



Request for Proposals: Cold Snap Demand Side
Management Analyses and Program Support
RFP FY2019-CSD-01

Date of Issue: April 29, 2019
Proposals Due: June 3, 2019

All proposals must be submitted to:
ahorowitz@masscec.com

I. SUMMARY

The Massachusetts Clean Energy Center (“MassCEC”) is requesting proposals from consultants with significant expertise in natural gas and electricity markets as well as demand-side management and energy efficiency to provide analytical support services. These services will support MassCEC staff in designing programs focused on demonstrating the ability of an innovative portfolio of demand-side measures and management (“DSM”) to reduce emissions and customer costs and improve resiliency during multi-day cold weather periods in Massachusetts and New England generally (“Cold Snap DSM Analyses” or “Services”).

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. BACKGROUND AND GOALS

MassCEC seeks to support the utilities’ energy efficiency program administrators in considering innovative uses for demand-side resources by creating a program(s) that can demonstrate an innovative portfolio of new and market-ready demand-side resources to reduce emissions during winter peak periods while increasing system reliability

Winter electricity reliability and cost increases resulting from a constrained electric system are issues of increasing importance in the New England electric sector. The electric sector has repeatedly faced pricing constraints during multi-day periods of extreme winter temperatures (also known as “cold snaps”). Pricing constraints have arisen despite several years of flat or declining demand for electricity in Massachusetts and New England generally, and despite increasing penetration of renewable generation resources, in part because of increasing demand for natural gas for heating purposes and other end uses. As such, although pricing constraints arise in the bulk electric system, this system may be the least equipped to take meaningful action to address the root causes of such constraints compared to gas utilities, system operators, and end users. By contrast, end users on the electric and gas distribution networks are impacted by and able to impact both systems, which are highly intertwined with and interdependent on one another. The ability of end users to impact pricing constraints, in particular through their gas consumption as well as electric consumption behavior, has been underexplored as a path to resolving such constraints.

The Massachusetts legislature recently-passed an Act to Advance Energy,¹ which has opened the possibility of new paradigms when considering resources on the distribution-scale of the Commonwealth’s gas and electric systems. In particular, the statute enables programs that “are designed to result in cost-effective reductions in greenhouse gas emissions through the use of expanded

¹ <https://malegislature.gov/Bills/190/H4857>

electricity consumption while minimizing ratepayer costs² to be included in the Commonwealth’s energy efficiency programs. Meanwhile, Massachusetts utilities’ energy efficiency program administrators have demonstrated an increased commitment to active demand and demand response programs in the most recent Three Year Plan.³

By encouraging utilities to explore active demand, fuel-switching, and electrification measures on the demand-side, the Commonwealth has opened a new path allaying regional concerns regarding extreme winter weather. Unlike major capital projects, demand-side measure can be procured rapidly and in granular increments. Uniquely among other options, an integrated portfolio of gas and electricity demand management measures can allow the Commonwealth’s gas and electric utilities, in collaboration with ISO-NE, to modulate demand for *both* types of energy consumption without threatening the ability of the system to support customer needs.

IV. ELIGIBILITY

MassCEC anticipates selecting a lead consultant under this RFP (the “Consultant”). An applicant may be individuals, sole proprietors, professional consultants, institutions or companies with multiple employees (“Applicant”). If an Applicant does not possess all the requisite experience required for the Study, MassCEC encourages Applicants to form teams. Proposals must be submitted by the 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

RFP Released	April 29, 2019
Questions Due	May 20, 2019
Applications Due*	June 3, 2019 by 4:00PM Eastern
Selection Announcement	July 31, 2019

*Late or incomplete submissions will not be considered.

VI. SCOPE OF WORK

The scope of work below is intended to allow Applicants to prepare a proposal that demonstrates their ability to carry out the anticipated tasks required and to provide an estimated budget for work for the Cold Snap DSM Analyses.

Applicants should base pricing and timelines on the following illustrative list of tasks:

- Resource-specific fact sheet-style analyses describing the ability of different demand-side measures to impact total gas consumption in Massachusetts. Anticipated measures for potential consideration include, but are not limited to, air source heat pump adoption, electric and thermal energy storage, end user gas demand response, gas efficiency and weatherization, electrification of industrial gas usage, and others.

² <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter227>

³ <http://ma-eeac.org/plans-updates/>

- The Consultant will be responsible for proposing a final list of measures for analysis. At least three new market entrant technologies should be included in the proposed list of measures.
- Analysis for each measure should include:
 - A description of the measure; its principle of operation; typical system design and target sectors/use cases; its level of current deployment; approximate upfront and operational costs
 - Electricity and gas usage associated with the measure per year and per usage event
 - A discussion of the appropriateness of the measure to reduce total-system gas usage during both brief (one day) and long (up to one week) constraint periods, including an analysis of the impact of different deployment levels on electric and gas prices during constraint periods
 - A discussion of existing market or regulatory barriers that may inhibit adoption of the measure
 - A discussion and roadmap of potential incentive models, pilot projects, and other approaches to spur adoption of the measure
- The Consultant will prepare a measure-specific factsheet for each measure summarizing the above in layman's terms
- Program design support
 - A memo describing similar pilot programs in other United States jurisdictions, including a description of lessons learned and recommendations within a Massachusetts context
 - A memo describing program design considerations such as participant recruitment, number of projects, and required funding levels to achieve program goals
 - A slide deck, suitable for adaptation by MassCEC staff for internal and external presentations, describing the potential cost and GHG savings associated with deployment on a measure-by-measure basis or of a portfolio of analyzed measures
- A technical white paper for MassCEC staff consumption, describing the methodology used to support the resource-specific analyses. The white paper should in particular include a description of the Consultant's approach to modeling the gas and electricity consumption impacts associated with implementation of each measure as well as the Consultant's approach to estimating price impacts from implementation of each measure that may arise due to interactions between price formation mechanisms in the electricity and gas markets during constrained periods in particular.

The final list of tasks and deliverables will be subject to negotiation during the selected Consultant and MassCEC prior to contracting.

VII. HOW TO APPLY

The submission must be in electronic form (one PDF file), including all relevant attachments, submitted via email to ahorowitz@masscec.com. “Cold Snap DSM Analyses” 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 to this RFP)
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.

PROPOSAL REQUIREMENTS

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

1. Firm Background (1 page)
 - Summary of the firm’s background, highlighting any relevant or complementary expertise and describing firm’s approach to similar engagements
2. Statement of Qualifications (2 – 3 pages)
 - The response should specifically indicate an Applicant’s current and historical expertise in providing the services identified in the RFP. Clearly address each criterion listed in the Selection Criteria section.
 - Brief bios of relevant team members (include resumes as an appendix; these do not count against the page limit)
 - Provide summaries of relevant previous work, including links to publicly-available analyses similar to the proposed Cold Snap DSM Analyses
 - Include 3 references
3. Proposed Scope (3 – 5 pages)
 - Discussion of proposed technical approach
 - Timeline
 - Data sources
4. Project Management Approach (1 page)
 - Approach to maintaining an ongoing understanding of project progress
 - Plan for engagement with MassCEC regarding the above
5. Budget (2 pages)
 - Estimated budget, broken out by task
 - Rates for all relevant team members

Under no circumstances will MassCEC accept responses past the deadline.

VIII. SELECTION CRITERIA

Criterion	Evaluation Questions
Budget	<ol style="list-style-type: none"> 1. Is the Applicant quote cost competitive? 2. Are the services reflected in the Applicant's quote commensurate with the proposed budget? 3. Is the Applicant's quote realistic?
Quality of Application	<ol style="list-style-type: none"> 4. Is the application timely? 5. Does the Applicant demonstrate an understanding of the concepts and motivators underlying this program? 6. Does the application provide all information requested in this RFP? 7. Is the proposed work plan clear? 8. Will the proposed work plan fulfil the goals of each of the tasks? 9. Does the Applicant plan to provide services commensurate with the services requested by MassCEC? 10. Has the Applicant demonstrated sufficient time resources and flexibility to provide the required services?
Familiarity with Innovative DSM Measures	<ol style="list-style-type: none"> 11. Demonstrate intimate knowledge of and experience with the demand-side management landscape, including technologies and practices available to manage gas and electric demand at the building level. 12. Demonstrate expertise with performing technical and economic potential analyses for DSM measures 13. Demonstrate familiarity with sectoral differences in DSM measures and adoption rates (i.e., across single-family residential, multi-family residential, commercial, and industrial sites) 14. Demonstrate strong knowledge of and experience with cost-benefit analysis and the Massachusetts energy efficiency regulatory and policy landscape 15. Ability and experience in providing policy options to advance DSM adoption in Massachusetts, including the ability and experience with identifying existing programs and providing options for new policies and regulatory changes
Gas and Electric Market Expertise	<ol style="list-style-type: none"> 16. Demonstrate knowledge of factors affecting delivered gas prices and wholesale electricity prices in New England. 17. Demonstrate knowledge of supply and pricing constraints in these markets, the causes thereof, and the likely outlook for such constraints over the next 5, 10, and 20 years. 18. Demonstrate knowledge of interrelationships between these markets, including how changes in demand for gas or electricity by end users may impact gas supply to electric generators and vice versa.

XI. BUDGET

An Applicant must provide an anticipated budget with the proposal. 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. An Applicant should include both staff time and expected expenses when creating the budget for their proposal. Applicants should include purchases of datasets for preparing the Study, however, it is encouraged that consultants use publicly available datasets.

X. CONTACT INFORMATION FOR QUESTIONS

Please submit all questions in writing to ahorowitz@masscec.com no later than **11:59 p.m. Eastern, Monday, May 20, 2019**. "Cold Snap DSM Analyses RFP Questions" must appear in the subject line. Responses to questions will be posted on the RFP page by May 27, 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.

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

Cold Snap DSM Analyses and Program Support Request for Proposals (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], 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 [COMPANY NAME AND PRINCIPAL PLACE OF BUSINESS] (“Contractor”) (each a “Party” and together the “Parties”).

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. 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:

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 [DATE] (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 the Project Personnel 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 listed in Section 4(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. Thus, any documentary material, data, or other information received by MassCEC from an applicant is a public record subject to disclosure. 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. Contractor agrees and acknowledges that it shall not send MassCEC any confidential or sensitive information under 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. 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.

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.: _____

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

TBD