

XCEL ENERGY
RECOMMISSIONING CALCULATOR TOOL
LICENSE

This revocable, nonassignable, nonexclusive license grant ("License") effective as of _____, 20____ ("Effective Date"), is made by and between Xcel Energy Services Inc., a Delaware corporation ("Licensor"), acting as agent for Public Service Company of Colorado, a Colorado corporation doing business as Xcel Energy ("Xcel Energy"), and [Insert Licensee's full legal name] _____ a [Insert if applicable - state of incorporation] _____ [if applicable -type of legal entity] _____, ("Licensee"), hereinafter both parties individually as "Party" and collectively as "Parties."

WHEREAS, Licensor owns a certain recommissioning estimation tool (the "RTool") which calculates energy savings for Xcel Energy participating utility customers using certain confidential customer account information ("Customer Information"); and

WHEREAS, Licensee wishes to use the RTool in conjunction with its services to help Xcel Energy's participating utility customers obtain estimates regarding changes in their equipment, building, and corresponding impact on their utility consumption (the "Advisory Services"); and

WHEREAS, Licensee acknowledges that subsequent disclosure and/or loss of control over the RTool and/or Customer Information would cause irreparable harm to Licensor; and

WHEREAS, Licensee acknowledges the RTool is private intellectual property license not subject to subsequent disclosure pursuant to requests under public record inquiry provisions, and is not available in the public domain; and

WHEREAS, Licensor will distribute the RTool and passwords to it by encrypted e-mail only to Licensee or to Licensee's authorized employee users listed on Exhibit A (attached hereto); and

WHEREAS, Licensee represents and warrants that it has appropriate security procedures in place so that the RTool will only be used by Licensee and its authorized employee users in conjunction with its Advisory Services to customers within Xcel Energy's service territory; and

WHEREAS, Licensee agrees to notify Licensor when any Licensee employee with access to the RTool leaves Licensee's employment, so that Licensor may cancel that employee's password and access to the RTool; and

WHEREAS, Licensee may provide printouts of the results of certain inputs in the RTool to Licensee's employees and Xcel Energy's customers but shall not allow access to the RTool by any third parties for any purpose absent specific written consent by Licensor;

NOW THEREFORE, the Licensee agrees as follows:

1. **NOTICE**. Any notice or request made to or by any Party regarding this Agreement shall be made in writing to the representative of the other Party as set forth in Exhibit B (attached hereto).

2. CONFIDENTIALITY. The RTool, including all Customer Information, shall be treated as proprietary and confidential and shall not be used by Licensee for any purpose inconsistent with this License. The RTool supplied pursuant to this License is not to be reproduced in any form in any manner or for any purpose that is not specifically detailed herein. The RTool remains the property of Licensor. Licensee agrees that upon Licensor's written request to Licensee, Licensee shall promptly return the RTool to Licensor (and shall not keep any reproductions, copies or duplicates of the same). Furthermore, all Customer Information and information derived from such information using the RTool is to be considered strictly confidential. Licensee shall maintain proper procedures and policies to ensure such information is kept confidential and subject to data privacy laws and Licensee shall notify Licensor of any breach of confidentiality relating to such information within forty-eight (48) hours of such breach.

3. WAIVER AND WARRANTY. If any RTool results are in written, recorded, graphical or otherwise in tangible form, Licensee shall label such results as follows: "THESE ESTIMATES HAVE BEEN PREPARED BY AN ESTIMATION TOOL OWNED BY XCEL ENERGY SERVICES INC. LICENSEE HAS A RESTRICTED LICENSE TO USE SAID TOOL. XCEL ENERGY SERVICES INC. SPECIFICALLY DISCLAIMS ANY WARRANTY, FITNESS, MERCHANTABILITY, OR DESIGNATION OF ANY INTENDED BENEFICIARY OF THESE ESTIMATES."

4. TERM AND TERMINATION. This License shall remain in full force and effect for five (5) years after the Effective Date (that date, the "Termination Date"). Licensor may terminate this License for convenience with thirty (30) days' written notice to Licensee. This License shall be automatically terminated by default if the Licensee becomes insolvent, or loses control over the RTool. Within five business days of the Termination Date or an the effective date of termination by convenience or default, Licensee shall certify in writing to Licensor that the RTool and all copies of estimates generated by the RTool in the possession of the Licensee have been destroyed.

5. REQUIRED DISCLOSURE. Notwithstanding anything in this License, if the RTool and any related Customer Information is subpoenaed, or otherwise required or requested to be disclosed to a governmental or regulatory authority the Licensee shall (1) resist or limit disclosure to the full extent allowed under applicable law; and (2) promptly notify Licensor in writing, and (3) cooperate in any efforts Licensor makes to resist or limit disclosure or to obtain any appropriate protective orders or other relief.

6. DISCLAIMER OF WARRANTIES, WAIVER AND INDEMNITY. FOR PURPOSES OF THIS SECTION, LICENSOR INCLUDES: LICENSOR AND LICENSOR'S CORPORATE AFFILIATES AS WELL AS THEIR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. Licensor offers absolutely no warranties or representations as to the accuracy of any of the data, inputs, algorithms, formulas, copyright licenses, or any other inputs or processes of the RTool. Licensee assumes all risk, control, and responsibility for use of the RTool and reports generated using the RTool.

- a) Licensor provides the RTool on an "AS IS" basis without warranty. Licensor makes no warranties or representations about the RTool or its suitability for any use. Any and all warranties, whether statutory, oral, express or implied, including but not limited to any warranties of merchantability or fitness for a particular purpose, are expressly disclaimed.

- b) Licensee waives all rights and remedies, and all warranties and liabilities of Licensor, express or implied, with respect to any non-conformance or defect in the RTool, including but not limited to any implied warranty of merchantability or fitness for a particular purpose.
- c) Without limiting any other provision of this License, Licensee hereby agree to assume entire responsibility and liability for all damages to property and all damages or injuries to all persons (including but not limited to Licensee's employees' injury or death), arising from or in any manner connected with the use of the RTool. Licensee agrees to indemnify and hold harmless Licensor from any and all claims, losses, harm, costs, liability, damages, demands, expenses (including, but not limited to reasonable attorneys' fees), causes of action, suits at law or equity of whatsoever kind including, without limiting the generality of the foregoing, claims by Licensee's employees and claims for personal injury (including death), property damage, medical expenses, loss of services, whether brought by Licensee employees or any other person or entity, on account of or in any way related to or arising from Licensor's provision of the RTool or Licensee's use of the RTool.
- d) Licensee warrants and represents that it has in force commercial general liability insurance covering its activities with limits of not less than two million dollars (\$2,000,000). As long as the RTool is used by Licensee, Licensee agrees that it will maintain such insurance and will provide evidence of coverage to Licensor upon written request. Licensee agrees that its obligations under Sections 1 (CONFIDENTIALITY), 5 (INDEMNITY) and 6 (INFRINGEMENT) are not limited to such limits of insurance.

7. INFRINGEMENT. Licensee's unauthorized disclosure of the source code of the RTool may result in irreparable harm to Licensor. Therefore, in the event of a violation or threatened violation of this License, without limiting the rights and remedies of Licensor to seek damages or other remedies at law, a temporary restraining order and/or an injunction to enjoin disclosure of such RTool code or the RTool may be sought against Licensee or any agent of Licensee who has breached or threatened to breach this License. Licensee and any person having access to the RTool through Licensee agree not to raise the defense of an adequate remedy at law. If such injunction or restraining order is brought, Licensor shall be entitled to costs, and reasonable attorney fees. Licensee's obligation to hold the RTool and RTool source code confidential is perpetual and shall survive this License

8. GOVERNING LAW. This License shall be subject to and interpreted under the laws of the State of Colorado. The State of Colorado is a proper venue to enforce the terms of this License or any related claim. The Licensee agrees to accept service of process and will not demand service to its registered agent for service of process.

9. AUDIT. Licensee shall maintain during the course of this Agreement and retain for not less than seven (7) years after completion of any Advisory Services pursuant to it, complete and accurate records of all Advisory Services, and Licensor or its authorized representatives shall have the right, during normal business hours, to inspect, audit and reproduce such records.

10. ENTIRE AGREEMENT. This License represents the entire License grant. The terms and conditions of this License supersede the terms of any prior License or understanding, express or implied, written or oral.

11. NO BENEFICIARIES. There are no third party beneficiaries to this License.

12. SEVERABILITY. The provisions of this License are considered to be severable, and in the event that any provision is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect to the extent possible and in keeping with the intent of the License.

13. ENFORCEABILITY. Failure of Licensor to enforce or exercise any provision, right or option contained in this License will not be construed as a present or future waiver of such provision, right or option. The significance, if any, shall be an unintended forbearance.

14. EXECUTION, ASSIGNMENT AND AMENDMENT. Any person designated by Licensee to execute this License represents and warrants that he/she is authorized and empowered to enter into this License on behalf of the Licensee. This License can not be assigned or assumed and is personal to the Licensee. This License may not be amended.

[INSERT LICENSEE LEGAL NAME] _____

Signature of Authorized Signer: _____

Printed Name of Authorized Signer: _____

Title of Authorized Signer: _____

EHXIBIT A

LICENSEE'S AUTHORIZED EMPLOYEE USERS

<u>Authorized Employee User Name (Last name, First Name):</u>	<u>Authorized Employee User E-mail</u>

EHXIBIT B

NOTICES

LICENSOR:	LICENSEE:
Name: Michelle Beaudoin Title: Product Portfolio Manager Company: Xcel Energy Address: 1800 Larimer Street, Suite 1500 Denver, CO 80202 Phone: 303.294.2133 Email: Michelle.M.Beaudoin@xcelenergy.com Fax: 612.318.4209	Name: _____ Title: _____ Company: _____ Address: _____ _____ Phone: (____) ____ - _____

Any Party may change the information for their representative set forth in this Exhibit B at any time by written notice to the other Party.