

**Master Service Agreement between Willdan Energy Solutions
and**

Xcel Energy - Texas Retro-Commissioning Program

This Master Services Agreement (MSA) is created as of (Month)_____ (Day)_____, (Year)_____ (the "Effective Date") by and between Willdan Energy Solutions, a California corporation ("Willdan" or "WES") and _____, a _____ corporation ("Subcontractor").

RECITALS

A. WES has entered into an agreement (the "Prime Agreement") with Southwest Public Service Company, doing business as Xcel Energy ("Xcel"), to provide program administration services for Xcel's Texas Retro-Commissioning Program (the "Program"). This Program is governed by the rules and regulations set by Public Utility Commission of Texas (PUCT).

B. Subcontractor is experienced and qualified to perform the services as generally described in Section 3 below, in accordance with the expectations of Xcel.

C. Subcontractor shall comply with all relevant terms and conditions as may be imposed by Xcel for the Program. WES shall identify such terms and conditions in the Task Orders for such projects.

D. WES wishes to enter into this Agreement with Subcontractor to perform services as described in Section 3 (Scope of Services) below.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, the parties hereto agree as follows.

1. Terms and Conditions. The terms and conditions that govern this Agreement shall be those contained or referenced herein and those referenced in the Contract Documents defined in Section 2.

2. Contract Documents. This Agreement consists of the following documents ("Contract Documents") and all exhibits and attachments thereto, each of which is hereby expressly incorporated to constitute a part of this Agreement. The documents are listed in their governing order from highest to lowest, with A, being of highest importance. In the event a conflict or inconsistency exists between the Contract Documents, such conflict or inconsistency shall be resolved in favor of the higher-ranking document. The documents shall take precedence in the following descending order. Any revisions or Change Orders shall rank higher than the documents they revise or change to the extent they conflict or are inconsistent with the original documents, and in all other circumstances they shall share the same precedence classification as the original documents they revise or change.

- A. This Agreement
- B. Exhibit A - Task Order
- C. Exhibit B - General Conditions

3. Scope of Services. All Services performed by Subcontractor under this Agreement will be defined by a project-specific, written Task Order. Task Orders shall be generally in the

form of Exhibit A attached hereto. Subcontractor shall be responsible for completing various tasks dependent on the level and type of services requested by WES and the particular project to which is assigned under the Task Order. This Agreement does not guarantee any specific amount of work. WES reserves the right to adjust the scope of services under any Task Order. In the event of such adjustments in the scope of services, Subcontractor's compensation shall be adjusted to reflect increases or decreases in the Services.

The following deliverables shall be provided by Subcontractor to WES:

- a) Project status updates as requested by WES.
- b) Project reports and savings calculations as required by the Task Orders.
- c) Invoices documenting, in detail, the services performed as well as total costs of equipment installed.

4. Compensation. Subcontractor shall be compensated, as provided in each Task Order. Such payments shall constitute Subcontractor's sole compensation for the performance of Subcontractor's services under this Agreement. Subcontractor shall be paid for such services within (30) days of receipt of payment by WES from Xcel. Subcontractor shall be paid on the basis of invoices submitted by Subcontractor to WES not more frequently than once per month and not less frequently than once per quarter for Services performed within the billing period. Invoices shall be submitted in a format and detail acceptable to WES. Failure to timely comply with the format and detail required by WES may delay both processing and payment by Xcel to WES and by WES to Subcontractor.

The acceptance by Subcontractor of final payment for services performed under a Task Order shall release WES and Xcel from all claims and liability that Subcontractor, its representatives, and assignees might otherwise have relating to the services performed under that Task Order.

Subcontractor shall keep, maintain, and preserve this Agreement at its principal office throughout the term of this Agreement and for a period of three years after completion of Subcontractor's work, full and detailed books, accounts, and records pertaining to the performance of this Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts, and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Subcontractor in the course of such performance.

5. Method of Performing the Services. Subcontractor will determine the method, details, and means of performing the Services. Notwithstanding the foregoing, Subcontractor agrees to (a) comply with the reasonable policies, procedures and practices established by WES and Xcel during the term of this Agreement, and (b) cooperate with all reasonable requests of WES regarding the performance of the Services. Subcontractor shall perform the services in an efficient and expeditious manner in accordance with the terms, conditions, and provisions of this Agreement, as required by the Task Order, and in accordance with the current professional standards expected for the performance of services of the type described in this Agreement. Subcontractor shall furnish such personnel and procure such materials, supplies, tools, equipment, and other items as may reasonably be necessary for Subcontractor to perform the Services in accordance with this Agreement and the Task Order.

6. Time of Performance. Subcontractor shall diligently perform the Services required under this Agreement and in accordance with the schedule specified by WES in the Task Order. Time is of the essence. If Subcontractor falls behind schedule, Subcontractor shall immediately notify WES of the estimated delay and shall provide a written explanation of the

delay if requested by WES. Failure to commence or complete work in a timely manner and/or diligently pursue work to completion shall be grounds for termination of this Agreement. Any waiver by WES of any required completion time on the part of Subcontractor shall not constitute a waiver of the requirement for strict compliance with respect to subsequent delays.

7. **Force Majeure.** Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion, sabotage, or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

8. **Technical Data.** For the purposes of this Section 8, the following terms shall have the following meanings:

"Contract Data" means Technical Data first produced in the performance of this Agreement, Technical Data which is specified to be delivered under this Agreement or any Task Order, and/or which is actually delivered in connection with this Agreement or any Task Order.

"Proprietary Data" shall mean Technical Data which incorporate trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data: (i) are not generally known or available from other sources without obligation concerning their confidentiality; (ii) have not been made available by the owner to others without obligation concerning its confidentiality; and (iii) are not already available to WES or Xcel without obligation concerning their confidentiality.

"Technical Data" shall mean recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

Rights in Technical Data shall be allocated as follows:

(1) WES shall have:

(i) the right to use, duplicate, or disclose Contract Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so, except as otherwise provided below with respect to Proprietary Data, and

(ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) Subcontractor shall have

(i) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the use of such data.

Subcontractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from WES or Xcel, Subcontractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of WES or Xcel, as applicable. Subcontractor acknowledges that all rights granted to WES under this Section may, in turn, be granted by WES to Xcel.

9. Infringement. Royalties and fees for patents, trademarks, copyrights, or trade secrets related to designs, materials, articles, apparatus, devices, equipment, or processes and the like ("Design(s)") used in or created pursuant to the Agreement, are included in the Agreement price. Subcontractor shall, at its own expense, hold harmless and defend WES and Xcel against any claim, suit or proceeding which is based upon any claim that manufactures, sells or uses any such Design(s), material, article, apparatus, device, equipment or process, or any part thereof, constitutes an infringement of any patent, trademark, copyright, trade secret or any other proprietary right of a Third Party, and Subcontractor shall pay all defense costs and damages and costs awarded against Xcel and WES, including attorneys' fees resulting therefrom.

If any Design(s), or any part thereof is found to constitute infringement and/or its use is enjoined, Subcontractor shall, at its own expense, subject to the following provisions, either:

- (i) procure for Xcel an irrevocable, royalty-free license to continue Xcel's use of the Design(s),
- (ii) with Xcel's prior written approval, replace the same with equal but non-infringing Design(s), or
- (iii) with Xcel's prior written approval modify the Design(s) so it becomes non-infringing, provided that no such replacement or modification shall in any way amend or relieve Subcontractor of its obligations set forth in the Agreement, including these General Conditions.

Notwithstanding any proprietary legends or claims of copyright, Xcel and WES may copy or reproduce documents and information furnished by Subcontractor and distribute such copies or reproduction to others in connection with the Project. Subcontractor is responsible for obtaining necessary permission and releases from any Third Parties and shall, at its own expense, hold harmless and defend Xcel and WES against any and all claims, suits or proceedings based upon any claim that a proprietary right or copyright has been infringed.

10. Withholding, Taxes and Benefits. Subcontractor will be responsible for withholding, accruing, and paying all income, social security and other taxes and amounts required by law. Subcontractor will also be responsible for all statutory insurance and other benefits required by law for Subcontractor and its Staff and all other benefits promised by Subcontractor to its Staff, if any. Subcontractor also agrees to submit a completed W-9 form (Request for Taxpayer Identification Number and Certification) prior to start of Services.

11. Records. For term of this Agreement and for a period of three years after completion of Subcontractor's Services, Subcontractor shall maintain at Subcontractor's principal

office a written record relating to the Services performed by Subcontractor under any Task Order, including full and detailed books, accounts, and records pertaining to Subcontractor's performance of Services, including without limitation all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Subcontractor in the course of such performance.

12. Non-Solicitation. Subcontractor and WES mutually agree that neither entity nor its officers, subcontractors, agents or employees (collectively the "parties") shall directly or indirectly, at any time during the term of this Agreement and for a period of one (1) year following the termination of this Agreement knowingly employ, retain, or solicit the employment or retention of any person who is, or was, during the term of the Agreement an employee of either entity without the prior written consent of the other party. Notwithstanding the foregoing, either party may employ the employee of the other if such person and/or if no individual solicitation was made to that employee, but the employee is responding to an advertisement made to the public.

13. Non-Compete. Subcontractor shall not directly or indirectly, whether independently or jointly with another person or entity, compete with WES for any extension, renewal or re-compete of the Xcel Program which is the subject of this Agreement.

14. Warranties and Guarantees. All services performed by Subcontractor shall be of high quality in accordance with the requirements of Xcel and WES. Subcontractor represents and warrants that Subcontractor, and its employees, have the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent, and professional manner. Subcontractor shall always faithfully, competently, and to the best of its ability, experience, and talent, perform all Services. In meeting its obligations under this Agreement, Subcontractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Subcontractor under this Agreement. Subcontractor represents and warrants to WES and Xcel that it or one of its affiliates has, and shall keep in effect, all licenses permits and approvals that are legally required to practice its profession and to provide the Services hereunder. In the event that any services, reports, or submittals provided by Subcontractor are not satisfactory, Subcontractor shall re-perform such services and/or re-prepare such submittals and/or reports, free of additional charge. Subcontractor shall reimburse WES and Xcel for any resulting costs, expenses, or damages suffered by WES and/or Xcel, including but not limited to costs of removal, reinstallation, re-procurement, and any other Third-Party costs, damages and losses incurred by WES and/or Xcel. If Subcontractor fails to timely replace any such defective Services, WES and/or Xcel may cause such defective Services to be replaced by another and the direct and indirect expense thereof shall be the responsibility of Subcontractor. WES shall be entitled to deduct this expense and the resulting damages from amounts otherwise due to Subcontractor. All Services shall be in accordance with applicable local, state, and federal laws and regulations in effect at the time the work is performed. Subcontractor further warrants and guarantees that:

(a) Subcontractor is financially and technically qualified to perform the Services.

(b) Subcontractor is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any that may in any way affect the performance of this Agreement.

(c) all equipment and workmanship furnished by Subcontractor in performance of the Services shall be free of defects in design, material, and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with applicable codes, specifications,

standards, and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted standards and best practices.

(d) neither Subcontractor nor any of its employees, agents, representatives, or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Services or any part thereof infringes any patent or otherwise interferes with any other right of any person or entity;

(e) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Services or WES's rights hereunder; and

(f) Subcontractor has no knowledge that any information or document or statement furnished by Subcontractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Services.

The rights and remedies of WES and Xcel provided in this Article 14 shall not be exclusive and shall be in addition to all other rights and remedies of WES and Xcel (i) as set forth in the General Conditions, (ii) under Applicable Law, or (iii) in an equitable proceeding. No failure on the part of Xcel or WES in the exercise of any right or remedy shall operate as a waiver of or by Xcel or WES of its right to exercise any other right or remedy.

15. Cooperation. Subcontractor shall cooperate fully and in good faith with WES and Xcel for the purpose of responding to any request for information or audit from WES, Xcel, and/or by any governmental agency or entity having jurisdiction over the Services and with their respective affiliates or representatives. Subcontractor shall respond to all reasonable data requests within three (3) business days of receipt of such data request, unless otherwise specified therein. Subcontractor shall use its best efforts to respond immediately to periodic urgent data requests when WES indicates that it has been given an urgent timeline to provide such response.

16. Audits. Subcontractor will maintain complete and accurate financial records of all charges under this Agreement, in accordance with generally accepted accounting principles. Upon entry into an appropriate confidentiality/non-disclosure agreement, Subcontractor, during normal business hours, will provide relevant billing and payment records for inspection and review by mutually agreed third party auditors or Xcel for purpose of verifying such charges during the term of this Agreement and for three years thereafter. Should such audit reveal that Subcontractor has overcharged for its services, Subcontractor shall pay for all costs of the audit. Such inspection and review will be scheduled by mutual agreement between the parties and conducted in a manner so as not to disrupt Subcontractor's business. Any payment made to Subcontractor under this Agreement shall be subject to retroactive reduction for amounts included therein which are found by Xcel on the basis of any audit of Subcontractor by an agency of the United States, State of Texas, or Xcel not to constitute an allowable charge or cost.

17. Term and Termination.

17.1. Term. This Agreement shall be effective upon execution by both parties (the "Effective Date") and shall remain in full force and effect between the Effective Date and the earlier of: (a) termination of the Prime Agreement for any reason; (b) termination by mutual written consent; (c) other termination as provided in this Article 17.

17.2 Termination. WES may terminate this Agreement with or without cause by giving Subcontractor fifteen (15) days advance notice, subject to (at the discretion of WES) the final completion of any ongoing projects pursuant to issued Task Orders. WES may upon written notice to Subcontractor immediately terminate this Agreement and/or any Task Order if WES is dissatisfied with the quality of services being performed by Subcontractor. In the event of termination, WES shall only be liable to compensate Subcontractor for services performed through the effective date of termination.

17.3 Effect of Termination and Survival. Upon the termination of this Agreement and/or any Task Orders issued under this Agreement for any reason whatsoever:

- a) all obligations of the parties hereunder shall cease subject to the completion of tasks in progress as directed by WES;
- b) upon receipt of the appropriate Invoices, WES shall pay Subcontractor all compensation due to Subcontractor within thirty (30) days of WES receiving payment from Xcel;
- c) Subcontractor shall return to WES all equipment, information, and documents, belonging to WES which Subcontractor may have in its possession. In no event shall WES be liable to Subcontractor for damages of any kind arising out of termination, whether for cause or without cause, or for any lost profit, unrecovered or increased overhead or lost opportunities to obtain other business. The obligations set forth in Sections 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 32 and 33 of this Agreement and the obligations described in Section 26 of the General Conditions shall survive termination of this Agreement.

18. Relationship of the Parties.

A. Subcontractor is an independent contractor and is not an employee, partner, or joint venturer of Xcel or WES. Subcontractor shall:

- (I) exercise its independent professional judgment in the performance of the Agreement, and
- (II) supply the manner and means of performance of the services hereunder. Subcontractor, its subcontractors, their respective employees, agents, and other representatives shall not have the right to represent or bind Xcel or WES in any manner.

B. Subcontractor and its subcontractors are directly and solely responsible for the safety of their respective agents, employees, and other representatives. Neither Xcel or WES shall in any way assume any of the duties, obligations or liabilities attributed to Subcontractor under the Agreement. Subcontractor shall immediately report via telephone and in writing to a WES representative all accidents in connection with the services that result in death, personal injury, or property damage.

C. Any and all agents, employees, and subcontractors of Subcontractor provided to perform the Services shall be the agent, employee, or subcontractor of Subcontractor. Subcontractor shall be solely responsible for the wages, salary, overtime, taxes, benefits (if any), and any and all other payments or benefits owed to an agent, employee, or subcontractor of Subcontractor for services provided under or pursuant to the agreement. No Subcontractor's

employee shall be entitled to any retirement, welfare, fringe, or other benefit provided by Xcel or WES to its employees.

D. If for any reason an investigation is conducted or a proceeding commenced by any governmental body, the purpose of which is to determine whether for any reason a Subcontractor's employee is an employee of Xcel or WES, subcontractor shall assist and cooperate with Xcel and WES, as applicable, in preparing a response to or defending against, as the case may be, any such investigation or proceeding or the appeal of any such investigation or proceeding. Subcontractor shall reimburse Xcel or WES, as applicable, for any and all reasonable costs they incur in the preparation and presentation of its response to any such investigation or proceeding.

E. If it is determined by a governmental body, that a subcontractor's employee is an employee of Xcel or WES and Xcel or WES, as applicable, elect not to appeal such determination or such determination shall not be appealable, Subcontractor shall reimburse Xcel and WES for any damages or costs or penalties of any kind, which they are ordered to pay by the governmental body. The parties further agree that if a governmental body determines that a Subcontractor's employee is an employee of Xcel or WES, such Subcontractor's employee shall be considered to be an employee only and solely to the extent set forth in the determination of the governmental body and for no other purpose.

19. Indemnification. Subcontractor shall protect, defend and hold harmless and indemnify WES, Xcel, and their respective officers, agents, employees, and affiliates (collectively the "Indemnified Parties") from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs, and expenses (including without limitation, attorney's fees and expenses) imposed upon or incurred by or asserted against the Indemnified Parties to the extent damages are caused by the acts, errors, or omissions of Subcontractor, resulting from, arising out of or relating to the performance of this Agreement. The obligations of Subcontractor under this Section shall survive any expiration or termination of this Agreement and shall not be limited by any enumeration herein or by any required insurance coverage.

20. Insurance. Without in any way limiting Subcontractor's liability pursuant to the indemnification described above, Subcontractor shall at its own expense procure and maintain, during the term of this Agreement and until acceptance of performance hereunder the following insurance coverage:

20.1. Workers' Compensation Insurance as prescribed by applicable law with limits of not less than \$1,000,000 per occurrence.

20.2 Employers' Liability Insurance including accidents (with a limit of not less than \$1,000,000 per accident) and occupational diseases (with a limit of not less than \$1,000,000 per employee).

20.3 Commercial General Liability Insurance (bodily injury and property damage), including Contractual Liability the limits of which shall not be less than \$5,000,000 per occurrence for bodily injury and \$5,000,000 per occurrence for property damage liability and shall include the following supplementary coverages:

- (a) Primary contractual liability to cover liability assumed under this Agreement;
- (b) Broad form property damage liability insurance; and
- (c) Explosion, collapse and underground hazard exclusions deleted.

20.4. Commercial Automobile Liability Insurance including bodily injury and property damage liability insurance, the limits of which shall not be less than \$2,000,000 per occurrence. Such insurance shall extend to owned, non-owned, and hired automobiles used by Subcontractor's employees, agents, or assignees in the performance of this contract.

20.5. Professional Liability Insurance with limits of which shall not be less than \$1,000,000 per claim and a \$2,000,000 annual aggregate.

The insurance policies specified above shall be endorsed to provide the following:

(a) Accept Professional Liability, Workers Compensation and Employer's Liability insurance, and name WES, Xcel, and their directors, officers, employees and agents as additional insured with respect to the services performed by Subcontractor hereunder.

(b) Be primary and noncontributing with respect to any insurance carried by WES, Xcel, and/or their agents, where liability arises out of or results from the acts or omissions of Subcontractor, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Subcontractor. Any insurance carried by WES and/or Xcel which may be applicable shall be deemed to be excess insurance and Subcontractor's insurance is primary for all purposes.

(c) Contain a waiver of subrogation in favor of WES, Xcel and their officers, agents and employees.

(d) Except for Workers' Compensation and Employers' Liability insurance, contain a severability of interest and cross-liability clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," or equivalent wording and a Contractual Liability Endorsement which shall state, "Such insurance as is afforded by the policy shall also apply to liability assumed by the insured under this Agreement".

(e) Except Workers' Compensation insurance, Subcontractor shall obtain additional endorsements naming WES, Xcel and their respective directors, officers, employees, and agents as additional insureds with respect to liabilities arising out of the performance of services under this Agreement. Subcontractor shall cause its insurers to provide Willdan and Xcel with certificates of insurance evidencing the coverages and endorsements required above.

(f) Neither WES nor Xcel shall have any liability for any premiums charged for such coverage(s). The inclusion of WES, Xcel, and their respective boards, and all of their officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and shall not, make them, or any of them a partner or joint venturer with Subcontractor in its operations.

(g) Should any portion of the required insurance be on a "claims made" policy, Subcontractor shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms, and conditions of the expiring policy, or that an extended three (3) years discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

(h) Prior to the commencement of services, Subcontractor shall provide WES with Certificates of Insurance covering all required insurance, signed by the insurer or its authorized representative, certifying that the required insurance has been obtained and will not be cancelled without at least thirty (30) days' prior written notice to WES (mail or email is acceptable)

or ten (10) days' notice if cancellation is due to nonpayment of premium. Such certificates shall at a minimum state the insurance carriers' name, the policy numbers, the project identity, that the policies have been issued and are effective, show their expiration dates. The certificate of insurance shall:

- (i) identify WES, Xcel, and their respective officers and employees are additional insureds with respect to commercial general liability insurance and commercial automobile insurance; and
- (ii) state that all rights of subrogation have been waived with respect to all insurance policies. The certificates shall bear the signature of an authorized representative of said carrier. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide WES with notice of cancellation. Upon request, Subcontractor shall furnish WES with copies of the policies specified above.
- (iii) Certificates of Insurance shall be sent to Willdan Energy Solutions, Attn: Risk Manager, 2401 E. Katella Avenue, Suite 300, Anaheim, CA 92806. Failure to comply with any of the insurance requirements set forth above shall constitute a material breach of this agreement, upon which WES may immediately terminate or suspend this Agreement. WES may withhold all payments to Subcontractor until Subcontractor has fully complied with all of the material provisions contained in this Section. WES and Subcontractor agree that the insurance policy limits specified in this Agreement may be reviewed for adequacy annually throughout the term of this Agreement by WES's Risk Manager and attorney, who may thereafter require Subcontractor to adjust the amounts and types of insurance coverage however WES's Risk Manager and/or Attorney deems to be adequate and necessary. WES reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance, including applicable license and ratings.

21. Insurance and Indemnity Required from Subcontractor's Subcontractors.

Subcontractor shall require that its subcontractors shall comply with all the insurance requirements that Subcontractor is required to satisfy. Subcontractor shall obtain from its subcontractors evidence of all the insurance coverages and endorsements as set forth above. Subcontractor shall require that its subcontractors agree to indemnify and hold harmless WES, Xcel, and their respective officers, directors, employees, and agents from all liabilities, claims and expenses, including attorney's fees, arising out of the subcontractor's negligent or other wrongful acts, errors, or omissions in the performance of services set forth within this Agreement.

22. Assignment and Subcontracting. Except as specifically provided otherwise in this Section, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of Subcontractor's rights, obligations, interests, or responsibilities hereunder, in whole or in part, without the express consent in writing of WES shall be void and of no effect as to WES. Without relieving it of, or in any way limiting, Subcontractor's obligations to WES under this Agreement, Subcontractor may enter into subcontracts for the performance of services or for the purchase of materials or equipment.

To the extent WES agrees to allow Subcontractor to subcontract any portion of the Services, Subcontractor shall ensure that all subcontractors are bound by the terms of the Agreement, including these General Conditions, in written form, executed by Subcontractor and its subcontractor. Xcel and WES shall be and are intended third party beneficiary of any such subcontractor agreement. Any delegation of the Services through subcontracting shall not relieve Subcontractor of its responsibilities under this Agreement nor result in extra cost or liability to WES. All subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier.

23. Integrated Contract. This Agreement, together with the General Conditions and any issued Task Orders, shall constitute the complete and exclusive statement of the Agreement between the parties, and shall supersede any oral or written communications or representations relating hereto.

24. Amendments. This Agreement, together with issued Task Order, contains the entire understanding of the parties with respect to the subject matter hereof. No modification or waiver of this Agreement shall be binding unless it is made in writing and signed by the parties hereto. The waiver by either party of any breach by the other party of any of its obligations hereunder or the failure of such party to exercise any of its rights in respect of such breach shall not be deemed to be a waiver of any subsequent breach. Notwithstanding the forgoing, Subcontractor acknowledges that in the contract between Xcel and WES, Xcel reserves the right at any time to make changes in the services to be performed or in any specifications and data incorporated in the contract; accordingly, WES reserves the right to incorporate such changes into this Agreement and Task Orders due to such Xcel changes. This Agreement shall be deemed amended to the extent that Xcel's changes relate to the services to be provided by Subcontractor pursuant to this Agreement. If any such changes cause an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the contract price or schedule, or both.

25. Survival of Provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision or requirement will be enforced only to the extent that it is not in violation of such law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect.

26. Alternative Dispute Resolution. Any controversy between WES and Subcontractor and/or its Staff arising out of or relating to this Agreement, shall be settled, as follows: The parties shall meet within fifteen (15) days to discuss any dispute that may arise. If such dispute is not resolved, the parties shall within thirty (30) days submit the dispute to mediation with the American Arbitration Association. If the dispute is not resolved by mediation, the dispute shall be settled by arbitration in accordance with the then-current commercial arbitration rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be rendered by any court having jurisdiction thereof. WES and Subcontractor shall share the costs of the arbitrator equally but shall each bear their own costs and legal fees associated with the arbitration.

27. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The parties agree that each and every provision of law required by the laws of the State of Texas to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either WES or Subcontractor, promptly be amended so as to comply strictly with the laws of the State of Texas

with respect to the inclusions in this Agreement of all such provisions. Jurisdiction and venue of any arbitration or action shall be conducted in Amarillo, Texas.

28. Notice. Any notice or other communication under this Agreement shall be considered given when delivered personally or delivered by express courier service (such as Federal Express Courier) to the parties at their respective addresses set forth below (or at such other address as a party may specify by notice made pursuant to the terms of this Section. Primary contact personnel for the Program are as stated below:

WILLDAN ENERGY SOLUTIONS	_____
_____	_____
_____	_____
_____	_____
Attn: _____	Attn: _____

29. Regulatory Requirements. Subcontractor shall ensure that all work performed meets all applicable regulatory codes and standards for energy efficiency and are installed pursuant to Local, State, and Federal laws governing such activity.

30. Sub-Subcontractor Standards. Subcontractor may not use sub-subcontractors to perform work without the written approval of WES and such approval shall not be unreasonably withheld. Approved sub-subcontractors shall comply with the quality standards, training, licensing, and quality assurance procedures as Subcontractor. Subcontractor shall have full responsibility for such compliance.

31. Inspection by WES. Both Xcel and WES reserve the right to randomly inspect completed work at any point during the program implementation. If there are any problems or deficiencies disclosed by these reviews of Subcontractor's work, Subcontractor shall perform corrective actions. Subcontractor acknowledges that Subcontractor is solely responsible for the quality of its work and that any reviews or inspections by Xcel and/or WES shall not relieve Subcontractor from such sole responsibility.

32. Maintenance and Ownership of Documents. All reports, plan specifications, field data, field notes, laboratory test data, calculations, estimates, and other similar documents, and drafts thereof, regardless of media, shall be provided to WES as they are produced, with the sole and exclusive intent that WES shall own them, and WES may in turn provide such materials to Xcel as determined by WES.

- 33. Confidential Information.** The receiving party agrees and acknowledges:
- (i) that Confidential Information (as hereinafter defined) of the disclosing party is valuable, special, and unique to its business.
 - (ii) that such business depends on the Confidential Information.
 - (iii) that if such Confidential Information was known to third parties substantial damage to the disclosing party's business would likely occur.
 - (iv) that the disclosing party is relying on the receiving party's representation that the receiving party will not disclose any such information to third parties nor use such information in order to compete with the disclosing party as a material consideration in making such disclosures.

- (v) and that the disclosing party wishes to protect such Confidential Information by keeping it confidential for its own use and benefit. Accordingly, the receiving party agrees to receive the Confidential Information subject to the obligations set forth in this Agreement.

Confidential Information means, without limitation, any and all information developed for or by the disclosing party and used in its business which is not readily available in the industry in which each party is or becomes engaged. Confidential Information shall include all oral or written data, reports, records, employee data, or other material obtained from the disclosing party. Confidential Information includes, but is not limited to, any and all information developed by or for the disclosing party concerning the terms and conditions of and methods of administering contracts, concerning the acquisition, utilization, and disposition of computer software, data, technology, inventory control techniques, products, processors, machinery, equipment, unpatented designs, formulae, know-how, marketing, and sales solutions, plans and methods, business forms and procedures, suppliers, buying agents, agents and customers, plans for development of new products and services and expansion into new areas or markets, financial information and information regarding internal operations, and any trade secrets and proprietary information of any type owned by each party or provided to each by a third party, together with all written, graphic and other materials relating to all or any part of the same. Confidential Information does not include any information which is, or becomes, generally available to the public or which is already in your possession. Confidential Information is being furnished in connection with this Agreement and such information be treated as “secret” and/or “confidential” and no portion of it shall be disclosed to others, except to those of each party’s employees and agents whose knowledge of the information is required for the receiving party to perform its duties under this Agreement. Unless it is otherwise agreed in writing, or disclosure is required by law, the receiving party shall not disclose or reveal any Confidential Information to any persons or entities other than to its own employees or your representatives, who shall be advised of this agreement, and shall be actively and directly participating in pursuing the Program. It is expressly understood that neither party will use or permit the use of any of this information to compete with the other party. Both parties agree that any Confidential Information exchanged does not grant or license any trademark, copyright, or Patent owned or used by the disclosing party.

34. Use of Name; Press Releases. Subcontractor and its subcontractors shall not use the name, seal, logo, and/or web page components, or any variation or abbreviation thereof, of Willdan Group, Inc., Willdan Energy Solutions, Xcel, or of any of their respective subsidiaries, parent companies or affiliates without the prior written consent of WES. Such consent shall be obtained for each individual use of the name, seal, logo and/or web page component in any advertisement, press release, or publicity with reference to this Agreement, the Program or any product or service resulting from this Agreement. Subcontractor and its subcontractors shall not prepare photographs, articles, or speeches about the existence of, scope of, or services to be performed under this Agreement without WES’s prior written consent. Applications for approval must be submitted to WES in writing and detail the intended uses thereof. Notwithstanding the foregoing, Subcontractor may distribute a copy of this Agreement to any subsidiary, affiliate, agent, or subcontractor for purposes of performance hereunder.

35. General Conditions. Subcontractor shall comply with the General Conditions, a copy of which is attached hereto as Exhibit B.

IN WITNESS WHEREOF, this Agreement is executed by both parties effective on the date first above written.

Willdan Energy Solutions

("Subcontractor")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A to Master Service Agreement

TASK ORDER NO. _____

Xcel Energy - Texas Retro-Commissioning Program

This Task Order dated _____ is an addendum to the Master Service Agreement (the "Agreement") between Willdan Energy Solutions ("WES) and _____ ("Subcontractor"), dated (Month) _____ (Day) _____, (Year) _____.

In consideration of the premises and of the mutual covenants and agreements hereinafter contained and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WES and Subcontractor do hereby covenant and agree as follows:

1. Incorporation of Agreement. All of the terms, conditions and provisions of the Agreement are incorporated herein by this reference and shall be fully applicable hereto.

2. Project Identification. Subcontractor shall perform services relating to _____
_____.

3. Scope of Services. Subcontractor shall perform the following services:

See Exhibit A to this Task Order- "SCOPE OF SERVICES"

4. Compensation. Subcontractor shall be compensated for such Services, as follows:

See Exhibit B to the Task Order -"PRICING"

5. Schedule of Performance. The Services shall be performed in accordance with the following schedule:

See Exhibit C to this Task Order -"SCHEDULE"

6. Additional Provisions. In addition to the terms, conditions and provisions contained in the Agreement, Subcontractor shall comply with the following additional provisions.

See Exhibit D to this Task Order - "ADDITIONAL PROVISIONS"

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Project Agreement as of the last date set next to the signatures appearing below.

Willdan Energy Solutions
By: _____
Name: _____
Title: _____

("Subcontractor")
By: _____
Name: _____
Title: _____

EXHIBIT A to Task Order _____
SCOPE OF SERVICES

EXHIBIT B to Task Order _____
PRICING

EXHIBIT C to Task Order _____
SCHEDULE

EXHIBIT D to Task Order _____
ADDITIONAL PROVISIONS

EXHIBIT B to Master Service Agreement

GENERAL CONDITIONS

Definitions.

Capitalized words, phrases and other expressions used herein that are not otherwise defined are defined in the Agreement. The capitalized words, phrases or other expressions used herein shall have the following meanings:

"Affiliate" shall mean with respect to any Person, any Person which, now or in the future, directly or indirectly, controls or is controlled by that Person or is under common control with that Person. For the purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, will mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall mean the Master Services Agreement between WES and Subcontractor.

"Applicable Law" or **"Applicable Laws"** shall mean any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, statutes, treaties, rules, codes, standards, licenses, certificates, franchises, permits, requirements and injunctions that (i) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body or industry agency or board, and (ii) are applicable to the Services.

"Change Order" shall mean a document issued by WES to Subcontractor to amend the Agreement and/or the Task Order.

"Company" shall mean WES.

"Confidential Information" shall mean information which is disclosed or shared by one Party to the other Party or generated or developed by one or both Parties and which a prudent person would expect not to be made available to Third Parties without restriction or payment, including, but not limited to, (i) any information marked confidential, restricted, or proprietary by the owning Party, and (ii) strategic plans, practices, data, marketing research, reports and activities, operations techniques, Personal Data and CIP Information.

"Critical Infrastructure Protection Information" or **"CIP Information"** shall mean all information concerning Xcel's critical netServices infrastructure which has been identified by Xcel as "CIP Information" or "Critical Infrastructure Protection Information" by written designation or verbal designation followed by written confirmation. For purposes of this definition, any information obtained by Subcontractor through the CIP portal in the Xcel's ProjectWise system shall be considered CIP Information.

"Data Laws" shall mean all privacy laws, encryption laws and other laws as may be applicable to the use, unauthorized access, confidentiality, and security of any Personal Data subject to the agreement, and procedures relating to the foregoing, including the international transfer of Personal Data.

"Data Security Policies and Procedures" shall mean those of Xcel's data security and data breach policies and procedures.

"Design(s)" shall have the meaning set forth in these General Conditions.

"Documents" shall have the meaning set forth in these General Conditions.

"Drawings" shall mean all (i) Drawings or supplementary Drawings furnished as a basis for soliciting proposals, (ii) Drawings submitted by Subcontractor with its proposal which are included in the Agreement, (iii) Drawings furnished to Subcontractor during the progress of the Services, and (iv) engineering data and Drawings submitted by Subcontractor

during the progress of the Services, provided such Drawings are acceptable to WES and Xcel.

"Final Acceptance" shall occur when both WES and Xcel have made their reasonable commercial determinations that all Services are complete in accordance with the requirements of the Prime Agreement and the Agreement, including these General Conditions.

"Force Majeure" shall have the meaning set forth in these General Conditions.

"General Conditions" shall mean this document and the terms and conditions contained or referred to herein.

"Goods" shall mean the personal property to be supplied under the Agreement, including but not limited to parts, Drawings, Services Product, items of merchandise, supplies, raw materials, fabricated or processed materials, components, intermediate assemblies, ancillary systems, tools, finished products and equipment.

"Governmental Body" shall mean any:

nation, state, county, city, town, village, district or other jurisdiction of any nature;

federal, state, local, municipal, foreign or other government; or

governmental or quasi governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court), in any such case exercising, or entitled to exercise, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature over the Agreement, the performance of the Services or the Parties.

"Other Damages" shall have the meaning set forth in these General Conditions.

"Party" or **"Parties"** shall mean WES and Subcontractor.

"Person" shall mean an individual, partnership, corporation, business trust, limited liability company, unincorporated association, trust, joint venture or any other entity or governmental authority.

"Personal Data" shall mean any information that specifically identifies any consumer, customer or employee of Xcel, WES, or their Affiliates or living or dead individual person, including any personally-identifiable information or any information that could be associated with such individual, such as drivers' license numbers, account numbers and addresses.

"Personnel" shall mean any individual or company a Party employs or has employed as a partner, employee, subcontractor or independent contractor and with which a Party comes into direct contact in the course of the Services.

"Prime Agreement" shall mean the agreement between Xcel and WES pertaining to the Texas Pilot Retro-Commissioning Program

"Project" shall mean the entirety, or a portion of, the Services being provided by Subcontractor and its subcontractors under the Agreement or Task Orders.

"Protected Health Information" shall mean any information that identifies or could reasonably be used to identify an individual in combination with information created, used, or disclosed in the course of a medical plan that relates to that individual's past, present, or future physical or mental health, health care or health care payments. For the avoidance of doubt, Protected Health Information does not include employment records or education records.

"Task Order" shall mean the specific authorizing document, including all documents attached thereto or referenced therein. Each Task Order shall identify the Goods and services, the price for such Goods and services, and state the location of where services are to be provided or the Goods are to be delivered.

"Requirements" shall have the meaning set forth in these General Conditions.

"Sanctions" shall have the meaning set forth in these General Conditions.

"Security Breach" shall mean (i) any actual or reasonably suspected unauthorized or accidental, access, use, loss, or disclosure of any Personal Data or Confidential Information which compromises the integrity and confidential nature of the Personal Data or Confidential Information; (ii) a breach of Subcontractor's security or information systems that could reasonably be expected to expose any Personal Data or Confidential Information to such unauthorized or accidental access or use, or (iii) a breach by Subcontractor of the Data Security Policies and Procedures and/or its obligations under the Sections relating to Data Security and Security Breach.

"Site" shall mean the location(s) where the Services are performed or goods are delivered pursuant to the Agreement.

"Subcontractor" shall mean the "Subcontractor" as set forth in the Agreement.

"Taxes" shall mean taxes assessments levies duties fees charges and withholdings of any kind whatsoever and any interest penalties fines or other additions to such amounts. The term "Taxes" includes without limitation, sales, use, property, excise, net income, gross receipts and value added taxes.

"Third Party" and **"Third Parties"** shall mean one or more Persons other than WES and Subcontractor, and their respective Affiliates.

"Services" shall mean all labor, services or activities to be furnished or performed, or Goods to be supplied, pursuant to the Agreement as the same may be supplemented or modified from time to time, and any other services which Subcontractor has agreed to provide and/or provides from time to time hereunder. This includes, but is not limited to, equipment, machinery, supplies, Goods, Design(s), technical information, technical consulting or other services (including but not limited to engineering services, design services, analytical services, consulting services, quality assurance, project management, transportation, expediting and delivery information and services, or any other specialized services), and related Services.

"Work-Made-For-Hire" shall have the meaning set forth in these General Conditions.

"Schedule" shall have the meaning set forth in these General Conditions.

"WES" shall mean Willdan Energy Solutions.

"Xcel" shall mean Southwest Public Service Company, doing business as Xcel Energy

The Parties further agree:

whenever the words "as ordered," "as directed," "as required," "as permitted," "as allowed" or similar words or phrases are used in the Agreement, they shall mean that the order, direction, requirement, permission or allowance of WES is intended only to the extent of compliance with the terms of the Agreement;

the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory" or similar words, unless otherwise particularly specified in the Agreement, shall mean approved, suitable, acceptable, proper or satisfactory in the reasonable judgment of Xcel or WES, as applicable; and

whenever the expression "it is understood and agreed" or a similar expression is used in the Agreement, such expression shall mean the mutual agreement of the Parties.

Section 1.01 APPLICABLE LAW.

Subcontractor and its employees, agents and representatives shall at all times perform the Services in a safe and professional manner and comply with Applicable Laws and other legal requirements, as such are amended from time to time. Subcontractor shall be responsible for the acts and omissions of its subcontractors in connection with the Agreement.

Subcontractor acknowledges that the Services and activities related to the Services to be provided by Subcontractor hereunder and the disclosure of Documents and/or other information (in tangible or intangible form) to Subcontractor is subject to export controls under the laws and regulations of the United States, including but not limited to the Export Administration Regulations, 15 C.F.R. Parts 730-774. Subcontractor will comply

strictly with all such United States export control laws and regulations, and Xcel's then current corporate policies and procedures related thereto, and will not (or permit any person to) export, re-export, transfer, divert or disclose to any destination or person (including any officer, director, employee, contractor or agent of Subcontractor) restricted or prohibited under U.S. export controls, except in accordance with all applicable U.S. export controls and regulations: (i) the Services or any direct product thereof; or (ii) any Documents and/or other information (in tangible or intangible form) obtained from Xcel or WES. Upon Xcel's or WES's reasonable request, Subcontractor will provide Xcel or WES, as directed, with all Export Classification Control Numbers applicable to the Services. Subcontractor will also strictly comply with the Foreign Corrupt Practices Act of the U.S. and Xcel's then current policies and procedures related thereto.

Subcontractor and its subcontractors will conduct all Services under the Agreement in an economically, socially and environmentally responsible manner. Subcontractor and its Subcontractors further agree to ensure that their employees, agents and representatives perform the Services in accordance with Xcel's Code of Conduct, as revised from time-to-time, which is available upon request.

Reference in these General Conditions, the Agreement, or any exhibit or Task Order, to the standards of any technical society, organization or association, or to any national, state or local codes or standards (including those of any Governmental Body), shall mean the latest standard or code adopted, as amended from time to time, unless specifically stated otherwise.

Subcontractor warrants that neither it nor any of its subcontractors have transferred, nor will it or they, transfer anything of value to any employee, agent or other representative of Xcel or WES, where such was or is made with the intent and/or understanding of obtaining favorable treatment with respect to the Agreement and/or the Services.

Subcontractor shall promptly notify WES if (i) Subcontractor is served with notice of violation of any Applicable Law, or is engaged in a settlement agreement, permit, or license relating to its Services hereunder, (ii) of near misses or injury occurring during the course of performing its obligations under the Agreement, (iii) proceedings are commenced to revoke any certifications, permits or licenses which relate to such Services, (iv) certifications, permits, licenses, or other authorizations by a Governmental Body relating to such Services are revoked, (v) litigation is commenced against Subcontractor which could affect such Services, or (vi) Subcontractor becomes aware that its equipment or facilities related to such Services are not in compliance with Applicable Laws ("Sanctions"). Subcontractor shall provide copies of any documents evidencing such Sanctions. Subcontractor will keep WES informed on a regular basis of the progress made and resolution of such Sanctions, whether resulting in a requirement by Subcontractor or its Subcontractors to pay fines, modify operations, or comply with said Sanctions in any other manner.

- If Xcel or WES determine that Subcontractor is failing to comply with any Applicable Laws and other legal requirements under the Agreement, or observes unsafe work practices and/or conditions on the part of Subcontractor or Subcontractors' employees or agents, WES may (i) advise Subcontractor of such and direct Subcontractor to stop the Services, and (ii) Subcontractor shall cause all such Services to stop. Subcontractor shall bear all additional costs including those that affect the Services Schedule which may result from Services stopped in accordance with this section. In the event that such Services stoppage is ultimately deemed by Xcel or WES, as the case may be, to have been unnecessary, Xcel or WES, as the case may be, shall afford Subcontractor a reasonable extension in the Services Schedule for completion of the Services.

The specifications, codes and standards referenced in the Agreement (including addenda, and amendments) shall govern in all cases where references thereto are made. In case of conflict between the referenced specifications, codes, or standards and the Agreement, the most stringent requirements shall apply to the extent of such differences except in the case where the Agreement acknowledges an exception to a referenced specification, code, or standard. In all but the latter case, Subcontractor shall notify WES of conflicts between referenced specification codes, or standards and the Agreement.

Section 1.02 SECURITY.

Xcel requires security screening of all Personnel of Subcontractor and/or its Subcontractors in security sensitive positions. Security sensitive positions include those that require or involve unescorted or unsupervised access to Xcel computer systems, facilities, equipment, material, customer property or issuance of an access card or keys to Xcel facilities or as required by regulation. Subcontractor shall comply with Xcel's requirements.

Xcel's security clearance process for Subcontractor and/or Subcontractor Personnel may include but is not limited to a criminal history check, Social Security number verification and drug testing. Subcontractor shall comply with Xcel's requirements.

Detailed results of the background screening will only be discussed with the individual screened. Subcontractor will be notified only that the individual has been granted or denied a security clearance. Those denied a security clearance may not Services in a security sensitive position at Xcel.

Section 1.03 OWNERSHIP OF SERVICES DOCUMENTS.

All Drawings, Designs, plans, specifications, calculations, reports and other documents ("Documents") whether in hard copy or electronic media, prepared pursuant to the Agreement shall become the sole and exclusive property of WES and title thereto shall pass to the WES upon transmittal to WES. Subcontractor acknowledges that WES shall, in turn, transfer possession and title to Xcel. It is agreed that this is a Work-Made-for-Hire agreement. For the purpose of these General Conditions, "Work-Made-for-Hire" shall mean any Document or other Drawings prepared by Subcontractor within the scope of the Agreement. Rights to Subcontractors intellectual property if any, developed, utilized or modified in the performance of the Services shall remain the property of Subcontractor, but is hereby irrevocably and perpetually licensed to Xcel on a royalty-free basis.

WES reserves the right to reproduce, modify and use in any manner, any and all Documents. Nothing contained in this Article shall be construed as limiting or depriving Subcontractor of its right to use its basic knowledge and skill to design or carry out other projects or Services for itself or others, whether or not such projects are similar to the Services to be performed under the Agreement. Any reuse of the Documents or Drawings by WES without prior written verification or adaptation by Subcontractor for the specific purpose intended will be at without liability or legal exposure to Subcontractor.

Subcontractor shall, and shall cause its employees, agents, representatives and Subcontractors to execute and deliver any and all forms and instruments necessary or desirable to transfer the Documents such that WES shall have of record all of its interests, title and ownership in and to the Documents, free and clear of all Third Party encumbrances and interests and thereby pass title to Xcel, as required in the Prime Agreement.

Subcontractor agrees that it and its employees, agents, representatives and Subcontractors, Subcontractor shall promptly communicate and disclose to WES all computer programs, documentation, software and other copyrightable works, discoveries, improvements and inventions conceived, reduced to practice, written or made by Subcontractor or by its employees, agents, representatives and Subcontractors, whether solely or jointly with others, during the term of the Agreement and for one (1) year thereafter, as a result of performing services to the extent that such: (i) relate to Xcel's business products or are applicable to or useful therewith, or (ii) relate to Xcel's processes or procedures, or (iii) result from or relate to any services Subcontractor or its employees, agents, representatives and Subcontractors performs or performed.

Section 1.04 CERTIFICATION OF DOCUMENTS.

Any and all Documents and Contract Documents shall be certified by Subcontractor if required by Applicable Law. In furtherance of the foregoing, all Designs and construction Drawings, specifications, reports and related design or construction documents or any other Contract Documents shall, if required by federal or state law or regulation, be certified by a registered professional engineer licensed to practice within the state of applicable jurisdiction.

Section 1.05 SUBCONTRACTOR'S RESPONSIBILITIES.

Subcontractor shall give all notices related to the Services to applicable Governmental Bodies and obtain and pay for all licenses, permits and inspections that Subcontractor is legally required to obtain for the performance of the Services. Xcel and WES shall have the right to inspect and obtain copies of all written licenses, permits or approvals, issued by any Governmental Body to Subcontractor or its subcontractors that are applicable to the performance of the Agreement.

In the event that Subcontractor performs services on or at the Site, Subcontractor shall comply with all applicable provisions of Xcel's plant, Project, facility or Site policies and procedures, including but not limited to any instructions and procedures pertaining to plant or facility Site security, industrial safety, environmental directives, work authorization, equipment control and hazardous materials. In addition, Subcontractor, its employees and subcontractors shall comply with and enforce, among Subcontractor's employees and subcontractors, plant or facility Site conditions and job Services rules which affect the performance of the Services, including but not limited to Services hours, smoking regulations, check-in and check-out procedures, job Site safety and security regulations, and emergency plans and procedures. Completion of Contractor Safety Program documentation is at Subcontractor's cost. In addition to these obligations, any special conditions or restrictions, required by Xcel under its Contractor Safety Program as part of Xcel's supplier qualification process or to qualify Subcontractor to do the Services, shall be given in writing to Subcontractor and are hereby expressly incorporated into the Agreement and made a part hereof. If Subcontractor performs services on or at the Site, Subcontractor shall be deemed the "controlling employer" for its Personnel and for its Subcontractors, for the purposes of the Federal Occupational Safety and Health Act (OSHA) and its implementing regulations.

Subcontractor shall comply with the quality management requirements contained in the Quality Management Special Conditions, if such Special Conditions are included.

Delivery of Goods shall be completed by Subcontractor in compliance with the terms of the Agreement, or, if unspecified, Subcontractor shall deliver Goods to the Site. Subcontractor shall be responsible for and shall bear any and all risk of loss or damage to the Services in progress and to all Goods delivered to the Site until Final Acceptance. Subcontractor shall also at all times conduct the Services in a manner to avoid risk of loss, theft or damage by vandalism, sabotage or other means to property and the Project.

Subcontractor shall remove or cause to be removed from any Site, any Person employed or engaged by Subcontractor or any of its subcontractors deemed by Xcel or WES to be unfit. WES shall notify Subcontractor of any such demand and Subcontractor shall promptly provide another Person to perform the Services.

Subcontractor will furnish licensed Personnel to perform engineering, design, architectural or other services as specifically required in the proper performance of the Services.

Section 1.06 SCHEDULING.

Subcontractor agrees that time is of the essence with respect to its obligations to perform the Services.

Subcontractor shall strictly adhere to the Services Schedule. WES reserves the right to direct Subcontractor to reschedule the order and rate of progress of performance of the Services as may be required by Xcel.

If requested by WES or Xcel, Subcontractor shall promptly submit regular progress data as to the Services and participate in schedule update meetings.

If at any time during the performance of the Services Subcontractor's progress does not keep pace with the requirements of the Schedule, WES may order Subcontractor to take steps to improve its progress without additional cost to WES. Failure of Subcontractor to comply with such notice may be grounds for determination that Subcontractor is not pursuing the Services with such diligence as shall ensure completion within the times specified. Upon such determination, Subcontractor may be terminated for default.

Subcontractor shall make available to WES and Xcel any and all data and reports, related to performance of the Services. WES's review of any such data shall in no way relieve Subcontractor of its responsibility for the professional quality, technical accuracy and completeness of such data.

Should the actions of Xcel or WES cause a significant delay of the Services, Subcontractor shall notify WES in writing within five (5) business days from the beginning of such delay. If WES and Subcontractor determine, with Xcel's concurrence, that the facts justify an extension of time and/or additional compensation and no remaining float time exists in the Services Schedule, the Agreement will be modified in writing as appropriate. WES may, in its sole discretion and in lieu of granting an extension of time, require Subcontractor to regain the Services Schedule.

:With respect to events of Force Majeure

WES and Subcontractor shall be excused from performing in accordance with the Services Schedule in the event of an occurrence of "Force Majeure." Force Majeure, is defined as fire, floods, earthquake, tornado, explosion, catastrophe, accident, war or war-like operations (whether or not a state of war is declared), riot, Acts of God, acts of terrorism, insurrection, order of a Governmental Body and Applicable Laws that prevent performance, to the extent (i) such event of Force Majeure is beyond the reasonable control of the Party claiming Force Majeure, and (ii) the Party claiming Force Majeure gives prompt written notice of the same to the other Party.

In the event of any such delay, Subcontractor's sole remedy shall be a time extension for the completion dates required by the Services Schedule, which extension shall be the time period lost by reason of the Force Majeure.

Section 1.07 FAMILIARITY WITH THE SERVICES.

By executing the Agreement, Subcontractor represents that it understands the scope of the Services under which the Agreement is to be performed and has correlated its understanding with the requirements of the Services and the Services Schedule.

No pleas of ignorance of conditions that exist or hereafter may exist, or of conditions or difficulties that may be encountered in the execution of the Services will be accepted as an excuse for failure or omission on the part of Subcontractor to fulfill in every detail all requirements of the Agreement, nor will they be a basis for any claim whatsoever for extra compensation or time.

Section 1.08 RESPONSIBILITY AS TO OTHER CONTRACTORS.

Subcontractor shall properly coordinate with other contractors, subcontractors and suppliers on the Project to ensure that each such other contractor or subcontractors may carry out their respective assignments within the Project. Any costs to other contractors caused by defective or ill-timed performance of Services by Subcontractor shall be borne by Subcontractor.

If any part of Subcontractor's performance of the Services depends upon the work of any other contractors or Xcel, Subcontractor shall promptly report to WES in writing any discrepancies or defects in such other work. Failure of Subcontractor to report in writing any discrepancies or defects it may discover shall result in Subcontractor bearing all costs incurred in rendering such other work suitable.

Section 1.09 INSPECTION.

The Services and all portions thereof shall be subject to inspection by Xcel, WES, or their designees at all times. Any such inspection shall not relieve Subcontractor of the responsibility to strictly comply with its performance requirements and other obligations under the Agreement, it being understood that any such inspection shall in no way (i) be construed as constituting or implying either a waiver or acceptance of the Services, or (ii) affect any of WES's rights or remedies under the Agreement.

Section 1.10 USE OF COMPLETED SEGMENTS OF SERVICES.

Whenever any segment of the Services performed by Subcontractor is in a stage suitable for utilization, WES or Xcel may at its sole option take possession of or use such segment. Such use shall in no case be construed as constituting Final Acceptance, and shall not relieve Subcontractor of any of its responsibilities under the Agreement.

Section 1.11 SERVICES CHANGES.

WES, without invalidating the Agreement, may at any time make changes to or deviations from the scope of the Services with a Change Order issued by an authorized representative of WES to Subcontractor.

If Subcontractor claims that the Change Order causes an increase or decrease in the cost of or the time required for performance of the Services, Subcontractor shall give WES written notice of such increase or decrease within five (5) days following the receipt of such a request. Subcontractor shall also provide sufficient documentation to justify the increase or decrease in the cost of or the time required for performance of the Services. Subcontractor's failure to comply with this Section shall constitute Subcontractor's agreement to perform any such Change Order in accordance with the price and schedule specified in the original order and/or subsequent revisions thereto.

Any proposed cost or price changes may be approved only in writing by the WES and shall be subject the further approval of Xcel's authorized Sourcing Representative. Any cost or price change without such written approval will have no effect.

If accepted in writing by an authorized WES representative with Xcel's approval, an equitable adjustment may be made in the price or delivery schedule, or both, and the Change Order shall be deemed to modify the Agreement.

Section 1.12 SUSPENSION OF SERVICES.

WES or Xcel may, by written notice to Subcontractor, suspend at any time the performance of all or any portion of the Services. During the period of suspension, Subcontractor shall use its best efforts to use its plant, labor and equipment in such a manner as to minimize costs associated with suspension.

Upon receipt of any such written notice, Subcontractor shall, unless such notice requires otherwise:

Immediately discontinue the Services on the date and to the extent specified in the notice;

Place no further orders or subcontracts with respect to suspended Services other than to the extent required in the notice;

Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Xcel or WES, as the case may be, of all orders, subcontracts, rental agreements and the like to the extent they relate to performance of the Services suspended; and

Promptly make every reasonable effort upon terms satisfactory to WES to protect or maintain the Services.

All costs to be reimbursed must be requested within thirty (30) days following termination of the suspension. Any such costs shall be documented and evidenced by all supporting documentation requested by WES and shall be subject to the audit rights set forth in these General Conditions.

Upon receipt of notice to resume suspended Services, Subcontractor shall immediately resume performance of the suspended Services to the extent required in the notice. Subcontractor waives any claim it may have for additional time or extra compensation because of any suspension of the Services unless such claim along with a revised Services Schedule (with respect to the Services suspended) is presented to WES in writing within ten (10) calendar days after Subcontractor's receipt of notice to resume the Services. No compensation or extension of time shall be granted if the suspension results from Subcontractor's noncompliance with the requirements of the Agreement or from any cause other than WES's or Xcel's suspension order pursuant to this Article.

Section 1.13 FINAL ACCEPTANCE.

Subcontractor shall notify WES in writing when it believes the conditions of Final Acceptance are deemed achieved by Subcontractor. WES shall be deemed to have determined its Final Acceptance of the Services if Xcel pays WES such Services.

WES reserves the right to return standard, unused Goods to Subcontractor without charge to WES if such Goods are returned by Xcel. Subcontractor shall promptly issue a Return Material Authorization. In such event, Subcontractor shall at WES's option, issue either (a) a monetary credit, or (b) a check to WES within thirty (30) days of Subcontractor's receipt of the returned Goods.

Section 1.14 RIGHT TO AUDIT.

Subcontractor shall maintain accurate and satisfactory records and books of account in accordance with sound accounting principles to evidence compliance with the Agreement. Subcontractor's records and books shall present all costs and expenses utilized either directly or indirectly in computing any charges to WES. Upon ten (10) days prior written notice, Subcontractor shall provide WES and its representative(s) access to Subcontractor's records and books (including but not limited to Subcontractor's electronic data files), for verification of Subcontractor's compliance with the Agreement. Subcontractor shall secure for WES the same rights with respect to the records and books of its subcontractors (including but not limited to electronic data files of its subcontractors). The records and books of account for Subcontractor in either electronic or paper format as kept by Subcontractor in its ordinary course of business, shall be made available upon request during the term of the Agreement, and for a period of thirty-six (36) months after the completion of all Services under the Agreement (or any longer period required by Applicable Laws).

Section 1.15 TAXES

Subcontractor shall be solely responsible for the administration and payment of: a) all Taxes imposed by Applicable Laws on Subcontractor's use, consumption, or storage of tangible personal property or services in its performance of the Services; b) all payroll, employment, unemployment, withholding and other employment-related Taxes applicable to Subcontractor or Subcontractor's employees; c) all federal, state, and local government Taxes which may be assessed on Subcontractor's net income; d) all engineering, occupational, and business license Taxes assessable against Subcontractor; e) all property taxes assessed on real or personal property owned by Subcontractor; and f) all other Taxes of any kind customarily borne by Subcontractor or Subcontractors performing Services similar to Subcontractor's Services. In addition, Subcontractor agrees to reimburse WES for any Taxes described in this Section that are paid by WES, if such Taxes are imposed by Applicable, but are unpaid by, Subcontractor.

Section 1.16 CONFIDENTIAL INFORMATION.

The Parties shall maintain the confidentiality of all information secured from the other Party and from Xcel in connection with the Agreement. Such Confidential Information shall not be divulged to any Third Party and shall not otherwise be exploited commercially by the non-disclosing Party, except with prior written consent of the disclosing Party or as compelled by Applicable Law. If either Party is or could be legally compelled to make disclosure of Confidential Information, the non-disclosing Party will notify the disclosing Party prior to making such disclosure and take all available steps to limit the effects of such disclosure and if possible, require the Parties to whom the information is disclosed to maintain the confidentiality of such information.

This Article and the restrictions contained herein shall not apply to any data and documentation:

Which is in the public domain at the time it was disclosed or at any time thereafter;

Which was already known to the non-disclosing Party at the time of disclosure;

After three (3) years from the date of completion of any Services under which any Confidential Information was disclosed, unless (i) the restriction applies to a trade secret, in which case the restriction shall not expire, and/or (ii) is subject to a longer restriction by a Third Party, and/or (iii) it is "Protected Health Information"

or "Personal Data" as defined herein, and/or is "Critical Infrastructure Protection Information" or "Personal Data" as defined herein, in which case, the restriction shall not expire.

Which is independently developed by the non-disclosing Party; or

Which becomes known to the Party from an independent source, where such source has not violated an agreement of confidentiality.

Notwithstanding the preceding, Xcel or WES may disclose or otherwise make available such Subcontractor proprietary data (i) to their attorneys, employees, agents and , representatives, (ii) pursuant to Applicable Law, including, without limitation, court order subpoena and regulatory rules or advice, and (iii) to a Third Party with whom Xcel or , WES contracts for maintenance, operation, training, modification, repair or consultation provided that said Third Party agrees to be bound in writing by similar limitations on use and disclosure of such data as contained herein. WES agrees to take all reasonable action by instruction to its employees who are permitted access to Subcontractor .proprietary data to satisfy its obligations under this Article

Upon termination or expiration of the Agreement for any reason, each Party will return or destroy (at the other Party's choice) all Confidential Information owned by such other Party then in its possession (except to the extent such Party is required by law to maintain such Confidential Information) and, if applicable, provide a certification of such destruction.

In addition to the requirements of Section regarding Subcontractor's treatment of Confidential : Information of Xcel and WES, Subcontractor agrees that

Xcel is a public utility subject to Federal Energy Regulatory Commission (FERC) standards of conduct rules regarding disclosure of non-public transmission function information to its merchant function and marketing affiliate personnel (18 C.F.R. Part 358, effective November 26, 2008); and

If the Services involves the transmission assets of Xcel, Subcontractor will not reveal any non-public transmission function information to any Person employed by Xcel in a sales or marketing function of Xcel or by an energy affiliate (as those terms are defined in 18 C.F.R. Part 358). Subcontractor shall strictly comply with any communication protocols established by Xcel to prevent the disclosure of non-public transmission function information with respect to the performance of Services; and

Subcontractor certifies on behalf of itself and its employees, agents and representatives that it and they are aware of the requirements of 18 C.F.R. Part 388. Subcontractor further certifies that after diligent review of 18 C.F.R. Part 388, it has no reason to believe that it or any of its employees, agents or representatives who may be granted access to Confidential Information that is also Critical Energy Infrastructure Information would be restricted from access to such Critical Energy Infrastructure Information pursuant to 18 C.F.R. Part 388.

"Critical Energy Infrastructure Information" (CEII) as used in these General Conditions means information that has been previously designated as CEII when filed with the FERC, or all information disclosed to Subcontractor or its representatives, by Xcel in connection with the Services, including information about proposed or existing critical infrastructure that: (i) relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a Person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) does not simply give the location of the critical infrastructure. "Critical infrastructure" as used in these General Conditions means systems and assets, whether physical or virtual, that are so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on the security, national economic security, national public health or safety, or any combination of those matters. Subcontractor agrees not to use CEII that is Confidential Information for purposes other than in connection with the Services.

Subcontractor agrees that:

Xcel is a registered entity subject to North American Electric Reliability Corporation (NERC) mandatory electric reliability standard approved by FERC pursuant to Section 215 of the Federal Power Act, including NERC standards related to Critical Infrastructure Protection (CIP); and

If the Services involves Services on or access to Xcel equipment designated by Xcel as a Critical Cyber Asset (CCA) as defined by NERC, or Services on or access to areas containing one or more CCAs, Subcontractor shall be deemed a contractor or service vendor subject to Xcel's CIP compliance program. Subcontractor shall comply with all CIP compliance protocols and procedures established by Xcel and applicable to Xcel Personnel related to CCAs and ESPs. To the extent necessary, Xcel and Subcontractor may develop supplemental terms setting forth specific protocols or procedures applicable to Subcontractor and Subcontractor personnel prior to Services on or access to Xcel CCAs. To the extent necessary, Xcel and Subcontractor may develop supplemental terms setting forth specific protocols or procedures applicable to Subcontractor and Subcontractor Personnel prior to Services on or access to Xcel CCAs or related information. Such supplemental terms or protocols may include, but are not limited to, personnel risk assessments (PRAs), training, access controls, and information protection requirements.

Subcontractor shall notify Xcel and WES within 72 hours if the assignment of Subcontractor or Subcontractor Personnel with access to a Xcel CCA or CCA Information through Xcel systems or facilities has changed, such that the Personnel no longer requires access to such Xcel CCA systems, information or facilities for any reason, including but not limited to change in job function, retirement or resignation; provided, however, that such notice shall be provided to Xcel within 12 hours (rather than 72 hours) in the event of an involuntary termination of service of any Personnel.

In the event the Applicable Law (NERC mandatory standard CIP-004-3, R4.2) governing these notification requirements is amended, with the effect of shortening any required notice periods, then Subcontractor shall provide the required notice to Xcel within one-half (1/2) the time required under the amended Applicable Law. For example, if the amended Applicable Law requires the Xcel to remove access to Xcel CCAs within 12 hours of an involuntary termination of service, then Subcontractor shall provide Xcel and WES notice within six (6) hours of such involuntary termination.

Subcontractor shall give the required notice by telephone and email to WES so that WES may in turn notify by telephone the Xcel Energy Security Operations Center (1-612-330-7842), to be followed up in an email writing to secopctr@xcelenergy.com.

Section 1.17 NOTICE OF CLAIMS AND LIENS.

Subcontractor agrees not to assert or pursue any claim against Xcel or WES for damages of any kind or nature unless written notice thereof shall have been given to Xcel and WES within ten (10) days after the occurrence giving rise to such damages.

In the event Xcel or WES is notified in writing of a Third Party claim or claims arising from the Services performed by Subcontractor, WES shall notify Subcontractor of such claim or claims and Subcontractor shall appoint a representative who will have the authority to settle any claims, subject to the prior approval of any settlement terms by WES. If Subcontractor fails to appoint a representative to settle such claims, WES shall have the right to make settlement thereof and charge the same to Subcontractor.

Section 1.18 LIMITATION OF LIABILITY.

In no event shall Xcel or WES be liable to Subcontractor for any special, incidental, indirect, punitive or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Xcel, WES, their employees, or agents. Xcel's and WES's liability on any claim of any kind for any loss or damage arising out of or in connection

with or resulting from the Agreement or from performance or breach thereof shall in no case exceed the dollar amounts paid under approved invoices to Subcontractor by WES.

In no event shall Subcontractor be liable to Xcel or WES for any special, indirect or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Subcontractor its employees, agents or subcontractors. This exclusion of liability for special, incidental, indirect, punitive or consequential loss or damage applies to loss of profits or revenue, cost of capital, loss of use of equipment or facilities, cost of purchased or replacement power or claims of customers due to loss of service. This foregoing exclusion does not apply to: (i) breaches of obligations relating to Confidential Information, offshore work and data transfer, security breaches or collection of Personal Data, (ii) Claims requiring indemnification under these General Conditions or (iii) damages arising from the termination of the Agreement for default pursuant to the Agreement, including these General Conditions.

To the extent an unauthorized acquisition and/or misuse of Personal Data is attributable to a Subcontractor Security Breach, and not solely to a breach by Xcel, WES or a Third Party of their obligations under these General Conditions with respect to Personal Data, Subcontractor will compensate Xcel and WES for the following damages incurred by Xcel and WES in responding to such Security Breach, to the extent applicable and reasonable (the "Other Damages"): (i) reasonable costs of providing notice to affected individuals as required by Applicable Law; (ii) reasonable costs of providing required notice to government agencies, state and/or federal regulators or credit bureaus as required by Applicable Law; (iii) reasonable costs of complying with an investigation conducted by a government agency and/or state or federal regulator; (iv) the cost of providing affected individuals with credit protection services for a specific period not to exceed twelve (12) months, and (v) fines and penalties assessed by government agencies, or state and/or federal regulators for Subcontractor's failure to comply with its obligations under these General Conditions; provided that to the extent such unauthorized acquisition and/or misuse of Personal Data is attributable in part to a breach by Xcel or a Third Party of their obligations under these General Conditions with respect to Personal Data, then the Other Damages will be apportioned between Subcontractor and Xcel on a contributory basis.

Subcontractor shall not be liable to Xcel or WES for damages that exceed twice the total value of the Services plus any applicable Change Orders. This limitation of liability does not apply to damages due to claims of:

indemnification per the Agreement, including these General Conditions;

loss or damage for breach of the Agreement pursuant to a termination for default;

Breaches of confidentiality set forth in Article 17;

a Subcontractor Security Breach directly resulting in an unauthorized acquisition and/or misuse of Personal Data or CIP Information (provided that to the extent a breach is caused in part or in whole by Xcel or WES, then the respective losses and damages will be apportioned between Subcontractor, WES and Xcel on a contributory basis);

breach of Offshore Services and Data Transfer obligations; or

breach of warranty.

Section 1.19 OFFSHORE SERVICES AND DATA TRANSFER.

Subcontractor shall not perform the Services (i) in locations outside the United States ("Offshore Locations"), or (ii) by Personnel, agents or subcontractors located outside the United States (collectively "Offshore Personnel"), or who are Foreign Nationals, without first obtaining both Xcel's or WES's prior written consent. Subcontractor shall not (i) transfer Xcel's or WES's data to Offshore Locations, or (ii) access Xcel's and WES's data or systems from Offshore Locations and/or by Offshore Personnel, without first obtaining Xcel's and WES's prior written consent. All requests for consent shall (i) be in writing, (ii) identify the Offshore Personnel and specify the Offshore Locations, and (iii) be sent to WES, who shall send it to Xcel representative listed in the Notice Section of the Agreement. Any written consent issued by Xcel shall only apply to the identified Offshore

Personnel and specified Offshore Locations. Any desired changes of Offshore Personnel or Offshore Locations shall require a new consent from both Xcel and WES. Such consent may be conditioned on Subcontractor complying with additional and/or different terms (e.g. additional security screening).

For purposes of this Section, a "Foreign National" is any person who is not (a) a citizen of the United States; (b) a permanent resident of the United States having a permanent residence card (Green Card), or (c) a political refugee, political asylum holder or other person protected under Applicable Laws.

Section 1.20 DATA SECURITY.

Data Security. The obligations of Subcontractor included in this Section in respect of Personal Data are in addition to, and not in limitation of, Subcontractor's obligations with respect to Xcel's and WES's Confidential Information. Xcel and WES will comply with their obligations under the Data Laws, and Subcontractor, as the service provider, will treat all Personal Data in accordance with the terms of this Section, the Data Security Policies and Procedures, and all applicable Data Laws. The Parties acknowledge that in relation to any Personal Data controlled and owned by Xcel or WES and processed by Subcontractor in the provision of the Services: (i) Subcontractor is acting solely as an information technology services provider and has no discretion regarding the purpose(s) for which such Personal Data is processed; (ii) Xcel and WES respectively will determine the purposes for which and the manner in which such respective Personal Data will be processed by Subcontractor; and (iii) Subcontractor will only access, use or disclose such Personal Data in accordance with the provisions of this Section. Subcontractor will provide Xcel and WES with such cooperation and assistance as they may reasonably require from Subcontractor in order to assist them in fulfilling their responsibilities under applicable Data Laws.

Use of Personal Data. Subcontractor will use Personal Data solely for the purposes of providing services under these General Conditions. Personal Data of Xcel will be and remain the property of Xcel. Personal Data of WES will be and remain the property of WES. Where, in connection with these General Conditions, Subcontractor processes Personal Data on behalf of either Xcel or WES, Subcontractor will: (i) process such Personal Data only on written instructions from Xcel or WES, as applicable, and only to the extent reasonably necessary or appropriate for the performance of these General Conditions; (ii) not disclose such Personal Data to any Person except as required or permitted by these General Conditions or with Xcel's and WES's written consent with respect to their Personal Data; and (iii) not sell, assign, lease, or otherwise commercially exploit such Personal Data.

Protected Health Information. In the event provision of the Services will require Subcontractor to access and/or process any Protected Health Information, the parties will execute a Business Associate Agreement with respect to such Protected Health Information. The obligations of Subcontractor included in any Business Associate Agreement in respect of Protected Health Information are in addition to, and not in limitation of, Subcontractor's obligations with respect to Confidential Information and Personal Data.

Security Measures. Prior to processing any Personal Data, Subcontractor will, consistent with the Data Security Policies and Procedures, implement physical, technical, and organizational measures and safeguards with respect to Personal Data and the collection, handling, delivery, processing, and transmission thereof against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing. The Parties acknowledge that the level of security measures that is appropriate will depend on the sensitivity of the information, the risks represented by the processing of the information, and the harm that is likely to result from a breach of security, industry standards and Applicable Law, including without limitation all Data Laws.

Disclosure of Personal Data. Subject to the Sections titled "Offshore Services and Data Transfer" and "Use of Personal Data," Subcontractor: a) will not rent, sell, disclose, transfer, store, retain or use any Personal Data except as necessary and proper to perform the Services; b) will disclose Personal Data only to its employees, officers,

agents and any Third Parties who have a need to know such Personal Data, and only to the extent as is necessary for performance of the Services and for no other reasons, and further provided that (i) Subcontractor informs such recipients of Personal Data of their obligations with respect to such Personal Data; (ii) such disclosure is in properly secured or encrypted formats, as may be applicable given the nature of the transmission, disclosure and Personal Data at issue; (iii) such Third Parties agree in writing to assume the obligations in this Section; (iv) Subcontractor obtains Xcel's and WES's approvals to disclose Personal Data to any subcontractor; and (v) Subcontractor will remain liable for all acts and omissions of such Persons.

Security Breach. Subcontractor will notify Xcel and WES promptly, but in no event later than forty-eight (48) hours of any actual or reasonably suspected Security Breach, by calling WES, who will in turn call Xcel's Security Operations Center at (612) 330-7842 and transmitting a written follow-up to such oral notice no later than three (3) days thereafter. Subcontractor will provide all necessary and reasonable cooperation with respect to the notification, investigation, and prosecution of the Security Breach. Unless attributable wholly and directly to Xcel or WES, Subcontractor will promptly (i) take all reasonable measures to remediate any such Security Breach, (ii) provide Xcel and WES a written report of what (Service Provider) did to remediate, (iii) provide Xcel and WES a written plan identifying the measures Subcontractor will implement to avoid any subsequent Security Breach of a similar nature, and (iv) comply with all Data Laws. Xcel and WES will determine whether and when to notify any individuals regarding any Security Breach affecting Personal Data. Notwithstanding the foregoing, Subcontractor is permitted to comply with all Applicable Laws to which it is subject.

Audit and Verification. Subcontractor will provide reasonable cooperation to Xcel and WES (and any governmental authorities with jurisdiction in connection with audit requests) to audit and verify Subcontractor's data security systems and procedures in order to confirm Xcel's, WES's and Subcontractor's respective and collective compliance with its obligations in this Section and with Applicable Law, including without limitation, the Data Laws.

Disclosure Required by Law. Subcontractor may disclose Personal Data as required by any Applicable Law or a governmental authority having jurisdiction over Subcontractor that orders such disclosure. In the event of any such required disclosure, Subcontractor will notify WES, who will in turn notify Xcel, in advance of such disclosure and reasonably cooperate with Xcel's and WES's effort to minimize the extent of such disclosure and maintain the confidentiality of such Personal Data.

Amendment as a Result of Change in Data Laws. The Parties in good faith agree to revisit and amend this Section from time to time, as necessary to comply with changes to Applicable Law, including without limitation, the Data Laws as they may apply to Subcontractor's provision of the Services. Any change in the Services required by such law or regulation that materially increases Subcontractor's costs and expenses with respect to compliance with its obligations in this Section shall be agreed to by the Parties. As between the Parties, Subcontractor is responsible for identification and compliance with the Data Laws as they may apply to Subcontractor's provision of the Services, and as such Data Laws may be amended; provided that Xcel and WES may require Subcontractor to comply with any Data Law that they, in its reasonable discretion, determine applies to Subcontractor's provision of the Services

Data and Record Retention. Subcontractor will retain Personal Data in accordance with Xcel's and WES's record retention policies and practices as communicated to Subcontractor and as may be changed from time to time in writing thereafter provided that any change materially increasing Subcontractor's costs in providing the Services shall be agreed to by the Parties (the "Company's Record Retention Policy"). Upon termination or expiration of the Agreement, or upon request by Xcel and WES at any time with respect to particular data not required by Subcontractor to perform Subcontractor's obligations under these General Conditions, (i) Subcontractor will return the Personal Data and records, and (ii) Subcontractor will remove all Personal Data from its applications and

databases and will use mutually approved data destruction methods to remove Personal Data from its back-up systems.

Section 1.21 EQUAL EMPLOYMENT OPPORTUNITY.

The Diversity Requirements for Contracts, attached hereto as Attachment 1, are hereby incorporated into these General Conditions.

Section 1.22 THIRD PARTY BENEFICIARIES.

Except for Xcel and the Third Parties described or named in the Agreement, no provision of the Agreement, including these General Conditions, shall in any way inure to the benefit of any Third Party so as to make any such Person a third party beneficiary of the Agreement or of any one or more of the terms of these General Conditions.

Section 1.23 HEADINGS.

Article headings and titles are included for the convenience of the Parties and shall not affect the meanings of the terms or conditions hereof.

Section 1.24 SEVERABILITY.

In the event any words, phrases, clauses, sentences or other provisions hereof are invalid or violate any Applicable Law, such offending provision(s) shall be ineffective to the extent of such violation without invalidating the remainder of the Agreement, and the remaining provisions of the Agreement shall be construed consistent with the intent of the Parties hereto as closely as possible, and the Agreement, as reformed, shall be valid, enforceable and in full force and effect.

Section 1.25 SURVIVAL.

In the event of termination or expiration of the Agreement, the following sections (in their entirety) and subsections of these General Conditions shall survive any such termination or expiration articles titled: Quality Management, Subcontractor Warranties, Right to Audit, Taxes, Confidential Information, Indemnity, Infringement, Limitation of Liability, Disputes, Offshore Services and Data Transfer, Data Security, Third Party Beneficiaries, Publicity, Headings, Severability, Survival, and Entire Agreement and Waiver.

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ATTACHMENT 1: DIVERSITY REQUIREMENTS FOR CONTRACTS

Section I: General Obligations

Subcontractor acknowledges that Xcel, as a government subcontractor, is subject to various orders and regulations regarding equal opportunity and affirmative action. These federal, state, and local orders and regulations may also be applicable to Subcontractor and that all applicable equal opportunity and affirmative action requirements (the "Requirements") shall be incorporated herein as required by Applicable Laws.

Subcontractor acknowledges that Xcel prohibits discrimination on the basis of race, color, religion, sex, national origin, actual or perceived sexual orientation or gender identity of an individual, or physical or mental disability, in terms of both employment and procurement opportunities. Xcel values diversity among its customers, employees, and suppliers.

Subcontractor acknowledges that Xcel may require related good faith efforts regarding equal opportunity and affirmative action requirements. Subcontractor agrees to comply with all of the Requirements and to incorporate the Requirements in its own agreements to the extent required by law and Xcel guidelines.

Subcontractor acknowledges and agrees that its failure to comply with the Requirements and good faith efforts outlined within may result in an order by or from any Governmental Body or authorized Xcel contracting agent barring Subcontractor from continuing to perform Services pursuant to government contracts or subcontracts. The entry of any order barring Subcontractor from performing Services pursuant to a government contract shall constitute a default of the Agreement.

In addition, Subcontractor shall inform WES, who shall in turn inform Xcel within seven (7) days of receiving an order to show cause from any governmental entity or authorized Xcel contracting agent relating to any issue between Subcontractor and that entity regarding the applicability of the Requirements to Subcontractor (an "Enforcement Event"). The Agreement shall be terminable, in WES's sole discretion, upon notice to Subcontractor, any time after WES receives notice of an Enforcement

Event unless Subcontractor, prior to receiving the notice of termination, either (a) enters into a formal agreement with the governmental entity or authorized WES agent resolving the issue or (b) obtains a final decision that the Requirements are not applicable to Subcontractor.

Subcontractor shall be responsible for all reporting requirements related to the supplier Diversity Program. These reporting requirements include completion of the Subcontracting Utilization Report for all contracts greater than \$100,000 and the Small Business Subcontracting Plan for all contracts greater than \$500,000 for goods and services contracts and \$1,000,000 for construction contracts. In addition, Subcontractor shall submit in a timely manner reporting documents certifying utilization performance.

Section II: Clauses Incorporated by Reference

Pursuant to 48 C.F.R. Section 52.252-2, these General Conditions incorporates one or more clauses by reference and excerpts, with the same force and effect as if they were given in full text. Upon request, their full text shall be made available to Subcontractor.

The following clauses are incorporated into these General Conditions:

41 C.F.R. Sections 60-1.4, 60-250.5, and 60-741.5 (Affirmative action in employment)

The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, because of physical or mental disability or because he or she is a special disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical/ mental disability or special disabled veteran or Vietnam veteran status.

48 C.F.R. Section 52.219-8 [(Utilization of Small Business Concerns) (May 2004)]

It is the policy that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns (diverse suppliers) shall have the maximum practicable opportunity to participate in performing contracts. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and diverse supplier's business concerns. The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance.

52.219-9 Small Business Subcontracting Plan (July 2005)

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation. "Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract. (c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (diverse suppliers). If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any).

The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

The offeror's subcontracting plan shall include the following:

- Goals;
- A statement of total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars;
- The total value of projected to small business concerns and divers suppliers, respectively;
- A description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to small business concerns and diverse suppliers;
- A description of the method used to develop the subcontracting goals of this clause;

- A description of the method used to identify potential sources for solicitation purposes;
- A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals;
- The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual;
- A description of the efforts the offeror will make to ensure that diverse suppliers have an equitable opportunity to compete for subcontracts;
- Assurances that the offeror will cooperate in any studies or surveys as may be required; submit periodic reports so that the Government and Xcel can determine the extent of compliance by the offeror with the subcontracting plan; subcontracting report for Individual Contracts.
- Reporting shall be in accordance with the instructions on the forms or as provided in agency and Xcel regulations. A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business concerns and diverse suppliers.

52.219-10 Incentive Subcontracting Program - (Oct 2001)

Of the total dollars it plans to spend under subcontracts, the Subcontractor has committed itself in its subcontracting plan to try to award certain percentages to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

48 C.F.R. Section 52.222-21 [Prohibition of segregated facilities (Feb 1999)]

The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction. (Feb 1999)

The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

48 C.F.R. Section 52.222-24 [Pre-award On-Site Equal Opportunity Compliance Evaluation (Feb 1999)]

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Subcontractor and its known first-tier Subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a pre-award compliance evaluation.

48 C.F.R. Section 52.222-26 [Equal Opportunity (Apr 2002)]

The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

55.222.27 Affirmative Action Compliance Requirements for Construction. (Feb 1999)

The Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Subcontractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions.

48 C.F.R. Section 52.222-29 [Notification of visa denial (June 2003)]

It is a violation of Executive Order 11246 for a Subcontractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the Services will be performed (41 CFR 60-1.10).

48 C.F.R. Section 52.222-35 [Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (Dec 2001)].

The Subcontractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified.

52.222-36 Affirmative Action for Workers with Disabilities. (June 1998)

Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability.

48 C.F.R. Section 52.222-37 [Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (Dec 2001)].

The Subcontractor shall report at least annually by job category and hiring location on the number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Subcontractor the total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans, and the maximum number and the minimum number of employees of the Subcontractor during the period covered by the report.

48 C.F.R. Section 52.222-38 [Compliance with Veterans' Employment Reporting Requirements (Dec 2001)].

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d).

Section III: Additional Representations

1. Previous Contracts and Compliance Reports [48 C.F.R. Section 52.222-22 (Feb 1999)]. Subcontractor represents that:

- (a) It has filed all required compliance reports with respect to all previous contracts or subcontracts subject to 48 C.F.R. Section 52.222-26 (Equal Opportunity); and
- (b) Before awarding any subcontracts, Subcontractor will obtain from proposed Subcontractors signed representations indicating submission of required compliance reports.

2. Affirmative Action Compliance [48 C.F.R. Section 52.222-25 (Apr 1984)]

Subcontractor represents that it has developed and has on file at each establishment affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. 60-1 and 60-2) unless:

- Subcontractor has not developed and does not have on file at each establishment affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. 60-1 and 60-2).

Subcontractor has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of