

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality Agreement ("Agreement") made this ___ day of _____ 2009 between Xe Services LLC, and any related affiliate, subsidiary, or member (collectively, "Xe") of the one Party, and Southwestern Community College District ("CLIENT") of the other Party. Xe and CLIENT shall be collectively referred to herein as the 'Parties' and singularly as a 'Party'. For good and valuable consideration, including the mutual agreements hereinafter recited, the Parties hereby agree as follows:

1. **Secrecy.** Each Party shall maintain in secrecy all Confidential Information, as defined below, in accordance with the terms of this Agreement, and shall not use the Confidential Information other than for the purposes specified herein, or disclose the Confidential Information to any third party without the written consent of the Disclosing Party.
2. **Definition of Confidential Information and exclusions.** The Parties contemplate providing to each other, either orally or in writing, certain confidential and proprietary financial and other information not readily available or otherwise known to the public. Such confidential information may include, but is not limited to, any and all computer software source code, programming techniques, computer graphics, financial information, product specifications, trade secrets, customer lists, customers (whether private or government), contracts (existing, past or prospective), prices and pricing, costing, sales techniques, estimating and pricing systems, internal cost controls, production processes and methods, product planning and development programs, marketing plans, any subcontractors or vendors, technical and business concepts and course and other training outlines, programs and manuals (such as training outlines, programs and manuals), materials and information related to or associated with either Party's business in any manner or respect, proprietary data processes, business plans, financial information and related information and materials of the Parties and their affiliates and subsidiaries (the "Confidential Information"). Confidential Information shall be marked with "confidential," "proprietary," or similar language at the time of disclosure, or shall be identified as by the Disclosing Party as Confidential Material within ten days of its disclosure to the Receiving Party. Confidential Information shall not include the following:
 - a. information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement;
 - b. information that is or becomes available to either Party from another source, which is not prohibited from disclosing the information; or
 - c. information that was or is developed by one Party independently from the information disclosed by the other Party.
3. **Non-Disclosure.** Each Party agrees not to disclose any Confidential Information to any person or entity other than to its officers, directors, employees, agents, representatives or advisors who need to review the information to further the business transactions contemplated by the Parties. Each Party agrees that if it discloses any Confidential Information to any officer, director, employee, agent, representative or advisor, the Disclosing Party is responsible for any prohibited disclosure by any such person. Each Party shall take all steps necessary to protect any Confidential Information, including having all officers, directors, employees, agents, representatives and advisors who have received any Confidential Information enter into a binding Confidentiality Agreement similar to this Agreement.
4. **Use of Information.** Each Party agrees that the Confidential Information will be used by it and its officers, directors, employees, agents, representatives and advisors solely to further the business transactions contemplated by the Parties, and will not be used in any way detrimental to the other Party.
5. **Return of Information.** All Confidential Information shall remain the property of the Disclosing Party. Each Party agrees, upon the written request of the other Party, to return all Confidential Information and copies thereof and to destroy any notes, analyses, studies or other writings prepared by the other Party containing or based on the Confidential Information, and such destruction shall be certified in writing to the other Party.
6. **Legal Obligations of Parties.** No contract or agreement providing for any transaction between the Parties shall be deemed to exist, and neither Party shall be under any legal obligation of any kind with respect to any

such transaction unless and until a definitive agreement with respect to such transaction has been executed and delivered by the Parties. Neither Party shall be under any obligation to enter into any further agreements with the other of any nature as a result of this Agreement.

7. **Exploitation.** A Receiving Party shall not exploit, commercialize, develop, test, promote, market or otherwise use any information incorporating or relying on the Confidential Information received from the Disclosing Party for its own benefit or the benefit of others.
8. **Compliance.** Each Party hereby agrees to comply with any and all applicable laws and regulations, and shall require all of its employees, agents and representatives retained in conjunction with the activities described in this Agreement to do likewise. The Parties shall carry out the efforts contemplated by this Agreement in accordance with all applicable laws and regulations including, without limitation, the U.S. Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), the Arms Export Control Act ("AECA"), the Export Administration Act ("EAA"), as amended; the Anti-Boycott Regulations and Guidelines issued under the Export Administration Act, as amended; Section 999 of the Internal Revenue Code, and compliance with FCPA.
9. **Specific Performance and Injunction.** Each Party agrees that money damages would not be a sufficient remedy for any breach of this Agreement by the other Party or its officers, directors, employees or representatives, and that in addition to all other remedies, each Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.
10. **Disclosures Required by Law.** Notwithstanding anything to the contrary herein, the each Party's obligations of confidentiality or non-disclosure hereunder shall be subject to any disclosure requirements imposed by law or rule of stock exchange, or any judicial or governmental order. In the event that either Party, or anyone to whom either Party transmits any Confidential Information, becomes legally compelled to disclose any Confidential Information, the compelled Party will provide the other with prompt notice before such Confidential Information is disclosed so that the other Party may seek a protective order or other appropriate protective action. In the event that such protective order or other remedy is not obtained, the compelled Party will exercise best efforts to obtain a protective order or other reliable assurances that confidential treatment will be accorded the Confidential Information.
11. **Governing Law.** The construction, validity and performance of this Agreement shall be governed and construed in all respects by North Carolina law.
12. **Expiration.** Any obligation either Party may have under this Agreement shall terminate five years after the date of this Agreement. On or before the expiration of the Agreement, each Party shall destroy or return all Confidential Information belonging to the other Party.
13. **Termination.** Either Party may withdraw from the Agreement by giving ninety (90) days notice in writing to the other Party at which point this Agreement will be deemed to have been terminated but both Parties shall remain bound by the residual obligation described in 12 above.
14. **National Security.** Nothing herein shall be deemed to replace or be in prejudice of any National Government security classification referenced on any part of the Confidential Information, and the receiving Party undertakes to respect and observe any such classification, and to treat the same with such degree of care and security as is required by the appropriate authority in the country of the disclosing Party. This obligation shall continue for the duration of this Agreement and thereafter until such time as the appropriate authority shall deem proper.
15. **Successors and Assigns.** For purposes of this Agreement, each Party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of each Party, and any other entity or entities which such Party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the Party.
16. **Limitation.** Neither this Agreement nor the exchange of Confidential Information between the Parties shall create or be relied on by either Party as a basis for creating any license between the Parties under any patent, or

other industrial or intellectual property rights of the other Party, or any other license between the Parties in the absence of any express written license agreement between them.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the Parties as of and effective from the date first written above.

By: _____

Title: _____ for Xe

Date: _____

By: _____

Title: _____ for Southwestern Community College District

Date: _____