

Charge at Home. Charge at Work. Service Agreement



This Agreement is entered into by the above stated consumer / member (Consumer) and Holy Cross Electric Association, Inc., doing business as Holy Cross Energy (HCE), each individually referred to as a “Party” and collectively referred to as the “Parties.”

Consumer desires to enroll in the Distributed Energy Resource Program of HCE to obtain and operate Electric Vehicle Supply Equipment (EVSE) at Consumer’s real property residence (Facility) under the terms of the “Distributed Energy Resource Service Agreement - Optional” Tariff of HCE (Agreement). The terms of this Agreement are supplemental to the Electric Service Agreement between Consumer and HCE. Consumer reaffirms the Electric Service Agreement and this Agreement is intended to grant Consumer the additional rights, duties and obligations under the Distributed Energy Resource Service Agreement – Optional Tariff of HCE.

Consumer agrees to the following terms and conditions:

1. Enrollment in the EVSE Program of HCE also enrolls the member in the Distribution Flexibility (DF) program of HCE, outlined below.
2. Consumer agrees to all of the terms and conditions of the Agreement as established from time to time by HCE. Consumer hereby grants HCE or its designee reasonable access to the Facility to perform the work under the Tariff at such date and time as the Parties shall mutually agree.
3. HCE will furnish an approved Level II EVSE (charging equipment) to the Consumer at the Consumer’s Facility without cost to the Consumer.
4. Consumer agrees to allow free and unrestricted access to usage data of the EVSE to HCE for the life of the equipment.
5. HCE will pay the licensed electrical contractor directly for the upfront cost to install the EVSE and the electrical service to the charging equipment. The Consumer will hire the licensed electrical contractor and see to the design and installation of the EVSE. The Consumer shall be responsible for all means, methods, techniques, sequences, and procedures and for coordinating all portions of the installation and operation of the EVSE.
6. HCE will own and maintain the EVSE for a maximum of three years, or until the entire cost has been repaid. After all of HCE’s costs and expenses have been paid under the Agreement, then HCE will transfer ownership of the EVSE to the Consumer by a bill of sale.
7. Consumer grants an irrevocable license to HCE for the operation of the EVSE on the Facility during the term of operation of the EVSE on the Facility, which license shall end after the removal of the EVSE from the Facility or the transfer of ownership to the Consumer.
8. The Consumer will pay HCE all of its expenses through a monthly fixed rate amount added through the Agreement on the utility bill for the amount incurred by HCE for its actual cost of the installation and operation of the EVSE and for other expenses connected with the program. This fixed rate will be assessed to the Consumer over a period [not to exceed three years] as determined by HCE under its ratemaking process.
9. Consumer understands and agrees that the calculation of the rate under the Agreement, HCE may include an administrative cost in the calculation of the monthly fixed rate charge [not to exceed the marginal cost of borrowing of HCE or 3% per annum, whichever amount is greater]. Consumer agrees that this transaction is a utility rate transaction and it is not a loan transaction.
10. If the Consumer moves or discontinues service at the Facility at which the EVSE is installed within three years, then the Consumer will be required to pay the cost of disconnection of the EVSE. Consumer then agrees to return the EVSE equipment to any HCE office location forthwith undamaged except for normal wear and tear, and the Consumer shall pay all of the remaining balance of monthly fixed rate.
11. HCE will limit the number of EVSE installations that can be qualified under the Agreement to 2 ports per consumer for home installations and a maximum of \$3,000 for installation cost per charging station. Charger cannot be used for commercial applications with public access.
12. EVSE must be installed within 60 days of the date of receipt of the EVSE or the member agrees to pay the full cost of the EVSE. Charger activation and enrollment as a Holy Cross Home Program Participant, per instructions provided to the Consumer, must also be completed within 60 days of receipt to allow HCE to obtain data from the EVSE and control of the EVSE.

13. EVSE must remain installed in HCE's service territory for the term of this Agreement.
14. The payment obligation under the Agreement shall be treated the same as charges for electric service pursuant to HCE's Rules and Regulations. Failure to make payment may, in addition to other rights of HCE under law, result in disconnection of electric service in accordance with HCE's Tariffs, Rules and Regulations.
15. Payment of any amount due under this Agreement is the personal obligation of the Consumer and cannot be discharged or assumed by another person without the prior written consent of HCE. A successor in possession or ownership of the Facility upon which the EVSE and improvements were installed may be required by HCE to pay the balance of the rate amount due for the installed EVSE and improvements. The Consumer agrees to and shall advise all successors in possession or ownership of the premises upon which the EVSE and improvements were installed that the additional amount due portion of the billing will continue to be paid by such successor unless such amount due to HCE is paid in full.
16. HCE has its rights under law for nonpayment of any amount due to HCE, including without limitation the right to terminate electric service to the Consumer and any successor in possession or ownership of the premises upon which the EVSE and improvements were installed, and the right to terminate any other electric service provided by HCE to the Consumer at any location in the event of any default in payment of any amount due to HCE including without limitation the amount of the cost as determined under the Agreement and other charges.
17. All information gathered by HCE in the application for and the administration of the payment for the EVSE and improvements and for the granting of electric service to the Facility is governed by the provisions of the Tariffs, Rules and Regulations of HCE which may be amended from time to time.
18. If the Consumer defaults in payment of the amount due under the Agreement or on electric service, then the Consumer may not participate in any existing or future benefit or subsidy program established by HCE.
19. All payments received from the Consumer will first be applied to any amount due under the Agreement and then to all amounts due to HCE for electric and other service and then applied to any other amount due to HCE.
20. HCE does not warrant the EVSE improvements or the quality of workmanship in the installation of the EVSE improvements. HCE disclaims any and all express or implied warranty of the EVSE improvements including without limitation any implied warranty of fitness for a particular purpose, merchantability, usability and habitability.
21. If the Facility upon which the EVSE improvement was installed is destroyed or damaged from any cause, the Consumer shall still be liable for payment of all amounts due to HCE under the Agreement. If the Facility upon which the EVSE improvement was installed is partially or totally vacant, the Consumer shall still be liable for payment of all amounts due to HCE under the Agreement. The Consumer shall insure the cost of replacement of the EVSE and shall show the interests of HCE under the terms of the Agreement as a loss payee.
22. To the maximum extent permitted by law the Consumer shall defend, indemnify, and hold harmless HCE and HCE's directors, officers, and employees from all claims, causes, action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to person (including but not limited to the Consumer's employees) and loss, damage to, or destruction of HCE's and the Consumer's property or the property of any other person or entity in any manner arising out of or connected with the Agreement and the installation and operation of the EVSE, or the materials or equipment supplied or services performed by HCE, its subcontractors and suppliers of any tier.
23. For the duration of the Consumer's participation in the program, Consumer agrees that HCE is entitled to all Green Attributes (such as Renewable Energy Credits, or carbon offsets, as may be applicable) and/or tax benefits of any kind or nature associated with the EVSE, and Consumer hereby conveys to HCE all present and future rights to such Green Attributes and/or tax benefits, and agrees to take all further steps required to effect such transfer to HCE at the time of any such delivery.
24. Responsibilities, understandings and authorizations of Consumer, HCE, landlord (if applicable) and participating contractor shall be evidenced by written agreements, notifications and disclosures/consents, the forms of which are prepared by HCE and are made a part of the Agreement. Consumer shall pay and be responsible for all sales, use, property, income and other taxes of any kind attributable to this transaction.
25. HCE's Tariffs, Rules and Regulations are subject to change at any time. HCE shall not be liable for any losses associated with investment or program enrollment decisions should this program or other rates change in the future.
26. Consumer agrees that (i) it possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein; (ii) this Agreement has been duly executed and delivered; and (iii) this Agreement constitutes the legal, valid, binding, and enforceable agreement of Consumer.
27. Consumer has obtained, to the extent Consumer has deemed necessary or prudent, legal counsel to advise it on this Agreement.
28. Consumer agrees that this Agreement constitutes the full, complete, and only agreement between the Parties and supersedes any previous representations or agreements, and this Agreement shall not be amended except in writing signed by duly authorized representatives of both Parties.
29. HCE may disclose such information as may be required to be disclosed by law or court order from a court of competent jurisdiction, and provided further that, unless otherwise prohibited by law.
30. Consumer agrees (A) That the laws of the State of Colorado shall govern this Agreement and any dispute arising hereunder shall be litigated in a Federal or State Court located in the State of Colorado, (B) TO WAIVE TO THE FULLEST EXTENT PERMITTED BY

LAW THE RIGHT TO A TRIAL BY JURY.

31. In the event any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent possible.
32. This Agreement is neither intended to create, nor shall it be construed as creating, a joint venture, partnership or other form of business association between the Parties, or an agreement to enter into any business relationship.
33. Consumer will purchase from HCE all electric energy used on the Facility and will pay for at the applicable rates and terms in accordance with the Tariffs, Rules and Regulations of HCE as may from time to time be adopted by HCE.
34. No agent or representative of HCE has the power to amend, modify, alter or waive any of the provisions of the terms of this Agreement. Any promises, agreements, or representations made by any agent or representative of HCE not herein set forth shall be void and of no effect.
35. Acceptance of this Agreement by HCE shall constitute a binding agreement between the Consumer and HCE.
36. Consumer shall comply with the Tariffs, Rules and Regulations of HCE. The Tariffs, Rules and Regulations of HCE may be changed by HCE from time to time and this Agreement shall incorporate the provisions thereof as changed in the future.
37. Failure on the part of Consumer to accept service from HCE or to comply with the Tariffs, Rules and Regulations of HCE, or to perform under the terms and conditions of this Agreement shall not relieve Consumer from making all the payments and performing all the conditions set forth in this Agreement. In the event Consumer becomes delinquent in any payments, Consumer will forfeit all deposits therefore made, and HCE shall have the option to declare all of the remainder of the payments due under this Agreement immediately due and payable. HCE, at its option and without further notice, may remove all or part of the electric facilities of HCE serving the Facility.
38. HCE may record this instrument in the office of the County Clerk and Recorder in the County in which the real estate is situated.
39. This Agreement shall be binding upon the successors, legal representatives, heirs, devisees, and assigns of the respective parties hereto.
40. HCE shall use reasonable diligence to provide Consumer with a constant and uninterrupted supply of electric power and energy; but if such supply shall fail or be Interrupted or become defective through acts of God, or the public enemy, or by accident, strikes, labor troubles, or by action of elements or inability to secure rights-of-way, or other permits needed, or any other cause beyond reasonable control of HCE, the HCE shall not be liable therefor.
41. Consumer hereby grants and conveys unto HCE the right, privilege and easement to construct, operate and maintain electric and other facilities on the Facility together with right of ingress and egress, including the installation of HCE owned locks and/or lock boxes, etc., as may be necessary to extend, maintain and operate this service.
42. Consumer hereby gives to HCE without cost or expense, the further right and privilege to cut and trim any trees or shrubbery on or near any electric underground or overhead lines supplying Consumer, so that adequate and proper service may be extended hereunder.
43. Consumer further agrees to assist in obtaining needed rights-of-way that may be required to provide service hereunder.
44. Service will be rendered at the HCE's standard voltage. HCE's meter shall constitute the point of delivery to customer unless otherwise stated in the Tariffs, Rules and Regulations of HCE, and Consumer will own and maintain all poles, wires, equipment and other facilities beyond the point of delivery including without limitation the EVSE.

Distribution Flexibility Program Provisions

In exchange for receiving an electric vehicle charger (EVSE) at no cost, Consumer also agrees to enroll in HCE's Distribution Flexibility (DF) Tariff – with the following terms and conditions being supplemental EVSE specific program rules. The Consumer agrees to allow HCE full operational control of the EVSE. This document serves as the program rules referenced in the DF tariff, which may be modified from time to time. The actual tariff terms as posted shall govern in the event of any discrepancy between the DF tariff and this Agreement.

Terms and Conditions for HCE's Control of EVSE:

45. HCE may delay or initiate the use of EVSE during times of peak demand.
Peak demand expectations:
 - a. High demand or critical demand events will most commonly take place between the hours of 4 p.m. and 9 p.m. and may occur on any day of the year.
 - b. Peak events are expected to last 2-3 hours in duration.
 - c. HCE will target a limit of 96 peak demand event hours in a calendar year, although that limit can be revised if conditions warrant.
46. HCE may delay or initiate the use of EVSE during times of peak renewable production.
Renewable oversupply expectations:
 - a. Peak renewable production will most commonly take place between the hours of 11 p.m. and 6 a.m., and between 1 p.m. and 5 p.m. and can occur any day of the year.
 - b. Peak renewable production events are expected to last 3-10 hours in duration.
 - c. HCE anticipates around 85 days may include peak renewable production events.

- d. HCE will target a limit of 300 peak renewable production event hours in a calendar year, although that limit can be revised if conditions warrant.
- 47. HCE may evaluate and consider all relevant conditions, including but not limited to forecasted and actual renewable generation, forecasted and actual peak hours, temperature, system load conditions, system operation needs, energy market conditions, transmission system conditions, and other emergency conditions in determining whether to exercise control over the Consumer's EVSE.
- 48. HCE may, at any time, terminate a consumer's participation in the DF program if the consumer violates the terms and conditions of the DF program.