



**Distributed Energy Resource (DER)
Interconnection and Operating Agreement**

THIS AGREEMENT is made and entered into this _____ day of _____ 20____ by and between Dakota Energy Cooperative, a Cooperative existing under the laws of the State of South Dakota, ("Utility") and _____ a customer of the Utility, ("Interconnection Customer"). Interconnection Customer and Utility each may be referred to as a "Party", or collectively as the "Parties".

RECITALS

WHEREAS, the Interconnection Customer is in good standing with the Utility; and,

WHEREAS, the Interconnection Customer desires to interconnect and operate in parallel a Distributed Energy Resource (DER) with the Utility's electric distribution system; and,

WHEREAS, for the purpose of this Agreement, "interconnection" means establishing an electrical connection between a DER and the Utility's electric distribution system. "Operate in parallel" means generating electricity from a DER that is electrically connected to the Utility's electric distribution system; and,

WHEREAS, the interconnection of the DER with the Utility's electric distribution system is subject to this Agreement, the corresponding Interconnection Application, the corresponding Interconnection Study Agreement and Interconnection Study Results as applicable, Technical Specifications Manual, and other applicable industry standards; and,

WHEREAS, this Agreement does not address any purchase or sale of electricity between the Utility and the Interconnecting Customer nor does it create any agency, partnership, joint venture or other business arrangement between the Utility and the Interconnection Customer.

THEREFORE, in consideration of the above recitals, the mutual covenants contained herein and for good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. DER Interconnection Information

A. The DER is built within the following type and ratings which will not be changed without thirty (30) days advance written notice to the Utility according to the notice requirements herein:

- i. Single or Three Phase Service: _____
- ii. Type of DER System: _____
- iii. Nameplate Rating of DER System: _____ kW-AC
- iv. Address of DER System: _____

B. The DER is planned to be ready for parallel operation on or about: _____

2. Definitions

- A. Affected System – Another customer’s electric system connected with the Utility’s electric distribution system, another DER connected with the Utility’s electric distribution system, the Transmission System, or Transmission System connected generation which may be affected by the proposed DER interconnection.
- B. Emergency Condition – A condition or situation that is imminently likely to endanger life or property, cause a material adverse effect on the security of the Utility’s electric distribution system or Affected System, cause damage to the Utility’s electric distribution system or Affected System, or cause damage to the Interconnected Customer’s DER or electric system.
- C. Good Utility Practice – Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- D. Interconnection Facilities – Collectively, Interconnection Facilities include all facilities and equipment between the DER and Utility’s electric distribution system.
- E. Material Modification – A modification to equipment settings, equipment configuration or to the interconnection site of the DER at any time after receiving notification by the Utility of a complete Interconnection Application that has a material impact on the cost, timing, or design of any Interconnection Facilities or Upgrades, or a material impact on the cost, timing or design of any subsequent Interconnection Application, or the safety or reliability of the Utility’s electric distribution system.
- F. Point of Common Coupling – The point where the Interconnection Facilities connect with the Utility’s electric distribution system.
- G. Transmission System – The facilities owned, leased, controlled or operated by the transmission provider or owner that are used to provide transmission services to the Utility.
- H. Upgrades – The required additions and modifications to the Utility’s electric distribution system or Transmission System. Upgrades do not include Interconnection Facilities.

3. Scope and Limitations of Agreement

- A. This Agreement is intended to provide for the Interconnection Customer to interconnect at the PCC and operate a Distributed Energy Resource (DER) in parallel with the Utility’s electric distribution system of the type, nameplate rating and location as described in Section 1.
- B. This Agreement governs the terms and conditions under which the Interconnection Customer’s DER will interconnect with, and operate in parallel with, the Utility’s electric distribution system.

- C. This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's energy. The purchase or delivery of energy and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for the delivery of electric energy to the Utility.
- D. Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.
- E. Responsibilities of the Parties
 - i. The Parties shall perform all obligations of this Agreement in accordance with the DER Technical Specifications Manual, all Applicable Laws and Regulations, Applicable Industry Standards, and Good Utility Practices.
 - ii. The Interconnection Customer shall construct, interconnect, operate and maintain its DER and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule and, in accordance with this Agreement, and with Good Utility Practices.
 - iii. The Utility shall construct, operate, and maintain its electric distribution system and its Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.
 - iv. The Interconnection Customer agrees to construct its facilities or systems in accordance with the DER Technical Standards and this Agreement; including, applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its DER so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the Utility's electric distribution system and any Affected Systems.
 - v. Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now owns or subsequently owns. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the Point of Common Coupling (PCC). The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's electric distribution system, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated at the PCC.
 - vi. The Utility shall coordinate with all Affected Systems to support the interconnection.

F. Parallel Operation Obligations

Once the DER has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the DER as identified by this Agreement and by the DER Technical Specifications Manual.

G. Metering

The Interconnection Customer shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment. The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry standards.

H. DER Capabilities and Electric Distribution System Reliability

- i. The DER Technical Specifications Manual outlines the Parties responsibilities consistent with IEEE 1547 Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces which provides requirements relevant to the interconnection and interoperability performance, operation and testing, and, to safety, maintenance and security considerations.
- ii. The Utility may offer the Interconnection Customer the option to utilize required DER capabilities to mitigate Interconnection Customer costs related to Upgrades or Interconnection Facilities to address anticipated system impacts from the engineering review.

4. Inspection, Testing, Authorization, and Right of Access

A. Equipment Testing and Inspection

The Interconnection Customer shall test and inspect its DER and Interconnection Facilities prior to interconnection pursuant to the DER Technical Specifications Manual and this Agreement. The DER will not be allowed to interconnect with the Utility's distribution system until the installation has been inspected and approved by an authorized South Dakota state electrical inspector. Furthermore, the Utility may require separate inspection and witness testing by Utility personnel or Utility representatives.

B. Authorization Required Prior to Parallel Operation

The Utility shall use reasonable efforts to list applicable parallel operation requirements by attaching the DER Interconnection Technical Requirements to this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Interconnection Customer shall not operate its DER in parallel with the Utility's electric distribution system without prior written authorization of the Utility.

C. Right of Access

- i. Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the DER first produces energy to

inspect the interconnection and observe the commissioning of the DER (including any required testing), startup, and operation for a period of up to three (3) business days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) business days prior to conducting any on-site verification testing of the DER.

- ii. Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.
- iii. Each Party shall be responsible for its costs associated with following this article as outlined in the DER Technical Specifications Manual.

5. Effective Date, Term, Termination, and Disconnection

- A. This Agreement shall become effective upon execution by the Parties on the Effective Date and shall remain in effect from the Effective Date unless terminated earlier in accordance with this Agreement.
- B. No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.
- C. Either Party may terminate this Agreement at any time by giving the other Party ninety (90) business day written notice.
- D. Either Party may terminate this Agreement upon the Default of the other Party.
- E. Upon termination of this Agreement, the DER will be disconnected from the Utility's electric distribution system. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default or such non-terminating Party otherwise is responsible for these costs.
- F. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.
- G. The provisions of this article shall survive termination or expiration of this Agreement.
- H. Temporary disconnections shall continue only for so long as reasonably necessary under Good Utility Practices.
 - i. Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the DER. The Utility shall use reasonable efforts to notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the DER. The Interconnection Customer shall use reasonable efforts to notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility's electric distribution system or any Affected Systems. To the extent information is

known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

- ii. The Utility may interrupt interconnection service or curtail the output of the DER and temporarily disconnect the DER from the Utility's electric distribution system when necessary for routine maintenance, construction, or repairs on the Utility's electric distribution system. The Utility shall use reasonable efforts to provide the Interconnection Customer with three (3) business day notice prior to such interruption. The Utility shall use reasonable efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.
- iii. During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's electric distribution system. The Utility shall use reasonable efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.
- iv. The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practices, operation of the DER may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the DER could cause damage to the Utility's electric distribution system or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating condition in the timeframe in the notice, the Utility may disconnect the DER. The Utility shall provide the Interconnection Customer with a five (5) business day written notification of such disconnection, unless the disconnection is due to Emergency Conditions.
- v. The Interconnection Customer must receive written authorization from the Utility before making any change to the DER that may have a material impact on the safety or reliability of the Utility's electric distribution system. Such authorization shall not be unreasonably withheld if the modification is not a Material Modification. Material Modifications, including an increase nameplate rating or capacity, may require the Interconnection Customer to submit a new Interconnection Application. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the DER.
- vi. The Parties shall cooperate with each other to restore the DER, Interconnection Facilities, and the Utility's electric distribution system to their normal operating state as soon as reasonably practicable following a temporary disconnection.
- vii. If the Interconnection Customer receives retail electrical service at the same site as the DER, it may also be disconnected consistent with the rules and practices for disconnecting other retail electrical customers.
- viii. If the Interconnection Customer is in Default it may be disconnected after a sixty (60) day written notice is provided and the Default is not cured during this 60 day notice. This provision does not apply to disconnection based on Emergency Conditions.

6. Cost Responsibility for Interconnection Facilities and Distribution Upgrades (if applicable)

- A. The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in the DER Interconnection Study performed by the Utility. The Utility shall provide a good faith cost estimate, including overhead, for the purchase and construction of its Interconnection Facilities. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.
- B. The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overhead, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.
- C. The Utility shall design, procure, construct, install, and own the distribution Upgrades. The Utility shall provide a good faith cost estimate, including overhead, for the purchase and construction of the distribution Upgrades. The actual cost of the distribution Upgrades, including overhead, shall be directly assigned to the Interconnection Customer.

7. Billing, Payment, Milestones, and Financial Security

- A. The Utility shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of Interconnection Facilities and distribution Upgrades contemplated by this Agreement, and the Interconnection Customer shall pay each bill within thirty (30) days of such bill date.
- B. The Parties shall agree on milestones for which each Party is responsible.
- C. The entire amount identified in the good faith cost estimates for the construction efforts of Section 6 and as noted for billing in Section 7.A, including overhead portions, shall be paid prior to the construction commencing. Once construction is complete the Utility will work with the Interconnection Customer to either refund any overpayment or bill for any costs over the good faith cost estimates based on the actual costs incurred, including overhead.

8. Insurance

- A. For the duration of the operation of the DER system, the Interconnection Customer is required to have general liability insurance from a qualified insurance agency with a B+ or better rating by "A.M. Best" with a combined single limit of not less than \$1,000,000. Such general liability insurance shall include coverage against claims for damages resulting from (i) bodily injury, including wrongful death; and (ii) property damage arising out of the Interconnection Customer's ownership and/or operation of the DER under this Contract.
- B. The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.

- C. The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.
- D. Failure of the Interconnection Customer or Utility to enforce the minimum levels of insurance does not relieve the Interconnection Customer from maintaining such levels of insurance or relieve the Interconnection Customer of any liability.

9. **Governing Laws.** This Agreement shall be interpreted, governed, and construed under the laws of the State of South Dakota.

10. **Consequential Damages.** Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

11. **Force Majeure.** If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

12. **Default.** No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. The defaulting Party shall have 60 calendar days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within 60 calendar days, the defaulting Party shall commence such cure within 20 calendar days after notice and continuously and diligently complete such cure within six months from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until a cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

13. **Amendment.** The Parties may amend this Agreement by a written instrument duly executed by both Parties.
14. **No Third-Party Beneficiaries.** This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.
15. **Waiver.** The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

16. **Subcontractors.** Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

17. **Assignment and Binding Effect.** This Agreement shall not be assigned by a Party without the prior written consent of the other Party. Any attempt to do so will be void. Subject to the proceeding, this agreement is binding upon, inures to the benefits of, and is enforceable by the Parties and their respective successors and assigns. The Interconnection Customer agrees to notify the Utility in writing upon the sale or transfer of the DER facilities. This Agreement shall terminate upon such notice unless the Utility consents to an assignment.
18. **Terms of Agreement and Termination.** This Agreement shall become effective upon execution by all Parties and it shall continue in full force and effect until terminated pursuant to Section 5.
19. **Severability.** If any of this Agreement is determined to be partially or wholly invalid, illegal, or unenforceable, then such provision shall be deemed to be modified or restricted to the extent necessary to make such provision valid, binding, and enforceable; or, if such provision cannot be modified or restricted in a manner so as to make such provision valid, binding or enforceable, then such provision shall be deemed to be excised from this Agreement and the validity, binding effect, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any manner.
20. **Indemnity and Liability.** Unless caused by the sole negligence or intentional wrongdoing of the other Party, each Party to this Agreement shall at all times assume all liability for, and shall defend, hold harmless, and to the extent permitted by law, indemnify the other Party and its directors, officers, employees, and agents from, any and all damages, losses, claims, demands, suits, recoveries, costs, legal fees, and expenses: (a) for injury to or death of any person or persons whomsoever occurring on its own system, or (b) for any loss, destruction of or damage to any property of third persons, firms, corporations, or other entities occurring on its own system, including environmental harm or damage, or (c) arising out of or resulting from, either directly or indirectly, its own Interconnection Facilities, or (d) arising out of or resulting from, either directly or indirectly, any electric energy furnished to it hereunder after such energy has been delivered to it by such other Party. The provisions of this Section shall survive termination or expiration of this Agreement. Notwithstanding anything in this Section, or any other provision of this Agreement to the contrary, the Utility's indemnity obligations under this Section shall be effective if and only to the extent not prohibited by Applicable Law or by Governmental Immunity.

The provisions of this Section shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

Notwithstanding anything in this Section, or any other provision of this Agreement to the contrary, any liability of a Party to the other Party shall be limited to direct actual damages, and all other damages at law or in equity are hereby waived. Under no circumstances shall a Party be liable to the other Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The indemnification obligations and limits on liability in this Section shall continue in full force and effect notwithstanding the expiration or termination of this Agreement, with respect to any event or condition giving rise to an indemnification obligation that occurred prior to such expiration or termination.

21. **Notices.** Any notice required under this Agreement shall be in writing and mailed, emailed, or personally delivered to the Party at the address below. Personal notices in effective upon delivery, or within 3 business days of depositing the notice in the United States mail with first class postage. Written notice of any address changes shall be provided. All written notices shall be directed as follows:

Notice to Utility

Dakota Energy Cooperative
Attn:
PO Box 830
Huron, SD 57350
Phone: 605-352-8591

Notice to Interconnection Customer

Attn: _____

Tel. _____

22. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and constitutes the entire agreement between the Parties hereto.

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

Dakota Energy Cooperative Inc.

Signature: _____ Date: _____

Printed Name: _____

Interconnection Customer

Signature: _____ Date: _____
(Authorized Agent of the Legal Entity)

Printed Name: _____