



Request for Proposals: Compensation Consulting Services  
RFP No. 1 OPER-2024-Compensation Consulting Services

Date of Issue: March 19, 2024  
Proposals Due: April 5, 2024

All proposals must be submitted to:  
Emily Pittsley: [epittsley@masscec.com](mailto:epittsley@masscec.com), and Stephanie Simmons:  
[ssimmons@masscec.com](mailto:ssimmons@masscec.com)

## I. SUMMARY

Through this Request for Proposals (this “RFP”), the Massachusetts Clean Energy Technology Center (“MassCEC”) is seeking the services of an experienced and qualified compensation consultant (the “Consultant”) with proven expertise to conduct a comprehensive compensation survey to determine MassCEC’s level of competitiveness with similar organizations in the current labor market. The selected Consultant will produce a Compensation Study (the “Study”) and provide consultation services (the “Services”) for the term of the scope of work.

## II. ABOUT MASSCEC

MassCEC is a quasi-state economic development agency dedicated to accelerating the growth of the clean energy sector across the Commonwealth to spur job creation, deliver statewide environmental benefits and to secure long-term economic growth for the people of Massachusetts. MassCEC works to increase the adoption of clean energy while driving down costs and delivering financial, environmental, and economic development benefits to energy users and utility customers across the state.

MassCEC’s mission is to accelerate the clean energy and climate solution innovation that is critical to meeting the Commonwealth’s climate goals, advancing Massachusetts’ position as an international climate leader while growing the state’s clean energy economy. MassCEC is committed to creating a diverse, equitable, and inclusive organization where everyone is welcomed, supported, respected, and valued. We are committed to incorporating principles of diversity, equity, inclusion, and environmental justice in all aspects of our work in order to promote the equitable distribution of the health and economic benefits of clean energy and support a diverse and inclusive clean energy industry. MassCEC strives to lead and innovate in equitable clean energy and climate solutions.

MassCEC employs approximately ninety-three (93) full-time employees who focus on a wide variety of projects, tasks and initiatives within the organization. Employees at MassCEC come from diverse backgrounds and sector experience. More information about MassCEC can be found at [www.masscec.com](http://www.masscec.com). The Consultant selected by MassCEC will be provided with more detailed information upon request.

In 2022, MassCEC, with the assistance of a consultant, conducted a compensation study. This study compared the organization's salary levels with those in related industries and organizations to help provide guidance for future compensation decisions, as well as to help inform the organization's compensation philosophy and structure. Utilizing the study's findings, MassCEC conducted an internal assessment of salaries and established pay grades and salary ranges for all positions in the organization to manage compensation moving forward.

### III. GOALS + OUTCOMES

The goal of the Study is to build on MassCEC's prior compensation study and evaluate MassCEC's compensation against the labor market as well as incorporating the recommendations and requirements generated by the Report of the Quasi-Public Authority Compensation Review Commission (commonly known as "The Crosby Report")<sup>1</sup>.

The Study shall:

- Assess MassCEC's compensation philosophy and strategy to ensure that the organization can continue to attract and retain staff, while promoting compensation policies that are appropriate;
- Assess MassCEC's compensation compared to similar positions at other Massachusetts quasi-state agencies, and separately compared to similar positions in the private sector, including similarly sized mission-driven organizations as well as other similarly sized private sector entities (where applicable) to particular overlapping roles;
- Analyze internal compensation relationships and compare compensation to the market and provide recommendations for structuring compensation and making adjustments, as needed;
- Evaluate MassCEC's current performance-based salary increase system and make recommendations for changes, as needed; and
- Evaluate overall factors that drive staff satisfaction outside of compensation and provide recommendations for increasing/improving satisfaction, as needed.

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<sup>1</sup> [https://www.umb.edu/editor\\_uploads/images/mgs/Report-of-the-Quasi-Public-Authority-Compensation-Review-Commission-Aug-2009\\_.pdf](https://www.umb.edu/editor_uploads/images/mgs/Report-of-the-Quasi-Public-Authority-Compensation-Review-Commission-Aug-2009_.pdf)

#### IV. ELIGIBILITY

The selected Consultant shall have the following minimum qualifications:

- Proven experience in compensation consulting and successful completion of projects of comparable size and scope;
- Experience with executive and organization compensation reports and surveys, analysis of total compensation packages, competitive analysis and establishing compensation philosophies;
- Experience with market pricing with salary structures and framework options and experience with Massachusetts Pay Equity Laws;
- Familiarity with the Massachusetts labor market and with organizations that are similar and comparable to MassCEC, such as other Massachusetts quasi-public agencies, non-profits, and government agencies;
- Experience with establishing appropriate compensation in both private and public settings; and
- Experience in establishing appropriate compensation for a variety of sectors within the clean energy industry (useful but not required).

#### V. ESTIMATED TIMELINE

<b>Release of RFP</b>	March 19, 2024
<b>Deadline for Written Questions</b>	March 27, 2024
<b>Final Questions and Answers Posted</b>	April 1, 2024
<b>Proposals Due</b>	<b>April 5, 2024 at 4 p.m. EST</b>
<b>Anticipated Interview Dates</b>	April 8, 2024 – April 10, 2024
<b>Anticipated Notification of Award</b>	April 12, 2024
<b>Anticipated Start of Services</b>	April 15, 2024
<b>Anticipated Deadline for First Draft of Study</b>	May 15, 2024
<b>Anticipated Deadline for Final Draft of Study</b>	May 31, 2024

Proposals to this solicitation must be received by MassCEC no later than 4 p.m. EST on April 5, 2024. Proposals must be sent to Emily Pittsley, [epittsley@masscec.com](mailto:epittsley@masscec.com), and Stephanie Simmons, [ssimmons@masscec.com](mailto:ssimmons@masscec.com). “Compensation Consulting Services” should be in the subject line. Only complete responses will be considered, and late responses will not be considered.

## VI. SCOPE OF WORK

It is anticipated that the Study will be completed no later than May 31, 2024. The selected Consultant will be required to establish a work plan that includes tasks, deliverables and deadlines. The Consultant will work with a MassCEC working group (the “Working Group”), which will consist of MassCEC’s human resources team, the Chief of Staff and Chief Financial Officer, to confirm the scope of services, methodology, project timelines, and other project deliverables. The Consultant will discuss the work of MassCEC and its compensation philosophies and policies and review benchmark classifications to be used for a market survey and analysis with the Working Group, as well as with MassCEC’s Chief Executive Officer and General Counsel. After conducting the analysis, the Consultant shall present the results to the Working Group, Chief Executive Officer and General Counsel. Once the Study is finalized, the Consultant shall be available to present the Study to the MassCEC Board of Directors Compensation Committee and full Board of Directors.

### **Compensation Study**

The Consultant will analyze the current salary and benefits provided to MassCEC staff, including retirement, health, and other related benefits, and compare them to similar organizations in multiple sectors (public, private, etc.). The Study must include comparisons to other quasi-public state agencies (data is generally publicly available on CTHRU<sup>2</sup>), similarly-sized private sector organizations, state agencies, and non-profits. The Consultant will assess factors and metrics that it agrees, in consultation with the Working Group, are appropriate for evaluating compensation. The Working Group will be prepared to respond to questions regarding organizational structure and to assist the Consultant with matching MassCEC positions with similar external positions for comparison. Data utilized to prepare the written Study shall be readily available in an organized manner for review by the Working Group.

MassCEC seeks to ensure that compensation levels are:

- Appropriate for the nature, size and uniqueness of MassCEC;
- Fair in providing compensation and recognition to employees;
- Competitive to ensure that the positions remain motivating and attractive (within the constraints of a public system) for staff with a combination of public and private sector experience; and
- Consistent with state guidelines and recommendations applicable to quasi-public entities (i.e., the Crosby Report).

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<sup>2</sup> <https://www.macomptroller.org/cthru>

Criteria for evaluating MassCEC's compensation policies may include, without necessarily being limited to:

- The nature, mission, and functions of MassCEC and the extent to which MassCEC has successfully met its mission and accomplished its functions;
- The sophistication of MassCEC's mission, programs, size and operations, as well as individual positions;
- The need to regularly attract new talent and to retain current talent;
- The need to balance salary levels with other benefit offerings;
- The particular stage of MassCEC's organizational development;
- The short and long-term goals of MassCEC, considering percentile benchmarks for future growth;
- The current and projected financial state of MassCEC;
- Comparison to general industry standards for compensation as well as any relevant public sector and similar quasi-public/non-profit standards, including 25<sup>th</sup> 50<sup>th</sup> and 75<sup>th</sup> percentiles for compensation levels;
- The appropriate competitive position for MassCEC in the market reflecting percentile rankings; and
- The national economic and labor market conditions, as well as the economic and labor market conditions for the Commonwealth of Massachusetts with a focus on percentile rankings for context.

The Consultant shall ensure that MassCEC's compensation philosophy and its performance-based salary increase process is factored into the above analysis, and that changes are recommended as needed to meet the goal of motivating, rewarding, and progressing employees through pay ranges, while ensuring sustainable compensation policies that are in competitive standing with the Commonwealth's labor market. The Consultant shall also evaluate the specialized skillsets or educational attainment levels that are required for positions and whether a varying compensation structure should apply. In addition, the Consultant shall characterize the intensity of competition for roles in both the public and private sector.

The Study shall provide not just market analysis and comparisons but also offer MassCEC specific options and recommendations for structuring its compensation and other internal policies, such as MassCEC's policies with respect to professional development or other non-cash compensation that support the overall compensation framework. MassCEC is interested in an evaluation of factors other than cash compensation, such as company culture, that drive satisfaction at the organization and how such factors are applied in the private and public sectors.

## VII. HOW TO APPLY

It is strongly preferred that the entire Proposal be no longer than five (5) to seven (7) pages in length. Information required for the Proposal includes the following:

- **Statement of Qualifications:** The Proposal must include a statement of qualifications, experience and description of the applicant and project leaders and team members. Please describe the applicant's current and historical expertise in providing the services identified in the RFP. Please provide an example of at least one similar, successful development and implementation of a compensation study.
- **Proposed Work Plan & Budget:** Proposals must include a detailed scope of services and methodology that comprehensively defines and describes the individual tasks involved in performing the Study. Proposals should include a timeline and budget for tasks/deliverables. Additionally, please also include a plan for hosting sensitive documents and information. Furthermore, proposals should provide a rate for one-off benchmarking, allowing for the addition of a new position after the study's completion for a set fee.
- **References:** All responses must include reference contacts from at least three (3) clients, and preferably clients who have utilized the firm on matters related to compensation consulting services. Please provide a brief description of the services provided.
- **Attachment 1: Authorized Applicant's Signature and Acceptance Form**
- **Attachment 2: Mark-up of Services Agreement with detailed explanations (if applicable):** A template services contract has been attached to this RFP as Attachment 2. If the applicant identifies any exceptions to the services agreement, these should be clearly and completely detailed with the application. Applicants must provide rationale for each proposed change. Thorough review of this agreement will significantly expedite the contracting process, if the applicant is selected. MassCEC reserves the right to reject any application without further review if an application seeks exceptions but does not detail and justify proposed changes.

It is the sole responsibility of the applicant to ensure that its Proposal is complete and properly submitted. At its discretion, MassCEC may request supplemental materials from the applicant and such materials must be submitted within five (5) days of the request or the Proposal may be rejected without further review.

Applicants may be invited for an interview with MassCEC team members, which may be held remotely via video-conference.

The completed Proposal and all other documentation should be submitted to Emily Pittsley at [epittsley@masscec.com](mailto:epittsley@masscec.com), and Stephanie Simmons, [ssimmons@masscec.com](mailto:ssimmons@masscec.com). Please send the minimum number of files possible. “Compensation Consulting Services” must appear in the email subject line. **Proposals are due on April 5, 2024 at 4 p.m. EST.**

## VIII. SELECTION CRITERIA

MassCEC will evaluate each response that is properly submitted. After submission and review of responses, interviews may be requested. Selection of a consultant to provide the Services will be based on the following criteria:

- Experience and qualifications of the applicant, and more specifically, individual team members assigned to the engagement, with a demonstrated experience in providing compensation consulting and preparation of compensation studies. This also includes years in business, service capabilities and experience of the applicant in providing compensation and classification studies for public or quasi-public governmental entities;
- Demonstrated ability to complete the Study in the desired timeframe;
- Approach to the Study and understanding of the objectives and organizational needs;
- Proposal’s responsiveness to the RFP requirements;
- Competence and knowledge demonstrated during the interview process;
- Communications skills (both verbal and written) and ability to conduct the study in an efficient and effective manner;
- Reasonable fees, including a clear understanding of what is included and not included in the fees; and
- Verification of positive references with other clients.

While the order of these factors does not generally denote relative importance, MassCEC acknowledges that selecting best value providers primarily requires a balanced combination of reasonable fees and strong experience and demonstrated expertise in providing compensation consulting services. MassCEC reserves the right to consider such other relevant factors as it deems appropriate. MassCEC may or may not request additional information from an applicant prior to selection.

## IX. CONTACT INFORMATION FOR QUESTIONS

Please submit all questions to Emily Pittsley and Stephanie Simmons by March 27, 2024 at 4 p.m. EST at [epittsley@masscec.com](mailto:epittsley@masscec.com) and [ssimmons@masscec.com](mailto:ssimmons@masscec.com) with “Compensation



Consulting Services” in the email subject line. Responses to such questions will be available on MassCEC’s website by April 1, 2024 at 4 p.m. EST.

## X. 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. If confidential information is submitted as part of the application and not clearly marked as confidential, such information may be made publicly available by MassCEC without further notice to the applicant.

### 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 apply based on an out-of-date RFP document.

### CONTRACT REQUIREMENTS

Upon MassCEC’s authorization to proceed with the proposal, MassCEC and the awarded applicant(s) will execute a contract, substantially in the form of the template agreement attached hereto as Attachment 2, which will set forth the respective roles and responsibilities of the parties.

ATTACHMENT 1: AUTHORIZED APPLICANT’S SIGNATURE AND ACCEPTANCE FORM

**Compensation Consulting Services (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 2: TEMPLATE AGREEMENT

### **AGREEMENT FOR SERVICES**

This **AGREEMENT FOR SERVICES** (the “Agreement”), effective as of [Date – M/D/YYYY], the (“Effective Date”), is 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 294 Washington Street, Suite 1150 Boston, Massachusetts, 02108, and [fill in COMPANY NAME AND PRINCIPAL PLACE OF BUSINESS] (“Contractor”) (each a “Party” and together the “Parties”).

**WHEREAS**, MassCEC is seeking a consultant to conduct a comprehensive compensation survey to determine MassCEC’s level of competitiveness with similar organizations in the current labor market;

**WHEREAS**, Contractor is [insert information regarding Contractor and their bona fides]; and

**WHEREAS**, MassCEC desires to retain Contractor to provide compensation consulting 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.] [**HOURLY FEE:** MassCEC shall pay Contractor at the hourly rate of \$[fill in AMOUNT] per [fill in AMOUNT OF TIME] to perform the Services. Such payments shall not exceed \$[fill in AMOUNT] in total (the “Fee Amount”). The Fee Amount shall be the sole and complete compensation for Services performed by Contractor under this Agreement.]
  - b. Contractor shall enroll in MassCEC’s Automated Clearinghouse (“ACH”) system to receive payment by completing the ACH enrollment form attached to this Agreement in Exhibit 2 and submitting it to [Finance@masscec.com](mailto:Finance@masscec.com) at or before the submission of their first invoice. Any changes to the information in the ACH form must be submitted to

Finance@masscec.com through an updated ACH enrollment form within thirty (30) days of any such change.

- c. 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.
- i. Contractor is registered and in good standing with the Secretary of the Commonwealth of Massachusetts's Office.

**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:

Emily Pittsley, Human Resources Manager, 617-315-9351 /

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

Stephanie Simmons, Human Resources Director, 617-315-9341 /

ssimmons@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) 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 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. 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 officers, directors employees, agents, subcontractors, or assigns under this Agreement, or (ii) any negligent acts or omissions or reckless misconduct of Contractor, its officers, directors, employees, agents, subcontractors, or assigns. 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, subcontractors, or assigns.
- 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's, its officers', directors', employees', agents', subcontractors', 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 CTRU:** [Include if you anticipate receiving confidential information] 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.

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 officers, directors, employees, agents, or assigns.

19. **Counterparts:** This Agreement may be executed in two (2) 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

b. Exhibit 2: ACH Enrollment Form

**In witness whereof**, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the Effective Date.

**Massachusetts Clean Energy Technology Center**

**[Contractor Name]**

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

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

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

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

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

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

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

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

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

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

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

**Exhibit 2 – ACH Enrollment Form**  
Please submit completed form to [Finance@masscec.com](mailto:Finance@masscec.com)

<b>Part I: Reason for Submission</b>		
New Enrollment	Change Enrollment	Cancel Enrollment
Document Included		
Voided Check	Bank Letter	

<b>Part II: Account Holder Information</b>		
Account Holder Legal Name		
dba Name		
Legal Address Number, Street, Apartment/Suite Number		
CityStateZip Code		
Account Holder Tax Identification Number Employer Identification Number (EIN) Social Security Number (SSN)		

<b>Part III: Financial Institution Information</b>		
Financial Institution Name		
Routing Number	Account Number	Account Type CheckingSavings
If this is an Enrollment Modification, you must include your old financial institution information or your request will be returned.		
Old Financial Institution Name		
Old Routing Number	Old Account Number	Old Account Type CheckingSavings

<b>Part IV: Vendor/Customer Information</b>	
This is the person we will contact for any questions regarding this ACH Authorization	
Contact Person's Name	Contact Person's Title
Contact Person's Phone	Contact Person's Email

**Part V: Authorization**

By signing below, I hereby certify that the account(s) indicated on this form is under my direct control and access; therefore, I authorize the Massachusetts Clean Energy Center to initiate, change, or cancel credit entries to the account(s) as indicated on this form.

For ACH debits consistent with the International ACH Transaction (IAT) rules check one:

I affirm that payments authorized by this agreement are not to an account that is subject to being transferred to a foreign bank account

I affirm that payments authorized by this agreement are to an account that is subject to being transferred to a foreign bank account.

This authority is to remain in full force and effect until the Massachusetts Clean Energy Center has received written notification from either me or an authorized officer of the organization of the account's termination in such time and in such a manner as to afford MCEC a reasonable opportunity to act upon it.

Account Holder Authorized Signature	Print Name
Title	Date