



Request for Proposals: Clean Energy and Resiliency  
("CLEAR") Program Technical Support  
RFP FY2020-CLEAR-01

Date of Issue: Monday, October 7<sup>th</sup>, 2019  
Proposals Due: Monday, November 25<sup>th</sup>, 2019

Total Funding Available: \$850,000

All proposals must be submitted to:

[microgrids@masscec.com](mailto:microgrids@masscec.com)

## I. SUMMARY

Through this Request for Proposals (“RFP”), the Massachusetts Clean Energy Center (“MassCEC”) seeks applications from consultants or professionals with expertise in clean energy systems engineering, energy project finance, and energy and utility certification standards to serve as a technical consultant (“Technical Consultant” or “Applicant”) under MassCEC’s Clean Energy and Resiliency Program (“CLEAR” or “the Program”). The Technical Consultant will apply to perform the required tasks under at least one (1) of the three (3) primary scopes: (i) perform analysis of a Massachusetts community’s energy resiliency needs and propose a feasible system design to meet those needs (“Resiliency Assessment and Design Studies”); (ii) develop an energy resiliency needs analysis toolkit to enable Massachusetts communities to perform their own screening and initial planning efforts (“Toolkit Development”); and/or (iii) develop a replicable method of certifying a facility as “resilient” such that the certification can be credibly relied upon by first responders and utility storm restoration teams (“Certification Development”).

MassCEC anticipates selecting up to three (3) Technical Consultants or Technical Consultant Teams under this RFP.

## II. ABOUT MASSCEC

MassCEC is a publicly-funded agency dedicated to accelerating the success of clean energy technologies, companies and projects in the Commonwealth—while creating high-quality jobs and long-term economic growth for the people of Massachusetts. Since it began operating in 2009, MassCEC has helped clean energy companies grow, supported municipal clean energy projects and invested in residential and commercial renewable energy installations, creating a robust marketplace for innovative clean technology companies and service providers.

## III. PROGRAM GOALS AND DESCRIPTION

The CLEAR Program is a successor to MassCEC’s Community Microgrids Program. The Community Microgrids Program funded fourteen feasibility studies around the Commonwealth, seeking to identify scalable, broadly-replicable microgrid business and ownership models to increase microgrid deployment and attract investment. Common challenges identified across the studies included determining critical needs and critical loads, designing resilient systems to work in conjunction with legacy electric distribution infrastructure and topology, and developing cost-effective solutions to reduce outage times.

MassCEC’s CLEAR Program seeks to create a body of data on the costs and systems designs needed to create resilient facilities throughout Massachusetts to reduce economic losses from major outage events, lower service interruption time for utility customers, and provide a replicable pathway for customers to assist utilities in outage recovery events. At present, most energy regulatory and policy structures have no definition or standard for resiliency as distinct from reliability. While the Commonwealth’s electric distribution companies (“EDCs”) have an obligation to provide safe and *reliable* electric service, an increase in the frequency and severity of severe storms associated with

global climate change has increased the Commonwealth’s need for *resiliency* in the face of major events and disturbances.<sup>1</sup>

Historically, pursuit of resilient systems has predominantly been driven by the economics surrounding individual projects on a customer-by-customer basis. As the Commonwealth has an increasing interest in promoting resiliency for ratepayers generally, the Program is structured to aid communities or other stakeholders in identifying and pursuing specific investment plans that will enable critical loads to “ride through” interruptions in grid service. Funding through the Program will advance first-stage system designs and develop a framework for communities and facilities to determine if they are resilient to loss of electrical service. The developed framework is intended to allow the Commonwealth’s policy and regulatory authorities to define and implement a requirement that the Commonwealth’s energy system demonstrate a certain level of resilience, and provide a pathway for customers to receive compensation for assisting utilities in complying with such a standard as well as the DPU’s increasing emphasis on reducing the impact of outages and climate adaptation generally.

Selected proposals under this Program (each a “Proposal”) will encompass at least one (1) of the three (3) primary scopes: (i) site-specific resiliency assessments and design studies, (ii) development of an energy resiliency needs analysis toolkit, and (iii) development of a resiliency certification.

#### IV. ELIGIBILITY

MassCEC anticipates selecting up to three (3) Technical Consultants or Technical Consultant Teams under this RFP. An applicant or applicant team (each an “Applicant”) may consist of one or more individuals, sole proprietors, professional consultants, institutions or companies with multiple employees. MassCEC encourages potential applicants to form a team (“Technical Consultant Team”), if necessary, to provide all the requisite experience required for the Program or one or more of its primary scopes. Proposals must be submitted by a single lead Applicant and clearly identify relevant Applicant team sub-vendor(s) with whom to jointly respond to this RFP and the respective roles and experience.

#### V. ESTIMATED TIMELINE

<b>RFP Released</b>	Monday, October 7, 2019
<b>Questions Due</b>	Monday, October 21, 2019
<b>Responses to Questions Posted</b>	Wednesday, October 23, 2019
<b>Applications Due*</b>	Monday, November 25, by 4:00PM Eastern
<b>Selection Announcement</b>	January 2020

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<sup>1</sup> Reliability is measured primarily using a set of service quality statistics (Customer Average Interruption Duration Index or CAIDI; Customer Average Interruption Frequency Index or CAIFI; System Average Interruption Duration Index or SAIDI; and System Average Interruption Frequency Index or SAIFI). Outages related to “major events” such as severe winter storms are excluded from the service quality statistics that EDCs must report to the Department of Public Utilities.

\*Late or incomplete submissions will not be considered.

## VI. SCOPE OF WORK

The CLEAR program consists of three primary scopes:

- 1) Site-Specific Resiliency Assessment and Design Studies
- 2) Resiliency Toolkit Development
- 3) Resiliency Certification Development

Applicants are not required to submit Proposals addressing all three of the primary scopes, although such Proposals are encouraged. Proposals should, however, clearly identify which scope or scopes the Applicant proposes to complete.

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### SITE-SPECIFIC RESILIENCY ASSESSMENT AND DESIGN STUDIES

Technical Consultants submitting Proposals for consideration that include the Resiliency Assessment and Design Studies will conduct technical and financial feasibility assessments for CLEAR projects selected by MassCEC. Up to nine specific sites will be selected through a separate solicitation process (the “Projects”) and will be assigned to the selected Technical Consultant(s) after that separate process. Applicants for this scope should expect work on site-specific studies to commence several months after the selection of the Technical Consultant(s).

The Technical Consultant will work with stakeholders and decision-makers from each selected community resiliency project (the “Project Team”) to complete the site-specific studies. For each community assigned to the Technical Consultant, the Technical Consultant will perform an analysis identifying the community’s energy resilience needs. Communities will need to determine what information is necessary to facilitate conversations about infrastructure planning. The Technical Consultant will lead the Project Team in identifying the size and scope of the Project. The Technical Consultant shall ensure that the Project Team’s goals and objectives align with the goals of MassCEC’s CLEAR Program. The Technical Consultant shall advise the Project Team and MassCEC if and where goals may be in conflict. Critical information necessary for the infrastructure deliberation process may include (but is not limited to):

- What are the community’s critical facilities and why?
- What services should the critical facilities be able to provide during major grid interruption events and roughly how many residents would they serve?
- What interdependencies exist between the identified critical facilities and related services these facilities provide?
- What are the technical and engineering elements of proposed resiliency improvements?
- What financial resources are available to support such investments?

An essential part of the site-specific studies would be identifying and categorizing what data is relevant for communities to gather to determine their resiliency needs. Relevant data could include (but is not limited to):

- Load data (including consumption, peak demand, and interval data),
- Distribution system topology and loading conditions, and
- Thermal data.

When the communities' critical loads and facilities have been identified, the Technical Consultant will propose a system design to meet the community's resilience needs, focused on clean distributed resources, and a process for how the communities would fund the proposed infrastructure upgrades. For some communities, a microgrid may make sense. For others, an understanding of their building typology and userbase may suggest building-specific backup generation, or traditional storm-hardening upgrades. The Technical Consultant will collaborate closely with any relevant electric and/or gas distribution companies to determine any infrastructure changes needed to cost-effectively support resiliency services in the community.

The proposed designs will prioritize clean resources and balance resiliency service with total capital requirements. The Technical Consultant shall propose a preliminary technical design and system configuration in accordance with the findings of the energy resiliency needs analysis, and then conduct a preliminary assessment of that system using DER-CAM or an equivalent tool. The Technical Consultant will propose potential ownership, business, and revenue models for the communities to employ to fund the proposed system design, discuss its financial and technical feasibility, and propose next steps for the community.

Applicants should note that all communities will be located in Massachusetts municipalities that have completed the Municipal Vulnerability Preparedness planning process. However, community projects need not be led by the municipality itself and may involve private entities such as businesses or community non-profits.

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## RESILIENCY TOOLKIT DEVELOPMENT

In order to reduce the upfront cost burden associated with design of resilient asset investment plans, communities will need tools to identify their critical loads and perform high-level resource screening independently. This scope supports the creation of such a toolkit for communities. An essential part of the toolkit would be identifying and categorizing what data is relevant for communities to gather to determine their resiliency needs. The toolkit will include creation of a template or walkthrough for communities to find their necessary data from utility websites or billing platforms, as well as a guide to consideration of critical loads and the resources needed to support such loads through outages of different durations.

Technical Consultants submitting Proposals to develop an energy resiliency needs analysis toolkit should address how the proposed materials will be applied to a range of critical facility typologies found in the Commonwealth. Common critical facility types could include but are not limited to:

- Fire stations
- Police stations
- Supermarkets
- Gas stations
- Community shelters
- Municipal headquarters
- DPW Garages

Applicants should specifically address whether, and if so how, they plan to customize toolkit materials for different critical facility types.

Applicants should specify how observations of Commonwealth critical facilities will be collected; Applicants may want to utilize observations from the site-specific Resiliency Assessment and Design Studies referenced above, or instead propose a separate research methodology to develop the critical

facility typology. Applicants should clearly articulate the approach used to gather the necessary information.

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## RESILIENCY CERTIFICATION DEVELOPMENT

In order to ensure that Massachusetts ratepayers reap maximum benefits from growth in resilient systems throughout the Commonwealth, the presence of such systems must be recognizable during major grid outages by first responders and storm restoration crews. This scope aims to support creation of a certification scheme so that resilient systems can be fully utilized during major events and grid disturbances. Recognition of systems with ride-through capabilities first requires the development of a clear definition of a “resilient” site. In addition, certification must entail process to arrive at an objective determination of a site’s capability to support critical loads for a given service interruption duration.

To achieve this, the Technical Consultant will propose a method to certify a specific site as “resilient” to outages of a specific duration (e.g., 4 hours; 48 hours; etc.). This method must address and define, for example:

- (i) How to specify partial versus full load support;
- (ii) How to specify islanding capability;
- (iii) How to specify what type of critical loads the facility or site can support; and
- (iv) Any seasonal or other circumstantial variation in site resiliency.

Stakeholder engagement and capacity building with EDC emergency response and storm restoration personnel will be required to complete the resiliency certification scope of work to ensure that the certification process may realistically be adopted by EDC staff and first responders. The Technical Consultant will be responsible for proposing a certification mechanism for resiliency capable of addressing a wide variety of different site and facility types throughout Massachusetts. Proposals should explicitly address how the Technical Consultant will incorporate and build on any relevant existing certification schemes and standards.

## VII. HOW TO APPLY

To respond to this Request for Proposals, submit a completed Proposal, not including recommendation letters. The submission must be in electronic form (one PDF file), including all relevant attachments, submitted via email to [microgrids@masscec.com](mailto:microgrids@masscec.com). “Clean Energy and Resiliency Program Application” must appear in the e-mail subject line.

Submission packages must include the following:

1. Cover Page
2. Applicant’s Signature and Acceptance Form (Attachment A)
3. Proposal (see outline of Proposal Requirements below)
4. Team Member Resumes (as an appendix)

No additional materials should be submitted. Any additional materials will not be considered in the evaluation.

Under no circumstances will MassCEC accept responses past the deadline. MassCEC, at its sole discretion, will determine whether an application is complete.

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## PROPOSAL REQUIREMENTS

Proposals must contain the following sections. Do not exceed the specified page limits.

**Executive Summary (1 page):** Applicants should provide a summary of their organization, qualifications, and their proposed approach for working with MassCEC and with the range of stakeholders participating in the Program, including community representatives, utilities, and critical facilities.

**Statement of Qualifications (2-3 pages):** All responses must include a statement of qualifications, experience, and description of the Applicant, including:

- A brief description of organization(s) involved in the proposing team, including major subcontractors. Include date founded, history, size, product portfolio and location.
- Include an explanation of why the proposed organization or team is the best qualified to perform the Assessments under the Program from a technical and business perspective. Identify other organizational qualifications relevant to the proposed work. Include examples of related past work, particularly related to energy and utility certification standards, energy distribution system engineering and design, or community energy projects, and the current status of those projects.
- Describe the team's ability to manage multiple client expectations to ensure that Assessments align with the community's needs and goals as well as MassCEC's CLEAR Program goals.
- Identify key individuals who will be involved in the Assessments. Provide one- to two-paragraph summaries of relevant technical and business expertise of these individuals. Submit resumes (as appendices) of all key applicant team members. Resumes should include education and experience that are relevant to the proposed work.
- If applicable, list MassCEC and other state or federal contracts awarded to the Applicant and/or any subcontractors in the past five years.

**Workplan Narrative (2 – 3 pages per primary scope):** The Workplan describes work activities, deliverables and timeline associated with completing at least one (1) of the three primary scopes provided in Section VI; up to 3 pages are allowed per primary scope. The Workplan shall describe each step or procedure required to accomplish each task, including who will perform it, how it will be performed and its intended result. Provide a project plan for working collaboratively with relevant stakeholders (e.g., sharing data, conducting public outreach and organization) and enlisting other sources of technical and financial expertise. Identify which components of the Workplan will require coordination with the Project Team.

**Project Schedule (1 page):** All responses must include an estimated project schedule which lays out all project milestones and deliverables and length or date of completion. Identify any seasonal constraints or specific requirements for work scheduling. Indicate where travel will be required. Propose a progress reporting schedule. Each Assessment is preferred to be completed within 9-12 months. Applicants should consider that multiple Assessments may occur concurrently.

**Budget and Rate Sheet (2 pages):** Responses must include a detailed budget, including information on rates of all team members working on the project.<sup>2</sup> Rates for travel should also be included and may not exceed half the consultant's usual hourly rate. Where Applicants anticipate using outside expertise for a task, the Applicant should include estimated rates. Budgets should be broken out by task and service provided, and must be proposed on a per-Assessment basis.

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<sup>2</sup> Please note that contractor rates are not considered confidential in the case of a public records request. Please see Section VI for additional information on the Massachusetts Public Records law.

**References (1 page):** All responses must include references from at least three (3) clients of the Applicant, and preferably clients who have utilized the Applicant on matters related to the proposed technical services. These references must include a contact person, a full address, an email address, and a phone number. Current and former MassCEC staff may be included as supplementary references for previous work conducted on behalf of MassCEC, but do not count toward the three-reference requirement.

**VIII. SELECTION CRITERIA**

MassCEC is seeking the most comprehensive Proposal from qualified entities to fulfil the roles described above. All Proposals must be responsive to the relevant scope of services and proposal requirements outlined in this RFP.

Applicant Proposals will be evaluated on the following criteria:

Criterion	Definition
<b>Range of Services to be Provided</b>	<ol style="list-style-type: none"> <li>1. Does the Applicant plan to provide services commensurate with the services requested by MassCEC?</li> <li>2. Does the Applicant demonstrate an understanding of the concepts and motivators underlying the Program?</li> <li>3. Does the Applicant demonstrate an ability and interest in provision of all three scopes?</li> <li>4. Has the Applicant clearly outlined a proposed approach for working with MassCEC and the selected Projects?</li> <li>5. If the Applicant has suggested changes to the primary scopes (additions, alterations or deletions), are those changes aligned with the overall goals of the Program?</li> </ol>
<b>Qualifications</b>	<ol style="list-style-type: none"> <li>1. What is the quality of the Applicant’s performance on similar past consulting assignments or their achievements related to proposed work? How were their efforts evaluated?</li> <li>2. What is the Applicant’s experience in clean energy systems engineering, energy project finance, and with utility certification standards? Do all individuals proposed as key team members have relevant technical and business expertise?</li> <li>3. What is the Applicant’s plan for acquiring technical knowledge that it may not have in-house?</li> <li>4. Has the Applicant demonstrated successful performance under previous MassCEC, state, or federal contracts?</li> <li>5. Has the Applicant provided strong references and recommendations?</li> <li>6. Does the Applicant demonstrate strong communication and interpersonal skills which would enable the Applicant to communicate Program goals, deadlines and expectations with the MassCEC team?</li> </ol>
<b>Project Workplan</b>	<ol style="list-style-type: none"> <li>1. Does the proposed Workplan meet the objectives of the primary scopes outlined in Section VI?</li> <li>2. Will the proposed Workplan fulfil the goals of each task?</li> <li>3. Is the proposed Workplan clear and specific regarding how tasks will be carried out and by whom?</li> </ol>



	<ol style="list-style-type: none"> <li>4. Are any changes to the primary scope(s) adequately justified in the Project Workplan?</li> <li>5. Is the proposed Schedule both reasonable and realistic?</li> </ol>
<b>Overall Quality of Proposal</b>	<ol style="list-style-type: none"> <li>1. Has the Applicant presented their qualifications clearly, completely and in adherence to the Proposal format?</li> <li>2. Has the Applicant demonstrated sufficient time resources and flexibility to participate in the Program?</li> </ol>
<b>Value Demonstration</b>	<ol style="list-style-type: none"> <li>1. Is the Applicant's Proposal cost-competitive and within the budget requirements?</li> <li>2. Are the services reflected in the Applicant's quote commensurate with the proposed budget?</li> <li>3. Does the range of services proposed align with the requirements of this RFP?</li> <li>4. Comparison of range of services to other Applicants' Proposals.</li> </ol>

## IX. BUDGET

MassCEC will pay up to \$75,000 per Resiliency Assessment and Design Study. CLEAR Projects receiving an Assessment will be selected by MassCEC through a separate solicitation process.

Applicants should propose clearly elaborated and justified budgets associated with the Toolkit Development and Certification Development scopes of work.

An Applicant must provide an anticipated budget with the application. Budget evaluation will be a factor in the selection criteria. Please note that the consultant will be paid on a milestone basis based on a deliverable schedule.

## X. CONTACT INFORMATION FOR QUESTIONS

Please submit all questions in writing to [microgrids@masscec.com](mailto:microgrids@masscec.com) no later than **11:59 p.m. Eastern, Monday, October 21, 2019**. "CLEAR RFP Questions" must appear in the subject line. Responses to questions will be posted on the RFP page by Wednesday, October 23, 2019.

## XI. GENERAL REQUEST FOR PROPOSALS CONDITIONS

### NOTICE OF PUBLIC DISCLOSURE

As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at Chapter 66 of the Massachusetts General Laws. Thus, any documentary material, data, or other information received by MassCEC from an applicant is a public record subject to disclosure. Applicants shall not send MassCEC any confidential or sensitive information in response to this RFP.

### DISCLAIMER & WAIVER AUTHORITY

This RFP does not commit MassCEC to award any funds, pay any costs incurred in preparing an application, or procure or contract for services or supplies. MassCEC reserves the right to accept or

reject any or all applications received, waive minor irregularities in submittal requirements, modify the anticipated timeline, request modification of the application, negotiate with all qualified Applicants, cancel or modify the RFP in part or in its entirety, or change the application guidelines, when it is in its best interests.

This RFP has been distributed electronically using MassCEC's website. It is the responsibility of Applicants to check the website for any addenda or modifications to an RFP to which they intend to respond. MassCEC accepts no liability and will provide no accommodation to Applicants who submit an application based on an out-of-date RFP document.

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## CONTRACT REQUIREMENTS

Upon MassCEC's authorization to proceed with the Proposal, MassCEC and the awarded applicant(s) will execute a contract which will set forth the respective roles and responsibilities of the parties.

ATTACHMENT A: AUTHORIZED APPLICANT'S SIGNATURE AND ACCEPTANCE FORM

**CLEAR Program Technical Support (the "RFP")**

The undersigned is a duly authorized representative of the Applicant named below. The undersigned has read and understands the RFP requirements and acknowledges and confirms that the Applicant and each member of its team has read and understands the RFP Requirements. The undersigned acknowledges and agrees that all of the terms and conditions of the RFP are mandatory.

The undersigned and each Applicant and each member of its team acknowledges and agrees that (i) all materials submitted as part of the application are subject to disclosure under the Massachusetts Public Records Law, as explained in the RFP; (ii) that the Massachusetts Clean Energy Technology Center ("MassCEC") has no obligation, and retains the sole discretion to fund or choose not to fund the application set forth herein; and (iii) that MassCEC's receipt of the application does not imply any promise of funding at any time.

The undersigned and each member of the Applicant's team understands that, if the Application is selected by MassCEC pursuant to this RFP, the Applicant will execute and deliver an agreement to be provided by MassCEC that shall set forth the terms and conditions, together the respective roles and responsibilities of the Applicant, and each member of its team, and MassCEC, with respect to the project described in the RFP.

I certify that the statements made in this Application, including all attachments and exhibits, are true and correct.

Applicant: \_\_\_\_\_

(Printed Name of Applicant)

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

(Signature of Applicant or Authorized Representative)

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

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

## ATTACHMENT B: SAMPLE AGREEMENT

### AGREEMENT FOR SERVICES

This **AGREEMENT FOR SERVICES** (the “Agreement”) is effective as of [**Date – M/D/YYYY**], the (“Effective Date”) by and between the **Massachusetts Clean Energy Technology Center** (“MassCEC”), an independent public instrumentality of the Commonwealth of Massachusetts (the “Commonwealth”) with a principal office and place of business at 63 Franklin Street, 3rd Floor, Boston, Massachusetts, 02110, and [**fill in COMPANY NAME AND PRINCIPAL PLACE OF BUSINESS**] (“Contractor”) (each a “Party” and together the “Parties”).

**WHEREAS**, [provide an introduction to the Agreement, why it is being entered into, provide facts about the relationship and goals of the parties, the nature of the contract, and mention other related transactional documents];

**WHEREAS**, [use as many clauses as necessary]; and

**WHEREAS**, MassCEC desires to retain Contractor to provide certain services described more fully herein, and Contractor desires to provide MassCEC said services, all in accordance with the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the recitals, the mutual promises and covenants contained in this Agreement, and other good and valuable considerations, the receipt, adequacy, and sufficiency of which are hereby acknowledged, MassCEC and Contractor agree as follows:

1. **Scope of Services:** Contractor shall carry out all services reasonably contemplated by this Agreement and described in Exhibit 1 attached hereto (the “Services”), which exhibit is incorporated by reference. This Agreement shall apply to all Services provided from time to time by Contractor to MassCEC during the Term, as defined below. Contractor shall perform the Services in accordance with schedule in Exhibit 1 (the “Schedule”).
2. **Deliverables:** Contractor shall provide all deliverables described in Exhibit 1 (the “Deliverables”).
3. **Payment:**
  - a. [**FIXED FEE:** MassCEC shall pay Contractor an aggregate amount of up to \$[**fill in AMOUNT**] (the “Fee Amount”) to perform the Services. The Fee Amount shall be the sole and complete compensation for the Services performed by Contractor under this Agreement.] The Fee Amount shall be the sole and complete compensation for Services performed by Contractor under this Agreement.]
  - b. Contractor shall submit to MassCEC reasonably detailed invoices [**each quarter/each month**] describing the Services rendered during the invoice period, and such invoices shall

become payable within forty-five (45) days of receipt by MassCEC. Invoices shall provide reasonable documentation of evidence of costs incurred including, but not limited to:

- i. **[IF APPLICABLE]** Staff Charges: staff charges for each employee, the employee's name, title, number of hours worked, and hourly rate; and
- ii. **[IF APPLICABLE]** Direct Materials/Other Direct Costs: all direct materials and other direct costs, itemized.

Contractor shall promptly provide MassCEC with any additional documentation or information upon MassCEC's reasonable request.

4. **Term:** This Agreement shall take effect as of the Effective Date, and shall remain in effect for **[fill in NUMBER OF DAYS/YEARS or until DATE – NOTE: Include sufficient time for invoicing/payment]** (the "Term"), unless terminated in accordance with Section 9 herein.
5. **Access and Use:** Contractor agrees to provide all contributions made in the scope of the Services as a work made for hire for MassCEC, which shall own all rights, including without limitation copyrights and patents, in materials Contractor prepares and delivers to MassCEC or its customers or clients or others on its behalf, and which shall have the right to use them in any way without additional payment to Contractor. In the event that Contractor's contributions are for any reason deemed not to have been a work made for hire, Contractor hereby assigns to MassCEC any and all right, title, and interest that the Contractor has, including any copyright or patent, in the work created or performed in the scope of the Services. Contractor, both during the Term and subsequently, shall cooperate with MassCEC to perfect, enforce, defend, and prosecute all such rights.

Contractor represents and warrants that Contractor's contribution will not infringe on any copyright, right of privacy, or personal or proprietary rights of others. If Contractor delivers or uses materials subject to the rights of any third parties (e.g., requiring permission from a copyright owner), Contractor will provide all information required of the person or entity to use such materials without infringing on any copyright, right of privacy, or other personal proprietary right of such third party. If Contractor provides to MassCEC or uses in the performance of the Services any material to which Contractor claims copyright, patent, or other interests or rights for itself, such use or delivery shall be deemed to be an assignment of such material, interests, and rights to MassCEC, unless a contrary agreement is reached in writing, between the Parties, prior to such delivery or use.

6. **Contractor's Representations, Warranties, and Certifications:** As of the Effective Date of this Agreement, Contractor hereby represents, warrants, and certifies under the pains and penalties of perjury as follows:
  - a. Contractor is duly authorized to enter into this Agreement.

- b. Contractor and all personnel to be employed or engaged by Contractor under this Agreement ("Project Personnel") are fully capable and qualified to perform the Services and Contractor's other obligations under this Agreement, and have obtained all requisite licenses and permits to perform any and all of the Services.
- c. Contractor and its Project Personnel are familiar with, and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders, or requirements of the Commonwealth and other governmental authorities applicable to or implicated by the subject matter of this Agreement.
- d. Contractor and its employees are independent contractors of MassCEC, and not employees, partners, or joint-venturers of MassCEC. Contractor will be solely responsible for withholding and paying all applicable payroll taxes of any nature and imposed by any authority, including social security and other social welfare taxes or contributions that may be due on amounts paid to its employees. Contractor has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System, and with all laws of the Commonwealth relating to worker's compensation, codified at M.G.L. c. 152.
- e. Contractor certifies that appropriate insurance coverage for all activities under this Agreement has been obtained and shall be maintained in effect through the term of this Agreement. CONTRACTOR ACKNOWLEDGES THE SUFFICIENCY OF THE TYPES AND AMOUNTS OF INSURANCE COVERAGE MAINTAINED AND THE APPROPRIATENESS OF THOSE COVERAGES FOR THE DURATION OF THE TERM. At MassCEC's request, Contractor will provide MassCEC with copies of the certificates of insurance evidencing such coverage. The insurance requirements for the Project and pursuant to this Agreement are solely Contractor's responsibility and shall not relieve Contractor of any responsibility to MassCEC.
- f. Contractor agrees to comply with all applicable federal and state and local statutes, rules, regulations, and permitting requirements, including, but not limited to, all laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices, and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits, or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, gender identity, or for exercising any rights afforded by law.

- g. Contractor represents and warrants that all of Contractor's Project Personnel are eligible to work in the United States at the time of execution of this Agreement and that Contractor shall comply with its continuing obligation to ensure such status for the Term.
- h. Contractor agrees and acknowledges that MassCEC is relying upon Contractor to provide the Services in a competent, complete, and professional manner, and, accordingly, Contractor performance under this Agreement shall be conducted with due diligence and in accordance with the highest industry standards of professionalism and competence.

**7. Project Managers:**

- a. MassCEC and Contractor have designated the following persons to serve as project managers to support effective communication between MassCEC and Contractor and to report on the Project's progress (the "Project Managers").

For Contractor:

[First Name Last Name], [Title] ([phone number] / [email]@)

For MassCEC:

[First Name Last Name], [Title] ([phone number] / [email]@masscec.com)

- b. Contractor shall be required to obtain prior written approval from MassCEC to make any change to its Project Managers. For the avoidance of doubt, MassCEC may update its Project Manager(s) listed without amending this Agreement, in compliance with the notice provisions of Section 8.

- 8. Notice:** Any notice hereunder shall be in writing and shall be sent either by (i) facsimile, email, or other electronic transmission, (ii) courier, or (iii) first class mail, postage prepaid, addressed to the Project Manager(s) listed in Section 7(a) at the address indicated in the preamble of this Agreement (or to such other address as a Party may provide by notice to the Party pursuant to this Section), and shall be effective (x) at dispatch, if sent by facsimile, email, or other electronic transmission, (y) if sent by courier, upon receipt as recorded by courier, (z) if sent by first class mail, five (5) days after its date of posting.

**9. Termination:**

- a. This Agreement may be terminated by either MassCEC or Contractor at any time for a material breach of any term of the Agreement.
- b. MassCEC may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate MassCEC action inconsistent with performing its obligations under this Agreement.

- c. MassCEC may terminate this Agreement at any time, in the exercise of its sole discretion. In the event of such termination, compensation shall be paid by MassCEC to Contractor for the actual costs of allowable expenses incurred for work performed and the reasonable and necessary actual direct costs incurred in the performance of the work pursuant to this Agreement prior to the effective date of the termination.
- d. Except as otherwise provided in the Agreement, the rights and obligations of each of the Parties under Sections: 5, 8, 9, 10, 12, 13, 14, 15, 17, 18, 20, 21, and 23 of this Agreement shall survive and remain in effect after the termination or expiration of this Agreement.

**10. Assignment and Subcontracting:** MassCEC may assign its rights and obligations under this Agreement to any person who succeeds to all or any portion of MassCEC's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. Contractor shall not assign or in any way transfer any interest in, or any of Contractor's rights or obligations under this Agreement, including by operation of law, without the prior written consent of MassCEC, nor shall Contractor subcontract any services to anyone without the prior written consent of MassCEC.

**11. Conflicts of Interest:** Contractor acknowledges the application of the Commonwealth's Conflict of Interest Law, codified at M.G.L. c. 268A to the subject matter of this Agreement and that Contractor's Project Personnel, and Contractor's subcontractor's personnel, if any, may be considered "special state employees" and thus may be subject to the provisions of such law. Contractor represents and warrants that it is, and agrees that, for the duration of the term of this Agreement, it and its subcontractors, if any, shall remain in full compliance with the Commonwealth's Conflict of Interest Law.

**12. Audit:** Contractor shall maintain books, records, and other compilations of data pertaining to its activities pursuant to this Agreement to the extent and in such detail as to properly substantiate claims for payment and Contractor's performance of its duties under the Agreement. All such records shall be kept for a period of seven (7) years, starting on the first day after final payment under the Agreement (the "Retention Period"). If any litigation, claim, negotiation, audit, or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MassCEC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy at reasonable expense, the books, records, and other compilations of data of Contractor which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not expressly



permitted under this Agreement, Contractor shall refund to MassCEC the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand.

**13. Indemnification:**

- a. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Commonwealth, MassCEC, and each of their respective agents, officers, directors, and employees (together with the Commonwealth and MassCEC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs, and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Contractor, its employees, agents, or assigns under this Agreement, or (ii) any negligent acts or omissions or reckless misconduct of Contractor. Without limiting the foregoing, Contractor shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or are imposed due to the failure to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees, or subcontractors.
- b. In no event shall either Party be liable for any indirect, incidental, special, or consequential damages whatsoever (including, but not limited to, lost profits or interruption of business) arising out of or related to Contractor, its employees, agents, or assigns performance of Services under this Agreement, even if advised of the possibility of such damages.

**14. Confidentiality:**

- a. Contractor hereby agrees to protect the physical security and restrict access to all data compiled for, used by, or otherwise in the possession of Contractor in performance of the Services in accordance with reasonable business practices and as otherwise provided in this Agreement. Contractor shall comply with all applicable laws and regulations relating to confidentiality and privacy, including, without limitation, all requirements of M.G.L. c. 66A implicated by the subject matter of this Agreement.
- b. In connection with the performance of the Contractor's Services, Contractor will be exposed to and have access to MassCEC's confidential and proprietary information and information that MassCEC's employees, applicants, consultants, affiliates, licensors, customers, vendors, and others have entrusted to MassCEC that may include, but is not limited to, trade secrets, know-how, or other intellectual property, financial, and commercial information, marketing and servicing information, costs, business affairs, future plans, employee compensation, employee personnel information, programs, databases, operations, and procedures (collectively, "Confidential Information") to which Contractor did not have access prior to performing Services of MassCEC, and

which Confidential Information is of great value to MassCEC. Contractor, at all times, both during and after any termination of this Agreement by either party, shall not in any manner, directly or indirectly, use any Confidential Information for Contractor's own benefit, or divulge, disclose, or communicate in any manner, or otherwise make available such Confidential Information, unless expressly authorized to do so in writing by an officer of MassCEC. Confidential Information shall not include (i) information which was in the public domain at the time of disclosure to Contractor; (ii) information which is or becomes generally known or available to the public through no act or failure to act on the part of Contractor; or (iii) information the disclosure of which is required by law or court order, provided the Contractor gives to MassCEC prompt, prior written notice of any such disclosure.

- c. Contractor has read and agrees to comply with, and will cause its agents, officers, directors, employees, and subcontractors to comply with, the provisions of this Section. Contractor agrees, for itself and for its agents, officers, directors, employees, and subcontractors, as follows:
- i. not at any time, whether during or after the termination of this Agreement, to divulge, disclose, or reveal to any person any Confidential Information, whether or not such information is produced by Contractor's own efforts, except (A) as specifically required in connection with the fulfillment of Contractor's obligations hereunder, or (B) as otherwise directed by MassCEC in connection with a disclosure request under M.G.L. c. 66 (the "Public Records Law"), a request for discovery, subpoena, court, or administrative order or other compulsory legal process, disclosure requirement or request relating to such Confidential Information;
  - ii. not at any time, whether during or after the termination of this Agreement, use any Confidential Information for Contractor's direct or indirect financial or other benefit or for the benefit of any Person related to or affiliated with Contractor or with whom Contractor is now or hereafter associated, other than MassCEC, nor will Contractor use or attempt to use any Confidential Information in any manner which could reasonably be expected to injure or cause loss, whether directly or indirectly, to MassCEC or any applicable third party;
  - iii. in the event that Contractor (or any of its agents, officers, directors, employees, or subcontractors) is questioned about Confidential Information by anyone who has not demonstrated to Contractor that it is authorized to receive or have access to such Confidential Information, or is asked to provide Confidential Information to any such Person, Contractor agrees to promptly notify MassCEC and respond to the inquirer in accordance with MassCEC's instructions; and
  - iv. not at any time, whether during or after the termination of this Agreement, reproduce any materials containing Confidential Information except to the extent

necessary to perform Contractor's obligations under this Agreement, nor make or use (or permit any of its agents, officers, directors, employees, or subcontractors to use) any materials other than in connection with the performance of Contractors' obligations under this Agreement and for the benefit of MassCEC, it being understood and agreed that all materials are, shall be and shall remain the sole and exclusive property of MassCEC, and immediately upon the termination of the Agreement for any reason, Contractor shall deliver all copies of MassCEC's confidential materials and all other property of MassCEC in its direct or indirect possession or control to MassCEC, at its main office. In addition, Contractor shall, upon termination of the Agreement, within ten (10) days, return all materials and Confidential Information, held by Contractor as data stored on computers, floppy disks, CD-ROMs, or other electronic media.

- d. Contractor shall collaborate directly with MassCEC to prepare any public statement, media strategy, webpage update, or announcement relating to or bearing on the work performed or data collected under this Agreement, or to prepare any press release or for any news conference in which MassCEC is concerned or discussed. The aforementioned includes, but is not limited to, any media pitches, interviews, embargoed materials, photo opportunities, blogs, guest columns, media events, or editorial boards which relates to this Agreement or MassCEC.
- e. Notwithstanding the foregoing, Contractor is hereby notified that in accordance with the Defend Trade Secrets Act of 2016 (18 U.S.C. Sec. 1833(b)), as amended, Contractor will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

**15. Public Records and CTHRU:** As a public entity, MassCEC is subject to the Commonwealth's Public Records Law, codified at M.G.L. c. 66 (the "Public Records Law"). Contractor acknowledges and agrees that any documentary material, data, or other information submitted to MassCEC are presumed to be public records. An exemption to the Public Records Law may apply to certain records, including materials that fall under certain categories of a statutory or common law exemption, including the limited exemption set forth in General Laws Chapter 23J, Section 2(k) regarding certain types of confidential information submitted to MassCEC by an applicant for any form of assistance. Contractor acknowledges and agrees that MassCEC, in its sole discretion, shall determine whether any particular document, material, data, or other information is exempt from or subject to public disclosure. MassCEC urges Contractor to carefully consider

what documents, materials, data, and other information it submits to MassCEC in connection with this Agreement.

In accordance with the Public Records Law, MassCEC generally considers the following types of information confidential:

- [fill in as necessary]

Contractor agrees and acknowledges that MassCEC shall have the right to disclose the name of Contractor and/or payee, the amount of any payments under this Agreement and any other information it may deem reasonably necessary on CTHRU, the Commonwealth's online database of state spending, or any other applicable state spending website.

**16. Tax Forms:** MassCEC will record payments to Contractor on, and provide to Contractor, a United States Internal Revenue Service ("IRS") Form 1099, and MassCEC will not withhold any state or federal employment taxes on Contractor's behalf. Contractor shall be responsible for paying all such taxes in a timely manner and as prescribed by law. Contractor shall provide MassCEC with a properly completed IRS Form W-9 (the "W-9"). Failure to provide the W-9 shall be grounds for withholding payment until such W-9 is received. The W-9 must be emailed to [finance@masscec.com](mailto:finance@masscec.com). For all tax-exempt entities (including government entities), a tax-exemption certificate or IRS tax-exemption determination letter must be emailed to [finance@masscec.com](mailto:finance@masscec.com).

**17. Choice of Law:**

- a. This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to its conflict of laws principles. Any dispute arising out of or relating to this Agreement or its breach, termination, or invalidity, whether before or after termination of this Agreement, if not resolved by negotiation among the Parties within thirty (30) days after such dispute is raised by either Party in writing, will be settled by binding arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over this Agreement. Any such arbitration will be conducted in or near Boston, Massachusetts. The prevailing Party shall be entitled to receive from the other Party its reasonable attorney's fees and costs incurred in connection with any action, proceeding, or arbitration hereunder.
- b. This Section shall not be construed to limit any other legal rights of the Parties. Each Party acknowledges and agrees that any breach or threatened breach of this Agreement by the other Party may result in substantial, continuing, and irreparable damage to the first Party. Therefore, before or during any arbitration, either Party may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction, where

such relief is necessary to protect its interests pending completion of the arbitration proceedings.

- 18. Independent Status:** Nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, partner, joint venturer, or principal and agent between MassCEC and Contractor, its employees, agents, or officers.
- 19. Counterparts:** This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 20. Severability:** Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power, or enforceability of any other clause or provision of this Agreement.
- 21. Amendments and Waivers:** MassCEC may amend Section 15 (without any action by Contractor) to reflect changes in law or MassCEC policies and shall promptly deliver any and all such amendments to Contractor in the manner provided in Section 8. Except as provided in the immediately preceding sentence, no amendments to or modifications of this Agreement, and no waiver of any provision of this Agreement, shall be effective unless the same shall be in writing and shall be signed by each of the Parties. Any waiver by MassCEC of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a Party shall not be construed as a waiver, or in any way limit the remedies available to that Party.
- 22. Force Majeure:** Neither Party shall be liable or responsible to the other Party, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) actions, embargoes, or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; and (f) strikes, labor stoppages or slowdowns. The Impacted Party shall give notice within two (2) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the

effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon fifteen (15) days' written notice.

**23. Binding Effect, Entire Agreement:** This Agreement shall be binding on the Parties and their respective successors and permitted assigns, and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no Person shall be regarded as a third party beneficiary of this Agreement. This Agreement embodies the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant, or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change, or restrict, the express terms and provisions of this Agreement. Furthermore, neither Contractor's nor any of its subcontractors' provision of services under this Agreement implies, establishes or otherwise creates any rights or expectations of additional contracts with the MassCEC, whether related or unrelated to the subject matter of this Agreement. The following (together with all exhibits, schedules, and attachments) are hereby incorporated into this Agreement by reference:

- a. Exhibit 1: Scope of Services

[Rest of Page Intentionally Blank]

**In witness whereof**, the Parties have caused this Agreement to be executed as a document under seal as of the Effective Date.

**Massachusetts Clean Energy Technology Center**

**[Contractor Name]**

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

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

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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

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

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

**Federal Tax ID No.:** \_\_\_\_\_

SAMPLE

**Exhibit 1**  
**SCOPE OF SERVICES: Project Plan, Deliverables, and Schedule**

- I. Project Plan [provide a description of the project]
- II. Payment Terms [describe payment terms and the invoicing process. Make sure this section is consistent with the terms of Section 3]
- III. Schedule and Deliverables

**EXAMPLE TABLE**

<b>Task Number</b>	<b>Task Description</b>	<b>Milestone/Deliverable</b>	<b>Completion Date</b>	<b>Payment Amount</b>
1				
2				
3				