

**Load Management  
Standard Offer Program:  
2019 Pilot**

**Southwestern Public Service Company  
dba  
Xcel Energy Inc.**



**Program Manual**

**for distribution level commercial class customers including  
governmental, non-profit, and educational (non-residential)  
customers of Southwestern Public Service Company dba Xcel  
Energy Inc. (Xcel Energy)**

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# Summary

The 2019 Load Management Pilot Standard Offer Program (SOP) offered by Southwestern Public Service Company dba Xcel Energy Inc. (Xcel Energy) is designed to provide non-residential customers the opportunity to earn money by making their facilities available to reduce electric power consumption on an hour's notice for short periods of time during the summer peak demand season.

The program is designed to reduce demand during peak periods, defined under this program as weekdays between 12:00 p.m. and 8:00 p.m. CDT, June 2019 through September 2019, excluding Federal holidays. It is a performance-based program that offers incentive payments to participating customers for curtailing electric load on notice. This manual outlines the requirements for participation and explains the commitments program participants must make.

## *Background*

The Xcel Energy Load Management Pilot SOP was developed in 2012 in accordance with Public Utility Commission of Texas (PUCT) Substantive Rule 25.181, which authorizes participating Project Sponsors (customers or third-party sponsors) to provide on-call, voluntary curtailment of electric consumption during peak demand periods, in return for incentive payments. Incentives are based on verified demand savings that occur at Xcel Energy distribution-level customer sites or eligible institutional customers' sites as a result of calls for curtailment. Customers are not required to produce a specific level of curtailed load, but will only receive payments for the amount of curtailed load produced.

## *Participation*

Project Sponsors<sup>1</sup> can participate in this project through a five-step process described in detail in this Program Manual.<sup>2</sup> The five steps are: (1) Application, (2) Contracting, (3) Performance, (4) Measurement and Verification, and (5) Payment of Incentives to the Project Sponsor.

## *Requirements*

The Load Management Pilot SOP is based upon a good-faith agreement between the Project Sponsor and Xcel Energy. It requires the participating entities to curtail agreed-upon loads at Xcel's request, within a specified period of time from notification and for a defined period of time. Xcel Energy's Load Management Pilot SOP has developed two (2) interruption options (Option A or Option B) from which the participating customer can choose. Option A includes up to six (6) Unscheduled Interruptions per Performance Period, each lasting four (4) hours. Option B includes up to twelve (12) Unscheduled Interruptions per Performance Period, each lasting four (4) hours.<sup>3</sup> The contract can be renewed each year by resubmitting online

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<sup>1</sup> Throughout this document, the term "Project Sponsor" is used to refer to either a participating customer (self-sponsor) or a third-party sponsor who may work with various facilities to offer demand reduction into the program.

<sup>2</sup> Additional information can be accessed on Xcel Energy's energy efficiency website by visiting <http://xcelefficiency.com/TX/LM/index.html>.

<sup>3</sup> Both options may also include a one-hour test curtailment event, called at the discretion of Xcel's Program Manager.

application materials to the program website, and issuance of a letter agreement. The agreement may be terminated by either party without penalty.

## ***Eligibility***

Xcel Energy prefers that project sponsors be capable of providing at least 100 kW of peak demand reduction at each site for which load reduction is offered into the program. However, Xcel Energy may accept applications including sites providing less than 100 kW of peak demand reduction in the interest of meeting its peak load reduction targets.

Metering considerations will impact the application process, with priority given to participants with existing Interval Data Recorders (IDRs).

All included project sites must be non-residential customers of Xcel Energy taking service at Primary or Secondary Voltage, and/or be a non-profit customer or government entity, including educational institutions.

## ***Customer Commitments***

Participating customers agree to a one-year commitment. While there are no penalties if customers opt out of the program at an earlier time, opting out (or other forms of non-delivery) in a given program year may cause Xcel Energy to look unfavorably on applications to participate in subsequent program years. In joining the program, the commercial or institutional customer chooses to commit to one of the following options:

Option A: Up to six (6) Unscheduled Interruptions per Performance Period, each lasting four (4) hours.

Option B: Up to twelve (12) Unscheduled Interruptions per Performance Period, each lasting four (4) hours.

The 2019 Performance Period, for which customers commit to making their load available, runs from June 1 through September 30 on weekdays between the hours of 12:00 p.m. and 8:00 PM CDT, excluding Federal holidays.

## ***Financial Benefits***

Xcel Energy will set aside \$35 per kW for the contracted curtailable load amount (kW) of each Project Sponsor accepted to the program under Option A, and \$50 per kW for the contracted curtailable load amount (kW) of each Project Sponsor accepted to the program under Option B. Actual payments are made on verified delivery of curtailed load. Customers who deliver load reductions in excess of their committed curtailable load may receive additional payments for some or all of the additional delivered load curtailment if the program budget allows, at Xcel Energy's discretion.

# 2019 Load Management Program

The Public Utility Commission of Texas (PUCT) has authorized the investor-owned Transmission and Distribution Utilities operating in Texas to implement and manage a demand control program known as the Load Management Standard Offer Program<sup>4</sup>, and to pay eligible customers for agreeing to curtail pre-determined electrical loads. In the Xcel Energy program, sponsoring participants (“Project Sponsors”) may be any Xcel Energy commercial, governmental, educational, or not-for-profit customer (or a group of eligible customers represented by a third-party) of qualifying load size. Project Sponsors complete a five-step process in order to receive incentive payments:

- **Step One: Application (Appendix A).** Project Sponsor submits the program application to allow Xcel Energy to review the proposed project for feasibility and tentatively reserve incentive funding.
- **Step Two: Contracting (Appendix B).** The qualifying Project Sponsor (usually an Xcel Energy Customer) enters into a Standard Offer Contract with Xcel Energy.
- **Step Three: Performance Period.** The Project Sponsor performs all requested curtailments between June 1 and September 30 of the contracted program year, upon notification from Xcel Energy.
- **Step Four: Measurement and Verification.** Xcel Energy verifies demand savings from curtailments (the “Verification Process”).
- **Step Five: Incentive Payment.** Xcel Energy compensates the Project Sponsor for the average kW demand reductions delivered via curtailments (the “Performance Period Payment”).

Each of these steps is covered in detail in subsequent sections of this Program Manual.

Project Sponsors must commit *Curtable Load* – the estimated amount of load that will be taken offline upon Xcel’s notification of a curtailment event - to the program for one summer period. Curtailments may occur during the summer peak demand period of each year, defined for this program as weekdays, June 1, 2019, through September 30, 2019, between the hours of 12:00 and 8:00 PM CDT, excluding Federal holidays.

There are no penalties beyond loss of participation for Project Sponsors who opt out of the program before the end of the performance period; however, opting out (or other acts of non-performance) in a given program year may cause Xcel Energy to look unfavorably on a Project Sponsor’s application to participate in subsequent program years.

*Application.* Interested parties can apply to participate in the program by submitting their Project Sponsor Profile and Project Site Information to the program administration site available at the following location. <http://www.ecurtail.com/XcelSPS/>.

***Xcel Energy will accept applications for participation in the 2019 program beginning April 1, 2019. Applicants must be under contract by May 31, 2019 to participate.***

*Contracting.* Xcel Energy will extend Standard Offer Contracts to those applicants accepted for participation by May 10, 2019. If the program is not fully subscribed by May 10, 2019, Xcel Energy may opt to admit

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<sup>4</sup> PUCT SUBST R. 25.181, Docket No. 33487; Order Adopting the Repeal of 25.181 and 25.184 and of New 25.181 As Approved At the March 26, 2008 Open Meeting (April 14, 2008).

late entrants; however, if contracts are not in place by the beginning of the performance period (June 1) payments to the project sponsor will be prorated according to the number of days in the peak demand season that their load was available for curtailment.

*Performance Period.* Participants are required to curtail pre-determined and contracted electric loads for a maximum of 24 hours annually under Option A, and a maximum of 48 hours under Option B, determined as follows:

- Option A: Up to six (6) Unscheduled Interruptions per Performance Period, each lasting four (4) hours.
- Option B: Up to twelve (12) Unscheduled Interruptions per Performance Period, each lasting four (4) hours.

**For purposes of this program, the Performance Period is defined as the hours between 12:00 p.m. and 8:00 p.m. CDT, on weekdays, June 1, 2019 through September 30, 2019, excluding Federal holidays.**

Participants will be provided notification of a curtailment event at least one (1) hour before they are expected to implement their load reduction strategy. Curtailments will have a duration of up to four (4) hours. Curtailments will be called at the discretion of Xcel Energy's Dispatch Center in response to expectations of high demand, system reliability, Southwest Power Pool-wide, or local, grid conditions, and/or need as determined by Xcel Energy.<sup>5</sup>

*Measurement & Verification:* The calculations that will be used to verify delivered load reduction amounts are the same as those used in the 2016 program year. Participants' baseline consumption – the amount estimated they would have been using had they not curtailed their load – is estimated using a "High 5 of 10" baseline. The High 5 of 10 baseline is described in detail in Step Four (p. 11).

*Payment.* Xcel Energy will set aside \$35 per kW for the contracted curtailable load amount (kW) of each Project Sponsor accepted to the program under Option A, and \$50 per kW for the contracted curtailable load amount (kW) of each Project Sponsor accepted to the program under Option B. Payments made will be based on the measured and verified load reduction delivered by project sponsors during the events called. Xcel Energy will submit all payments by November 15, 2019. Project Sponsors who participate in Option A for 1,000 kW and consistently curtail 1,000 kW or more when requested would earn \$35,000 under the 2019 program design. Project Sponsors who participate in Option B for 1,000 kW and consistently curtail 1,000 kW or more when requested would earn \$50,000 under that program. Customers who deliver load reductions in excess of their committed curtailable load may receive additional payments for some or all of the additional delivered load curtailment if the program budget allows, at Xcel Energy's discretion.

## ***Program Objectives***

The Load Management SOP seeks to achieve two primary objectives: (1) reduce summer peak demand in the Xcel Energy service territory in a cost-effective manner; and (2) assist Xcel Energy in reaching the demand savings goals established by the legislature and PUCT regulations.

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<sup>5</sup> At the discretion of the program manager, Xcel may also choose to execute a one-hour test event during the performance period, either in lieu of or in addition to unscheduled interruptions.

## Program Eligibility

Interested parties must identify one or more Project Sites capable of delivering load reduction in response to a one (1) hour advance call. The program operates under a Sponsor/Site model: participants may either be self-sponsors or third party sponsors. A given Sponsor may represent one or more sites (typically, a meter) participating in the program.

## Project Sponsor Requirements

Eligible Project Sponsors include any of the following entities:

- Self-Sponsors: individual customers that identify curtailable load in their own facility or facilities; or,
- Third-party Sponsors: Other entities with customer agreements (e.g. aggregators).

To ensure that the SOP incentive budget is allocated to projects that are likely to meet with success, all Project Sponsors are required to complete an application demonstrating a commitment to fulfilling SOP objectives and competency in completing their proposed project. Project Sponsors are required to submit information concerning their loads, operating characteristics, and experience as part of the application process.

Applications are submitted by creating an account at the program administration website, [www.ecurtail.com/XcelSPS](http://www.ecurtail.com/XcelSPS), and providing project sponsor and proposed site information. A more complete description of the application requirements are found in Step One on page 5.

## Project and Site Eligibility

A project site is defined in the SOP as one or more metered locations having an estimated curtailable load (estimated kW demand savings) during the summer peak demand period of at least 100 kW per meter.<sup>6</sup> Project Sponsors may include more than one project site in their applications, provided each project site meets the following requirements:

1. Is under the control of an Xcel Energy Customer in Southwest Public Service Company's Service Territory in the State of Texas taking Secondary or Primary voltage service and/or a non-profit, governmental, or educational institution served by Xcel Energy;
2. The site can provide total estimated demand savings of at least 100 kW during the 2019 Performance Period; and,

Priority will be given to applicants with existing Interval Data Recorders ("IDR").

If all buildings and meters at a given site are tied to one IDR, then they may be combined into a single project site. If the participating customer (Project Sponsor) has multiple meters that are not tied together, then Xcel Energy may choose to aggregate them to the benefit of the customer.

## Curtable Load Eligibility

Curtable loads must meet the following requirements:

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<sup>6</sup> At its sole discretion, Xcel may choose to allow participation by sites expected to deliver less than the 100 kW threshold.



1. Curtailable load must produce demand savings, defined as the reduction of electrical consumption during a specified period, as the result of verified savings following a dispatched (noticed) curtailment.
2. Curtailment must begin at the time indicated when notice is provided, and last for the duration of the requested curtailment event, not to exceed four (4) hours for any Curtailment, at any time during the performance period. All events will begin and end on the quarter, half, or top of a given hour.

In general, the SOP does not specify limits to the types of loads eligible to be considered curtailable load. This allows Project Sponsors flexibility in determining the level and method of curtailing loads. However, the following sources of curtailable load are specifically excluded from consideration for this SOP:

1. loads for the re-location of existing operations to a location outside of the area served by Xcel Energy; and
2. loads that receive an incentive through any other energy efficiency program offered by Xcel Energy or through any demand response program conducted by an independent organization, independent system operator, or regional transmission operator.<sup>7</sup>

Only load submitted for approval via the program database will be considered eligible curtailable load, and incentives will be paid only for demand savings directly related to curtailment of end-use equipment described in the Project Sponsor-provided application materials. This may be entire building(s) and/or individual end-use equipment that consumes electric energy during the summer peak demand period. Xcel Energy will consider any and all curtailable load that consumes electrical energy for participation in the SOP. It is the Customer's (or other Project Sponsor's) responsibility to identify the project site(s) and sources of curtailable load.

### ***Standard Offer Program Review and Approval***

The application process for the 2019 program year begins on a rolling basis on April 1, 2019. Approved applicants must sign contracts by May 31, 2019. All Standard Offer Program applications are reviewed on a first-come, first-served basis; however, Xcel Energy reserves the right to move an application up or down the priority list based on the quality of the proposed curtailable load, evaluation of the Project Sponsor's ability to implement curtailments, or other such reasonable factors as may be applied. Applications will be accepted for the SOP until all funds have been committed. Projects placed on the waiting list that are not accepted for a given program year will not be carried over into the next program year, and must be resubmitted by the Project Sponsor. Project Sponsors from the prior year are required to submit a new application each year, but the application and contracting process will be simplified for returning participants.

**Upon approval of a project application, Xcel Energy will notify participants and initiate the contracting process.**

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<sup>7</sup> This provision does not preclude a load from participating in other programs that are not concurrent with Xcel Energy's Performance Period.

# Step 1: the Application Process

A Project Sponsor's first step to participate in the Xcel Energy Load Management Pilot SOP is to register online at <http://www.ecurtail.com/XcelSPS>. The application process requires creation of a Project Sponsor Profile and completion of individual information form(s) for each Project Site to be considered for inclusion in the sponsor's proposed project. The program site will open for registration on February 16: at that time, participants will be able to set up sponsor and site profiles. The site will begin accepting applications at 9 AM on April 1. Project Sponsors are encouraged to apply as soon as possible after the Xcel Energy application period opens to increase their chances of being awarded a Contract Offer.

Applications are subject to ranking by Xcel Energy based on factors including, but not limited to, the amount and type of load to be curtailed and Xcel Energy's perception of the likelihood that the customer can consistently curtail the offered load. Applications can be submitted until May 10). Xcel will review applications on a rolling basis and reserves the right to approve applications at a lower demand (kW) amount than that submitted by the sponsor. Applications received after the program goal has been reached will be placed on a waiting list, from which they will be drawn in the order received in the event previous applications are either rejected or accepted at a lower capacity than their originally-proposed amount.

By submitting the Project Sponsor and Site application forms through Xcel Energy's website, the Project Sponsor requests that Xcel Energy review the application and, if approved, reserve funding for the Project Sponsor based upon the proposed level of demand savings in the application, pending execution of the Standard Offer Contract (see Appendix B). The application has an interactive format and includes several sections and attachments that must be completed by the Project Sponsor.

## *Required Project Sponsor Information*

The application form includes questions that all Project Sponsors are required to complete. Project Sponsors must provide information about the scope of their proposed project(s). The following fields are to be filled out in the Project Sponsor section of the online application:

- 1. Project Sponsor Contact Name** - Identification and information related to the representative of the Project Sponsor with primary responsibility for implementing the project.
- 2. Company Name.**
- 3. Tax ID.**
- 4. Address Information.** This should be the business address of the project sponsor, to which project correspondence, *including incentive payment at the end of the program year*, should be addressed.
- 5. Phone Number.** At least one phone number is required.
- 6. Email Address.** An email address is required for project communications.
- 7. Management Plan.** Describe how curtailments will be performed. If a project sponsor plans to curtail more than one site, explain how instructions will be relayed from primary contact to all project sites.

- 8. Business Description.** Provide a brief description of your business and the electric loads at participating premises.

## *Required Project Site Information*

Project sponsors must create a Site Profile for each site to be included in the program by adding a site and filling out the Site Information Form. Project sponsors are also responsible for keeping this information up to date across the program year.

- 1. Site Name.** The name by which the proposed location is generally recognized.
- 2. Xcel Energy Premise Number.** This nine digit number can be identified on the customer's electric bill, and is necessary in order to verify the location of the customer load being offered.
- 3. Address Information.** The physical address of the site where the load reduction will occur.
- 4. Average Peak Demand (kW).** Estimate the average of typical maximum demand for the site in the months from June through September.
- 5. Proposed Amount to Curtail (kW).** Enter the amount proposed to curtail at this location. This amount can be equal to, but cannot exceed, the average peak demand.
- 6. Building Type.** Select the building type from the dropdown menu that most accurately describes the proposed site.
- 7. Site Description.**
- 8. Description of Load to be Curtailed.** Describe the electric end use(s) that will be removed from the grid during a curtailment event.
- 9. Curtailment Method.** Project Sponsor describes how it will implement the curtailment when Xcel Energy executes a call. This information includes the design, implementation, operation, and management of the project.
- 10. Contact Information.** Complete contact information for three contacts must be provided for each site. The Xcel Load Management *ecurtail* site contains a Contacts Manager. Contact information can be uploaded to the Contacts Manager from the Site Creation interface or directly into the Contacts Manager, in which case the "Select Existing Contact" button can be used for attaching primary, secondary, and tertiary contact information for each site a project sponsor proposes for inclusion in the program.

Primary and secondary telephone numbers are to be provided for all contacts where Xcel Energy can contact the Project Sponsor to provide advance notification of a curtailment. A representative of the Project Sponsor must be available at this number at all times during peak summer demand hours to accept and act on these calls. The Company will also accept email and text addressable cell phone addresses. Contact names and numbers may be changed with proper notice.

As part of the application review, Xcel Energy will review the feasibility of the proposed curtailable load and accuracy of the demand savings estimates. Xcel Energy may request clarification of, or additional information about, any item in the application. Project Sponsors must respond to such requests within the time period specified by Xcel Energy. If the clarification or additional information is not forthcoming in a timely manner, Xcel Energy may choose to discontinue its evaluation of the application.

## **Information and Application Contacts**

<b>MATERIAL REQUESTS</b>	<b>BEST SOURCE</b>	<b>ADDRESS AND CONTACT</b>
Program Questions	Email	Brian Doyle, Sr. Product Portfolio Manager <a href="mailto:Brian.g.doyle@xcelenergy.com">Brian.g.doyle@xcelenergy.com</a> Steve Wiese, Frontier Energy <a href="mailto:swiese@frontierenergy.com">swiese@frontierenergy.com</a> Charles Winkle, Frontier Energy cwinkle@frontierenergy.com
Technical Support, website	Email/Phone	Alex Rivera, Frontier Energy <a href="mailto:arivera@frontierenergy.com">arivera@frontierenergy.com</a> +1 737 236 0280
Customer Agreements	Mail	Will be provided to qualifying applicants by the Program Manager upon completion of the application review.

### ***Confidentiality***

This and all Standard Offer Programs are subject to oversight by the PUCT, which may request a copy of any program materials that Xcel Energy receives. Sensitive company and project information submitted by the Project Sponsor to Xcel Energy such as load information, process descriptions, management information, and financial statements will be treated confidentially.

### ***Submission of False Information***

Xcel Energy reserves the right to discontinue its evaluation of all submittals and terminate all Agreements of a Project Sponsor if it is determined that any submission or part of any submission contains intentionally false, misleading, or materially incorrect information.

## Step 2: The Contracting Process

Once an Application (consisting of the Project Sponsor and Project Site information submitted via Xcel Energy's online program tracking system) has been reviewed and approved by Southwestern Public Service Company dba Xcel Energy Inc. (Xcel Energy), qualifying Project Sponsor applicants will receive a Standard Offer Contract similar to the sample Standard Offer Contract attached as Appendix B to this Program Manual. Because this is a Standard Offer Contract authorized by the PUCT, the terms of the Standard Offer Contract are uniform and effectively non-negotiable, except where it can be demonstrated to the satisfaction of Xcel Energy that unique circumstances merit revision. Once the Standard Offer Contract is signed by both the Project Sponsor and Xcel Energy, the Project Sponsor's primary obligation will be to perform the following:

1. Respond effectively to calls for curtailments of the contracted curtailable loads following notification by Xcel Energy.
2. Monitor loads during curtailments, and maintain the loads at the desired minimum throughout the duration for the event(s).

The primary obligations of Xcel Energy will be to perform the following:

1. Perform the Measurement and Verification activities for each Project Sponsor site in order to verify and measure the Demand Savings for each curtailment.
2. Calculate and issue the "Performance Period Payment" by November 15, 2019, based on verified Demand Savings relating to the curtailment(s) occurring between June 1, 2019 and September 30, 2019.

## Step 3: The Performance Period

To achieve the goal of reducing load during peak demand periods, Xcel Energy has set the maximum number of annual curtailments to six (6) curtailments of up to four (4) hours' duration each under Option A, for a total of 24 hours per annum. Under Participation Option B, Xcel Energy has set the maximum number of annual curtailments to twelve (12) curtailments of up to four (4) hours' duration each, for a total of 48 hours per annum.

### *Curtailment Events*

By its participation, the commercial or institutional customer chooses to commit to one of the following options:

Option A: Up to six (6) Unscheduled Interruptions per Performance Period, each lasting four (4) hours.

Option B: Up to twelve (12) Unscheduled Interruptions per Performance Period, each lasting four (4) hours.

Curtailment events occur upon request by Xcel Energy's Dispatch Center. Xcel Energy will notify Project Sponsors of a curtailment with at least one (1) hour advance notice of the start-time for the curtailment. Curtailments will last up to four hours. Starting times may occur between 12:00 and 6:00 p.m. CDT. Ending times will occur between 1:00 and 8:00 p.m. CDT.

Xcel may also choose to execute a one-hour test event during the performance period, either in lieu of or in addition to unscheduled interruptions.

## Step 4: Measurement and Verification

Xcel Energy will perform the Verification Process after any curtailment occurs. Demand savings and incentive payment amounts will be based on actual and verified curtailment of curtailable load.

### *Steps of the Verification Process*<sup>8</sup>

Following the billing period(s) during which a curtailment has occurred, the IDR data will be accessed by the Load Management program manager (or designee) to verify delivered demand (kW) savings. Verified demand savings are calculated using the following formula:

$$\text{Verified Demand Savings} = \text{Baseline Demand (kW)} - \text{Curtailed Demand (kW)}$$

Where,

*Baseline Demand(kW)* = *Baseline average demand calculated according to the High 5 of 10 Baseline Method, as explained below*

*Curtailed Demand (kW)* = *Average demand measured during the curtailment period*

### High 5 of 10 Baseline with Day-of Adjustment

A “High 5 of 10” baseline considers the 10 most recent ‘like’ days (‘like’ days in this case being non-holiday weekdays) preceding an event and uses the data from the 5 days with the highest load within those 10 days to calculate the baseline. Day-of adjustments are used to scale the baseline load estimate to the load conditions on the day of the event using data from the hours on the event day prior to the time when participants were notified of the pending need to curtail load.

The *high 5 of 10 baseline* for a given curtailment event is estimated by first identifying the ten non-holiday weekdays immediately preceding the event in which no prior program curtailment events were called, and calculating each participant’s average demand during the same hours as the hours for which the curtailment event was implemented on each of those ten days. The five highest of these ten average like day demand values are then averaged to estimate the *unadjusted high five baseline*.

Next, the *day-of baseline adjustment* is estimated by comparing participants' average demand for electricity on the day of the event during the two hours prior to notification of the pending event (the *adjustment period*) to participants' average demand for electricity on the “high five” days during those same two hours. The difference (positive or negative) between day-of demand and high five demand in the adjustment period is the *uncapped additive adjustment*. Finally, a 50 percent cap is applied to the uncapped additive adjustment: the absolute value of this adjustment should not exceed 50 percent of the value of the unadjusted high five baseline. The *capped additive adjustment* to be applied to the unadjusted high five baseline is the lessor of the absolute value of the uncapped additive adjustment or the unadjusted high

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<sup>8</sup> National standards for Load Management M&V programs are currently under development and are expected to be proposed for national adoption in the future, potentially altering the methodology presented here.

five baseline multiplied by 0.5. If the uncapped additive adjustment is negative, the original sign is returned to the capped additive adjustment. The high 5 of 10 baseline is estimated by adding the capped additive adjustment to the unadjusted high five baseline.

EXAMPLE: Assume a 2014 program year curtailment occurred on Wednesday, August 13, from 4:00 to 7:00 p.m. Notification was provided one hour before, at 3:00 PM.

<b>Prior 10 'Like' Days</b>	<b>Average Demand during Event Hours (kW)</b>	<b>Rank</b>
<b>8/12/2014</b>	<b>688.5</b>	<b>3</b>
8/11/2014	591.8	8
8/8/2014	547.7	10
8/7/2014	602.1	7
<b>8/6/2014</b>	<b>713.7</b>	<b>1</b>
<b>8/5/2014</b>	<b>711.9</b>	<b>2</b>
8/4/2014	563.0	9
8/1/2014	613.8	6
<b>7/31/2014</b>	<b>643.1</b>	<b>5</b>
<b>7/30/2014</b>	<b>672.8</b>	<b>4</b>

The five like days with the highest average demand during event hours are selected (shown in bold in the above table): demand on these five days is averaged to estimate the unadjusted high five baseline.

<b>High Five Baseline Days</b>	<b>Average Demand during Event Hours (kW)</b>	<b>Rank</b>
8/6/2014	713.7	1
8/5/2014	711.9	2
8/12/2014	688.5	3
7/30/2014	672.8	4
7/31/2014	643.1	5
unadjusted high five baseline:	686.0	

Next, the additive adjustment is calculated. First, the uncapped adjustment amount is estimate by subtracting average demand on the high five baseline days in the Baseline Adjustment Period (the two hours prior to notification) from event-day average demand in those same hours.



<b>Baseline Adjustment Period</b>	<b>Average Demand during Event Hours (kW)</b>	<b>Average Demand on High Five Baseline Days</b>	<b>Uncapped Additive Adjustment</b>
1 PM – 3 PM	695.7	683.1	12.6

Next, the uncapped additive adjustment is capped by comparison to 50 percent of the unadjusted high five baseline:

<b>unadjusted high five baseline</b>	<b>x 0.5</b>	<b>Uncapped Additive Adjustment</b>	<b>Additive Adjustment</b>
686.0	343.0	12.6	12.6

In this case, the uncapped additive adjustment is less than 50 percent of the unadjusted high five baseline and the cap does not affect the amount of the additive adjustment.

Baseline demand is estimated by adding the adjustment amount to the unadjusted high five baseline:

<b>unadjusted high five baseline</b>	<b>+ Uncapped Additive Adjustment</b>	<b>Baseline Demand (kW)</b>
686.0	12.6	698.6

Curtailed demand is simply the average demand during the event. The verified demand savings are the difference between the baseline demand and the curtailed demand:

<b>Baseline Demand (kW)</b>	<b>Curtailed Demand</b>	<b>Verified Demand Savings (kW)</b>
698.6	83.3	615.3

The same process is repeated for each curtailment event, and the average of the verified demand savings across all events becomes the Verified Curtailed Demand Savings, which provides the basis for the Incentive Payment calculation discussed in Step Five.

# Step 5: Incentive Budget and Payments

Xcel Energy will pay Project Sponsors a single payment for each Project, regardless of Participation Option. In the event a Project Sponsor fails materially to produce the demand savings as proposed in its Application, Xcel Energy reserves the right to decline to make any further incentive payments and terminate the Standard Offer Contract. Xcel Energy’s payment of Incentive Payment(s) to Project Sponsor is expressly and specifically conditioned upon Xcel Energy receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in the Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in the Agreement shall be deemed a material breach of the Agreement.

## *Incentive Payment Rates*

The SOP rules provide standard incentive prices per kW for demand savings each year of participation. For each project site, Xcel Energy will not be obligated to pay the Project Sponsor for verified demand savings that exceed the amount of estimated demand savings proposed in the Project Sponsor’s Application. However, at Xcel Energy’s sole discretion, and provided SOP funds are available, Xcel Energy may revise a Project Sponsor’s estimate of proposed demand savings upward, and may pay a Project Sponsor accordingly. The incentive rates are set forth in the following table.

**Table 1. Incentive Rates**

Participation Option	Payment Rate (\$/kW)
A	\$35
B	\$50

## *Payment Schedule*

Xcel Energy will make the Performance Period Payment by November 15, 2019, following the conclusion of the Performance Period and Xcel Energy’s approval of the IDR data for the agreement year. The amount of the Performance Period Payment shall be calculated using the following formula:

<b>Performance Period Payment (\$)</b>	=	<b>Verified Curtailed Demand Savings (kW)</b>	*	<b>Curtailment Payment Incentive Rate (\$/kW)</b>
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where the Curtailment Verified Demand Savings are calculated by taking the average of the Curtailment Demand Savings for all of the curtailments called during the agreement year.

## *Payments for Curtailment in Excess of Committed Amount*

At the end of the program year, Xcel Energy will determine whether it has expended its entire program budget based on the Performance Period Payments to all participating customers for delivered demand reductions up to the contracted amount for that program year. If there is additional budget, and if one or more Project Sponsors have delivered demand reductions in excess of their curtailable load commitments, Xcel Energy may elect to provide bonus payments to those Project Sponsors. Xcel Energy will not make payments in excess of its program budget for a given year.

# Appendices

*Appendix A: Application Package (see Step 1)*

*Appendix B: Standard Offer Contract (see Step 2)*

Contract Cover Sheet

Attachment 1: Compensation Schedule

Attachment 2: Scope of Work

Attachment 3: General Conditions

Attachment 4: IRS W-9 Taxpayer ID

# Appendix A: Application Process

Xcel Energy's 2019 Peak Load Management program will be administered through an online program tracking system. Application to participate in the program requires registration and the creation of a user name and password, provision of a unique company identifier (such as your company's Tax ID number), and provision of Project Sponsor and project site information.

To apply for Project Sponsor status in the 2019 peak load management program, visit the program website (located at <http://www.ecurtail.com/XcelSPS/>).

# Appendix B: Standard Offer Contract

*(Refer to Step Two, Program Manual)*

- Contract Cover Sheet
- Attachment 1: Compensation Schedule
- Attachment 2: Scope of Work
- Attachment 3: General Conditions
- Attachment 4: IRS W-9 Taxpayer ID

**Note to Proposers:** This Standard Offer Contract is generally consistent with Xcel Energy and Public Utility Commission of Texas (PUC) standards for the State of Texas energy efficiency Standard Offer Programs. Successful Project Sponsors will be required to execute all documents in order to participate in the Xcel Energy Load Management Program. Because this is a Standard Offer Program similar to that offered by other utilities, the Terms and Conditions are essentially non-negotiable unless it is demonstrated to Xcel Energy's satisfaction that the conditions are unique and thus require and deserve special conditions. To facilitate the process of selecting and qualifying candidates, it is recommended that your company initiate a legal review of these documents when you are considering your submission.

# CONTRACT COVER SHEET

## Southwestern Public Service Company dba Xcel Energy Inc. (Xcel Energy)

790 S Buchanan St

Amarillo, Tx 79101

Agreement Date: TBD

### CONTRACT

To:

**Project Sponsor's Name:** \_\_\_\_\_  
**Project Sponsor's Address:** \_\_\_\_\_  
**City, State Zip:** \_\_\_\_\_

Direct All Correspondence To:

**Contact:** \_\_\_\_\_  
**Telephone:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_

This contract is effective from June 1, 2019 through September 30, 2019.

Premise Number (location of customer's load being offered.) \_\_\_\_\_

### Project Sponsor's Curtailment Dispatch Contact Information:

	Primary Contact	Secondary Contact
<b>Name:</b>	_____	_____
<b>Business Phone:</b>	_____	_____
<b>Cell Phone:</b>	_____	_____
<b>Email or SMS:</b>	_____	_____

Participation Level (Select one):

A	6 events @ \$35/kW	
B	12 events @ \$50/kW	

Target Load Shed Amt (kW): \_\_\_\_\_

Target Value (\$): \_\_\_\_\_

This Contract is entered into by and between Xcel Energy and Project Sponsor, to provide miscellaneous goods and services connected with the Load Management Program, all in accordance with the following:

Attachment 1: Compensation Schedule

Attachment 2: Scope of Work

Attachment 3: Terms and Conditions of Services

### Notice to Project Sponsor

The Target Value listed above represents an estimated amount. Xcel Energy does not represent, warrant, or guarantee that this value, or any other value, will be reached under this Contract. Project Sponsor shall only be paid for those goods and services actually rendered and accepted in accordance with the above noted attachments.

Nothing herein shall limit or otherwise restrict Xcel Energy from procuring like or similar services from other vendors, without notice to or approval of Project Sponsor.

In witness thereof, the parties have executed this Agreement in their respective names, by their duly authorized representatives as of the date and year written above.

Southwestern Public Service Company, a New Mexico Corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Project Sponsor: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THIS ORDER IS PLACED SUBJECT TO CONDITIONS ATTACHED.**

# ATTACHMENT 1: COMPENSATION SCHEDULE

Project Sponsors will be paid based on the procedures outlined in Step Four (Measurement and Verification) and Step Five (Incentive Payments) of the Program Manual.

## Payment Procedures:

Xcel Energy will pay Project Sponsors one (1) payment for each Project, regardless of Participation Option. In the event a Project Sponsor fails materially to produce the demand savings as proposed in its Application, Xcel Energy reserves the right to decline to make any further incentive payments and terminate the Standard Offer Contract. Xcel Energy's payment of Incentive Payment(s) to Project Sponsor is expressly and specifically conditioned upon Xcel Energy receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in the Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in the Agreement shall be deemed a material breach of the Agreement.

## Incentive Payment Prices

The SOP rules provide standard incentive prices per kW for demand savings each year of participation. For each Project, Xcel Energy will not be obligated to pay the Project Sponsor for verified demand savings that exceed the amount of estimated demand savings proposed in the Project Sponsor's Application, although at Xcel Energy's sole discretion and provided SOP funds are available, Xcel Energy may revise a Project Sponsor's estimate of proposed demand savings upward, and may pay a Project Sponsor accordingly. (Within one project, some Project Sites may exceed the estimated amount proposed in the Application, but payments may be capped for the total demand savings for the Project as a whole, if they exceed the proposed demand savings estimate for the Project.) The incentive rates applicable to kW savings are set forth in the following table, subject to final PUCT rules.

<b>Incentive Rates</b>				
Participation Option	Payment (\$/kW)	Rate	Date Made	Payment
A	\$35		November 15	
B	\$50		November 15	

## Payment Schedule

Xcel Energy will make the Performance Period Payment by November 15, 2019, following the conclusion of the Performance Period and Xcel Energy's approval of the IDR data for the Agreement year. The amount of the Performance Period Payment shall be calculated using the following formula:

<b>Performance Period Payment (\$)</b>	=	<b>Verified Curtailment Demand Savings (kW)</b>	*	<b>Curtailment Payment Incentive Rate (\$/kW)</b>
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where the Verified Curtailment Demand Savings are calculated by taking the average of the Curtailment Demand Savings for all of the curtailments called during the Agreement year.



### *LIMITATIONS TO THE COMPENSATION SCHEDULE*

1. Notwithstanding anything to the contrary, Xcel Energy may, in its sole discretion, revise the calculation of the Performance Period Payment to allow payment to Project Sponsor for an amount of peak demand reduction that exceeds the amount of Estimated Demand Savings and is less than or equal to the amount of Demand Savings.
2. Xcel Energy's payment of Incentive Payment(s) to Project Sponsor is expressly and specifically conditioned upon Xcel Energy receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in this Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in this Agreement shall be deemed a material breach of this Agreement.

## ***ATTACHMENT 2: SCOPE OF WORK***

**The Project Sponsor's Application, certifications, and the Program Manual are incorporated by reference and are hereby made a part of the Standard Offer Contract.**

# ***ATTACHMENT 3: GENERAL TERMS AND CONDITIONS FOR SERVICES***

## **1.0 DEFINITIONS**

The following definitions shall apply to the Contract, all Contract Documents and Amendments thereto and to related correspondence. A word or expression defined in this Contract containing capital letter(s) shall be identified, in any section of this Contract where the whole text is printed in block capitals, or by such word or expression being underlined and/or printed in a more prominent typeface.

1.1 “Acceptance” shall mean the official written notification of acceptance of the Work to Project Sponsor from the authorized representative of Xcel Energy following satisfactory completion of the Work in accordance with the Contract.

1.2 “Affiliate” shall mean (A) a person who directly or indirectly owns or holds at least 5.0 percent of the voting securities of an energy efficiency service provider; (B) a person in a chain of successive ownership of at least 5.0 percent of the voting securities of an energy efficiency service provider; (C) a corporation that has at least 5.0 percent of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider; (D) a corporation that has at least 5.0 percent of its voting securities owned or controlled, directly or indirectly, by: (i) a person who directly or indirectly owns or controls at least 5.0 percent of the voting securities of an energy efficiency service provider; or (ii) a person in a chain of successive ownership of at least 5.0 percent of the voting securities of an energy efficiency service provider; or (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0 percent of the voting securities of an energy efficiency service provider; (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider; (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph; (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

1.3 “Baseline” shall mean the amount of demand in the period(s) determined by Xcel Energy to be the amount for comparison to Curtailment kW Usage to calculate Demand Savings. Baseline demand shall be calculated by averaging the one-hour period on the day of curtailment which

began two hours prior to the start of a curtailment, with the same period as the curtailment for each of the four previous business days (weekdays, excluding federal holidays).

1.4 “Xcel Energy” shall mean Xcel Energy or any of its representatives, successors, or assigns, including Southwestern Public Service dba Xcel Energy.

1.5 “Commercial Customer” shall mean a non-residential customer currently taking service at a metered point of delivery at secondary or primary voltage under Southwestern Public Service Company’s Texas utility tariff or a non-profit customer or government entity, including an educational institution. For purposes of this section, each metered point of delivery shall be considered a separate customer unless Xcel Energy has totaled the metered loads for billing purposes.

1.6 “Competitive Energy Efficiency Services” shall mean energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

1.7 “Contract” or “Agreement” shall mean, collectively, the entire agreement between Xcel Energy and Project Sponsor, the terms and conditions incorporated therein and other documents, if any, which are by reference made a part of the Contract and providing for signature of a duly authorized representative of each party thereto.

1.8 “Contract Administrator” shall mean Xcel Energy’s duly authorized agent who shall initiate and administer all contract activities related to the contractual terms and conditions.

1.9 “Contract Documents” or “Agreement Documents” shall mean 1) Project Sponsor’s approved application (“Application”) and Application Agreement, attached hereto as Attachment A and incorporated by reference herein, 2) the SOP Manual (“SOP Manual”), which is incorporated by reference herein, and 3) this Contract together with any and all other exhibits, addenda, or amendments referenced in the Agreement Documents or made a part thereof in accordance with this Agreement.

1.10 “Contract Supplement” shall mean the written instrument describing additions, changes or deletions to Project Sponsor’s scope of work as defined by the Contract Documents, or in the time of performance of the Contract (or any other change desired by Xcel Energy) authorized and executed by duly authorized representatives of the parties hereto with the same formality as this Contract.

1.11 “Curtailable Load” shall mean the equipment, material, or systems at a Project Site that is identified in the application as load that will be interrupted at the request of Xcel Energy pursuant to the SOP.

1.12 “Curtailment” shall mean shutting down operations of, or otherwise removing from the grid, Curtailable Load at the request of Xcel Energy pursuant to the SOP.

1.13 “Curtailment kW Usage” shall mean the average hourly demand that occurs during the period of a Curtailment.

1.14 “Customer Agreement” shall mean the agreement between Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the Measures and other related and/or unrelated matters at the Project Site.

1.15 “Demand” shall mean the rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

1.16 “Demand Savings” shall mean a quantifiable reduction in demand.

1.17 “Eligible Customers” shall mean commercial and industrial customers. In addition, to the extent that they meet the criteria for participation in load management standard offer programs developed for industrial customers and implemented prior to May 31, 2007, industrial customers are eligible customers solely for the purpose of participating in such programs.

1.18 “Energy Efficiency” shall mean improvements in the use of electricity that are achieved through facility or equipment improvements, devices, or processes that produce reductions in demand or energy consumption with the same or higher level of end-use service and that do not materially degrade existing levels of comfort, convenience, and productivity.

1.19 “Energy Efficiency Measures” shall mean equipment, materials, and practices at a customer’s site that result in a reduction in electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.

1.20 “Energy Efficiency Program” shall mean the aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.

1.21 “Energy Efficiency Project” shall mean an energy efficiency measure or combination of measures undertaken in accordance with a standard offer or market transformation program.

1.22 “Energy Efficiency Service Provider” shall mean a person who installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer.

1.23 “Energy Savings” shall mean a quantifiable reduction in a customer's consumption of energy.

1.24 “Estimated Demand Savings” shall mean: 1) the amount of demand that Project Sponsor proposes in the Application to save in a one-hour period during Summer Peak Demand Hours through Curtailments that are implemented pursuant to the SOP and that Xcel Energy approves after review of the Application and receipt of all Customer Agreements, or 2) the amount of approved Curtailment Demand Savings that occurs in the first year of the Project, whichever is less.

1.25 “Governmental Authority” shall mean any federal, state, local or municipal governmental body or agency or subdivision thereof, including, but not limited to, any legislative or judicial body, having appropriate jurisdiction to exercise authority or control over Xcel Energy, its parent corporation, or any part or all of the Work to be performed under this Contract.

1.26 “Growth in Demand” shall mean the annual increase in demand in the Texas portion of an electric utility's service area at time of peak demand, as measured in accordance with this section.

1.27 “IDR” shall mean Interval Data Recorder.

1.28 “Incentive Budget” shall mean the amount of money budgeted by Xcel Energy for the SOP in each year of the Project.

1.29 “Incentive Payment” shall mean payment made by a utility to an energy efficiency service provider under an energy-efficiency program.

1.30 “Inspection” shall mean examination of a project to verify that an energy efficiency measure has been installed, is capable of performing its intended function, and is producing an energy saving or demand reduction.

1.31 “Load Control” shall mean activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.

1.32 “Load Management” shall mean load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

1.33 “Measurement and Verification” shall mean activities intended to determine the actual energy and demand savings resulting from energy efficiency projects as described in this section.

1.34 “Off-peak Period” shall mean the period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.

1.35 “Peak Demand” shall mean electrical demand at the times of highest annual demand on the utility's system.

1.36 “Peak Demand Reduction” shall mean reduction in demand on the utility system during the utility system's peak period.

1.37 “Peak Period,” for purposes of the load management program, shall mean the hours from one p.m. to seven p.m., during the months of June, July, August, and September, excluding weekends and Federal holidays.

1.38 “Performance Period” shall mean the period from June 1 through September 30.

1.39 “Performance Period Payment” shall mean the payment made by Xcel Energy to Project Sponsor for Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.

1.40 “Project Sponsor” shall mean the party who is the provider of the energy efficiency services being purchased under this Contract and who is entering into this Contract with Xcel Energy.

1.41 “Project Sponsor's Representative” shall mean the person designated by the Project Sponsor to represent the Project Sponsor during the term of the Contract.

1.42 “Program Manager” shall mean Xcel Energy’s designee who shall manage and coordinate the work activities furnished under this Contract.

1.43 “Notice” shall mean any formal written correspondence providing notice of action, purpose, intent or the like given under the provisions of this Contract.

1.44 “Peak Demand Savings” shall mean the Peak Demand Reduction as calculated pursuant to the Compensation Schedule.

1.45 “Personnel” shall mean Project Sponsor's employees or subcontractor employees performing Work under this Contract.

1.46 “Project Site” shall mean the location of a Customer’s Curtailable Load, as identified in the Application. For the purposes of this Agreement, multiple facilities representing Curtailable Load may be combined into one Project Site as long as they are connected to a single IDR meter.

1.47 “Project Sponsor Contact Telephone Number” shall be the telephone number identified in the Application as the telephone number that Xcel Energy will call to notify Project Sponsor of a required Curtailment.

1.48 “PUCT” shall mean the Public Utility Commission of Texas.

1.49 “Specifications” shall mean collectively, all technical descriptions and data referenced in the Contract, and such amendments, revisions, deductions or additions as may be made and all written agreements made or to be made, pertaining to the processes, workmanship, products and quantities and qualities of the materials to be furnished under this Contract.

1.50 “Standard Offer Contract” shall mean a contract between an energy efficiency service provider and a participating utility specifying standard payments based upon the amount of energy and peak demand savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, consistent with this section.

1.51 “Standard Offer Program” shall mean a program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

1.52 “Subcontractor” shall mean any person, firm, partnership, association, joint venture, company, corporation or other entity, regardless of tier, engaged by Project Sponsor to provide any part of the Work under this Contract.

1.53 “Work” shall mean any and all labor, evaluations, reports and services, including all equipment, material, duties and obligations that are the responsibility of Project Sponsor under this Contract.

## **2.0 CONTRACT DOCUMENTS**

2.1 The Contract Documents consist of the Contract Signature Page, the Compensation Schedule, the Scope of Work, these Terms and Conditions for Services, the SOP Manual, and all other exhibits, addenda, drawings, Specifications, Applications and any Contract Supplements issued subsequently.

2.2 The Contract Documents are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document. In the event there are any conflicting provisions or requirements in the Contract Documents, the provisions and requirements thereof shall take the following order priority:

1. Contract Supplements
2. Compensation Schedule
3. Scope of Work
4. SOP Manual
5. Terms and Conditions for Services
6. Application
7. Contract Signature Page
8. Supplier Diversity Documents

Xcel Energy assumes no responsibility for bidding errors or omissions caused by failure of Project Sponsor or any of its Subcontractors to inspect and familiarize themselves with the complete set of Contract Documents.

### **3.0 EFFECT OF HEADINGS**

Article headings appearing in this Contract are for convenience and reference only and shall in no way be construed to define, limit or interpret the text hereof.

### **4.0 APPLICABLE STATE LAW**

The rights, obligations and remedies of the parties to this Contract shall be interpreted and governed in all respects by the laws of the State of Texas. Should any provision of this Contract or part thereof, or the application of any provision or part thereof, be judicially determined to be illegal or invalid or otherwise unenforceable, the validity of the remaining provisions or parts thereof and other applications of such provisions or parts thereof shall not be impaired.

### **5.0 NOTICES AND CORRESPONDENCE**

5.1 All Notices or correspondence arising from or pertaining to the legal requirements, terms & conditions or the performance required by this Contract shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following addresses:

(a) To Xcel Energy:

Xcel Energy  
Attn: Load Management Portfolio Manager  
1800 Larimer St  
Suite 1500  
Denver, CO 80202

(b) To Project Sponsor: Address stated on the Contract Signature Page.

5.2 All Notices or correspondence to Xcel Energy arising from or pertaining to project administration shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following address:

Xcel Energy  
Attn: Tracie Cooper  
1515 S. Capital of Texas Highway Suite 110  
Austin, TX 78746



5.3 Either of the parties may, at any time, change its mail or delivery address by giving the other party ten (10) days prior written Notice.

5.4 The effective date of any written Notice delivered or mailed pursuant to this Contract shall be the date of receipt by the Xcel Energy or Project Sponsor, as applicable, if delivered, or the postmark date if mailed.

## **6.0 AUTHORIZATION TO COMMENCE WORK**

Project Sponsor shall not commence Work until receipt of a signed Contract.

## **7.0 EQUAL EMPLOYMENT OPPORTUNITY**

Project Sponsor represents that it is in compliance with all applicable laws, regulations and orders with respect to equal employment opportunity and either has heretofore provided or will provide to Xcel Energy the certifications and representations regarding equal employment opportunity that Xcel Energy may require under such laws, regulations and orders.

## **8.0 NON-WAIVER OF RIGHTS**

Failure of Xcel Energy to insist upon strict performance of any of the provisions hereof, or its failure or delay in exercising any rights or remedies provided herein or by law, or Xcel Energy's Acceptance of, or use of or payment for the Work, or any part or combination thereof, or any approval of Work by Xcel Energy, or any purported oral modification or rescission of this Contract, or any part hereof, by any employee or other authorized representative of Xcel Energy shall not release Project Sponsor of any of its obligations under this Contract and shall not be deemed as a waiver of any of Xcel Energy's rights to insist upon strict performance hereof or of any of Xcel Energy's rights or remedies under this Contract or by law, and shall not operate as a waiver of any of the provisions hereof.

## **9.0 REPRESENTATIONS AND WARRANTIES**

9.1 By executing this Agreement, Project Sponsor warrants and represents that it is aware of, is in compliance with, and will continue to comply for the term of this Agreement with, all of the Agreement Documents and all applicable laws and regulations related to the SOP.

9.2 Project Sponsor warrants and represents that the Project meets all federal, state, and local regulatory requirements, including:

The Project will result in consistent and predictable peak demand savings over the Agreement year;

The Application disclosed all potential adverse environmental or health effects associated with the Project, if any;

The Project will not result in building vacancies or the re-location of existing operations to a location outside of the area served by Xcel Energy; and

The Project would not have been implemented in the absence of the SOP.

9.3 Project Sponsor acknowledges that it received a copy of the SOP Manual prior to submission of its Application. Project Sponsor warrants and represents that its participation in the SOP has at all times been in compliance with, and will continue to comply for the term of this Agreement with, the procedures and conditions set forth in the SOP Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOP as described in the SOP Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement. Procedures or conditions set forth in the SOP Manual may only be waived or modified by written agreement of the parties. Any such Agreement shall be attached hereto and incorporated herein for all purposes.

9.4 Project Sponsor warrants and represents that any relevant Agreement(s) or agreement(s) between a Customer and the Customer's retail electric provider concerning electric service to Curtailable Load do not prohibit or inhibit Curtailments.

9.5 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Agreement Documents.

9.6 The Project will be implemented during calendar year 2019 and beyond if this Agreement is extended by mutual covenant.

All Curtailments shall be implemented at the time and for the duration specified by Xcel Energy.

Xcel Energy must notify Project Sponsor at least one (1) hour prior to the required start-time of any Curtailment by calling the Project Sponsor Contact Telephone Number. A representative of Project Sponsor must be available to personally answer calls made to the Project Sponsor Contact Telephone Number during all Summer Peak Demand Hours.

Project Sponsor may change the Project Sponsor Contact Telephone Number by providing notice to the Program Manager of the new Project Sponsor Contact Telephone Number a minimum of two business days prior to the date that the new Project Sponsor Contact Telephone Number is to become effective. In order for notice of a new Project Sponsor Contact Telephone Number to be valid, Project Sponsor must verify that the Xcel Energy Program Manager has actually received such notice by the above-mentioned deadline.

Project Sponsor represents that the project schedule, (as noted in the Project Authorization Form) and applicable compensation is based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of Xcel Energy. Xcel Energy assumes no responsibility for any understanding or representation made or alleged to have been made by any of its representatives, unless such understandings or representations are expressly and fully stated in this written Contract.

## **10.0 SAFETY AND HEALTH**

10.1 Project Sponsor shall be solely responsible for the safety and health of Project Sponsor's Personnel, its Subcontractors' Personnel, and other persons required in the execution of the Work.

10.2 Project Sponsor shall take all precautions for the safety and health of, and shall provide all protection necessary to prevent damage, injury or loss to all Personnel engaged in the Work and any other persons who may be affected thereby;

## **11.0 STANDARDS, CODES, LAWS AND REGULATIONS**

11.1 Project Sponsor shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal Governmental Authority having jurisdiction over the Work covered by this Contract.

11.2 Project's Sponsor shall indemnify Xcel Energy for loss occasioned by noncompliance with the authorities listed in Article 11.1 above, as set forth in Article 16.2. 11.3 Project Sponsor shall secure and pay for all permits, governmental fees and licenses necessary for proper execution and completion of the Work, unless otherwise specified in the Contract Documents.

## **12.0 INDEPENDENT CONTRACTOR AND SUBCONTRACTOR**

12.1 Project Sponsor agrees to perform the Work as an independent contractor and not as a subcontractor, agent or employee of Xcel Energy.

12.2 Xcel Energy shall not be responsible for all acts and omissions of its Personnel and its Subcontractors and Subcontractor's suppliers and their employees and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with Contract requirements.

12.3 There shall be no contractual relationship between Xcel Energy and any of Project Sponsor's subcontractors or suppliers, arising out of or by virtue of this Contract. Xcel Energy shall not be responsible for the payment of any sums to any subcontractor or supplier.

12.4 Project Sponsor shall include in all agreements with Vendors and Subcontractors liability limitation, suspension, termination and attorneys' fees terms at least as favorable to Xcel Energy as those set forth herein. **SHOULD PROJECT SPONSOR FAIL TO OBTAIN SUCH LIABILITY LIMITATION, TERMINATION, SUSPENSION AND ATTORNEYS' FEES RIGHTS IN VENDOR AND SUBCONTRACTOR AGREEMENTS, PROJECT SPONSOR SHALL INDEMNIFY AND HOLD XCEL ENERGY HARMLESS TO THE EXTENT THAT ANY SUBCONTRACTORS OR VENDORS ASSERT CLAIMS OR CAUSES OF ACTION FOR DAMAGES IN EXCESS OF AMOUNTS PERMITTED PURSUANT TO TERMINATION (WITH OR WITHOUT CAUSE) AND/OR SUSPENSION INCLUDING ATTORNEY'S FEES. THIS INDEMNITY PROVISION IS ADDITIONAL TO ANY INDEMNITY OWED BY PROJECT SPONSOR UNDR ARTICLE 16 (AND ITS SUBPARAGRAPHS) BELOW.**

## **13.0 ASSIGNMENT AND SUBCONTRACTING**

13.1 Neither this Contract nor the duties to be performed hereunder nor monies to become due hereunder shall be subcontracted, assigned, delegated or otherwise disposed of by Project Sponsor without prior written consent of Xcel Energy.

13.2 Neither permitted assignment of this Contract, nor shall delegation of any duties hereunder, relieve Project Sponsor of any of its obligations hereunder.

13.3 If this Contract should be permitted by Xcel Energy to be assigned by Project Sponsor, it shall be binding upon and shall inure to the benefit of the permitted assignee.

## **14.0 FORCE MAJEURE**

14.1 Performance of this Contract by each party shall be pursued with due diligence in all requirements hereof; however, neither party shall be liable for any loss or damage for delay or for nonperformance due to causes not reasonably within its control, including but not limited to, acts of civil or military authority, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, fires, or floods. In the event of any delay resulting from such causes, the time for performance of each of the parties hereto (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delays. No further modification to other terms and conditions of this Contract shall occur.

14.2 In the event of any delay or nonperformance caused by the above causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated extent of such delay, and shall indicate whether it is anticipated that any completion dates will be affected thereby

## **15.0 INSPECTION, TESTING AND ACCEPTANCE**

15.1 All Work commenced pursuant to this Contract shall be subject to inspection and verification by the Xcel Energy. Xcel Energy shall be responsible for all costs associated with such inspection and verification.

15.2 Inspection by the Xcel Energy of any Work does not relieve Project Sponsor from any responsibility regarding defects or other failures to meet the Contract requirements.

## **16.0 INDEMNITY**

**16.1 General Liability; Indemnification.** To the fullest extent permitted by law, Project Sponsor shall indemnify, defend and hold harmless Xcel Energy, and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all damages, losses, claims, obligations, demands, assessments, penalties, liabilities, costs, and expenses (including attorney fees and expenses) (“**Damages**”), arising out of or resulting from performance of the Services or this Agreement, but only to the extent that the Damages are caused by, or arise out of, the acts or omissions of Project Sponsor, any subcontractor of Project Sponsor, anyone directly or indirectly employed or retained by them,

or anyone for whose acts they may be liable. For purposes of this Agreement, “**Affiliate**” of a Party means any other person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this definition, control means the power to direct the management or policies directly or indirectly.

**16.2 Compliance with Laws.** Project Sponsor shall comply with all Applicable Laws. Project Sponsor shall indemnify, defend, and hold harmless Xcel Energy and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all Damages asserted or awarded against or incurred by such indemnities arising out of, resulting from or relating to the violation by Project Sponsor of any Applicable Laws.

**16.3 Intellectual Property Rights Infringement Indemnity.** Project Sponsor warrants that none of the Services, or the results thereof, performed by Project Sponsor, or any subcontractor, or the documents, drawings, goods or equipment produced, designed, fabricated, delivered or assembled by Project Sponsor, or any subcontractor, pursuant to this Agreement, infringe upon or violate any patent, copyright, trade secret, or any other intellectual or property rights of any third party. If any third party makes a claim or commences a proceeding against Xcel Energy or any of its Affiliates alleging such an infringement or violation, Project Sponsor shall indemnify, defend and hold harmless Xcel Energy and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all Damages asserted or awarded against or incurred by such indemnities. Xcel Energy will notify Project Sponsor if any such claim is made or proceeding is commenced. Xcel Energy may, at its option, be represented by separate legal counsel in any claim or proceeding. Project Sponsor shall reimburse Xcel Energy the costs and expenses incurred by Xcel Energy in being so represented, including reasonable attorney fees. If the use of any of the Services, or the results of such Services, or documents, goods, or equipment, or any part thereof, furnished under this Agreement is held in any such claim or proceeding to constitute an infringement and/or is enjoined, whether temporarily or permanently, Project Sponsor shall, at its sole cost and expense, either:

- (a) procure for Xcel Energy the right to use the results of such Services or such documents, goods and equipment; or
- (b) replace the results of such Services or such documents, goods, or equipment with non-infringing results, documents, goods or equipment having the equivalent functionality as the infringing or allegedly infringing results, documents, goods or equipment; or
- (c) modify the results of such Services or such documents, goods, or equipment so as to make them non-infringing, but equivalent in functionality.

**16.3.1 Best Efforts.** Project Sponsor shall use its best efforts to obtain for the benefit of Xcel Energy identical intellectual property rights indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement. The requirements of this **Section 16.3.1** are not intended to abridge, abrogate, amend, or otherwise affect Project Sponsor’s obligations under **Section 16.3 “Intellectual Property Rights Infringement Indemnity”** through the ownership of voting securities, by contract, or otherwise.

## **17.0 TERMINATION FOR CAUSE OR CONVENIENCE**

17.1 Either party shall have the right to terminate this Contract in whole or in part at any time by written Notice to the other party. Any such written Notice shall specify the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

17.2 In the event of termination by Xcel Energy as provided herein, Xcel Energy shall compensate Project Sponsor for any and all Work approved in writing. Xcel Energy shall not be required to compensate Project Sponsor for expenses connected with preparation of an Initial or Final Application, or any other cost not directly approved by in writing.

17.3 In the event of termination, those provisions of this Contract that by their nature continue beyond the Termination of this Contract shall remain in full force and effect after such termination.

17.4 The rights and remedies of Xcel Energy provided in Article 17.0 are not exclusive and are in addition to any other rights and remedies provided under this Contract, or at law, or in equity.

## **18.0 COMPLETE AGREEMENT**

This Contract is intended as the exclusive statement of the agreement between the parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Contract, and recourse shall not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to vary or contradict the express terms of this Contract. This Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by duly authorized representatives.

## ***ATTACHMENT 4: IRS W-9***

Note - Completion of IRS W-9 is required to create a vendor number for each Project Sponsor.

The full form can be obtained in PDF format from the IRS website by following [this link](#).