

RESILIENCY SERVICE PROGRAM CUSTOMER SERVICE AGREEMENT

THIS RESILIENCY SERVICE PROGRAM CUSTOMER SERVICE AGREEMENT (the “Agreement”), is made effective this _____ day of _____, 20__ (“Effective Date”) by and between Public Service Company of Colorado, a Colorado corporation doing business as Xcel Energy (“Xcel Energy”), ADDRESS, and _____ (“Customer”) a _____ [corporation/limited liability company/other]. Customer and Xcel Energy may be referred to herein individually as a “Party” or collectively as the Parties.

WITNESSETH: That the parties hereto, each in consideration of the promises of the other in this Agreement, agree as follows:

1. Definitions

- “Applicable Laws” means all applicable federal and state laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, tariff provisions and orders of any governmental entity having jurisdiction over the Resiliency Project, the practices involved in the Resiliency Project, or any work Xcel Energy or Customer performs.

“Business Days” means any day, except Saturdays, Sundays, and United States Government federal holidays.

- “Calendar Days” means every day shown on the calendar, beginning and ending at midnight.
- “Confidential Information” means information which is disclosed or shared by one Party to the other Party or generated or developed by one or both Parties and which a prudent person would expect not to be made available to Third Parties without restriction or payment, including, but not limited to, (i) any information marked confidential, restricted, or proprietary by the owning Party, and (ii) strategic plans, practices, data, marketing research, reports and activities, operations techniques, and CIP Information.
- “Customer Location” means the physical location where any and all Resiliency Service Assets will be located and is described as:

_____.

- “Customer Project Asset” means an asset owned by Customer that Customer and Xcel Energy agree to incorporate into the design and operation of the Resiliency Project.
- “Dispute” means a disagreement between Xcel Energy and Customer that arises under or that relates to the Agreement.
- “Facilities” means any privately, publicly, or cooperatively owned line, system, and or other utility item that produces, transmits, or distributes communications, power, cable, television, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, signal systems, and other products or services that serve the public, and/or a privately-

owned irrigation system. Any necessary appurtenances to each Facility are considered a part of it.

- “Force Majeure Event” means fire, floods, explosion, catastrophe, accident, declared war, riot, acts of God, acts of terrorism, insurrection, strike, and applicable laws that prevent performance, to the extent (i) such event is beyond a Party’s control, that due diligence and use of reasonable efforts by the Party claiming the Force Majeure Event could not have avoided or prevented, (ii) that materially and adversely affects a Party’s ability to meet its obligations under this Agreement, and (iii) the Party claiming the Force Majeure Event gives prompt written notice of the same to the other Party. A Force Majeure Event does not include events due to the acts or omissions of the Party claiming the Force Majeure Event.
- “In-Service Date” means the date Xcel Energy notifies Customer, in writing, that the Resiliency Service Assets have been installed, tested to ensure operability and are commissioned for Customer’s use.
- “Non-Routine Operations and Maintenance” means any operations and maintenance that does not meet the definition of Routine Operations and Maintenance.
- “Total Equipment Failure” means failure of a piece of the Resiliency Service Assets covered under this Agreement such that it is beyond reasonable repair, as determined in Xcel Energy’s sole discretion.
- “Resiliency Service Assets” means the assets specified in Exhibit [] to this Agreement.
- “Resiliency Service Program” means the program offered by Xcel Energy pursuant to the terms of Schedule RSP tariff.
- “Resiliency Project” means the project for which the Xcel Energy will install the Resiliency Service Assets, and which may also include other assets, including other assets owned by Xcel Energy and Customer Project Assets.
- “Routine Operations and Maintenance” means the operations and maintenance set forth in Exhibit [] to this Agreement.
- “Working Days” means any Calendar Day, excluding Saturdays, Sundays, and legal public holidays, as set forth in 5 U.S.C. § 6103(a).

2. Availability

2.1 Customer has elected to participate in the Xcel Energy Resiliency Service Program. To be eligible to participate in the Resiliency Service Program, and prior to Xcel Energy undertaking any Xcel Energy responsibility set forth in Article 4, Customer must provide documentation acceptable to Xcel Energy evidencing that Customer meets all the following requirements (the “Customer Requirements”):

2.1.1 Take service from a qualifying rate schedule as defined by the tariff;

- 2.1.2 Own or lease the Customer Location, or be Xcel Energy's customer of record associated with the premise's electric service meter at the Customer Location; or
- 2.1.3 In the event the Customer does not own the Customer Location, provide express written consent, in a form acceptable to Xcel Energy in its sole discretion, from the owner of the Customer Location to grant Xcel Energy the appropriate real property rights and continuous access to the Resiliency Service Assets owned and maintained by Xcel Energy, including any necessary license or access Agreements, or easements signed by the owner of the Customer Location and approved in its sole discretion by Xcel Energy.

3. Customer Responsibilities

- 3.1 Except for the costs incurred by Xcel Energy to undertake the responsibilities set forth in Article 4 of this Agreement, Customer will pay all other costs associated with this Agreement, including all costs set forth in Exhibits [Capital Costs of Resiliency Service Assets], [Routine O&M] [and] [Non-Routine O&M].
- 3.2 Xcel Energy will perform a credit review as outlined below and meet baseline credit and financial health requirements as defined by the Xcel Energy in its reasonable determination.
 - 3.2.1 Customer shall have the obligation prior to execution of this Agreement, and annually thereafter, to provide Xcel Energy its annual and most recent financial statements for the purpose of Xcel Energy assessing Customer's financial ability to perform under the Agreement. These financial statements shall include, at a minimum, the balance sheet, income statement, statement of cash flows and, if available, footnotes to the financial statements and any written transmittal (such as an opinion or statement of review) by Customer's independent accountants. Customer represents and warrants that all such financial statements as provided to Xcel Energy shall (i) be true, correct and complete, (ii) fairly state the financial condition of Customer, and (iii) be presented in accordance with generally accepted accounting principles, consistently applied. Such financial statements shall be delivered to Xcel Energy, to the attention of the Xcel Energy representative from whom request was made, within five (5) business days after Customer's receipt of such request.
- 3.3 Where Xcel Energy reasonably determines under Section 3.2 above that Customer's credit standing does not meet Xcel Energy's baseline requirements to enter into this Agreement, Customer shall provide Xcel Energy with security to secure Customer's performance under the Agreement ("Security"). Customer shall maintain such Security in good standing as required during the term of this Agreement. Security may be provided in one of the following forms within five (5) Business Days following the Effective Date of this Agreement:
 - 3.3.1 The Security may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit X, "Form of" Letter of Credit ("Letter of Credit") from a financial institution ("Issuer") acceptable to Xcel Energy.

- a) The Issuer of the Letter of Credit shall have and maintain a Credit Rating equivalent to A- (or better) by Standard & Poors and A3 (or better) from Moodys. If such Credit Rating is A- or A3, the Issuer must not be on credit watch by any rating agency.
 - b) The Letter of Credit must be for a minimum term of []. Customer shall give Company at least 90 days advance written notice prior to any expiration or earlier termination of the Letter of Credit. Customer shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of [] or more (or, if shorter, the remainder of the Term) more than 90 Days prior to each expiration date of the Security. If the Letter of Credit is not renewed or extended at least 90 Days prior to its expiration date or otherwise is terminated early, Xcel Energy shall have the right to draw immediately upon the Letter of Credit for the entire amount remaining due and owing under this Agreement and to place the amounts so drawn, at Customer's cost and with Customer's funds, in an escrow account in accordance with Section [] below, until and unless Customer provides a substitute form of Security meeting the requirements of this Section 3.3. In the event Customer is unable to satisfy its obligations this Section 3.3.1(b), Xcel Energy shall have a right to make a claim for the remaining amounts due and owing pursuant to Section 5.3 of this Agreement preserving all rights under applicable law and at equity.
- 3.3.2 The Security may consist of a parent guaranty substantially in the form of Exhibit X, "Form of" Parent Guaranty, from a parent or other guarantor ("Guarantor") with a minimum of net worth of at least \$250,000,000 and an Investment Grade Credit Rating (and if such Credit Rating is exactly equivalent to BBB- [S&P] / Baa3 [Moody's]; the Guarantor must not be on credit watch by any rating agency). If the Credit Rating of the Guarantor is downgraded below Investment Grade, put on credit watch, or an event occurs that (in the reasonable determination of Xcel Energy) indicates a material adverse effect in the creditworthiness of the Guarantor, then Xcel Energy may require Customer to convert the guaranty to a Security instrument meeting the criteria set forth in this Section.
- 3.3.3 Xcel Energy shall negotiate in good faith any needed escrow and account control agreement and, upon request by Customer, immaterial changes to the Letter of Credit and/or Parent Guaranty, provided that Customer shall pay or reimburse Xcel Energy for the direct expenses (including the fees and expenses of legal counsel) incurred by Xcel Energy in connection therewith.
- 3.3.4 Xcel Energy may draw from the Security such amounts as are necessary to recover amounts owing to Xcel Energy pursuant to this Agreement, including any damages and any amounts for which Xcel Energy is entitled to indemnification under this Agreement. Xcel Energy may, in its sole discretion, draw all or any part of such amounts from any form of Security to the extent available pursuant to this Section and in any sequence Xcel Energy may select. Xcel Energy's failure or

delay to draw any amount from the Security in any instance shall not prejudice Xcel Energy's rights to subsequently recover such Security amount.

- 3.3.5 Seller may change the form of the Security at any time and from time to time upon Commercially Reasonable prior notice to Xcel Energy, provided, however, that the Security Fund must at all times satisfy the requirements of this Section.
- 3.3.6 In the event that the Security ever fails to comply with the requirements of this Section or Xcel Energy determines in a commercially reasonable manner that an event has occurred or circumstances have developed that threaten to cause the Security to fail to comply with the requirements of this Section (e.g. a Guarantor is placed on negative credit watch by a rating agency), Customer shall be required to replace the Security with Security in compliance with this Section within five (5) Days following notice thereof from Xcel Energy.
- 3.3.7 The Security shall survive termination of this Agreement to be available to pay any amounts owed to Xcel Energy arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Customer's obligations under this Agreement, or (ii) termination of this Agreement for any reason prior to the Termination Date, Xcel Energy shall determine the amount, if any, owed by Customer for any obligations or damages arising out of this Agreement. Xcel Energy may draw such amount and shall release the balance of the Security (including any accumulated interest, if applicable) to Customer.
- 3.3.8 Customer shall reimburse Xcel Energy for its direct expenses (including the fees and expenses of counsel) incurred by Xcel Energy in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of the Security Fund under this Section.
- 3.4 Customer will comply with Xcel Energy's safety and technical specifications, including but not limited to those applicable and included within the Schedule RSP tariff.
- 3.5 Customer will assist in coordinating installation, commissioning and maintenance of the Resiliency Service Assets at the Customer Location with Xcel Energy and its contractor(s) who provide services in connection with installing and maintaining the Resiliency Service Assets. This will include issuing or obtaining any necessary license to allow Xcel Energy and its contractor(s), as well as access to the Customer Location for the installation, commissioning and maintenance of the Resiliency Service Assets. Customer will also meet regularly with Xcel Energy to review and coordinate time schedules and track Resiliency Service Asset installation and commissioning status.
- 3.6 Customer will provide Xcel Energy with accurate and complete information relevant to the Resiliency Service Program in order to permit Xcel Energy to successfully install and complete construction, installation and commissioning of the Resiliency Service Assets for the Resiliency Service Program. Customer consents to and permits Xcel Energy and its contractor(s), including any applicable equipment manufacturers, vendors, and subcontractors, who provided services in connection with the installation, commissioning and maintenance of the Resiliency Service Assets, to have access, collect, and share data

from the Resiliency Service Assets with respect to their maintenance and technical performance (the “Data”) during the Term of this Agreement. Except to the extent Data is treated as confidential pursuant to applicable law, Xcel Energy shall not be prohibited or restricted from disclosure or use of any Data, information, or documents it receives from Customer, nor is Xcel Energy prohibited or restricted from disclosing documents or information Customer provides pursuant to this Agreement in connection with any legal or regulatory proceeding.

- 3.7 During the Term, Customer grants Xcel Energy, and its officers, agents, representatives, employees, and contractors a right of ingress, egress, and physical disturbance to the Customer Location on a seven (7) day, 24 hour per day basis as required to construct, install, maintain, operate, repair, and remove Resiliency Service Assets in accordance with the provisions of this Agreement. The general manner of such ingress and egress is subject to coordination with Customer.
- 3.8 Customer will promptly notify Xcel Energy in the event Customer becomes aware that the Resiliency Service Assets fail to operate or otherwise require repair.
- 3.9 In the case of Total Equipment Failure of all or a portion of the Resiliency Service Assets that is caused by Customer, any of Customer’s employees, agents, or partners and such failure is not covered by a manufacturer’s warranty, Customer may either request that Xcel Energy replace the necessary equipment at Customer’s expense in accordance with the Schedule RSP tariff or terminate this Agreement pursuant to Article 5.
- 3.10 Customer will maintain the area surrounding the Resiliency Service Assets to ensure Xcel Energy physical access in compliance with Section 3.5 above, including, but not limited to, pavement maintenance, pruning of vegetation, snow removal, and the repair of security lighting.
- 3.11 Customer will participate in surveys initiated by Xcel Energy and provide feedback about the Resiliency Service Program. Customer will permit Xcel Energy to conduct surveys of employees or others using the Resiliency Service Assets related to end-user satisfaction of the Resiliency Service Program, and the Resiliency Service Assets in general. Xcel Energy may freely use such feedback without restriction.
- 3.12 Customer will fund the Design and Engineering Study cost associated with the Resiliency Service Asset as set forth in Exhibit [].
- 3.13 Customer will fund the capital cost associated with the Resiliency Service Asset program as set forth in Exhibit [].
- 3.14 Customer will fund Routine Operation and Maintenance associated with the Resiliency Service Program as set for the Exhibit [].
- 3.15 Customer will fund Non-Routine Operation and Maintenance according to the terms set forth in Exhibit [].

4. Xcel Energy Responsibilities

- 4.1 Xcel Energy agrees to procure, install, own, operate and maintain all Resiliency Service Assets at the Customer Location according to the Schedule set forth in Exhibit [].
- 4.2 Xcel Energy and/or qualified and competent contractors hired by Xcel Energy will prepare construction drawings (“Construction Drawings”) for the Resiliency Service Assets at location(s) within the Customer Location determined by Customer in coordination with Xcel Energy. The Construction Drawings will show the proposed Resiliency Service Assets and its location(s) within the Customer Location, along with other affected assets that are part of the Resiliency Project, including but not limited to other Xcel Energy-owned assets and any Customer Project Assets, and will clearly indicate which Party owns each of the relevant assets. Prior to Xcel Energy commencing construction of the Resiliency Service Assets, Customer must approve via signature the Construction Drawings within the project SOW executed with the selected vendor, a “Form of SOW” which is attached hereto and incorporated herein as Exhibit []. Once approved, the Construction Drawings may be modified only with the mutual consent of both Parties.
- 4.3 Xcel Energy will prepare and coordinate the Resiliency Service Asset installation schedule (“Installation Schedule”) with Customer’s designated Responsible Party as to minimize disruption to Customer’s operations. Xcel Energy will also meet regularly with Customer’s Responsible Party to review and coordinate time schedules and track installation status. Prior to Xcel Energy commencing construction, Customer must approve via signature the Installation Schedule within the project SOW executed with the selected vendor. Once approved, the Installation Schedule may be modified only with the mutual consent of both Parties.
- 4.4 Xcel Energy will install the Resiliency Service Assets pursuant to the Installation Schedule and consistent with the Construction Drawings in a good and workmanlike manner, with qualified and competent contractors, in compliance with all applicable codes and engineering standards, and in compliance with all Applicable Laws.
- 4.5 Xcel Energy will retain title and ownership of the Resiliency Service Assets once installation and commissioning are completed. Customer shall acquire no right, title, or interest in any portion of the work performed by Xcel Energy or Xcel Energy’s equipment, Resiliency Service Assets or Facilities unless transferred to Customer under the provisions in Section 5. The work constructed and installed by Xcel Energy shall be and remain the personal property of Xcel Energy, shall not be considered a fixture of the property, shall not attach to the realty, and shall not be alienable or subject to lien by Customer or any third party for the Term of this Agreement. Customer shall not allow lien claims, third party interest or any encumbrances to be placed on the work and/or Resiliency Service Assets. Xcel Energy shall not permit any mechanics or other liens to be placed on Customer property during the Term of this Agreement caused by or resulting from any work performed, material, or supplies furnished by or at the request of Xcel Energy or its contractors.
- 4.6 Xcel Energy shall own, operate, and maintain at its own expense the Resiliency Service Assets at the Customer Location for the Term of this Agreement, unless terminated earlier

as provided herein. Xcel Energy may engage one or more third-party contractors to complete its obligations under this Agreement. Xcel Energy shall be responsible for supervising any third-party contractor it chooses to retain.

- 4.7 After installation of, and while Xcel Energy owns the Resiliency Service Assets, Xcel Energy shall conduct emergency repairs on the Resiliency Service Assets on an as needed basis in accordance with the following:
 - 4.7.1 Requests for emergency repairs can be made by Customer or Xcel Energy staff;
 - 4.7.2 Customer's requests for repair shall be made via telephone, email, or text message to an agreed-upon representative at Xcel Energy;
 - 4.7.3 All emergency repairs shall be completed by qualified technicians selected by Xcel Energy;
 - 4.7.4 Emergency repair service calls shall begin with inspection of malfunctioning Resiliency Service Assets, a diagnosis of the potential issue, and an expected time required for repair;
 - 4.7.5 Xcel Energy shall use commercially reasonable efforts to repair the Resiliency Service Assets in a timely manner; and
 - 4.7.6 If the Resiliency Service Assets cannot be repaired within a reasonable period of time, Xcel Energy will provide Customer updated timelines throughout the repair process.
- 4.8 After commissioning of, and while Xcel Energy owns the Resiliency Service Assets, Xcel Energy may inspect the Resiliency Service Assets at the Customer Location on a periodic basis as determined by Xcel Energy.
- 4.9 Except as otherwise set forth in this Agreement, Xcel Energy shall be responsible for all costs that Xcel Energy, in its sole discretion, deems reasonably required for operating and maintaining the Resiliency Service Assets (except that Customer will pay for all power consumed by the Resiliency Service Assets). All payments for Resiliency Service Assets will be made directly by Xcel Energy to the third-party contractor retained to complete the work, and Xcel Energy will have no financial obligation for any payments to Customer.
- 4.10 Xcel Energy will promptly notify Customer in the event Xcel Energy becomes aware that the Resiliency Service Assets fails to operate or otherwise requires repair.
- 4.11 Unless otherwise agreed to by the parties, in the case of Total Equipment Failure of all or a portion of the Resiliency Service Assets, that is not caused by Customer, any of Customer's employees, agents, or partners, and not covered by a manufacturer's warranty, the Customer is responsible to pay Xcel Energy for the undepreciated value of the Resiliency Service Asset and may request that Xcel Energy replace the necessary equipment by signing a new agreement. Customer's full payment under this clause shall result in termination of this Agreement pursuant to Article 6. Total Equipment Failure shall not be considered a material breach by Xcel Energy.

5. Term and Termination

- 5.1 This Agreement shall be effective upon the Effective Date. The term of this Agreement (the "Term") shall be from the Effective Date until [] years following the In-Service Date.
- 5.2 Xcel Energy may terminate this Agreement for any reason or no reason, without cause, at any time by providing the other Party sixty (60) Calendar Days prior written notice. If Xcel Energy terminates this Agreement pursuant to this Section for a reason other than Customer's material breach of Customer's obligations under this Agreement, Xcel Energy shall transfer title of the Resiliency Service Assets to Customer, without any payment from Customer, and the Resiliency Service Assets will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.
- 5.3 Either Party may terminate this Agreement if the other party materially breaches any of its obligations under the Agreement as follows:
- 5.3.1 Prior to termination pursuant to this Section, the Party seeking the termination shall give the other Party written notice of the material breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the material breach within thirty (30) Calendar Days of the notice (or, if the breach is not one that can be reasonably cured within thirty (30) Calendar Days, and if the breaching Party is not working diligently to cure such breach), then the Party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.
- 5.3.2 If Customer terminates this Agreement pursuant to this Section for Xcel Energy's material breach of the Agreement, Xcel Energy shall transfer title of the Resiliency Service Assets to Customer, without any payment from Customer, and the Resiliency Service Assets will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.
- 5.3.3 If Xcel Energy terminates this Agreement pursuant to this Section for Customer's material breach of the Agreement, Customer shall pay the Early Termination Fee set forth in Section 5.4 below, and when such fee is paid, Xcel Energy shall transfer title of all Resiliency Service Assets to Customer on an "AS IS" basis, without any warranty (express or implied).
- 5.3.4 A party terminating this Agreement pursuant to this Section does not waive its rights to any remedy at law or in equity for a material breach of the Agreement.
- 5.4 Should (i) Customer terminate this Agreement for any reason other than pursuant to the provisions of Section 5.3.2 for Xcel Energy's material breach of its obligations hereunder, or (ii) Xcel Energy terminates this Agreement pursuant to the provisions of Section 5.3.3 for Customer's material breach of its obligations hereunder, Customer will be charged an early termination fee in an amount equal to the undepreciated balance of the Resiliency Service Assets, as reasonably determined by Xcel Energy based on Xcel Energy's cost to purchase and install the Resiliency Service Assets and the expected lives of the

components of the Resiliency Service Assets (“Early Termination Fee”). The Early Termination Fee, if applicable, will be due and payable by Customer thirty (30) days following the termination of the Agreement. Upon payment of the Early Termination Fee, Xcel Energy will transfer title of the Resiliency Service Assets to Customer on an “AS-IS” basis, without any warranty (express or implied).

- 5.5 At least 180 Calendar Days prior to the end of the Term of this Agreement, Customer shall notify Xcel Energy if it intends to request that Xcel Energy continue to own, operate and/or maintain the Resiliency Service Assets after the end of the Term.
- 5.6 If Customer does not request that Xcel Energy continue to own, operate and maintain the Resiliency Service Assets under Section 5.5, then at the end of the Term, Xcel Energy will transfer ownership of all Resiliency Service Assets to Customer in “AS IS” condition, without any warranties (express or implied) by Xcel Energy. Xcel Energy is not responsible for decommissioning or removing the Resiliency Service Assets from Customer Location, and Xcel Energy is not responsible for restoring the Customer Location to original conditions.

6. Warranties, Indemnification, and Limitation of Liability

- 6.1 Customer represents and warrants that: (i) the execution, delivery and performance of the Agreement has been duly authorized by all requisite action on the part of Customer, and Customer has full power and authority to grant the rights and licenses granted by the Agreement to Xcel Energy, including but not limited to the rights and licenses set forth in Section 3.3; (ii) this Agreement constitutes the legal, valid, and binding obligation of Customer; (iii) Customer is and will remain duly licensed, authorized or qualified to do business, and in good standing; and (iv) it is and will remain in compliance with all Applicable Laws applicable to it in connection with performance under this Agreement.
- 6.2 Xcel Energy, itself or through its contractor(s), shall perform the installation of the Resiliency Service Assets in a safe and professional manner in accordance with all Applicable Laws. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, XCEL ENERGY MAKES OR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AGAINST INFRINGEMENT, WITH RESPECT TO THE WORK TO BE PERFORMED, SERVICES TO BE PROVIDED, OR ASSETS TO BE DELIVERED UNDER THIS AGREEMENT. IN THE EVENT TITLE TO RESILIENCY SERVICE ASSETS IS TRANSFERRED TO CUSTOMER IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THE RESILIENCY SERVICE ASSETS ARE PROVIDED “AS IS” AND WITH NO WARRANTY OF ANY KIND. XCEL ENERGY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 6.3 **IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL XCEL ENERGY BE LIABLE TO CUSTOMER AND ITS AGENTS, CONTRACTORS AND EMPLOYEES, FOR SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE.**

- 6.4 (GOVERNMENT ENTITY) Subject to the limitations contained in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by Applicable Laws and shall not be responsible for the acts of the other Party and the results thereof. Notwithstanding the foregoing, to the fullest extent allowed by Colorado law, Customer shall waive the statutory damage limitation on recovery for tort actions. Customer shall also, to the fullest extent allowed by Colorado law, waive any discretionary immunity defense and at its own expense, defend, indemnify and hold Xcel Energy, its officers, directors, members, consultants, agents, and employees, harmless from and against any claims, lawsuits, liability, losses, damages or expenses (including attorney's fees) arising out of, resulting from or in any way connected with the (Customer's, or its employees', agents', or contractors' negligent acts or omissions or willful misconduct.
- ALT 6.4 (PRIVATE COMPANY) Subject to the limitations contained in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by Applicable Laws and shall not be responsible for the acts of the other Party and the results thereof. Notwithstanding the foregoing, to the fullest extent allowed by Applicable Laws, Customer shall at its own expense, defend, indemnify and hold Xcel Energy, its officers, directors, members, consultants, agents, and employees, harmless from and against any claims, lawsuits, liability, losses, damages or expenses (including attorney's fees) arising out of, resulting from or in any way connected with the Customer's, or its employees', agents', or contractors' negligent acts or omissions or willful misconduct
- 6.5 In no event will Xcel Energy be liable to Customer for any claims, expenses, losses, damages, or lawsuits arising out of any interruptions or disturbances in electric service. Except as described in this section, Xcel Energy's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement, or from performance or breach thereof, shall in no case exceed the total dollar amount for the specific work giving rise to the claim.

7. Dispute Resolution

7.1 Negotiation.

- 7.1.1 In the event of any Dispute arising under or associated with the Parties' performance of this Agreement, within ten (10) Business Days following notice by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.
- 7.1.2 In the event the Parties' representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the designated senior managers for both Parties

shall negotiate in good faith to resolve the Dispute. If such senior managers are unable to resolve the Dispute thereafter, either Party may seek available legal remedies provided in this Agreement.

- 7.2 Time Bar. If no Dispute Notice has been issued within 18 months following the occurrence of events or circumstances giving rise to the Dispute (regardless of the actual knowledge of either Party of such events and circumstances), all claims related to such Dispute (including any allegations of billing errors) shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.
- 7.3 No Termination Pending Dispute Resolution. Notwithstanding any provision in this Agreement to the contrary:
- 7.3.1 An Event of Default shall not be deemed to have occurred (and hence neither Party may terminate this Agreement) for failure by the other Party to pay any amount(s) allegedly due totaling less than \$100,000, if (a) such amount(s) are disputed in good faith, (b) the Party alleged to owe such amount(s) promptly commences and diligently pursues resolution of the Dispute pursuant this Article where the owed amount (if any) is paid within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.
- 7.3.2 An Event of Default by Customer shall not be deemed to have occurred (and hence Xcel Energy may not terminate this Agreement) for failure by Customer to pay any amount(s) allegedly due totaling \$100,000 or more, if
- a) such amount(s) are disputed by Customer in good faith;
 - b) Customer promptly commences and diligently pursues resolution of the Dispute pursuant to this Article;
 - c) Customer either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow and account control agreement, in addition to any funds subject to security issued in association with this Agreement; and
 - d) the owed amount (if any) is paid by Customer within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.
- 7.3.3 An Event of Default by Xcel Energy shall not be deemed to have occurred (and hence Customer may not terminate this Agreement) for failure by Xcel Energy to pay any amount(s) allegedly due totaling \$100,000 or more, if
- a) such amount(s) are disputed by Xcel Energy in good faith;
 - b) Xcel Energy promptly commences and diligently pursues resolution of the Dispute pursuant to this Article;

- c) Xcel Energy either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow agreement, and
- d) the owed amount (if any) is paid by Xcel Energy within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

8. Default and Remedies

8.1 Default by Customer. Any of the following events shall constitute a default by Customer under this Agreement. Unless otherwise provided herein, such default shall be deemed an “Event of Default” by Customer immediately upon its occurrence.

8.1.1 Change in Financial Circumstances

- a) Customer’s application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Customer or for all or substantially all of its assets, or its authorization of such application or consent; or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.
- b) Customer’s authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or the institution of such proceedings against Customer without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from inception or which result in adjudication of bankruptcy or insolvency within such time.
- c) Customer’s assignment of this Agreement, the Resiliency Assets, or any change of control, not otherwise permitted herein.
- d) Seller’s failure to establish and maintain the Security as and in the amounts required under Article 3.

8.1.2 Customer’s failure to make any payment to Xcel Energy as and when required by the terms of this Agreement, subject to Xcel Energy’s prior notice, and Customer’s failure to cure such breach within ten (10) days from such notice.

8.1.3 Any representation or warranty by Customer in this Agreement that is false, later proves to be false, or has a material adverse effect on Customer’s ability to perform this Agreement, other than due to a change of law, subject to Xcel Energy’s prior notice, and Customer’s failure to cure such breach within thirty (30) days from such notice.

- 8.1.4 The breach by Customer of the Interconnection Agreement, which breach (i) materially interferes with Customer's production and/or delivery of any product or service to be produced or delivered pursuant to this Agreement or Xcel Energy's ability to accept or receive such product or service, (ii) Xcel Energy's ability to transmit Contract Energy beyond the Point of Delivery, and/or (iii) otherwise has a Material Adverse Effect on Xcel Energy.
- 8.1.5 The failure by Customer to perform or observe any other material obligation to Xcel Energy under this Agreement, unexcused by Force Majeure, subject to Xcel Energy's prior notice, and Customer's failure to cure such breach within thirty (30) days; provided, that if such default is not reasonably capable of cure within such 30-day period, Customer shall have such additional period of time (not to exceed ninety (90) days in any event) as is reasonably necessary for cure, so long as Customer initiates cure within such thirty (30)-Day period and diligently prosecutes the cure to conclusion thereafter.

8.2 Xcel Energy Remedies for Customer Default.

8.2.1 *Financial Remedies.* In connection with any default by Customer under Section 8.1 (whether or not cured by Customer), Xcel Energy may take any, or all of the following actions:

- a) Seize the Resiliency Asset and repurpose it;
- b) Seek damages in such amounts and on such basis for the default as authorized by this Agreement;
- c) Draw any actual damages and other amounts due from Customer, from the Security Fund.

8.2.2 *Termination for Event of Default.* Upon, and at any time following an Event of Default by Customer under Section 8.1, in addition to its rights under Section 8.1 above, Xcel Energy may terminate this Agreement pursuant to Article 5, without penalty or further obligation to Customer. In connection with any such termination, Xcel Energy may collect from Customer all damages arising from such Event of Default through the termination date.

8.2.3 *Specific Performance.* In addition to the other remedies specified herein, upon any Event of Default of Customer, Xcel Energy may elect to treat this Agreement as being in full force and effect and Xcel Energy shall have the right to require Customer's specific performance.

8.3 Default by Xcel Energy. Any of the following events shall constitute a default by Xcel Energy under this Agreement. Unless otherwise provided herein, such default shall be deemed an "Event of Default" by Xcel Energy immediately upon its occurrence.

8.3.1 Change in Financial Circumstances.

- a) Xcel Energy's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver,

trustee or liquidator for Xcel Energy or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

- b) Xcel Energy's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Xcel Energy without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from inception or which result in adjudication of bankruptcy or insolvency within such time.
- c) Xcel Energy's assignment of this Agreement not otherwise permitted herein.

8.3.2 Any representation or warranty by Xcel Energy in this Agreement that false, later proves to be false, or has a material adverse effect on Xcel Energy's ability to perform this Agreement, other than due to a change of law, subject to Xcel Energy's prior notice, and Customer's failure to cure such breach within thirty (30) days from such notice.

8.3.3 The failure by Xcel Energy to perform or observe any other material obligation to Customer under this Agreement, unexcused by Force Majeure subject to Customer's prior notice, and Xcel Energy's failure to cure such breach within thirty (30) days; provided, that if such default is not reasonably capable of cure within such 30-day period, Xcel Energy shall have such additional period of time (not to exceed ninety (90) days in any event) as is reasonably necessary for cure, so long as Xcel Energy initiates cure within such thirty (30)-Day period and diligently prosecutes the cure to conclusion thereafter.

8.4 Customer's Remedies for Xcel Energy Default.

8.4.1 *Financial Remedies.* In connection with any default by Xcel Energy (whether or not cured by Xcel Energy), Customer may take any or all of the following actions:

- a) Seek damages in such amounts and on such basis for the default as authorized by this Agreement; and/or
- b) Offset against any payments due to Xcel Energy, any damages.

8.4.2 *Termination for Event of Default.* Upon an Event of Default by Xcel Energy, in addition to its rights this Section, Customer may terminate this Agreement pursuant to Article 5 without penalty or further obligation to Xcel Energy. In connection with any such termination Customer may collect from Xcel Energy all damages arising from such Event of Default through the termination date.

- 8.5 Bankruptcy. This Agreement grants each Party the contractual right to “cause the liquidation, termination or acceleration” of the transactions within the meaning of Sections 556, 560 and 561 of the U.S. Bankruptcy Code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, *inter alia*, §362(b)(6), §362(b)(17), §362(b)(27), §362(o), §546(e), §548(d)(2), §556, §560 and §561, as they may be amended, superseded or replaced from time to time.
- 8.6 Cumulative Remedies. Except as explicitly provided to the contrary in this Agreement, each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein
- 8.7 Duty to Mitigate. Each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of a default by the other Party under this Agreement.

9. Assignment

9.1 Assignment by Customer.

9.1.1 Customer shall not sell, exchange or otherwise transfer the Resiliency Assets or any material portion thereof to any third party, nor shall Customer undergo any change of control (whether voluntary or by operation of law) absent the prior written consent of Xcel Energy, which shall not be unreasonably withheld or delayed. Xcel Energy shall have no obligation to provide any consent under this Article unless:

- a) Customer has complied with the requirements of this Article, if and as applicable;
- b) Customer has provided to Xcel Energy such information concerning the transferee’s direct and indirect ownership as Xcel Energy reasonably requests;
- c) the transferee (together with its parents and affiliates) possesses baseline credit and financial health requirements as defined by the Xcel Energy in its reasonable determination and otherwise meets any Xcel Energy security requirements;
- d) Customer has provided to Xcel Energy at least 30 days’ prior notice of the transaction, and

e) Customer pays or reimburses Xcel Energy for the direct expenses (including the fees and expenses of counsel) incurred by Xcel Energy in connection with the transaction.

9.1.2 Any change of control or sale, transfer, or assignment of any interest in the Facility effected without fulfilling the requirements of this Agreement shall be null, void and a breach of this Agreement.

9.1.3 Customer shall assign this Agreement to any successor owner of the Facility and shall cause such successor to assume all obligations of Customer (accrued and prospective) hereunder pursuant to an agreement approved by Xcel Energy. Customer also may assign this Agreement for collateral purposes to any Facility Lender and may subcontract some or all of its duties under this Agreement, upon notice to but without the consent of Xcel Energy.

9.1.4 Except as permitted in this Article, Customer may not assign this Agreement or any portion hereof. No assignment shall relieve Customer of its obligations under this Agreement, nor impair any security posted by Customer unless such security is replaced in accordance with Article 11. Before this Agreement is assigned by Customer, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

9.2 Assignment by Xcel Energy.

9.2.1 Xcel Energy may assign this Agreement to any Affiliate, or to any successor that provides retail electric service in all or substantially all of Xcel Energy's service territory. Any other assignment of this Agreement by Xcel Energy shall require the prior written consent of Customer, not to be unreasonably withheld or delayed.

9.2.2 Any assignee of Xcel Energy shall assume all obligations of Xcel Energy (accrued and prospective) hereunder via a writing reasonably satisfactory to Customer. Before this Agreement is assigned by Xcel Energy, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

10. General Terms

10.1 *Confidential Information.* The Parties shall maintain the confidentiality of, and except as expressly authorized in this Agreement, shall not exploit commercially all Confidential Information secured from the other Party in connection with this Agreement. Confidential Information of the other Party shall not be divulged to any Third Party except: (i) to individuals or entities who are bound by confidentiality obligations no less restrictive than the terms set forth in this Agreement; (ii) with prior written consent of the disclosing Party; or (iii) as compelled by applicable laws, including without limitation court order, subpoena and regulatory rules, requirements or advice. For clarity, Xcel Energy is a regulated entity and the information exchanged by the Parties under this Agreement may be shared as required under Subsection 7.1(iii) with the Colorado Public Utilities Commission and, as such, may be subject to the Colorado Open Records Act, C.R.S. §24-72-201 to 206. If either Party is or could be legally compelled to make disclosure of

Confidential Information, the disclosing Party will notify the non-disclosing Party prior to making such disclosure and take all reasonable steps to limit the effects of such disclosure and if possible, require the Parties to whom the information is disclosed to maintain the confidentiality of such information. The restrictions contained herein shall not apply to information which is (w) in the public domain at the time it was disclosed; (x) already known to the non-disclosing Party at the time it was disclosed; (y) independently developed by the non-disclosing Party, or (z) becomes known to the non-disclosing Party from an independent source where such source has not violated an Agreement of confidentiality. Upon expiration or termination of this Agreement, the non-disclosing Party shall return or certify as destroyed any Confidential Information in their possession to the disclosing Party.

- 10.2 *Insurance.* Each Party shall be responsible to secure and maintain its own insurance at all times during the Term of the Agreement. Upon request, either Party shall provide proof that it holds a policy of general commercial liability insurance, or provide evidence of self-insurance to Xcel Energy's satisfaction, in an amount of at least five million dollars (\$5,000,000) and excess/umbrella coverage in an amount of at least five million dollars (\$5,000,000). Each Party's insurance shall be its own primary insurance. Except where prohibited by law, each Party waives all rights of subrogation against the other Party and its insurers.
- 10.3 *No Third-Party Beneficiary.* Unless otherwise provided expressly herein, this Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
- 10.4 *Legal Compliance.* The Parties shall comply with all Applicable Laws. Each Party shall monitor its agents, contractors, and employees for the purposes of ensuring compliance with all Applicable Laws. If any change in circumstances or law will affect a Party's performance under this Agreement, that Party shall notify the other Party of the change in circumstances or law at the earliest reasonable opportunity, and the Parties will negotiate in good faith to modify the Agreement to take into account the changed circumstance or law.
- 10.5 *Governing Law.* The interpretation and performance of this Agreement, and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Colorado, exclusive of conflict of laws principles.
- 10.6 *Venue.* The Parties agree to submit to the exclusive jurisdiction of the state courts of the State of Colorado for purposes of resolving any dispute hereunder, except as otherwise provided herein, venue for any court proceedings shall lie exclusively in Colorado.
- 10.7 *Waiver of Jury Trial.* The Parties each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Xcel

Energy related hereto and expressly agree to have any Disputes be adjudicated by a judge of the court having jurisdiction, without a jury.

- 10.8 *Non-Waiver.* The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.
- 10.9 *Complete Agreement.* This Agreement constitutes the complete and exclusive understanding of the parties concerning its subject matter. This Agreement supersedes all prior agreements, representations, understandings, and communications, written or oral, between the Parties as to the subject matter of this Agreement.
- 10.10 *Amendments.* The terms of this Agreement may be changed, amended or modified only by mutual signed agreement of the parties.
- 10.11 *Consent to Disclose.* Customer consents to Xcel Energy's unrestricted disclosure of the existence, terms, and status of this Agreement. Customer further acknowledges that pursuant to this Agreement, Xcel Energy may disclose without restriction any information and documents Customer provides to Xcel Energy pursuant this Agreement.
- 10.12 *Property of Xcel Energy.* All reports, drawings, plans, specifications, calculations, studies, software programs, tapes, models, and memoranda, if any, assembled or prepared by Xcel Energy or Xcel Energy's affiliates, independent professional associates, agents, consultants, contractors, or subcontractors pursuant to this Agreement are instruments of service in respect of the Agreement, and Xcel Energy shall retain all ownership and property interest therein. Customer may make and retain copies for information and reference in connection with the Resiliency Service Program; provided, however, that it is understood and agreed that such documents are not intended to be re-used by Customer or others on extensions of the Resiliency Project or Resiliency Service Program or on any other project or any other purpose other than as expressly set forth in this Agreement, and Customer shall not re-use or disclose to any third party all or any portion of such work product without the express prior written consent of Xcel Energy, which consent shall not be unreasonably withheld.
- 10.13 *Force Majeure.* If a Party's performance is delayed or hindered by a Force Majeure Event, such Party is excused from such performance for the period of delay, provided that the Party claiming a Force Majeure Event has notified the other Party of the delay as soon as is reasonably possible. In such event, the period for the performance shall be extended for the period of such delay.
- 10.14 *Independent Contractors.* The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment or joint venture relationship between the Parties or any of their representatives. Neither Party is an agent of the other nor has the authority to represent the other as to any matters. Customer is responsible for the safety of its respective agents, employees and other representatives. Xcel Energy in no way

assumes any of the duties, obligations or liabilities attributed to Customer under the Agreement.

- 10.15 *Survival.* Those provisions of this Agreement which would require that they survive termination of the Agreement in whole or part in order to give them full force and effect will survive the termination of the Agreement, regardless of the date, cause or manner of the termination. In addition, all rights of action arising from or related to the Agreement that accrue during the Term of the Agreement, and any remedies for such claims, both legal and equitable, will survive such termination.
- 10.16 *Branding and Education.* The Parties agree to discuss opportunities for Xcel Energy branding, outreach, and education efforts related to the benefits of Resiliency Service Assets in connection with the Resiliency Service Program.
- 10.17 *Publicity.* Neither Party shall make any announcement or release any information, publicity or photographs concerning the Agreement or the Project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from the other Party.
- 10.18 *Taxes on Sale of Resiliency Service Assets.* If Xcel Energy sells or otherwise transfers the Resiliency Service Assets to Customer at the then undepreciated balance of the Resiliency Service Assets, including any transfer of assets to Customer as a result of termination of this Agreement pursuant to Article 6, then Xcel Energy will deliver to Customer a Bill of Sale for the Resiliency Service Assets. Customer further agrees that, in accordance with federal and state laws in effect at the time of the sale of the Resiliency Service Assets from Xcel Energy to Customer: (i) Customer shall be responsible for and shall pay transfer taxes, either directly to a taxing authority or to Xcel Energy, as required by law, related to the undepreciated balance of the Resiliency Service Assets as stated on the Bill of Sale; and (ii) Xcel Energy agrees to complete a Form W-9 "Request for Taxpayer Identification Number and Certification" in the event of such sale.
- 10.19 *Consent to Xcel Energy's Applicable Terms and Conditions.* Customer agrees that the electric service Customer will take in connection with this Agreement will be under and subject to Xcel Energy's Colorado electric tariffs. Customer further acknowledges that any line extensions, distribution modifications, or other equipment necessary for Xcel Energy to install the Resiliency Service Assets and Customer's financial obligations are subject to Xcel Energy's Distribution Extension Policy as set forth in its Colorado electric tariff.
- 10.20 *Notice.* Any notice required or permitted by this Agreement shall be deemed given (i) when delivered by hand, (ii) on the next business day after being sent by a reputable overnight courier service for next business day delivery, or (iii) on the third business day after being sent by prepaid United States mail, return receipt requested, in each case to the Party at the address specified as follows:

Customer: _____

Xcel Energy: [INSERT BU CONTACT FOR NOTICES]
1800 Larimer
Denver CO 80202
[INSERT EMAIL LINK](#)

Either Party may change its address for notice purposes by giving the other Party prior written notice of the new address and the date upon which the change will be effective.

IN WITNESS WHEREOF, each of the undersigned is duly authorized and directed to sign this Agreement.

[Insert Customer Name]

By _____ Date: _____

Name _____

Title _____

Public Service Company of Colorado, d/b/a Xcel Energy

By _____ Date: _____

Name _____

Title _____

INSERT EXHIBITS AS DESCRIBED IN THE AGREEMENT IN THE ORDER IN WHICH THEY ARE REFERENCED

EXHIBIT X
"FORM OF" LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

IRREVOCABLE STANDBY LETTER OF CREDIT
NO: _____

DATE OF ISSUANCE: _____

INITIAL EXPIRATION DATE: [MUST BE AT LEAST
ONE YEAR AFTER DATE OF ISSUANCE]

BENEFICIARY:

ATTN:

APPLICANT:

ADDRESS:

ATTN:

AS THE ISSUING BANK ("ISSUER"), WE, _____, HEREBY ESTABLISH THIS IRREVOCABLE STANDBY LETTER OF CREDIT NO. SXXXXXX (THIS "LETTER OF CREDIT") IN FAVOR OF THE ABOVE-NAMED BENEFICIARY ("BENEFICIARY") FOR THE ACCOUNT OF THE ABOVE-NAMED APPLICANT ("APPLICANT") IN THE AMOUNT OF [INSERT AMOUNT OF LOC] US DOLLARS (\$XX.XX).

BENEFICIARY MAY DRAW ALL OR ANY PORTION OF THIS LETTER OF CREDIT AT ANY TIME AND FROM TIME TO TIME AND ISSUER WILL MAKE FUNDS IMMEDIATELY AVAILABLE TO BENEFICIARY UPON PRESENTATION OF BENEFICIARY'S DRAFT(S) AT SIGHT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A" ("SIGHT DRAFT"), DRAWN ON ISSUER AND ACCOMPANIED BY THIS LETTER OF CREDIT AND ANY AMENDMENTS HERETO. ALL SIGHT DRAFT(S) MUST BE SIGNED ON BEHALF OF BENEFICIARY AND SIGNATOR MUST INDICATE HIS OR HER TITLE OR OTHER OFFICIAL CAPACITY. NO OTHER DOCUMENTS WILL BE REQUIRED TO BE PRESENTED. THIS ISSUER WILL AFFECT PAYMENT UNDER THIS LETTER OF CREDIT WITHIN THREE (3) DAYS AFTER PRESENTMENT OF THE SIGHT DRAFT(S). PAYMENT SHALL BE MADE IN U.S. DOLLARS WITH ISSUER'S OWN FUNDS IN IMMEDIATELY AVAILABLE FUNDS.

ISSUER WILL HONOR ANY SIGHT DRAFT(S) PRESENTED IN SUBSTANTIAL COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT AT THE ISSUER'S LETTERHEAD OFFICE, THE OFFICE LOCATED AT [INSERT ISSUER ADDRESS] ON OR BEFORE THE ABOVE STATED EXPIRATION DATE, AS SUCH EXPIRATION DATE MAY BE EXTENDED HEREUNDER. PARTIAL AND MULTIPLE DRAWS AND PRESENTATIONS ARE PERMITTED ON ANY NUMBER OF OCCASIONS. FOLLOWING ANY PARTIAL DRAW, ISSUER WILL ENDORSE THIS LETTER OF CREDIT AND RETURN THE ORIGINAL TO BENEFICIARY.

ISSUER ACKNOWLEDGES THAT THIS LETTER OF CREDIT IS ISSUED PURSUANT TO THE PROVISIONS OF THAT CERTAIN RESILIENCY ASSET SERVICE AGREEMENT BETWEEN THE BENEFICIARY AND THE APPLICANT DATED AS OF _____, 20__ (AS THE SAME MAY HAVE BEEN OR MAY BE AMENDED FROM TIME TO TIME, THE "Agreement"). NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO

THE AGREEMENT OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS, OR REFERENCES IN AGREEMENT OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS TO THIS LETTER OF CREDIT, THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED EACH YEAR WITHOUT AMENDMENT FOR A PERIOD OF ONE YEAR FROM THE EXPIRATION DATE HEREOF, AS EXTENDED, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE, ISSUER NOTIFIES BENEFICIARY BY REGISTERED MAIL THAT IT ELECTS NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD. NOTICE OF NON-EXTENSION WILL BE GIVEN BY ISSUER TO BENEFICIARY AT BENEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS BENEFICIARY MAY DESIGNATE TO ISSUER IN WRITING AT ISSUER'S LETTERHEAD ADDRESS.

THIS LETTER OF CREDIT IS FREELY TRANSFERABLE IN ITS ENTIRETY, BUT NOT IN PART, AND MAY BE SUCCESSIVELY TRANSFERRED, AND THE NUMBER OF TRANSFERS IS UNLIMITED. ISSUER AGREES THAT IT WILL AFFECT ANY TRANSFERS IMMEDIATELY UPON PRESENTATION TO ISSUER OF THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENTS, A COMPLETED WRITTEN TRANSFER REQUEST IN THE FORM ATTACHED HERETO AS EXHIBIT "B" ACCOMPANIED BY EVIDENCE TO THE BANK OF THE LEGAL AUTHORITY OF THE AUTHORIZED SIGNER. SUCH TRANSFER WILL BE AFFECTED AT NO COST TO BENEFICIARY. ANY TRANSFER FEES ASSESSED BY ISSUER WILL BE PAYABLE SOLELY BY APPLICANT, AND THE PAYMENT OF ANY TRANSFER FEES WILL NOT BE A CONDITION TO THE VALIDITY OR EFFECTIVENESS OF THE TRANSFER OR THIS LETTER OF CREDIT. THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON WITH WHICH U.S. PERSONS ARE PROHIBITED FROM DOING BUSINESS UNDER U.S. FOREIGN ASSETS CONTROL REGULATIONS OR OTHER APPLICABLE U.S. LAWS AND REGULATIONS.

ISSUER WAIVES ANY RIGHTS IT MAY HAVE, AT LAW OR OTHERWISE, TO SUBROGATE TO ANY CLAIMS BENEFICIARY MAY HAVE AGAINST APPLICANT OR APPLICANT MAY HAVE AGAINST BENEFICIARY.

THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600 (THE "UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(B) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. WITH RESPECT TO ARTICLE 14(B) OF THE UCP, ISSUER SHALL HAVE A REASONABLE AMOUNT OF TIME, NOT TO EXCEED THREE (3) BANKING DAYS FOLLOWING THE DATE OF ISSUER'S RECEIPT OF DOCUMENTS FROM THE BENEFICIARIES (TO THE EXTENT REQUIRED HEREIN), TO EXAMINE THE DOCUMENTS AND DETERMINE WHETHER TO TAKE UP OR REFUSE THE DOCUMENTS AND TO INFORM BENEFICIARY ACCORDINGLY.

IN THE EVENT OF AN ACT OF GOD, EPIDEMIC, RIOT, CIVIL COMMOTION, INSURRECTION, WAR, ACT OF GOVERNMENT OR OTHER REGULATORY PROHIBITION, OR ANY OTHER CAUSE BEYOND ISSUER'S CONTROL THAT INTERRUPTS ISSUER'S BUSINESS (COLLECTIVELY, AN "INTERRUPTION EVENT") AND CAUSES THE PLACE FOR PRESENTATION OF THIS LETTER OF CREDIT TO BE CLOSED FOR BUSINESS ON THE LAST DAY FOR PRESENTATION, THE EXPIRY DATE OF THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED

WITHOUT AMENDMENT TO A DATE THIRTY (30) CALENDAR DAYS AFTER THE PLACE FOR PRESENTATION REOPENS FOR BUSINESS.

ISSUER:

BY: _____

AUTHORIZED SIGNATURE

ITS: _____

**ATTACHMENT "A"
TO LETTER OF CREDIT**

SIGHT DRAFT

DATED: _____, 20__

TO:

ATTN: STANDBY LETTER OF CREDIT SERVICES

US\$ _____

AT SIGHT, PAY TO THE ORDER OF [NAME OF BENEFICIARY TO BE INSERTED], THE AMOUNT OF USD
_____ AND 00/100THS U.S. DOLLARS (\$XX.XX)

DRAWN UNDER [ISSUING BANK], STANDBY LETTER OF CREDIT NO. _____.

[NAME OF BENEFICIARY TO BE INSERTED]

BY: _____
ITS AUTHORIZED REPRESENTATIVE AND [TITLE

**ATTACHMENT "B"
TO LETTER OF CREDIT**

FORM OF TRANSFER REQUEST

IRREVOCABLE STANDBY LETTER OF

CREDIT NO: _____

CURRENT BENEFICIARY:

APPLICANT:

TO: [NAME OF ISSUING BANK]

The undersigned, as the current "Beneficiary" of the above referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [INSERT TRANSFEREE NAME AND ADDRESS BELOW]:

From and after the date this transfer request is delivered to the Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

DATED: _____

[NAME OF BENEFICIARY]

By: _____

Name: _____

Title: _____

[NOTARY ACKNOWLEDGMENT]

[TO BE SIGNED BY A PERSON PURPORTING TO BE AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY AND INDICATING THEIR TITLE OR OTHER OFFICIAL CAPACITY AND ACKNOWLEDGED BY A NOTARY PUBLIC.]

EXHIBIT X
“FORM OF” PARENT GUARANTY

In consideration of and for the purpose of inducing, Public Service Company of Colorado, a Colorado corporation, d/b/a Xcel Energy, (“Xcel Energy”), to enter into the Resiliency Asset Service Agreement of this same date (the “Agreement”) with _____, (“Customer”), a _____ corporation which is a wholly owned subsidiary of the undersigned _____, a _____ corporation (the “Guarantor”). Guarantor hereby guarantees unto Xcel Energy absolutely and unconditionally, the due and prompt payment and performance by Customer of any and all sums and obligations which are now or hereafter owing from Customer pursuant to the Agreement and any and all Scope of Work, Purchase Orders and Change Orders entered into pursuant to the Agreement (the “Obligations”).

Customer is a direct or indirect wholly owned subsidiary of the Guarantor and the Guarantor will derive benefits from the execution, delivery and performance of the Agreement, and the Guarantor finds it advantageous, desirable and in best interests to execute and deliver this Guaranty to Xcel Energy.

This Guaranty is an absolute, unconditional, and continuing guaranty of payment and performance of the Obligations. Without limiting the generality of the foregoing, the Guarantor will not assert, plead or enforce against Xcel Energy any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, usury, illegality or unenforceability which may be available to the Customer or any other person liable in respect of any Obligations, or any setoff available against Xcel Energy to the Customer or any such other person, whether or not on account of a related transaction. The Guarantor shall not be exonerated with respect to the Guarantor’s liabilities under this Guaranty by any act or thing except irrevocable payment and performance of the Obligations, it being the purpose and intent of this Guaranty that the Obligations constitute the direct and primary obligations of the Guarantor and that the covenants, agreements, and all obligations of the Guarantor hereunder be absolute, unconditional, and irrevocable. The liability of

Guarantor shall not be affected or impaired by any voluntary or involuntary dissolution, sale, or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar event or proceeding affecting the Customer.

Xcel Energy is expressly authorized (a) to amend, modify, extend or supplement the Agreement, any Scope of Work or part thereof, or to enter into or amend or modify any Purchase Orders or Change Orders, with respect to the Obligations; (b) waive compliance by the Customer or any other person with respect to the terms thereof, or settle or compromise any of the Obligations without notice to the Guarantor. The liabilities of the Guarantor hereunder shall not be affected or impaired by any failure, delay, neglect or omission on the part of Xcel Energy to realize upon any of the Obligations of the Customer to Xcel Energy, nor by the taking by Xcel Energy of (or the failure to take) any other guaranty, guaranties, or other form of security to secure the Obligations. No act or omission of Xcel Energy, whether or not such action or failure to act varies or increases the risk of, or affects the rights or remedies of the Guarantor, shall affect or impair the obligations of the Guarantor hereunder.

This Guaranty shall (a) remain in full force and effect until irrevocable payment and performance in full of the Obligations, (b) be binding upon the Guarantor, its successors and assigns and (c) inure to the benefit of, and be enforceable by, Xcel Energy and its successors, transferees, and assigns. This Guaranty may be revoked by the Guarantor prospectively as to future transactions, by written notice actually received by Xcel Energy. Any such revocation shall not be effective as to Obligations existing or committed for at the time of actual receipt of such notice by Xcel Energy, or as to any renewals, extensions and refinancing thereof.

The Guarantor will not exercise or enforce any right of contribution, reimbursement, recourse, or subrogation available to the Guarantor against any person liable for payment of the Obligations, or as to any collateral security therefor, unless and until all Obligations shall have been fully paid and discharged. The Guarantor will pay or reimburse Xcel Energy for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Xcel Energy in connection with the protection, defense or enforcement of this Guaranty whether suit is commenced or not, including costs and expenses in any litigation or bankruptcy or insolvency proceedings.

If any payment applied by Xcel Energy to the Obligations is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Customer or any other obligor), the Obligations to which such payment was applied shall for the purposes of this Guaranty be deemed to have continued in existence, notwithstanding such application, and this Guaranty shall be enforceable as to such Obligations as fully as if such application had never been made.

This Guaranty shall be governed under the terms of the Agreement and applicable Law, and the Guarantor hereby irrevocably submits to the jurisdiction of courts, as provided in the Agreement.

In witness whereof, the Guarantor has caused this Guaranty to be executed this ___ day of ____, 202X.

X _____

By: _____

Its: _____