **MASTER DISTRIBUTED ENERGY RESOURCE INTERCONNECTION AGREEMENT** (“**Agreement**”) is entered into by and between **PUBLIC SERVICE COMPANY OF COLORADO, d/b/a Xcel Energy**, a Colorado corporation, having a mailing address of P.O. Box 840, Denver, Colorado, 80201, hereinafter referred to as “**Public Service**,” and the **CITY AND COUNTY OF DENVER**, by and through its Department of Aviation, having a mailing address of 8500 Peña Boulevard, 9th Floor, Denver, Colorado 80249-6340, hereinafter referred to as “**Customer**.” The Customer and Public Service are sometimes also referred to in this Agreement jointly as “**Parties**” or individually as “**Party**.”

In consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

I. SCOPE AND PURPOSE

- A) Establishment of Points of Common Coupling. This Agreement is intended to provide for the Customer to from time to time interconnect and operate DERs in parallel with the Public Service electric distribution system at the addresses identified in Statements of Interconnection.
- B) This Agreement, including its applicable Statements of Interconnection, contain the terms and conditions under which the Customer may interconnect and operate in parallel DERs with the Public Service electric distribution system and the facilities required by the Customer for such interconnection.
- C) This Agreement does not authorize the Customer to export power or constitute an agreement to purchase or wheel the Customer’s power. Other services that the Customer may require from Public Service, or others, may be covered under separate agreements or the Public Service Electric Tariffs, or both.
- D) This Agreement does not cover FERC jurisdictional generating system installations.
- E) The Technical Requirements for interconnection are set forth in a separate Technical Requirements document, entitled “Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers, and Customer-Owned Generation,” dated August 6, 2020, or any successor set of guidelines, a copy of which has been made available to the Customer and the receipt of which Customer hereby acknowledges. The Technical Requirements, as may be modified from time to time, are hereby incorporated and made part of this Agreement by this reference.

II. DEFINITIONS

- A) “Agreement” - This Master Distributed Energy Resource Interconnection Agreement.
- B) “Area EPS” - an electric power system (EPS) that serves Local EPSs. Note: Typically, an Area EPS has primary access to public rights-of-way, priority crossing of property boundaries, *etc*.
- C) “Commission” - the Public Utilities Commission of the State of Colorado.
- D) “Customer” - the party or parties that will own/operate the DERs and shall be responsible for

meeting the requirements of this Agreement.

- E) “Dedicated Facilities” - the equipment that is installed due to the interconnection of a DER and not required to serve other Public Service customers, including the upgrade work associated with such equipment, as more specifically described on the applicable Statement of Interconnection and made a part hereof.
- F) “Distributed Energy Resource” or “DER” - the Customer's source of electric power connected to Public Service's electric distribution system pursuant to this Agreement, including retail renewable distributed generation (as defined in the Commission's rules for electric generation), other small generation facilities for the production of electricity, Energy Storage Systems, or combination of any of these elements, but shall not include the interconnection facilities not owned by the interconnection customer. “DER” includes an interconnection system or a supplemental distributed energy resource device that is necessary for compliance with IEEE Standard 1547-2018, until January 1, 2022, or such time new distributed energy resource devices applying for interconnection will comply with IEEE 1547-2018 (but not including any later amendments or editions of such standard). “DER” also includes any controls, relays, switches, breakers, transformers, inverters, and associated wiring and cables, up to the Point of Common Coupling.
- G) “Electric Tariffs” - Public Service's electric tariffs as in effect and on file with the Commission from time to time.
- H) “Energy Storage Systems” - any commercially available, customer-sited system or utility-sited system, including batteries and batteries paired with on-site generation, that does not generate energy, that is capable of retaining, storing, and delivering electrical energy by chemical, thermal, mechanical, or other means.
- I) “EPS” (Electric Power System) - facilities that deliver electric power to a load. Note: This may include generation units.
- J) “Franchise Agreement” - that certain binding agreement between the Parties approved by voters in a Special Municipal Election on August 8, 2006, and effective as of January 1, 2007, together with the DEN Operating Agreement of the same date.
- K) “Generation” - any device producing electrical energy, i.e., rotating generators driven by wind, steam turbines, internal combustion engines, hydraulic turbines, solar, fuel cells, etc.; or any other electric producing device, including energy storage technologies.
- L) “Governmental Entity” - any federal, state or local government, board, department, agency, special district, instrumentality, or other similar entity entitled to rely on the rights, immunities or protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time.
- M) “Local EPS” - an electric power system (EPS) contained entirely within a single premise or group of premises.
- N) “Nameplate Capacity” - the total AC nameplate capacity rating of all the Generation and Energy Storage Systems included in the DER. For this definition, the “standby” and/or maximum rated kW capacity on the nameplate shall be used.
- O) “Point of Common Coupling” - the point where a Local EPS is connected to Public Service, as shown on the applicable Statement of Interconnection.

- P) “Point of Delivery” - the point where the energy changes possession from one party to the other. Typically, this will be where the metering is installed but it is not required that the Point of Delivery is the same as where the energy is metered.
- Q) “Public Service Operator” - the distribution dispatch personnel or group that operates the Public Service Area EPS.
- R) “Statement of Interconnection” - statements executed and agreed to from time to time by the Parties that are subject in all respects to the terms and conditions of this Agreement that set forth (i) a description of a DER and single-line diagram for such DER, (ii) estimated engineering, installation, equipment removal, commissioning and testing costs payable by the Customer arising from and related to such DER, (iii) engineering and operating information regarding such DER, and (iv) special operation requirements, if any, that are a condition of interconnection and/or continued ongoing operation with respect to such DER. A form of a Statement of Interconnection is attached to this Agreement as Attachment 1.
- S) “Technical Requirements” - the total AC nameplate capacity rating of all the Generation and Energy Storage Systems included in the DER. For this definition, the “standby” and/or maximum rated kW capacity on the nameplate shall be used.

III. STATEMENTS OF INTERCONNECTION; DESCRIPTION OF INTERCONNECTION CUSTOMER’S DER

- A) From time to time, the Parties may enter into and agree to individual Statements of Interconnection for the purposes of interconnecting DERs with and into Public Service’s electric distribution system. Such Statements of Interconnection shall reference this Master Distributed Energy Resource Interconnection Agreement, and shall state that they are subject to the terms and conditions of this Agreement. No new obligations or conditions shall be required of Customer through these Statements of Interconnection, which shall include only the new, project specific information listed in Section III.B *infra*. To the extent there is any conflict between this Agreement and an individual Statement of Interconnection, this Agreement shall control.
- B) Each Statement of Interconnection will include a description of a DER, including a single-line diagram showing the general arrangement of how such DER is interconnected with Public Service’s electric distribution system, unless the Customer is installing a package system that is pre-certified to IEEE 1547.1 and UL 1741 standards. Packaged Systems pre-certified under IEEE Standard 1547.1 and UL Standard 1741 will not require a relaying and metering one-line diagram. The single-line diagram for each DER, if applicable, will include the following:
 - 1) Point of Delivery;
 - 2) Point of Common Coupling;
 - 3) Location of Meter(s);
 - 4) Ownership of the equipment;
 - 5) DER total Nameplate Capacity; and
 - 6) Scheduled operational (on-line) date for the DER.
- C) If a Statement of Interconnection is executed before Public Service has conducted its inspection and testing of a DER in accordance with the Technical Requirements, and such inspection and testing indicates that certain Dedicated Facilities or additional Operating Requirements are

required, then the Parties shall promptly modify the appropriate exhibits to the Statement of Interconnection accordingly.

D) Each Statement of Interconnection will include the following Exhibits:

- 1) Exhibit A – Description of DER and single-line diagram. This diagram will show all major equipment, including, visual isolation equipment, Point of Common Coupling, Point of Delivery for such DER that intentionally export, ownership of equipment, and the location of metering.
- 2) Exhibit B – Estimated engineering, installation, equipment removal, commissioning and testing costs payable by the Customer. Included in this listing will be the description and estimated costs for the required Dedicated Facilities being installed by Public Service for the interconnection of the DER and a description and estimate for the final acceptance testing work to be done by Public Service.
- 3) Exhibit C – Engineering Data Submittal – A standard form application, and related charts, drawings and inventory lists that provide the engineering and operating information about the DER relied on by Public Service in establishing the interconnection.
- 4) Exhibit D – Operating Requirements. To be included when needed. Operating Requirements detail special operation requirements and limitations that are a condition of interconnection and/or continued ongoing operation.

IV. RESPONSIBILITIES OF THE PARTIES

- A) The Parties shall perform all of their respective obligations under this Agreement in accordance with all applicable laws, regulations, and operating requirements, and good utility practices.
- B) Customer shall construct, operate, and maintain each DER in accordance with the applicable manufacturer's recommended maintenance schedule, the Technical Requirements, and in accordance with this Agreement.
- C) Public Service shall carry out the construction of the Dedicated Facilities in a good and workmanlike manner, in accordance with standard design and engineering practices. In connection with the performance of any work on Customer's behalf under this Agreement, Public Service may not refuse to hire, discharge, promote, demote, nor discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity or gender expression, marital status, source of income, military status, protective hairstyle, or disability. Public Service shall insert the foregoing provision in all subcontracts for such work hereunder or otherwise shall ensure that such requirement passes through to all subcontractors for such work hereunder.

V. CONSTRUCTION

- A) The Parties agree to cause their facilities or systems to be constructed in accordance with the laws of the State of Colorado and to meet or exceed applicable codes and standards provided by the NESC (National Electrical Safety Code), ANSI (American National Standards Institute), IEEE (Institute of Electrical and Electronic Engineers), NEC (National Electrical Code), UL (Underwriter's Laboratory), Technical Requirements, applicable local building codes, and other applicable ordinances in effect at the time of the installation of the DER. Any obligations of Customer in respect of the construction standards and building requirements pursuant to this Agreement are not intended to and shall not waive any immunity or limitation of Customer's

liability, shall not operate as a waiver of any defense Customer may have, and shall not under any circumstances act as an indemnification by Customer.

- B) Charges and Payments. The Customer is responsible for the actual costs to interconnect each DER with the Public Service electric distribution system at such DER's Point of Common Coupling, including, but not limited to any Dedicated Facilities attributable to the addition of such DER, Public Service labor for installation coordination, commissioning, installation testing, and engineering review of such DER, and interconnection design that are consistent with the applicable rules of the Commission. Estimates of these costs for each DER to be incurred by Public Service will be set forth on the applicable Statement of Interconnection. All costs for which the Customer is responsible shall be reasonable under the circumstances of the particular design and construction of the interconnection.

1) Dedicated Facilities.

- a) During the term of this Agreement, Public Service shall design, construct, and install the Dedicated Facilities outlined in each Statement of Interconnection.
- b) Once installed, the Dedicated Facilities for each DER shall be owned and operated by Public Service and all costs associated with operating and maintaining such Dedicated Facilities shall be the responsibility of Public Service, unless otherwise agreed.
- c) Upon execution of each Statement of Interconnection, Public Service shall be authorized to begin construction and to procure the necessary facilities and equipment to complete the installation of the Dedicated Facilities with respect to the applicable DER. Notwithstanding any other provision of this Agreement to the contrary, (i) the Customer may, for any reason, cancel such DER project, so that any or all of such Dedicated Facilities are not required to be installed, (ii) the Customer shall provide written notice to Public Service of cancellation, and (iii) if for any reason, such DER project is canceled or modified, or this Agreement or the applicable Statement of Interconnection is terminated by the Customer or by reason of the Customer's failure to diligently pursue such interconnection, such that any or all of the Dedicated Facilities arising from or related to such DER are not required, the Customer shall nevertheless reimburse Public Service for the actual costs incurred by Public Service in pursuing the installation of such Dedicated Facilities, including, but not limited to, any additional costs to remove and/or to complete the installation of such Dedicated Facilities. Upon receipt of a cancellation notice, Public Service shall take reasonable steps to minimize additional costs to the Customer, where reasonably possible. This provision shall survive the termination of this Agreement.

2) Payments. The Customer shall pay Public Service for the cost of the Dedicated Facilities as follows:

- a) All of the estimated costs of the Dedicated Facilities, as set forth on the applicable Statement of Interconnection, shall be due after substantial completion of construction and installation of the Dedicated Facilities but prior to initial energization of the applicable DER with Public Service.
- b) The remainder of actual costs of the Dedicated Facilities, incurred by the Public Service, excluding the ongoing costs of telemetry, arising from or related to the applicable DER shall be due within thirty (30) days from the date the bill is mailed by Public Service after project completion. If the Customer does not make payment in full within that time, the unpaid balance shall bear interest at the rate of one and one half percent (1.5%) per month. In the event the actual costs are less than the estimated costs paid by Customer, Public Service shall refund the difference to the Customer within thirty (30) days of the applicable project completion.

- c) Notwithstanding any other term or condition of this Agreement, the obligation of the Customer, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. Customer does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Customer.
 - d) Notwithstanding any other term or condition of this Agreement, Customer is not liable for the payment of interest, taxes, late charges, or penalties of any nature, except for any additional amounts that the Customer may be required to pay under Customer's prompt payment ordinance, D.R.M.C. § 20-107, *et seq.* as in effect as of the date of this Agreement. Public Service shall promptly pay when due all taxes, bills, debts and obligations it incurs under this Agreement and shall not allow any lien, mortgage, judgment or execution on account thereof to be filed against Customer property, including but not limited to land, facilities, improvements, or equipment.
- 3) Access to Records. Any authorized agent of Customer, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at the City's election in paper or electronic form (as may be in existence at the time of such request), any pertinent books, documents, papers and records related to Public Service's performance pursuant to this Agreement, provision of any goods or services to Customer, and any other transactions related to this Agreement. Public Service shall cooperate with Customer representatives and Customer representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations, *provided*, that such documents and information are subject to Public Service's retention policies exercised in the ordinary course of business. When conducting an audit of this Agreement, the Customer shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require the Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. § 20-276. Notwithstanding anything to the contrary set forth in this Agreement, Public Service shall not be required to disclose customer information, employee information or any other information that Public Service is not permitted to disclose under applicable laws and regulations.

VI. TERMS AND TERMINATION

- A) This Agreement shall become effective as of the date when both the Customer and Public Service have executed this Agreement. This Agreement shall continue in full force and effect for so long as Public Service's 2020-2021 RE Plan, Proceeding No. 19A-0369E, remains in effect or until the Parties agree in writing to terminate the Agreement; *provided*, that if Public Service's 2022-2025 RE Plan, Proceeding No. 21A-0625EG, is approved by the Commission, then this Agreement shall continue in full force and effect for so long as the 2022-2025 RE Plan remains in effect.
- B) Customer may terminate any Statement of Interconnection:
 - 1) Upon written notice to Public Service prior to witnessing the completion of the final acceptance testing of the applicable DER by Public Service. Upon such termination, the Customer shall continue to be responsible for costs incurred by Public Service as provided for in Section V.B. above. Upon receipt of a termination notice, Public Service shall take reasonable steps to minimize additional costs to the Customer, where reasonably possible.

- 2) Once the applicable DER is operational, the Customer may terminate the applicable Statement of Interconnection after thirty (30) days written notice to Public Service.
- C) Customer may terminate this Agreement upon thirty (30) days prior written notice to Public Service.
- D) Public Service may terminate this Agreement or any applicable Statement of Interconnection after thirty (30) days written notice to the Customer if:
 - 1) The Customer fails to interconnect and operate a DER in accordance with the terms of this Agreement and the applicable Statement of Interconnection;
 - 2) The Customer fails to take all corrective actions specified in Public Service's written notice that Customer or a DER is out of compliance with the terms of this Agreement or the applicable Statement of Interconnection, within the time frame set forth in such notice; or
 - 3) The Customer fails to complete Public Service's final acceptance testing of a DER within 24 months of the date proposed under Section III.B.6 for such DER.
- E) This Agreement shall automatically terminate upon the removal of all DERs or the permanent cessation of generation operations by Customer behind all Points of Common Coupling under all Statements of Interconnection.
- F) Upon termination of the applicable Statement of Interconnection, the applicable DER shall be disconnected from Public Service's electric distribution system.
- G) Notwithstanding anything to the contrary in the foregoing, if this Agreement is terminated but one or more Statements of Interconnection remain in effect, the terms and conditions of this Agreement shall continue to apply to such Statement of Interconnection until its expiration or termination. The termination of this Agreement or any Statement of Interconnection shall not relieve either Party of its liabilities and obligations, owed or continuing, at the time of the termination.

VII. OPERATIONAL ISSUES

Each Party shall, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for, the facilities that it now or hereafter may own, unless otherwise specified.

- A) Technical Standards: Each DER shall be installed and operated by the Customer consistent with the requirements of this Agreement; the Technical Requirements; the applicable requirements located in the National Electrical Code (NEC); the applicable standards published by the American National Standards Institute (ANSI) and the Institute of Electrical and Electronic Engineers (IEEE); applicable local building codes, and other applicable ordinances in effect during the installation and operation of such DER and related facilities.
- B) Right of Access: At all times, Public Service's personnel shall have access to the disconnect switch of each DER for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement, to meet its obligation to operate Public Service's system safely, and to provide service to its customers. As necessary for Public Service to operate, maintain, inspect, test, repair or replace its facilities for the purposes of this Agreement, the Customer shall allow Public Service access to Public Service's equipment and facilities located on the premises where DERs are located.

- C) Electric Service: This Agreement does not govern the provision of electric service by Public Service to supply the electrical requirements of the Local EPS. Any such electric service to be supplied to the Customer's Local EPS by Public Service shall be exclusively in accordance with the Franchise Agreement and Electric Tariffs and rate schedules applicable to the Customer's class of service thereunder, as in effect from time to time.
- D) Operation and Maintenance: Each DER shall be operated by the Customer in accordance with the Technical Standards and any additional requirements that may be agreed to in writing from time to time.
- E) Cooperation and Coordination: Both Public Service and the Customer shall communicate and coordinate their operations, so that the normal operation of Public Service's system does not unduly affect or interfere with the normal operation of each DER and each DER does not unduly effect or interfere with the normal operation of Public Service's system. Under abnormal operations of a DER or the Public Service system, the responsible Party shall provide reasonably timely communication to the other Party to allow mitigation of any potentially negative effects of the abnormal operation of their system.
- F) Disconnection of Unit: Public Service may disconnect the DER as reasonably necessary in the event of termination of this Agreement, non-compliance by the Customer with the terms of this Agreement, system emergency, imminent danger to the public or Public Service personnel, and routine maintenance, repairs, and modifications to the Public Service system. When reasonably possible, Public Service shall provide prior notice to the Customer explaining the reason for the disconnection. If prior notice is not reasonably possible, Public Service shall, after the fact, provide information to the Customer as to why the disconnection was required. Public Service shall have no liability for any loss of sales or other damages, including any consequential damages for the loss of business opportunity, profits, or other losses, regardless of whether such damages were foreseeable, for the disconnection of the DER in accordance with this Agreement. Public Service shall use reasonable efforts to reconnect the DER in a timely manner and to work towards mitigating damages and losses to the Customer where reasonably possible.
- G) Modifications to a DER: The Customer shall notify the Public Service Operator, in writing, of plans for any modifications to each DER interconnection equipment, including all information needed by Public Service, as part of the review described in this paragraph, at least twenty (20) business days prior to undertaking such modification(s). Modifications to any of the interconnection equipment, including all interconnection required protective systems, the generation control systems, the transfer switches/breakers, interconnection protection VT's & CT's, and DER capacity, shall be included in the notification to Public Service. The Customer agrees not to commence installation of any modifications to a DER until Public Service has approved the modification, in writing, which approval shall not be unreasonably withheld. Public Service shall have a minimum of ten (10) business days to review and respond to the planned modification. Public Service shall not take longer than a maximum of ten (10) business days to review and respond to the modification after the receipt of the information required to review the modifications. A major upgrade or expansion of a DER does not qualify for this provision. Such changes shall be reviewed through a formal interconnection application.
- H) Any modification to a DER that causes such DER to operate contrary to the provisions of the Electric Tariffs, any applicable laws, rules, or regulations, and/or this Agreement shall be considered a material breach of this Agreement. For purposes of this Section, modifications include but are not limited to: operating at a power factor other than specified; introduction in any manner of non-eligible energy resources to a net metered installation; connecting additional generation without notification to Public Service; or, other operating modes disallowed under the Electric Tariffs or any applicable rules, regulations, or laws pursuant to which operation has been authorized. In such event, Public Service shall notify the Developer of a DER's non-compliance with the Electric Tariffs, rules, regulations, laws, or this Agreement and Customer shall have twenty

(20) days from the date of such notice to either remedy the non-compliant operation or cease operation. If Customer fails to either remedy the non-compliant operation or cease operation within twenty (20) days of the date of the notice, Public Service may terminate the applicable Statement of Interconnection after ten (10) days written notice to the Developer. Failure by Public Service to provide timely notice hereunder shall not be construed as a waiver of any non-compliance by Customer.

- I) Permits and Approvals: The Customer shall obtain all applicable environmental and other applicable permits from governmental authorities as required by law prior to the construction of each DER. The Customer shall maintain all such applicable permits, as necessary, and comply with such permits during the term of this Agreement.

VIII. LIMITATION OF LIABILITY

- A) Nothing in this Section or any other provision of this Agreement or any addendum or amendment hereto shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Customer may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., *et seq.*) or to any other defenses, immunities, or limitations of liability available to the Customer by law.
- B) To the extent permitted by law, any liability of either Party to the other for failure to perform its obligations under this Agreement shall be limited to the amount of direct damage actually incurred. Subject to applicable law, in no event shall either Party be liable to the other Party for any punitive, incidental, indirect, special, or consequential damages of any kind whatsoever, including for loss of business opportunity or profits, regardless of whether such damages were foreseen. To the extent that there is a conflict between this Section IX(B) and Section 17.2 of the Franchise Agreement, the Franchise Agreement controls.
- C) Notwithstanding any other provision in this Agreement, with respect to Public Service's provision of electric service to any customer including the Customer, Public Service's liability to such customer shall be limited as set forth in Public Service's tariffs and terms and conditions for electric service, and shall not be modified or in any manner affected by the terms of this Agreement.

IX. DISPUTE RESOLUTION

- A) Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably, and in a good faith manner.
- B) In the event a dispute arises under this Agreement, and if the Parties cannot resolve it within five (5) days after written notice of the dispute to the other Party, the Parties may mutually agree to submit the dispute to mediation by a mutually acceptable mediator or dispute resolution service, in a mutually convenient location in the State of Colorado. Each Party will be responsible for one-half of the cost paid to neutral third-parties.
- C) The Parties agree to participate in good faith in the agreed upon mediation or resolution process. If the Parties are not successful in resolving their dispute through mediation or the dispute resolution process, then the Parties may refer the dispute for resolution to the Commission or to a court of law in the State of Colorado, which shall maintain continuing jurisdiction over this Agreement.

X. INSURANCE¹

- A) Public Service acknowledges that Customer is a “public entity” within the meaning of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended (the “Act”). Customer shall maintain insurance, by commercial policy or self-insurance, as is necessary to meet the Customer’s liabilities under the Act; provided, that at a minimum, in connection with the Customer’s performance of its duties and obligations under this Agreement, the Customer shall maintain, during the term of the Agreement, general liability insurance, written by an insurer with an A.M. Best rating of at least A-VII or a Standard & Poor’s rating of at least A, with a combined single limit of not less than:
- 1) For a non-invertor-based DER:
 - a) Three million dollars (\$3,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 5 MW.
 - b) Two million dollars (\$2,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 2 MW up to and including 5 MW.
 - c) One million dollars (\$1,000,000) for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 500 kW up to and including 2 MW.
 - d) Five hundred thousand dollars (\$500,000) for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 50 kW up to and including 500 kW.
 - e) No additional insurance is required for each occurrence if the Gross AC Nameplate Rating of the DER is 50 kW or less.
 - 2) For an inverter-based DER:
 - a) Two million dollars (\$2,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 5 MW.
 - b) One million dollars (\$1,000,000) or greater for each occurrence if the Gross AC Nameplate Rating of the DER is greater than 1 MW up to and including 5 MW.
 - c) No additional insurance is required for each occurrence if the Gross AC Nameplate Rating of the DER is 1 MW or less.
 - 3) General liability insurance required under this Section X.A shall include coverage against claims for damages resulting from (i) bodily injury, including wrongful death; and (ii) property damage arising out of the Customer’s ownership and/or operating of the DER under this Agreement. Customer shall not be required to maintain insurance to cover damages other than Public Service damages.
- B) The general liability insurance required by Section X.A shall, by endorsement to the policy or policies: (i) include Public Service as an additional insured; (ii) provide that Public Service shall not be reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium for such insurance; and (iii) provide for thirty (30) calendar days’ written notice to Public Service prior to cancellation, termination, alteration, or material change of such insurance.
- C) Evidence of the insurance required in Section X.A shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by Public Service.
- D) If the Customer is a Governmental Entity and self-insures against liability in amounts above those required in Section X.A for a DER up to 2 MW or to the replacement value of the DER for a DER above 2 MW, Customer shall not be required to purchase additional insurance or to add Public Service as an additional insured to any policy, nor shall Customer be obligated to indemnify Public

¹ **Note:** Subject to ongoing review by PSCo.

Service, though the Customer shall be liable for any of its negligent or intentional acts or omissions, or its employees, contractors, subcontractors, or agents. If Customer self-insures under this Section XI.D, it must comply with the following in lieu of Section X.A – C:

- 1) Customer shall provide to Public Service, at least thirty (30) days prior to the date of initial operation, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required under section X.A.
 - 2) If Customer ceases to self-insure to the level required hereunder, or if the Customer is unable to provide continuing evidence of its ability to self-insure, the Customer agrees to immediately obtain the coverage required under Section X.A.
- E) The Customer shall provide Public Service a certificate of insurance evidencing the requisite coverage and provisions prior to the interconnection of a DER. After interconnection, Public Service may periodically request proof of current insurance coverage in order to verify compliance with the requirements of this Section XI. Upon receipt of any such request, the Customer shall provide a certificate of insurance evidencing the requisite coverage and provisions. Failure of the Customer to provide timely evidence of proper insurance may result in disconnection of each DER pursuant to this Agreement.
- F) Failure of the Customer or Public Service to enforce the minimum levels of insurance does not relieve the Customer from maintaining such levels of insurance or relieve the Customer of any liability.
- G) All insurance certificates, statements of self-insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

Public Service, Manager Area Engineering, 1123 W. 3rd Avenue, Denver, CO 80223

XI. MISCELLANEOUS

A) FORCE MAJEURE

- 1) An event of Force Majeure means any act of God, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's reasonable control. An event of Force Majeure does not include an act of negligence or intentional wrongdoing by a Party.
- 2) Neither Party will be considered in default of any obligation hereunder if such Party is prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations hereunder.

B) NOTICES

- 1) Any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person or sent by first class mail, postage prepaid, to the person specified below:

a) If to Public Service:

Public Service
Manager Area Engineering
1123 W. 3rd Avenue
Denver, CO 80223

b) If to Customer:

Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340
Attn: Chief Executive Officer

- 2) A Party may change its address for notices at any time by providing the other Party written notice of the change, in accordance with this Section.
- 3) The Parties may also designate operating representatives to conduct the daily communications that may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, and phone numbers may be communicated or revised by one Party's notice to the other Party. Until subsequent written notice of change, Customer's designated operating representatives shall be:

Energy Manager, DEN
8500 Peña Boulevard, 7th Floor
Denver, Colorado 80249-6340

C) ASSIGNMENT

All of the terms, covenants, representations, warranties, and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the Parties hereto and their respective successors, but neither this Agreement nor the rights and obligations of the Customer may be assigned except as provided for in this Section XII.C. In the event the Customer sells, conveys, or otherwise transfers ownership or operational control of the DER to another entity ("New Owner"), the Customer may transfer this Agreement to such New Owner upon receipt by Public Service of a written document, in a form satisfactory to Public Service, indicating the New Owner's agreement to comply with all of the terms of this Agreement. The Customer shall not otherwise assign its rights nor delegate its duties under this Agreement without Public Service's written consent, which shall not be unreasonably withheld. Any assignment or delegation the Customer makes without Public Service's written consent shall not be valid.

D) NON-WAIVER

None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

E) GOVERNING LAW AND INCLUSION OF PUBLIC SERVICE'S TARIFFS AND RULES.

- 1) This Agreement shall be interpreted, governed, and construed under the laws of the State of Colorado as if executed and to be performed wholly within the State of Colorado without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.
- 2) The provisions of this Agreement shall at all times be subject to the applicable terms and conditions set forth in the Electric Tariffs pertaining to the electric service provided by Public Service, which are hereby incorporated into this Agreement by this reference.
- 3) Notwithstanding any other provisions of this Agreement, Public Service shall have the right to unilaterally file with the Commission, pursuant to the Commission's rules and regulations, an application for change in rates, charges, classification, service, tariff, or rule or any agreement relating thereto.
- 4) It is expressly understood and agreed that Public Service and the City and County of Denver have entered into the Franchise Agreement. In the event of any conflict between the language of this Agreement and the Franchise Agreement, the language of the Franchise Agreement controls; provided that, this Agreement shall control with respect to any technical or operational provisions specific to the DER and its interconnection to Public Service's distribution grid.

F) CUSTOMER ORDINANCES AND REGULATIONS.

- 1) Prevailing Wage. To the extent applicable to work performed under this Agreement, the Parties shall comply with the Customer's Prevailing Wage Ordinance, D.R.M.C. Section 20-76, *et seq.*
- 2) Division Of Small Business Opportunity ("DSBO"). To the extent applicable to work performed under this Agreement, the Parties shall comply with the Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") requirements of Article III, Divisions 1 and 3 of Chapter 28 of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance.
- 3) Security. Public Service shall cause its officers, contractors, agents, and employees to comply with any and all existing and future airport security regulations adopted by the Customer, including badging requirements, and all airport security regulations and regulations of the Federal Aviation Administration or the Department of Homeland Security, including as they may be amended from time to time.
- 4) Federal Provisions and Bond Ordinances. This Agreement is in all respects subject and subordinate to any and all City and County of Denver bond ordinances applicable to the Customer's airport system and to any other bond ordinances which amend, supplement or replace such bond ordinances. This Agreement also is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the Customer and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the Customer for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Customer's airport system.

G) AMENDMENT AND MODIFICATION

This Agreement will not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.

H) ENTIRE AGREEMENT

This Agreement, including all Statements of Interconnection, attachments, exhibits, and appendices hereto and thereto, constitutes the entire agreement between the Parties with regard to the interconnection of the DERs at the Point(s) of Common Coupling expressly provided for in this Agreement and supersedes all prior agreements or understandings, whether verbal or written. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on the promise, inducement, representation, warranty, agreement, or other statement not set forth in this Agreement or in the incorporated attachments, exhibits, and appendices.

I) CONFIDENTIAL INFORMATION

- 1) Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." All design, operating specifications, and metering data provided by the Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.
- 2) Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities, including under the Colorado Open Records Act,, C.R.S. §§ 24-72-200.1–205.5, after notice to the other Party, or necessary to be divulged in an action to enforce an agreement between the Parties. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under agreements between the Parties, or to fulfill legal or regulatory requirements.
 - a. Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
 - b. Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
- 3) Notwithstanding anything in this article to the contrary, if the Commission, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the Commission, within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public by the Commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to the Commission. The Party shall notify the other Party when it is notified by the Commission that a request to release Confidential Information has been received by the Commission, at which time either of the Parties may respond before such information would be made public.

- 4) Notwithstanding any other term or condition of this Agreement, the parties understand that all the material provided or produced under this Agreement may be subject to disclosure under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1–205.5.

H) NO WARRANTIES

By undertaking the performance of any of its responsibilities under the terms of this Agreement, including, without limitation, any inspection, acceptance or non-rejection, Public Service does not give and hereby disclaims any warranty, expressed or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances, or devices owned, installed, or maintained by the Customer or leased by the Customer from third parties, including without limitation the DERs and any structures, equipment, wires, appliances, or devices appurtenant thereto.

I) NO PARTNERSHIP

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

J) APPROPRIATIONS; TABOR

The Parties acknowledge that this Agreement and Customer's obligations hereunder are subject to Article X, § 20 of the Colorado Constitution ("TABOR") and the Colorado Revised Statutes ("CRS"). In the event TABOR or the CRS conflict with any provision of this Agreement, TABOR or the CRS, as applicable, will prevail. Notwithstanding anything to the contrary, if the Customer fails to appropriate funds for any given fiscal year sufficient to perform its obligations under this Agreement, (a) the Customer will be in material breach of this Agreement and (b) either Party may terminate this Agreement upon ten (10) days prior written notice to the other Party.

K) ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS

This Agreement may be executed in two or more counterparts, each of which is deemed original but all constitute one and the same instrument. The Parties agree that a facsimile copy of a signature will be deemed original and binding. In addition, Public Service consents to the use of electronic signatures. The Agreement and any other documents requiring signature hereunder may be signed electronically in the manner specified by Customer. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Signature pages follow]

Contract Control Number:
Contractor Name:

PLANE-202265813-00
PUBLIC SERVICE COMPANY OF COLORADO

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number: PLANE-202265813-00
Contractor Name: PUBLIC SERVICE COMPANY OF COLORADO

By:

DocuSigned by:
Beth Chacon
5751C3FB5B9D468...

2/12/2023 | 3:23 PM PST

Name: Beth Chacon
(please print)

Title: Director, Grid Strategy & Emerging Technologies
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)