

# Power+

## Tesla Powerwall 2 Service Agreement



<b>Holy Cross Energy</b>	<b>Customer Name</b>
<b>3799 Highway 82</b>	<b>Account Number</b>
<b>Glenwood Springs, CO 81601</b>	<b>Service Address</b>

This Agreement (Agreement) is entered into between 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 a Battery Energy Storage System(s) (BESS) 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 and HCE agree to the following terms and conditions:

1. In return for participating in HCE’s Power+ Program, Consumer agrees to pay the resulting Power+ Program premium beginning with the first billing cycle after the BESS installation is complete, as calculated by HCE and outlined at the end of this agreement.
2. Consumer acknowledges HCE’s Power+ Program is not suitable for medical equipment backup applications.
3. Enrollment in the Power+ Program of HCE also enrolls Consumer in the Distribution Flexibility (DF) program of HCE, outlined below.
4. Consumer hereby grants HCE or its designee reasonable access to the Facility to perform the work under the Tariffs, Rules, and Regulations of HCE at such date and time as the Parties shall mutually agree which shall be within 60 hours of the first request by HCE.
5. Consumer may not also be enrolled in HCE’s Residential Services Time-of-Day rate or HCE’s Peak Time Payback program.
6. BESS Installations shall be in compliance with National Electric Code (NEC).
7. HCE will pay an approved licensed electrical contractor and certified Tesla installer to install an approved Tesla Powerwall 2 (BESS equipment) at Consumer’s Facility without up-front cost to Consumer.
8. Consumer agrees to allow free and unrestricted access to all data of the BESS to HCE for HCE’s benefit and for the benefit of all of its assigns for the life of the BESS equipment. Consumer gives permission for Tesla to share battery data with HCE in support of the execution of this program. Consumer shall pay for and provide all necessary communications interconnections of the BESS through Consumer’s Wi-Fi or telephone communications. All ongoing costs of maintaining the Wi-Fi or telephone communications between the BESS and HCE’s data system shall be paid for by Consumer.
9. HCE will pay the licensed electrical contractor directly for the upfront cost to install the BESS and the electrical and communications interconnection service to the BESS equipment. Consumer shall hire the licensed electrical contractor, as approved by HCE, and see to the design and installation of the BESS. Consumer shall be responsible for all means, methods, techniques, sequences, and procedures and for coordinating all portions of the installation and operation of the BESS and its communications equipment.
10. HCE will own and maintain the BESS for a maximum of 10 years, or until the entire cost has been repaid. After all of HCE’s costs and expenses have been paid, then HCE will transfer ownership of the BESS to Consumer by a bill of sale, as-is, without warranty of any kind. HCE disclaims any and all express or implied warranty of the BESS improvements including without limitation any implied warranty of fitness for a particular purpose, merchantability, usability and habitability.
11. Consumer grants an irrevocable license to HCE for the operation of the BESS on the Facility during the term of operation of the BESS on the Facility, which license shall end after the removal of the BESS from the Facility or the transfer of ownership to Consumer.
12. Consumer shall 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 BESS and for other expenses

- connected with the program. This fixed rate will be assessed to Consumer over a period [not to exceed 10 years] as determined by HCE under its tariffs, rules and regulations.
13. Consumer understands and agrees that in the calculation of the rate under the Agreement, HCE will not include an administrative or cost of capital fee. Consumer agrees that this transaction is a utility rate transaction, and it is not a loan transaction.
  14. If Consumer moves or discontinues electric service to the Facility at which the BESS is installed within 10 years after the BESS is approved by HCE, or the Consumer wishes to exit the program, then Consumer shall be required to:
    - a. Pay all of the remaining balance of monthly fixed rate; or
    - b. Require that the successor in possession or ownership of the Facility upon which the BESS and improvements were installed assumes and undertakes this Agreement, subject to the requirements in the Agreement.
  15. HCE limits the number of BESS installations that can be qualified under the Agreement for Consumer at the Facility to align with the Facility's load profile, and the total maximum BESS capacity shall be 25 kW.
  16. BESS must be validated by HCE at Consumer's property within 60 days after the date of installation of the BESS and before the BESS can be physically and electrically interconnected with the HCE electric system. Enrollment as a Holy Cross Power+ Program Participant, per instructions provided by HCE to Consumer, must also be completed within 60 days of receipt to allow HCE to obtain data from the BESS and control of the BESS. Member agrees that failure to complete validation and enrollment will result in an obligation to pay the full installed cost of the BESS to HCE on demand by HCE.
  17. BESS must remain installed at the Facility for the term of this Agreement, except as provided in the Agreement.
  18. The payment obligation under the Agreement shall be treated the same as charges for electric service pursuant to HCE's Tariffs, 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.
  19. Payment of any amount due under this Agreement is the personal obligation of 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 BESS and improvements were installed may be required by HCE to pay the balance of the rate amount due for the installed BESS and improvements. Consumer agrees to and shall advise all successors in possession or ownership of the premises upon which the BESS and improvements were installed that the additional amount due portion of the billing will continue to be paid by such successor unless the repayment terms of Section 14 are satisfied.
  20. HCE has its rights under law for nonpayment of any amount due to HCE, including without limitation the right to terminate electric service to Consumer and any successor in possession or ownership of the premises upon which the BESS and improvements were installed, and the right to terminate any other electric service provided by HCE to 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.
  21. All information gathered by HCE in the application for and the administration of the payment for the BESS 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.
  22. If Consumer defaults in payment of the amount due under the Agreement or on electric service, then Consumer may not participate in any existing or future benefit or subsidy program established by HCE.
  23. All payments received from 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.
  24. HCE does not warrant the BESS improvements or the quality of workmanship in the installation of the BESS improvements. HCE disclaims any and all express or implied warranty of the BESS improvements including without limitation any implied warranty of fitness for a particular purpose, merchantability, usability and habitability. BESS equipment is warranted solely as provided in Tesla's manufacturer limited warranty.
  25. If the Facility upon which the BESS improvement was installed is destroyed or damaged from any cause, Consumer shall still be liable for payment of all amounts due to HCE under the Agreement. If the Facility upon which the BESS improvement was installed is partially or totally vacant, Consumer shall still be liable for payment of all amounts due to HCE under the Agreement. Consumer shall insure the cost of replacement of the BESS and shall show the interests of HCE under the terms of the Agreement as a loss payee.
  26. To the maximum extent permitted by law 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 Consumer's employees) and loss, damage to, or destruction of HCE's and 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 BESS, or the materials or equipment supplied or services performed by HCE, its subcontractors and suppliers of any tier.
  27. For the duration of 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) or tax benefits of any kind or nature associated with the

- BESS, and Consumer hereby conveys to HCE all present and future rights to such Green Attributes or tax benefits and agrees to take all further steps required to affect such transfer to HCE at the time of any such delivery.
28. Responsibilities, understandings, and authorizations of Consumer, HCE, landlord (if applicable) and participating contractors 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.
  29. HCE's Tariffs, Rules and Regulations are subject to change at any time. 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.
  30. 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.
  31. 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.
  32. Consumer has obtained, to the extent Consumer has deemed necessary or prudent, legal counsel to advise it on this Agreement.
  33. 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.
  34. 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.
  35. 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.
  36. 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.
  37. 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.
  38. Consumer will self-produce on site or 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.
  39. 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.
  40. Acceptance of this Agreement by both Parties shall constitute a binding agreement between Consumer and HCE.
  41. 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.
  42. HCE may record this instrument in the office of the County Clerk and Recorder in the County in which the real estate is situated.
  43. This Agreement shall be binding upon the successors, legal representatives, heirs, devisees, and assigns of the respective Parties hereto.
  44. 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 any Force Majeure event including without limitation acts of God, or the public enemy, or by accident, strikes, labor troubles, pandemic 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, then HCE shall not be liable therefor.
  45. Consumer hereby grants and conveys unto HCE the right, privilege and easement to construct, operate and maintain electric, communication 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.
  46. 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 or communication underground or overhead lines supplying Consumer, so that adequate and proper service may be extended hereunder.
  47. Consumer further agrees to assist in obtaining needed rights-of-way that may be required to provide service hereunder.
  48. HCE may elect to assign the assets in this program to an affiliate or third-party service provider. Consumer consents to such assignment, if HCE elects to exercise this option.

## Distribution Flexibility Program Provisions

In exchange for receiving a Battery Energy Storage System (BESS) as provided under this Agreement, Consumer agrees to enroll in HCE's Distribution Flexibility (DF) Tariff – with the following terms and conditions provided below as supplemental BESS-specific program rules, as may be amended by HCE from time-to-time. Consumer agrees to allow HCE full operational control of the BESS. These provisions serve as the program rules referenced in the DF Tariff, which may be modified by HCE from time to time. The actual Tariff terms as posted by HCE shall govern in the event of any discrepancy between the DF Tariff and this Agreement.

### Terms and Conditions for HCE's Control of BESS:

49. HCE may initiate withdrawal or delay charging of the BESS 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 100 peak demand event hours in a calendar year, although that limit can be revised if conditions warrant.
50. HCE may delay withdrawal from or initiate charging of the BESS 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 that approximately 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.
51. 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, load shape, transmission system conditions, and other emergency conditions in determining whether to exercise control over Consumer's BESS.
52. Consumer is responsible for ensuring communications with the device are uninterrupted. If communications are interrupted for any reason due to Consumer's decision or Consumer's equipment failure, HCE has the right to withhold payment of the DF credit for the month in which the interruption occurred. If internet connectivity remains unrestored for a period of more than 30 days, HCE may remove the BESS from the DF program and Consumer will not receive the credits. In any circumstance, the obligations of the DER Service Agreement remain unchanged.
53. A capacity credit to the member for their BESS is offered at \$10.30/kW/Mo, where;
  - a. kW is defined as the lesser of  $(kWh * (1 - SOC_{min}) / 2)$  or (kW max continuous)
  - b. SOC<sub>min</sub> = minimum state of charge as defined by the battery manufacturer (in a % form), expressed here as a ratio to full state of charge energy volume. Tesla Powerwall SOC requirements reserve **20%** SOC for the Consumer.
54. The capacity credit will be tied to the term of the "Distributed Energy Resource Service Agreement" above.
55. Consumer agrees to the payment terms outlined below in the "Member Payment Summary" section of this Agreement.
56. HCE has the right to recalculate the capacity credit under any of the following events:
  - a. HCE enters an organized wholesale electricity market; or
  - b. HCE terminates its full requirements service with Public Service Company of Colorado (PSCo); or
  - c. PSCo substantially modifies its formula rate calculation for capacity; or
  - d. The HCE/PSCo Transmission Integration and Equalization Agreement is terminated or substantially modified; or
  - e. HCE's marginal cost for capacity decreases by more than 20% from the 2019 level.
57. HCE may, at any time, terminate Consumer's participation in the DF program if Consumer violates the terms and conditions of the DF program, this Agreement or any Tariff, Rule, or Regulation of HCE.

**Power+**  
**Member Payment Summary**

Battery:	Tesla Powerwall 2
Quantity:	5
Installed Cost:	\$53,500.00
HCE Rebate:	\$12,500.00

Monthly DERSA Payment	\$341.67
Monthly DF Credit	<u>(\$257.50)</u>

<b>Monthly Net Cost (Credit)*</b>	<b>\$ 84.17</b>
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As a qualified Holy Cross Consumer, I have read, understood, and agreed to the terms of the Contract set forth above. By signing this agreement, I represent that I am authorized to do so on behalf of the party holding title to the stated physical location.

Authorized Signature of Customer:

Date: