

ATTACHMENT B: SAMPLE 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, [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 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, which is incorporated by reference. From time to time, the Parties may agree to additional or modified scopes of services, schedules, or deliverables (each, an “Additional Scope”), provided that any such Additional Scope is set forth in a written amendment to this Agreement executed by authorized representatives of both Parties. This Agreement shall apply to all services in Exhibit 1 or any Additional Scopes (collectively, the “Services”) provided by Contractor to MassCEC during the Term, as defined below. Contractor shall perform the Services in accordance with the schedule in Exhibit 1 (the “Schedule”) or, with respect to any Additional Scope, in accordance with the schedule set forth in the applicable written amendment (for example Exhibit 1-A, Exhibit 1-B, etc.).
- 2. Deliverables:** Contractor shall provide all deliverables described in Exhibit 1 or any Additional Scope (collectively, the “Deliverables”).
- 3. Payment:**
- 4. 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.

Contractor shall email AP@masscec.com to enroll in MassCEC’s Automated Clearinghouse (“ACH”) system to receive payment. Contractor shall include the contract ID GG-XXXX-XXXXX on all invoice documentation provided to MassCEC. Any changes to Contractor’s ACH information must be submitted to AP@masscec.com within thirty (30) days of such change.

5. 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:
6. [IF APPLICABLE] Staff Charges: staff charges for each employee, the employee’s name, title, number of hours worked, and hourly rate; and
7. [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. Contractor shall submit invoices by email to MassCEC’s Project Managers listed herein and copy AP@masscec.com.

8. **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 this Agreement.
9. **Access and Use**: Contractor agrees to provide all contributions, including Deliverables, 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 contributions Contractor prepares and delivers to MassCEC or third parties on MassCEC’s behalf, and which shall have the right to use them in any way without additional payment to Contractor. If Contractor’s contributions are for any reason deemed not to have been a work made for hire, Contractor hereby assigns to MassCEC all rights, titles, and interests 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.

Each Party shall retain all right, title, and interest in and to any intellectual property, materials, tools, data, software, knowhow, or other assets that were conceived, developed, or acquired by such Party prior to the commencement of Services under this Agreement or independently of the performance of the Services (“PreExisting IP”). Nothing in this Agreement shall be construed as transferring or assigning either Party’s PreExisting IP, except to the extent expressly agreed in writing by authorized representatives of both Parties.

Contractor represents and warrants that Deliverables 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 the Parties have expressly agreed in writing, prior to such delivery or use, that such material constitutes Contractor's PreExisting IP and is being licensed rather than assigned.

10. **Contractor's Representations, Warranties, and Certifications:** As of the Effective Date of this Agreement, Contractor hereby represents and warrants as follows:
 11. Contractor is duly authorized to enter into this Agreement.
 12. 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.
 13. 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.
 14. 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.
 - a. 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.
 - b. 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 with the reasonable care and skill ordinarily exercised by professionals in the same field.

- c. Unless Contractor is a municipality or political subdivision of the Commonwealth of Massachusetts, Contractor is registered and in good standing with the Secretary of the Commonwealth of Massachusetts's Office for the duration of the Term.

15. **Independent Status:** 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.

16. **Insurance:** 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.

17. **Project Managers:**

18. 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)

- a. Contractor shall obtain prior written approval (email acceptable) from MassCEC to make any change to its Project Managers.

19. **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 herein 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.

20. Termination:

21. This Agreement may be terminated by either MassCEC or Contractor at any time for a material breach of any term of the Agreement.
22. 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.
23. [Optional - delete if no go/no-go point in Scope of Work] In the event the Scope of Work contains a "Go/No-Go" decision, MassCEC may terminate this Agreement at the applicable decision point in its sole discretion and in accordance with any metrics, milestones, or criteria indicated in the Scope of Work, at which point Grantee shall not submit any additional invoices to MassCEC.
24. 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.
 - a. Except as otherwise provided in the Agreement, the rights and obligations of each of the Parties under Sections the following sections shall survive and remain in effect after the termination or expiration of this Agreement: 5 (Access and Use), 6 (Contractor's Reps, Warranties, and Certifications), 8 (Insurance), 10 (Notice), 11(Termination), 14 (Audit), 15 (Indemnification), 16 (Confidentiality), 17 (Public Records and CTHRU) , 19 (Choice of Law), 20 (Independent Status), 22 (Severability), 23 (Amendments and Waivers), and any other provision of this Agreement which by its nature would be intended to survive the Agreement's termination or expiration.
25. **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. Any subcontract entered into by Contractor pursuant to this section shall not relieve Contractor from any of its obligations pursuant to this Agreement, any act or omission by a subcontractor of Contractor shall be deemed an act or omission by Contractor, and Contractor shall be responsible for each of its subcontractors complying with all obligations of Contractor pursuant to this Agreement.

26. **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.
27. **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.
28. **Indemnification:**
29. 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 related to third party claims (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; (ii) any negligent acts or omissions or reckless misconduct of Contractor, its officers, directors, employees, agents, subcontractors, or assigns; or (iii) the failure to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees, subcontractors, or assigns.
30. 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.

31. Confidentiality:

32. Contractor shall protect the security and confidentiality of all data and materials used or obtained in performing the Services, consistent with reasonable business practices, applicable law, and this Agreement, including all requirements of M.G.L. c. 66A, as each may evolve or change.
33. In performing the Services, Contractor may receive or have access to MassCEC's confidential or proprietary information, including information of MassCEC's employees, customers, vendors, and other third parties ("Confidential Information"). Contractor shall not use, reproduce, or disclose any Confidential Information except as necessary to perform the Services or as expressly authorized in writing by MassCEC, provided however, that Contractor may disclose Confidential Information as required by law, subpoena, or court order provided further that Contractor gives MassCEC prompt prior written notice of such request for disclosure when legally permitted. These obligations apply during and after the Term of this Agreement. Confidential Information does not include information that (i) is publicly available without breach of this Agreement; or (ii) becomes publicly available through no act or omission of Contractor.
- a. At no time shall Contractor use Confidential Information for Contractor's direct or indirect benefit or the benefit of any other person or entity, outside of the scope of this Agreement. Confidential Information and any related materials shall remain the sole and exclusive property of MassCEC at all times. Contractor shall return or securely destroy all Confidential Information upon termination of this Agreement, provided that Contractor may keep one archival copy of Confidential Information if required for legal or audit purposes so long as Contractor continues to apply all of the protections under this Agreement to such Confidential Information. Contractor shall coordinate with MassCEC before making any public statement, media communication, or external disclosure relating to the Services or any data collected under this Agreement. Contractor shall ensure that its personnel and subcontractors comply with this Section and shall promptly notify MassCEC of any request for, unauthorized access to, or unauthorized use of, Confidential Information.
 - b. 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.
34. **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 subject to disclosure. An exemption to the Public Records Law may apply to certain records, such as materials that fall under certain statutory or common law

exemptions, 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 shall be solely responsible for informing MassCEC in advance of any information it plans to submit to MassCEC that it considers exempt from the Public Records Law. Notwithstanding the foregoing, Contractor acknowledges and agrees that MassCEC, in its sole discretion, shall determine whether any document, material, data, or other information is exempt from or subject to public disclosure. Contractor shall not send MassCEC any confidential or sensitive information that may be subject to public disclosure.

Contractor agrees and acknowledges that MassCEC shall have the right to disclose the name and address of Contractor, the amount of the payment pursuant to 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.

35. **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 AP@masscec.com. For all tax-exempt entities (including government entities), a tax-exemption certificate or IRS tax-exemption determination letter must be emailed to AP@masscec.com.

36. **Choice of Law:**

37. 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 fees and costs incurred in connection with any action, proceeding, or arbitration hereunder.

38. 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.

39. **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.
40. **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.
41. **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.
42. **Amendments and Waivers:** MassCEC may amend this Agreement (without any action by Contractor) to the extent such amendment is necessary to reflect changes in law, regulation, or public policy that apply to MassCEC or the Services. MassCEC shall promptly deliver any such amendment to Contractor in the manner provided in the Notice provision hereof. 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 either Party 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.
43. **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. If 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.
44. **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:

45. Exhibit 1: Scope of Services

[Rest of Page Intentionally Blank]

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				

