REQUEST FOR QUALIFICATIONS

PROTOTYPING AND MANUFACTURING SERVICES FOR

THE MARYLAND ENERGY INNOVATION ACCELARATOR PROGRAM (MEIA)

ISSUED BY:	**Maryland Clean Energy Center** **5000 College Avenue, Suite 31010** **College Park, MD 20740**
RELEASE DATE:	**Monday, December 8, 2025**
PRE-SUBMITTAL CONFERENCE:	**Tuesday, December 16, 2025**
SITE VISITS:	**N/A**
QUESTIONS DUE:	**Ongoing**
QUALIFICATIONS DUE DATE:	**Ongoing**
ANTICIPATED INITIAL AWARD DATE:	**Friday, February 6, 2026**
PROCUREMENT OFFICER:	**Ben Rupert, Director of Procurement** **Maryland Clean Energy Center** **Email: brupert@mdcleanenergy.org** **Phone: (301) 314-6061**
DIRECT INQUIRIES TO:	**lmingo@mdcleanenergy.org**

Offerors are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render an Offeror's Qualifications Submittal unacceptable and subject to rejection. Questions and inquiries may be addressed as outlined in Section 1.5 of this solicitation. Any exceptions to MCEC terms and conditions are not binding unless they are negotiated and affirmatively deemed mutually agreeable by the Offeror and MCEC in an executed contract. MCEC is not required to negotiate changes to its terms and conditions.

MARYLAND
CLEAN ENERGY CENTER

TABLE OF CONTENTS

SECTION I. PROCUREMENT INSTRUCTIONS

1.1 Introduction and Background Info

The Maryland Clean Energy Center (MCEC) is a green bank and corporate instrumentality of the state of Maryland created by the General Assembly with a statute-directed mission to advance clean energy and energy efficiency products, services, and technologies as part of a specific economic development strategy. MCEC and the Clients we support have established policy mandates and developed goals to significantly reduce greenhouse gas emissions in the near term.

The selection of one or more qualified entities ("Vendor(s)") under this RFQ is anticipated to be the initial step in developing Master Services Agreements (MSAs) between MCEC and a Vendors to deliver services specified in the scope of work, Section 3 of this RFQ. It is envisioned that the MSA will be for an initial term of three (3) years, with the possibility of two (2) two-year annual extensions to the initial term.

<u>About the Maryland Energy Innovation Accelerator</u>

MCEC's Maryland Energy Innovation Accelerator (MEIA) program supports inventors, scientists, and founders who are developing climate tech innovations that advance the State's clean energy and emissions reduction goals. As part of MCEC's mission to promote clean energy and energy efficiency as an economic development strategy, MEIA provides funding to help bring breakthrough technologies to market, driving both climate progress and the growth of Maryland's clean energy industry.

The current State of Maryland greenhouse gas (GHG) emissions reductions goals formalized via the Climate Solutions Now Act (CSNA) require a 60% GHG reduction by 2031, and net-zero emissions by 2045. Transitioning to Clean Energy is a primary strategy for reducing carbon emissions. Maryland continues to experience growth in clean energy transition. This growth is supported by technological advancements, state and federal incentives, as well as public and private sector incentives.

MEIA is issuing this RFQ to support startup teams that are in the process of designing, building, or refining their first prototype of Minimum Viable Product (MVP), as well as those that already have an existing prototype and need support in transitioning from lab-scale to pilot-scale production, while also evaluating and designing manufacturing systems to encourage future growth. The goal is to accelerate progress toward manufacturing prototypes by connecting startups with expert technical and design resources.

1.2 Issuing Office; Procurement Officer

Maryland Clean Energy Center
5000 College Ave
Suite 31010
College Park, Maryland 20740
Procurement Officer: Ben Rupert, Director of Procurement

Phone: (301)-314-6061
E-mail: brupert@mdcleanenergy.org

The sole point of contact for purposes of this procurement is the Procurement Officer. The Procurement Officer may designate others to act on his behalf. The MCEC Executive Director may change the Procurement Officer or change the limits of her authority at her discretion.

1.3 Schedule of Events

Event	Date
RFQ Release Date	Monday, December 8, 2025
Deadline for Receipt of Questions	Ongoing
Qualifications Due Date	Friday, January 9, 2026 - Ongoing
Tentative Date of Contract Award	Friday, February 6, 2026

1.4 Pre-proposal Conference

A pre-submittal conference will be held virtually via Zoom on Tuesday, December 16, 2025 from 11:00 AM – 12:00 PM. To register, click on the following link: Pre-Proposal Conference Registration Link. For assistance with registration, please send an email to lmingo@mdcleanenergy.org

1.5 Questions and Inquiries

All questions and inquiries should be directed to Limunga Mingo at lmningo@mdcleanenergy.org. ~~must be submitted in the "Discussion Room" section of the Tradogram platform by 5:00 PM EST Wednesday, December 31st, 2025.~~ Oral questions will not be accepted. If a question or inquiry pertains to a specific section of the RFQ, the page and section number(s) must be referenced. ~~For questions regarding In order to receive a link to the Tradogram platform, please send an email to lmingo@mdcleanenergy.org.~~

1.6 Submission Deadline

This RFQ will remain Open until Closed, with an initial submission deadline of Friday, January 9, 2026 at 5:00 PM. To be eligible for consideration, responses should be submitted electronically in the form of a PDF to lmingo@mdcleanenergy.org, with confirmation of receipt from MCEC. ~~Offerors must submit their responses via MCEC's procurement software, Tradogram, using the submission link provided in the solicitation announcement email titled: "MCEC Request for Qualifications: MEIA Prototype Manufacturing." Please contact MCEC at lmingo@mdcleanenergy.org with questions regarding the proposal submission process. Any response received after the submission deadline, no matter what the~~

~~reason, will be deemed unacceptable.~~ Proposals or unsolicited amendments to proposals arriving after the closing date and time will not be considered.

1.7 Duration of Offer

Proposals submitted in response to this solicitation are irrevocable for 120 days following the closing date, unless explicitly agreed to in writing by the MCEC Procurement Officer. This period may be extended at the Procurement Officer's request only by an Offeror's written agreement.

1.8 Electronic Distribution

This RFQ, including all updates, are available for download via MCEC's RFP Bulletin Board. To ensure that you receive general procurement correspondence, including future MCEC solicitation announcements, please subscribe to our mailing list via the following link, and check the box next to "Business Development Career Announcements": https://www.mdcleanenergy.org/resources/mcec-currents/subscribe/.

SECTION II. GENERAL INFORMATION

2.1 Purpose

The overall purpose of this RFQ is to provide information to Offerors interested in preparing and submitting qualification proposals to meet MCEC's requirements for MEIA's prototyping and manufacturing services as outlined in Section 3 of the RFQ.

2.2 Revisions to the RFQ

MCEC reserves the right to amend this RFQ at any time prior to the proposals due date and time. If it becomes necessary to revise this RFQ, amendments will be provided to all prospective Offerors that were sent this RFQ or are otherwise known by the Procurement Officer to have obtained this RFQ. Acknowledgment of the receipt of all amendments will be required.

2.3 Cancellation of the RFQ; Rejection of All Proposals

MCEC may cancel this RFQ, in whole or in part, or may reject all proposals submitted in response, whenever this action is determined to be fiscally advantageous to MCEC or otherwise in the State's best interests.

2.4 Proposal Acceptance; Discussions

MCEC reserves the right to accept or reject any proposals, in whole or in part, received in response to this RFQ, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified Offerors in any manner necessary to serve the best interests of MCEC. MCEC also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

2.5 Interviews/Oral Presentation

MCEC may conduct interviews with qualifying Offerors. In addition, in support of their proposals, Offerors may be required to make an oral presentation. Interviews and oral presentations must be conducted within two calendar weeks after MCEC has requested an Offeror to do so. Failure to meet with MCEC for an interview or to make an oral presentation within this time period may prevent the Offeror's proposal from receiving further consideration. The main point of contact proposed in the Offeror's proposal must be present during these interviews.

2.6 Incurred Expenses

MCEC will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal in response to this RFQ.

2.7 Proposal Form

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposal for meeting the requirements of this procurement. Only electronically transmitted proposals will be accepted and shall be submitted to the email address provided in section 1.6 of this RFP. ~~via the Tradogram platform using the submission link provided in the solicitation announcement email titled: "MCEC Request for Qualifications: MEIA Prototype Manufacturing" by TBD will be accepted.~~

2.8 Multiple Proposals

Multiple and Alternate proposals will not be acceptable.

2.9 Access to Public Records Act Notice

An Offeror should give specific attention to the identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by MCEC under the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland. Careful consideration should be given before confidential information is submitted to MCEC as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

2.10 Proposal Opening

Proposals will not be opened publicly. When the contract is awarded, those portions of the proposal available, pursuant to the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland, will be made available upon written request to the Procurement Officer.

2.11 Compliance with Laws

Offeror hereby represents and warrants that:

a) It is registered and qualified to do business in the State of Maryland, and that it will take such action as, from time to time, may be necessary to remain so registered and qualified;
b) It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become son in arrears during the term of this Agreement;
c) It shall comply with all federal, State, and local laws applicable to its activities and obligations under this Agreement; and
d) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

2.12 Arrearages

By submitting an offer in response to this RFQ, the Offeror shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland or any department or unit thereof, including the payment of taxes and employee benefits, and if selected for award, that it shall not become in arrears during the term of the Contract.

2.13 Acceptance of Terms and Conditions

By submitting an offer in response to this RFQ, an Offeror shall be deemed to have accepted all the terms, conditions, and requirements set forth in this RFQ unless otherwise clearly noted and explained in its proposal.

2.14 Bid/Proposal Affidavit

A completed Bid/Proposal Affidavit must accompany all proposals submitted by an Offeror. A copy of this affidavit is included as Appendix 1 attached to this RFQ.

2.15 Contract Affidavit

All Offerors are advised that if a contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this affidavit is included for informational purposes as Appendix 3 attached to this RFQ. This affidavit need not be submitted with an Offeror's proposal.

2.16 Order of Precedence

The offeror shall perform in accordance with this Contract and Exhibits, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provisions:

1. The Contract and Contract modifications executed by both parties;
2. This RFQ; and
3. Offeror's submittal.

Modifications of the order of precedence provision of this solicitation will not be accepted. If any terms and conditions inconsistent with requirements of the solicitation are proposed, those terms and conditions must be stated in the proposal.

2.17 Contract Award

MCEC anticipates making multiple awards under this solicitation but may select a single firm if deemed appropriate. It may award a contract based on initial applications without discussion, or following limited discussion, negotiations, or interviews. Each offer should be submitted using the most favorable cost and technical terms. MCEC may request additional data or material to support applications. It is anticipated that unique Task Orders will be issued under the MSA(s) between MCEC and the Vendor(s). As specified in Section 1.6 above, this RFQ will remain Open until it is Closed.

2.18 RFQ Modifications

MCEC also reserves the right to correct any arithmetic errors, to change the final due date and time for the proposals, to accept or reject any of the firm’s employees assigned to provide services on this project, and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the Offeror.

2.19 Limitation

This solicitation does not commit MCEC to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. MCEC reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in MCEC's best interest.

2.20 Performance of Services

The Offeror shall perform the services within the limits prescribed by MCEC in a manner consistent with that level of care and skill ordinarily exercised by other independent public financial advisors under similar circumstances at the time the services are performed.

2.21 Term

A Master Services Agreement, if awarded pursuant to this RFQ, shall begin on the date that the Agreement is signed by both parties and continue for an initial term of three (3) years, with the possibility of two (2) two-year annual extensions to the initial term, provided that either party gives the other notice of non-renewal at least thirty (30) days before the end of the expiring term, as applicable, to stop the automatic renewal of this Agreement.

SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

3.1 Services Sought

The following services shall be required if the Offeror:

1. Prototyping. Serves startup teams that are at the stage of designing, building, or refining their first prototype or Minimum Viable Product (MVP). The goal of this program is to help teams make progress toward a manufacturing-ready prototype by leveraging expert technical and design support.

    a. Industrial design consultation and support

    b. CAD design and 3D modeling

    c. Engineering review and performance testing

    d. Materials selection and sourcing

    e. Small-scale fabrication and rapid prototyping

    f. Design-for-manufacturing (DFM) advisory

    g. Prototyping project planning and budgeting

2. Manufacturing. Serves startup teams that have an existing prototype and need help preparing for scaled production. This includes transitioning from lab-scale to pilot-scale production, as well as evaluating and designing appropriate manufacturing systems and supply chains.

    a. Supply chain analysis and vendor identification

    b. Manufacturing process development and optimization

    c. Assembly line and automation planning

d. Production tooling and fixture design

e. Contract manufacturing selection and engagement

f. Quality assurance and control planning

g. Regulatory and compliance readiness

'Value-Add' Products and Service-Response. MCEC is soliciting value added services and asks each Offeror to include with their Proposal, descriptions for each class of item and service listed above on which they provide rates or rate structures, if different from the rates being submitted. Offerors should include any additional information that MCEC should have when making its decision concerning contract award(s).

3.2 Task Order Award Process

This RFQ contemplates a multiple-step, indefinite delivery, indefinite quantity, contracting process, as follows:

i. MCEC and Vendor enter into a Master Service Agreement ("MSA").

ii. MCEC will develop a description of the services for a Project that are to be the subject of a particular Task Order and will notify Vendor(s) of the need for such work or/and services via a Task Order Request for Proposal

iii. Vendor(s) will respond to the TORFP by developing a pricing proposal that includes their approach and the calculation of the reasonably expected rate and the projected cost for use of the Vendor's equipment or materials over their useful life. This calculation should specify the cost of the equipment, installation and service, in compliance with all requirements outlined in the TORFP.

iv. Unless otherwise specified in the TORFP, Vendors shall have 30 days to prepare a proposal for the project.

v. Upon acceptance of the proposal by MCEC, MCEC will develop and issue the Task Order, integrating the Pricing Proposal received from the Vendor as the Scope of Work to be completed under the Task Order contract, and pursuant to the terms proposed in its response to this RFQ.

vi. MCEC will circulate the Task Order contract for review and approval by vendor.

vii. The Vendor(s) shall not commence work under any Task Order until the Task Order is signed by all Parties and the Vendor receives an executed Task Order from MCEC.

viii. A Task Order Contract will be awarded for a particular service

ix. The Vendor shall not commence the work and/or service under any Task Order until the Task Order is signed by all Parties and the Vendor receives an executed Task Order from MCEC.

SECTION IV. PROPOSAL REQUIREMENTS

Each offeror shall carefully examine the RFQ and all amendments, exhibits, revisions, and other data and materials provided with respect to this RFQ process. Offerors should familiarize themselves with all proposal requirements prior to submitting their proposal.

Offerors are required to respond to each service separately. Each section should be clearly labeled and detailed to ensure clarity regarding the scope of work being bid on. As noted above, offerors may submit proposals focused on a specific service(s) and are not required to cover all services outlined.

Proposals should be concise and focused on providing relevant information pertaining to the requirements outlined in this RFQ. While the proposal should be thorough and detailed, Offerors should avoid making proposals excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal.

Proposals should be organized into two sections: "Technical Proposal" and "Price Proposal" as set forth below. Each page of the proposal should state the name of the Offeror and the page number. In addition, the proposal should contain:

(a) Name of firm.

(b) Mailing address of the office from which the proposal is being submitted.

(c) Name of individual who will represent firm as primary contact person on matters relating to the proposal

(d) Telephone number, fax number, and E-mail address, if applicable.

(e) Hourly rates for no more than four classes of personnel: principal, professional, para-professional, and staff. The rates will include all expenses.

(f) Estimate number of hours for each task outlined in the scope of services to which the offeror is responding.

4.1 Technical Proposal

4.1.1. Describe your organizational structure.

4.1.2. Describe your technical capabilities, with a focus on tooling and manufacturing. Provide details on your experience producing finished products, the range of materials you are able to work with, and any specialized processes or equipment that distinguish your capabilities from other offerors.

4.1.3. Provide a project organization and management description that describes the unique capabilities of your firm and the individuals assigned as consultants related to the proposed scope of work.

4.1.4. Provide the names of personnel in the firm who will be assigned to MCEC's account and their experience in performing services similar to those requested in this RFQ. Include resumes for all employees proposed to be involved on MCEC's account. Include a description of each employee's function in the company, title, office address, and number of years of service with the firm and other relevant past experience. (Resumes may be included as an appendix.)

4.1.5. Describe your firm's experience and expertise working with public entities and local municipalities, particularly agencies, authorities, and instrumentalities of the State of Maryland.

4.1.6. Briefly describe the services you expect to provide to MCEC. Indicate whether your firm is prepared to render the services enumerated in this RFQ using its own resources. Discuss the approach your firm would take to meet the requirements of this RFQ.

4.1.7. Discuss fully any conflicts of interest, actual or perceived, which might arise in connection with your firm's involvement with MCEC. If conflicts do or might exist, describe how your firm would resolve them.

4.1.8. Identify any litigation or administrative proceedings to which you are a party and which would either materially impair your ability to perform the services enumerated herein and for which this RFQ was issued or, if decided in an adverse manner, materially adversely affect the financial condition of your firm.

4.1.9. Identify the employees that have been the subject of any investigation or disciplinary action by any Maryland ethical or regulatory authority. Describe briefly how any matter was resolved or whether it remains unresolved.

4.1.10. Identify if your firm or any employee has ever been disbarred or suspended by any agency of the U.S. Government or the State of Maryland.

4.1.11. Indicate if your firm is a minority and / or woman-owned business enterprise and provide the appropriate certification. If your firm is not a minority and / or woman-owned business enterprise, please furnish information on the number and percentages of minorities and women among the employees of the firm; a copy of the firm's affirmative action or equal opportunity plan or other commitment to affirmative action and equal employment opportunity; and an explanation of how your firm, if selected, would help MCEC further its policy of promoting participation of minorities and women in the provision of services to it, including services in support of its financing program. Future projects contemplated as a result of this RFQ must attempt to meet or exceed State of Maryland MBE participation requirements for State agencies.

4.1.12. Indicate the address of the office through which MCEC's account will be primarily serviced, and any anticipated travel or other such costs.

4.1.13. Provide three client references. The list must include references related to projects: (i) On which the proposed principal consultant played a lead role; and (ii) For which the services provided were similar to the services expected to be provided under this RFQ. MCEC reserves the right to contact any previous client whether or not provided as a reference.

4.1.14. Provide any other information that you believe would make your firm's representation of MCEC superior to other firms' representation, including descriptions of your firm's role in recommending innovative or unique ideas or concepts.

4.2 Price Proposal

4.2.1. Delineate all cost elements anticipated to be associated with this work. Fees will be applicable for the term of any future contract between MCEC and the winning Offeror(s), and all extensions of the contract(s).

4.2.2. State any special considerations with respect to billing or payment of fees and expenses that your firm offers and that you believe would differentiate you from other Offerors and make your firm's services more cost effective for MCEC.

4.2.3. Provide a detailed breakdown of the cost components and assumptions used in setting the fees in the proposal.

SECTION V. PROPOSAL FORMAT

5.1 Transmittal Letter

A brief transmittal letter prepared on the Offeror's business stationery should accompany the original and required copies of the two-part proposal. The letter must be signed by an individual authorized to bind the Offeror to all statements, including services and prices, contained in the proposal. The transmittal letter should also indicate that, if selected, the Offeror will execute a contract with MCEC.

5.2 Proposal Body

Proposals should address all items requested in Section 4 of this RFQ, including sections 4.1 and 4.2. Each of the elements within those sections is expected to be addressed in all submitted proposals. However, additions may be made where necessary for purposes of clarification or amplification. Please limit proposals to 20 pages.

MARYLAND
CLEAN ENERGY CENTER

SECTION VI. PROPOSAL EVALUATION

Proposals meeting the RFQ requirements will be evaluated as follows:

A selection committee consisting of MCEC staff and outside subject matter experts will review the Proposals to determine if they each meet the requirements of this RFQ. Following this review, MCEC may develop a short list of Offerors who will be eligible for further consideration and will be asked to interview with and/or make oral presentations to the selection committee as set forth in Section 2.5 above. Following any presentations or, if the selection committee believes that it has sufficient information based upon its review of the Proposals without presentations, the selection committee will recommend an Offeror to the MCEC Board of Directors for approval. The selection committee's recommendation, and any final Board approval, will be based upon the determination of the selection committee and the Board, in their sole judgment, as to which Proposal would provide MCEC with the most advantageous and comprehensive combination of technical expertise, reputation, and price, while also assessing the minority business enterprise goals of MCEC.

SECTION VII. APPENDICES

Appendix 1	Bid/Proposal Affidavit
Appendix 2	Sample Form of Contract
Appendix 3	Contract Affidavit

APPENDIX 1 – BID/PROPOSAL AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _______________ (name of affiant) am the ______________(title) and duly authorized representative of ______________(name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

(1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Proposal;

(2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;

(3) Fail to use the certified minority business enterprise in the performance of the contract; or

(4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

(1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;

(2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran–owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;

(3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or

(6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

____

____

____.

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

(a) §7201, Attempt to Evade or Defeat Tax;

(b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,

(c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,

(d) §7205, Fraud and False Statements, or

(e) §7207, Fraudulent Returns, Statements, or Other Documents;

(10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

____

____

____.

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

____

____

____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

____

____

____.

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/Proposal that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: ____

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Bid or Proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: ________________________

By: ___________________________________ (print name of Authorized Representative and Affiant)

____________________________________ (signature of Authorized Representative and Affiant)

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is made this ______ day of __________________, (______), by and between ____________________________, a ____________________________ ("Vendor") and the **MARYLAND CLEAN ENERGY CENTER**, a body politic and corporate and a public instrumentality of the State of Maryland ("MCEC").

<u>Recitals</u>

1. MCEC provides procurement and technical support services to its clients through Memorandum of Understanding agreements, including, but not limited to, the services described in this Agreement.

2. Vendor is a qualified ___________________ services company, pursuant to MCEC's RFQ/RFP ____________________________, Exhibit A of this Contract.

3. Pursuant to a Request for Qualifications and Proposals (___________) (the "RFP/RFQ"), Vendor has been selected to perform ______________________ services in accordance with this Contract and Exhibits (_________), which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the order of precedence specified in Section 2.1 of this contract shall determine the prevailing provision.

NOW, THEREFORE, in consideration of the promises and the covenants in this Contract, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

1. Definitions

In addition to words that are defined in other provisions of this Contract, including the Recitals, the following words have the meanings indicated. If a term is not defined in this Contract, it shall have the meaning specified in the RFQ, as the case may be:

1.1 "COMAR" means Code of Maryland Regulations.

1.2 "Contract" means this Master Services Agreement, together with the RFP/RFQ and any other document, instrument, attachment, exhibit, submittal, or contact which is related to, submitted with, or attached to any of the prior listed documents, as any of them may be amended from time to time.

1.3 "Contract Price" means the price for a Project as set forth in the Project Documents for that Project.

1.4 “Project” means a specific project initiated with a Task Order issued by MCEC under the terms of this Contract.

1.5 “Project Document(s)” means this Contract and any document or instrument related to a Project, including, a Task Order, Proposal, plans and specifications and construction drawings developed by Vendor, and any other document, instrument, or contact which is related to, submitted with, or attached to any of the prior listed documents or this Contract, as any of them may be amended from time to time.

1.6 “State” means the State of Maryland.

2. Scope of Services

2.1 All services under this Contract shall be accomplished on a task order basis. Actual task orders with a specifically designed scope of work will be developed by MCEC when particular work or services are needed, and proposals may be submitted by Contractor for said task order. There is no guarantee that Contractor will be awarded any task order or any particular work or services.

MCEC will develop a description of services that are to be the subject of a particular task order and will then notify contractor of the need for such services ("Task Order Request”). MCEC will invite Contractor to develop a proposed work plan and cost estimate, including approach and timeline to perform the services. Contractor must develop and submit to MCEC a proposed work plan and cost estimate that meets the requirements outlined in the Task Order Request. If accepted and approved, MCEC will issue a purchase order to proceed with the task order upon acceptance of the submitted response. Contractor shall not commence the service under any task order until a purchase order has been executed by MCEC and received by Contractor.

Eligible activities under task orders may include each of the elements outlined in the task descriptions below:

1. **Task 1:** Deep knowledge of evolving clean energy landscape and processes, including:
   - 1.0 Ability to align owner needs with local, regional, and national initiatives and opportunities;
   - 1.1 Defining and prioritizing owner objectives, per ESJ, climate, and economic criteria;
   - 1.2 Technical leadership and support for RFQ/RFP Scope of Work development or other solicitation support;
   - 1.3 Management of procurement processes, including coordination of kickoff meetings; leading facility tours; participation in submittal/proposal review;
   - 1.4 Building project teams; establishing roles and responsibilities; milestones; and communication protocols for owner, vendor/ESCO, and other stakeholders;
   - 1.5 Contract negotiation, including pricing and technical proposal review and analysis;

1.6 Deep knowledge of government processes and programs, at all levels (Federal, State, regional/local)

2. **Task 2:** Specialized project management, with the ability to provide the following services:
   - 2.0 Establishment of roles, responsibilities, milestones, and communication protocols for Owner, ESCO, and other stakeholders
   - 2.1 ESCO/vendor proposal evaluation – technical and pricing aspects
   - 2.2 ESCO/vendor construction oversight and management; progress tracking and reporting

3. **Task 3:** Financial advisory services and management, including the following primary services:
   - 3.0 Ability to quickly assess and understand customer's financial and budgeting processes and integrate with project management;
   - 3.1 Perform technical review of savings projections in RFQ/RFP responses, and assess feasibility of achieving savings and costs;
   - 3.2 Review and advise on reasonability of draft financial prospectus; on project capitalization, including construction, interest, and principal payments;
   - 3.3 Develop and/or support process for invoice and cost documentation review;
   - 3.4 Cost effectiveness evaluation and prioritization, including marginal abatement cost analysis, at both project and portfolio levels.

4. **Task 4:** Technical Services, including the ability to perform the following:
   - 4.0 Engineering and building modeling;
   - 4.1 Risk analysis and mitigation;
   - 4.2 Building and system commissioning;
   - 4.3 HVAC design and design review, including building systems and controls;
   - 4.4 Energy project measurement and verification, and deep knowledge of and experience with International Performance Measurement and Verification Protocol (IPMVP) standards and procedures.

5. **Task 5:** Additional Service Requirements
   - 5.0 The Offeror should have the organizational, human and technical resources in-house to perform the tasks listed above in an expeditious and economical manner consistent with the interests of MCEC and its customers.
   - 5.1 Subcontracting of specialty consultants may be permitted only as specified through an individual Task Order.
   - 5.2 The Contractor awarded a Task Order shall develop and complete an end-of-project report detailing at least:
     - What processes went right;
     - What processes should be changed before the next project;
     - What training should be obtained; and
     - Recommendations to improve the solicitation, contracting, and administration of design, construction, and construction management processes.

2.2 Confidentiality and Non-Disclosure: Prior to beginning work on a project, Contractor and its personnel may be required to complete and abide by confidentiality and non-disclosure agreement(s) depending upon the project. The Offeror shall be responsible for protecting all shared information from unauthorized use or disclosure for as long as it remains proprietary, and, refrain from using the information for any purpose other than for which it was furnished to MCEC and/or its customers.

2.3 A Project under this Contract will be initiated by a written Task Order issued by MCEC.

2.4 For Energy Performance Contract Projects, upon issuance of a Task Order, Vendor shall have 30 days to prepare a Phase I Proposal for the Project. Upon written approval by MCEC of a Phase I Proposal, Vendor shall sign a Phase I Contract and commence completion of a Phase I—Preliminary Design and Development Phase for the Project. Upon written approval by MCEC of a completed Phase I, Vendor shall sign a Phase II Contract with MCEC and commence Phase II of the Project.

2.5 If a Project is not an Energy Performance Contract Project, the terms of the RFQ and the IDC shall apply to the Project to the extent applicable. The determination of the applicability of an IDC provision to a Project shall be made by MCEC in its sole and absolute discretion. MCEC will notify Vendor of the process and documents which will be required for a non-Energy Performance Contract Project.

2.6 MCEC may, at any time, by written order, make changes in the work or a Project within the general scope of this Contract or Project Documents. No other order, statement, or conduct of MCEC or any person shall be treated as a change or entitle Vendor to an equitable adjustment under this section. Except as otherwise provided in this Contract or any Project Document, if any change under this section causes an increase or decrease in Vendor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract Price shall be made and the appropriate Project Documents shall be modified in writing accordingly. Vendor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by Vendor shall be allowed if asserted after final payment of the Contract Price for a Project. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse Vendor from proceeding with the Project Documents for a Project as changed.

2.7 While MCEC may, at any time, by written change order, make unilateral changes in the work or a Project within the general scope of this Contract or any Project Document as provided in Section 2.2 above, this Contract or any Project Document may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; and (b) all parties sign the modification.

2.8 This Contract does not grant an exclusive right to Vendor to perform work for the Client and Vendor acknowledges that MCEC and/or Client may award contracts to other contractors for work or projects which are described in the Scope. Vendor further acknowledges that it has received no assurances of any minimum amount or type of work under this Contract.

MCEC, or its designee, shall have the sole discretion to determine which contractor shall be assigned to handle a particular project or specific work and shall have the further right to assign a particular project or specific work to another contractor if MCEC, or its designee, determines such action to be in the best interest of MCEC and/or Client.

3. Priority of Documents

3.1 This Contract is a Master Services Agreement under which Vendor shall provide deliverables, programs, and services specified in section 3 of this Agreement and in accordance with this Agreement and Exhibits (______), which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:
Exhibit A – The RFP/RFQ
Exhibit C – MCEC Contract Affidavit
Exhibit D – The Qualifications Submittal submitted under the RFP/RFQ

3.2 A project under this Contract will be initiated by a written Task Order issued by MCEC. Upon issuance of a Task Order, Vendor shall have 30 days to prepare a Proposal for the Project. Upon written approval by MCEC of a Proposal, Vendor and MCEC shall execute a Contract and Vendor shall commence as of the date provided in a written Notice to Proceed.

3.3 MCEC may, at any time, by written order, make changes in the work within the general scope of this Contract or Project Documents. No other order, statement, or conduct of MCEC or any person shall be treated as a change or entitle Vendor to an equitable adjustment under this section. Except as otherwise provided in this Contract or any Project Documents, if any change under this section causes an increase or decrease in Vendor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract Price shall be made and the appropriate Project Documents shall be modified in writing accordingly. Vendor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by Vendor shall be allowed if asserted after final payment of the Contract Price for a Project. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse Vendor from proceeding with the Project Documents for a Project as changed.

3.4 While MCEC may, at any time, by written change order, make unilateral changes in the work within the general scope of this Contract or any Project Documents as provided in Section 3.1 above, this Contract or any Project Documents may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; and (b) all parties sign the modification.

4. Period of Performance

4.1 The term of this Contract begins on the date set forth at the beginning of this Contract. This Contract shall terminate on (__________________).

4.2 MCEC, at its sole option, has the unilateral right to extend the term of this Contract for four additional successive one-year terms.

4.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of this Contract.

5. Consideration and Payment

5.1 In consideration of the satisfactory performance of the work set forth in the Project Documents for a Project and subject to Section 5.2 below, MCEC shall pay Vendor in accordance with the terms of the Project Documents.

5.2 **For MCEC Client Services: Payments under any Project Documents will be made by MCEC to Vendor only from corresponding funds received by MCEC from (CLIENT) for that purpose. MCEC will not, and is under no obligation to, pay Vendor for any work if MCEC has not received funds from (CLIENT) which are designated to pay for work of Vendor under the corresponding Project Documents. The obligation to pay amounts under any Project Documents is not a direct or indirect obligation of MCEC or the State.**

5.3 Subject to Section 5.2, payments to Vendor shall be made no later than thirty (30) days after MCEC's receipt of a proper invoice for services provided by Vendor, acceptance by MCEC of services provided by Vendor, and pursuant to the conditions outlined in Section 4 of this Contract or the appropriate Project Documents. Each invoice for services rendered must include Vendor's Federal Tax Identification or Social Security Number set forth in a form W-9 provided to MCEC by Vendor. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. **Electronic funds transfer shall be used by MCEC to pay Vendor pursuant to this Contract and any other MCEC payments due Vendor unless MCEC grants Vendor an exemption.**

5.4 In addition to any other available remedies, if, in the opinion of MCEC, Vendor fails to perform in a satisfactory and timely manner, MCEC may refuse or limit approval of any invoice for payment, and may cause payments to Vendor to be reduced or withheld until such time as Vendor meets performance standards as established by MCEC.

5.5 Payment of an invoice by MCEC is not evidence that services were rendered as required under this Contract or the appropriate Project Documents.

6. Rights to Records

6.1 Vendor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by Vendor for purposes of this Contract or any Project Documents shall be the sole property of MCEC and shall be available to MCEC at any time. MCEC shall have the right to use the same without restriction and without compensation to Vendor other than that specifically provided by this Contract or any Project Documents.

6.2 Vendor agrees that at all times during the term of this Contract or any Project Documents and thereafter, works created as a deliverable under this Contract or any Project Documents, and services performed under this Contract or any Project Documents shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract or any Project Documents are not works made for hire for MCEC, Vendor hereby relinquishes, transfers, and assigns to MCEC all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract or any Project Documents, and will cooperate reasonably with MCEC in effectuating and registering any necessary assignments.

6.3 Vendor shall report to MCEC, promptly and in written detail, each notice or claim of copyright infringement received by Vendor with respect to all data delivered under this Contract or any Project Documents.

6.4 Vendor shall not affix any restrictive markings upon any data, documentation, or other materials provided to MCEC under this Contract or any Project Documents and if such markings are affixed, MCEC shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6.5 Upon termination of the Contract or any Project Documents, Vendor, at its own expense, shall deliver any equipment, software or other property provided by MCEC to the place designated by MCEC.

7. Exclusive Use

7.1 MCEC shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by Vendor in connection with this Contract or any Project Documents. If any material, including software, is capable of being copyrighted, MCEC shall be the copyright owner and Vendor may copyright material connected with this project only with the express written approval of MCEC.

7.2 Except as may otherwise be set forth in this Contract or any Project Documents, Vendor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Vendor by MCEC or developed by Vendor relating to the Contract or any Project Documents, except that Vendor may provide said information to any of its officers, employees and subVendors who Vendor requires to have said information for fulfillment of Vendor's obligations hereunder. Each officer, employee and/or subVendor to whom any of MCEC's confidential information is to be disclosed shall be advised by Vendor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract or any Project Documents.

8. Patents, Copyrights, and Intellectual Property

8.1 If Vendor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, Vendor shall obtain the necessary permission or license to permit MCEC to use such item or items.

8.2 Vendor will defend or settle, at its own expense, any claim or suit against MCEC alleging that any such item furnished by Vendor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, Vendor will defend MCEC against that claim at Vendor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided MCEC: (a) promptly notifies Vendor in writing of the claim; and (b) allows Vendor to control and cooperates with Vendor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

8.3 If any products furnished by Vendor become, or in Vendor's opinion are likely to become, the subject of a claim of infringement, Vendor will, at its option and expense: (a) procure for MCEC the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

9. Confidential or Proprietary Information and Documentation

9.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within Vendor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract or any Project Documents, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract or any Project Documents; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or which such party is required to disclose by law.

9.2 This Section 9 shall survive expiration or termination of this Contract.

10. Loss of Data

In the event of loss of any MCEC data or records where such loss is due to the intentional act or omission or negligence of Vendor or any of its subVendors or agents, Vendor shall be responsible for recreating such lost data in the manner and on the schedule set by MCEC. Vendor shall ensure that all data is backed up and recoverable by Vendor. Vendor shall use its best efforts to assure that at no time shall any actions undertaken by Vendor under this Contract or any Project Documents (or any failures to act when Vendor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which Vendor is working hereunder.

11. Indemnification

11.1 Vendor shall hold harmless and indemnify MCEC, and the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to a Project or to the performance or nonperformance of Vendor or its subVendors under this Contract or any Project Documents.

11.2 This indemnification clause shall not be construed to mean that Vendor shall indemnify MCEC, and the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of MCEC, and the State or their respective employees.

11.3 MCEC, and the State has no obligation to provide legal counsel or defense to Vendor or its subVendors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against Vendor or its subVendors as a result of or relating to a Project or Vendor's performance under this Contract or any Project Documents.

11.4 MCEC, and the State has no obligation for the payment of any judgments or the settlement of any claims against Vendor or its subVendors as a result of or relating to a Project or Vendor's performance under this Contract or any Project Documents.

11.5 Vendor shall immediately notify MCEC of any claim or lawsuit made or filed against Vendor or its Sub-Vendors regarding any matter resulting from, or relating to, a Project or Vendor's obligations under the Contract or any Project Documents, and will cooperate, assist, and consult with MCEC in the defense or investigation of any claim, lawsuit, or action made or filed against MCEC as a result of, or relating to, Vendor's performance under this Contract or any Project Documents.

11.6 This Section 11 shall survive termination of this Contract.

12. Non-Hiring of Employees

No official or employee of MCEC, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract or any Project Documents, shall, during the pendency and term of this Contract or any Project Documents and while serving as an official or employee of MCEC, become or be an employee of Vendor or any entity that is a subVendor on this Contract or any Project Documents.

13. Disputes

This Contract and all Project Documents shall be subject to the provisions of Md. Code Ann., MCEC Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, Vendor shall proceed diligently with the performance of the Contract or any Project Documents in accordance with MCEC's decision. Unless a lesser period is provided by applicable statute, regulation, the Contract, or any Project Documents, Vendor must file a written notice of claim with MCEC within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under or any Project Documents, Vendor must submit to MCEC its written claim containing the information specified in COMAR 21.10.04.02.

14. Maryland Law

14.1 This Contract and all Project Documents shall be construed, interpreted, and enforced according to the laws of the State of Maryland. Any action or claim brought in connection with this Contract, any Project Documents, or a Project must be brought in the courts of the State.

14.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.

14.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

15. Nondiscrimination in Employment

Vendor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subVendors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

16. Contingent Fee Prohibition

Vendor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

17. Non-Availability of Funding

If MCEC fails to receive funds from for the payment of work under any Project Documents, Vendor's sole remedy is to stop all work on the related Project (but continue all work on any other Projects for which payments to Vendor are current). If (a) Vendor has not received payment which would otherwise be owed but for the fact that MCEC has not received corresponding funds from, (b) the failure to pay has continued for a period of 90 days after all other conditions to payment have been met, and (c) Vendor is not then continuing work on another Project for which all payments are current, Vendor may cancel this Contract and the Project Documents. Upon cancellation all work performed shall belong to MCEC and MCEC and Vendor shall have no further claims or obligations with respect to each other.

18. Termination for Default

If Vendor fails to fulfill its obligations under this Contract or any Project Documents properly and on time, or otherwise violates any provision of this Contract or any Project Documents, MCEC may terminate this Contract and any or all Project Documents, by written notice to Vendor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by Vendor shall, at MCEC's option, become MCEC's property. Subject to Section 4.2, MCEC shall pay Vendor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Vendor's breach. If the damages are more than the compensation payable to Vendor, Vendor will remain liable after termination and MCEC can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B. A breach or default under this Contract or any Project Document shall constitute a cross-breach or cross-default under this Contract or any other Project Document, as the case may be.

19. Termination for Convenience

The performance of work under this Contract or any Project Documents may be terminated by MCEC in accordance with this clause in whole, or from time to time in part, whenever MCEC shall determine that such termination is in the best interest of MCEC. MCEC will pay all reasonable costs associated with this Contract or any Project Documents, that Vendor has incurred up to the date of termination. Vendor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

20. Delays and Extensions of Time

20.1 Vendor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract or any Project Documents.

20.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of Vendor, including but not restricted to, acts of God, acts of the public enemy, acts of MCEC in either its sovereign or contractual capacity, acts of another Vendor in the performance of a contract with MCEC, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subVendors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either Vendor or subVendors or suppliers.

21. Suspension of Work

MCEC unilaterally may order Vendor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as MCEC may determine to be appropriate for the convenience of MCEC.

22. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

23. Financial Disclosure

Vendor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with State or its agencies during a calendar year under which the business is to receive in the aggregate, $200,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches $200,000, file with MCEC certain specified information to include disclosure of beneficial ownership of the business.

24. Political Contribution Disclosure

Vendor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of $200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of $500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending

April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.State.md.us/campaign_finance/index.html.

25. Documents Retention and Inspection Clause

Vendor and subVendors shall retain and maintain all records and documents relating to this Contract or any Project Documents for a period of five (5) years after final payment by MCEC hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of MCEC or its designee, at all reasonable times. All records related in any way to this Contract or any Project Documents are to be retained for the entire time provided under this section. In the event of any audit, Vendor shall provide assistance to MCEC, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract or any Project Documents.

26. Right to Audit

26.1 MCEC reserves the right, at its sole discretion and at any time, to perform an audit of Vendor's and/or subVendor's performance under this Contract or any Project Documents. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to MCEC and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) Vendor's compliance with this Contract or any Project Documents, including but not limited to adequacy and compliance with established procedures and internal controls over this Contract or any Project Documents services being performed for MCEC.

26.2 Upon three (3) Business Days' notice, Vendor and/or any subVendors shall provide MCEC reasonable access to their respective records to verify conformance to the terms of the Contract or any Project Documents. MCEC may conduct these audits with any or all of its own internal resources or by securing the services of a third-party accounting or audit firm, solely at MCEC's election. MEC may copy, at its own expense, any record related to the services performed and provided under this Contract or any Project Documents.

26.3 The right to audit shall include any of Vendor's subVendors including but not limited to any lower tier subVendor(s) that provide essential support to the services under this Contract or any Project Documents. Vendor and/or subVendor(s) shall ensure MCEC has the right to audit such subVendor(s).

26.4 Vendor and/or subVendors shall cooperate with MCEC and MCEC's designated accountant or auditor and shall provide the necessary assistance for MCEC and MCEC's designated accountant or auditor to conduct the audit.

26.5 This Section shall survive expiration or termination of the Contract or any Project Documents.

27. Representations and Warranties

Vendor hereby represents and warrants that:

27.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

27.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

27.3 It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract or any Project Documents; and

27.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

28. Subcontracting; Assignment

28.1 Vendor may not subcontract any portion of the services provided under this Contract or any Project Documents without obtaining the prior written approval of MCEC. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, any Project Documents, exhibits, submittals, or attachments. MCEC shall not be responsible for fulfillment of Vendor's obligations to its subVendors.

28.2 Vendor may not assign this Contract or any Project Documents, nor any of its rights or obligations under this Contract or any Project Documents, without the prior written approval of MCEC; provided, however, that a Vendor may assign monies receivable under a Project Document after due notice to MCEC.

28.3 MCEC may assign, without the consent of Vendor, any or all of its rights, titles, or interests in, and obligations under, this Contract or any Project Documents to the State, any of its agencies or instrumentalities, or any entity designated by the Governor or the Maryland General Assembly. Any other assignment by MCEC requires the prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed.

29. Liability

For breach of this Contract or any Project Documents, negligence, misrepresentation, or any other contract or tort claim, Vendor shall be liable as follows:

29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;

29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and

29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form Vendor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if MCEC is not immune from liability for claims arising under Section 10.

30. Commercial Nondiscrimination

30.1 As a condition of entering into this Contract, Vendor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Vendor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subVendors, vendors, suppliers, or commercial customers, nor shall Vendor retaliate against any person for reporting instances of such discrimination. Vendor shall provide equal opportunity for subVendors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Vendor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Vendor from participating in MCEC contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Vendor shall be deemed to have made this representation and warranty each time it enters into a Project Document.

30.2 Vendor shall include the above Commercial Nondiscrimination clause, or similar clause approved by MCEC, in all subcontracts.

30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Vendor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Vendor agrees to provide within sixty (60) days after the request a complete list of the names of all subVendors, vendors, and suppliers that Vendor has used in the past four (4) years on any of its contracts that were undertaken within the State, including the total dollar amount paid by Vendor on each subcontract or supply contract. Vendor further agrees to cooperate in any investigation conducted by MCEC pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and provide any documents relevant to any investigation that are requested by MCEC. Vendor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by MCEC from participating in MCEC contracts, and other sanctions.

31. Prompt Pay Requirements

31.1 If Vendor withholds payment of an undisputed amount to its subVendor, MCEC, at its option and in its sole discretion, may take one or more of the following actions:

(a) Not process further payments to Vendor until payment to a subVendor is verified;

(b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

(c) Pay or cause payment of the undisputed amount to the subVendor from monies otherwise due or that may become due;

(d) Place a payment for an undisputed amount in an interest-bearing escrow account; or

(e) Take other or further actions as appropriate to resolve the withheld payment.

31.2 An "undisputed amount" means an amount owed by Vendor to the subVendor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:

(a) Retainage which had been withheld and is, by the terms of the agreement between Vendor and subVendor, due to be distributed to the subVendor; and

(b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of MCEC or a representative of MCEC, concerning a withheld payment between Vendor and a subVendor under this provision, may not:

(a) Affect the rights of the contracting parties under any other provision of law;

(b) Be used as evidence on the merits of a dispute between MCEC and Vendor in any other proceeding; or

(c) Result in liability against or prejudice the rights of MCEC.

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subVendors that have contracted pursuant to the Minority Business Enterprise (MBE) program.

31.5 To ensure compliance with certified MBE subcontract participation goals, MCEC may, consistent with COMAR 21.11.03.13, take the following measures:

(a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate: (i) Inspecting any relevant records of Vendor; (ii) Inspecting the jobsite; and iii. Interviewing subVendors and workers.

Verification shall include a review of the: (i) Vendor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subVendors and the reason for nonpayment; and (ii) The monthly report of each certified MBE subVendor, which lists payments received from Vendor in the preceding thirty (30) days and invoices for which the subVendor has not been paid.

(b) If MCEC determines that Vendor is not in compliance with certified MBE participation goals, then MCEC will notify Vendor in writing of its findings, and will require Vendor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring Vendor to compensate the MBE for work performed as set forth in the MBE participation schedule.

(c) If MCEC determines that Vendor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that MCEC requires, then MCEC may: (i) Terminate the Contract or Project Documents; (ii) Refer the matter to the Office of the Attorney General for appropriate action; or (iii) Initiate any other specific remedy identified by the Contract or Project Documents, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

(d) Upon completion of the Contract or Project Documents, but before final payment or release of retainage or both, Vendor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subVendors.

32. Living Wage

If a Vendor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

33. Use of Estimated Quantities

Unless specifically indicated otherwise in MCEC's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and MCEC does not guarantee a minimum or maximum number of units or usage in the performance of this Contract or any Project Documents.

34. Contract Interpretation

All matters relating to the interpretation of this Contract or any Project Documents, shall be referred to MCEC for determination. MCEC's interpretation shall be final and unappealable.

35. Notices

All notices under this Contract or any Project Documents shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to MCEC:

Maryland Clean Energy Center
5000 College Avenue, Suite 31010
College Park, MD 20740
Attention: Executive Director

If to Vendor:

____
____
____
____

36. Liquidated Damages

36.1 The Contract and the RFP/RFQ require Vendor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and Contract provisions. MCEC and Vendor acknowledge and agree that MCEC will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if Vendor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages MCEC might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by MCEC that Vendor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without MCEC being required to present any evidence of the amount or character of actual damages sustained, Vendor agrees to pay liquidated damages to MCEC at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. Vendor expressly agrees that MCEC may withhold payment on any invoices as an offset against liquidated damages owed. Vendor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss MCEC is anticipated to incur as a result of each violation.

(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): $156.00 per day until the monthly report is submitted as required.

(b) Failure to include in its agreements with MBE subVendors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): $78.00 per MBE subVendor.

(c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subVendor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Project Documents for a Project.

(d) Failure to meet Vendor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

(e) Failure to promptly pay all undisputed amounts to a subVendor in full compliance with the prompt payment provisions of the Contract or the Project Documents for a Project: $585.00 per day until the undisputed amount due to the subVendor is paid.

36.2 Time is an essential element of the Contract and all Project Documents, and it is important that the work be vigorously prosecuted until completion.

(a) For each day that any work remains incomplete beyond the Milestones for a Project as specified in the Project Documents, Vendor shall be liable for liquidated damages in the amount specified in the Project Documents for that Project. If the Project Documents for a Project do not provide for liquidated damages, then the liquidated damages for that Project under this section are $500.00 per day. An adjustment of the specified completion time(s) may be granted for approved change orders, or at the sole discretion of MCEC.

(b) MCEC will deduct and retain out of the monies due to or become due to Vendor hereunder the amount of liquidated damages, and in case the amounts due Vendor are less than the amount of such damages, Vendor shall be liable to MCEC for the difference.

36.3 Notwithstanding the assessment or availability of liquidated damages, MCEC reserves the right to terminate the Contract and any Project Documents and exercise any and all other rights or remedies which may be available under the Contract, any Project Documents, or otherwise may be available at law or in equity.

(If Vendor intends to rely on its Parent Company in some manner while performing onhe MCEC Contract, the following clause should be included and completed for Vendor's Parent Company to guarantee performance of Vendor. The guarantor/Vendor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.)

37. Vendor Contractor Financial Information.

37.1 Vendor shall furnish to MCEC and any entity identified by MCEC as providing a source of funding for a Project (a) the most recent audited annual, financial statements of Vendor, prepared in accordance with generally accepted accounting principles in effect in the United States within 120 days after the end of its fiscal year, and (b) any other financial information of Vendor as may be reasonably requested by MCEC and or its lender(s) for any Project from time to time.

37.2 Vendor authorizes MCEC to provide Vendor's financial information to any prospective providers of funding in connection with the financing or refinancing of any Project.

38. Miscellaneous

38.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

38.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

IN WITNESS THEREOF, the parties have executed this Contract as of the date written above.

WITNESS/ATTEST:

CONTRACTOR:

____

____

By: ____
Name: ______________________________________
Title: ____

WITNESS:

MARYLAND CLEAN ENERGY CENTER:

____

By: ____
Name: I. Katherine Magruder
Title: Executive Director

Attachments: Exhibit A: The RFQ
Exhibit B: MCEC Contract Affidavit
Exhibit C: Vendor's Proposal
Exhibit D: MCEC Task Order Template
Exhibit E: MCEC Change Order Template

MASTER SERVICES AGREEMENT

Exhibit A

Request for Qualifications

MASTER SERVICES AGREEMENT

Exhibit B

MCEC Contract Affidavit

MASTER SERVICES AGREEMENT

Exhibit C

Vendor’s Proposal

Exhibit D: MCEC Task Order Template

Task Order No.:

THIS TASK ORDER AGREEMENT (this "Agreement"), is made as of the __ day of ________ (the "Effective Date"), by and between **___________,** ("Vendor"), and the **MARYLAND CLEAN ENERGY CENTER**, a body politic and corporate and a public instrumentality of the State of Maryland ("MCEC").

<u>Recitals</u>

1. Vendor and MCEC are parties to a Master Services Agreement dated as of ____________ (the "Agreement" as that term is defined in the Master Services Agreement), for the delivery of marketing and communications support services.

2. Pursuant to the Agreement, MCEC issued Task Order ______ to Vendor, requesting Vendor to develop a proposal for ____________________________________ (the "Task Order").

3. In response, Vendor developed a proposal entitled "__________________" dated _________________ which Proposal, as may have been modified, has been approved by MCEC and is attached to this Agreement as <u>Attachment A</u> (the "Proposal").

4. This Agreement implements the Proposal.

NOW, THEREFORE, in consideration of the promises and the covenants in this Agreement, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

Article 1. <u>General Provisions</u>

1.1 All capitalized terms which are not defined in this Agreement have the meaning set forth in the Agreement (as defined in the MSA), as the case may be.

1.2 For purposes of this Agreement, the "Agreement Documents" consist of the following and are made a part of this Agreement:

(a) This Agreement, as modified or refined written, signed amendments, approved change orders, and approved plans, drawings, and specifications;

(b) The Contract; and

(c) The Proposal as to Project timeframes and milestones.

In the event of a conflict between provisions of the Agreement Documents, the documents shall be controlling in the order in which they are listed in this Section 1.2.

Article 2. <u>Acceptance of Project and Scope</u>

2.1 MCEC and Client have accepted the Proposal which sets forth in detail the scope of the Project, and Project Price.

2.2 Vendor shall furnish all of the materials and perform all of the work necessary to complete the work set forth in the Scope of Work attached to and made a part of this Agreement as <u>Exhibit A</u>, as modified or refined by approved change orders and drawings and specifications prepared in connection with this Agreement (collectively, the "Scope of Work"), and do everything required by the Agreement Documents. All work shall be done in a workmanlike and professional manner. The work specified in this Article 2 is referred to as the "Project".

Article 3. <u>Time of Completion</u>

3.1 The Project shall commence upon execution of this Agreement and shall continue pursuant to the timeline and milestones set forth in the Proposal, subject to coordination with MCEC staff. For the avoidance of doubt, this Agreement shall be deemed to operate as the Notice to Proceed from MCEC to Service Provider for the Project.

3.2 The Project shall be substantially completed by ________________, and any interim milestones and timeframes shall be met as set forth in the Proposal.

Article 4. <u>Project Price</u>

For services satisfactorily rendered under the Agreement Documents, MCEC shall pay Vendor the Contract Price of ________________________________ ($). This amount shall be paid subject to and in accordance with the Agreement Documents. The proposal includes the payment terms and such terms are incorporated herein by reference.

Article 5. <u>Limitation of Liability</u>

In no event shall Vendor be responsible for any special, punitive, exemplary, or indirect, damages arising out of any claim of whatever nature relating to this Agreement, even if Vendor has been advised of the possibility of such damages. The liability of Vendor in any event shall not exceed the aggregate of (a) the amount of insurance carried by Vendor which is available for the claim, including any excess or umbrella insurance, and (b) three (3) times the total fees payable to Vendor under this Agreement.

Article 6. <u>Miscellaneous</u>

6.1 Unless otherwise terminated sooner in accordance with the terms of the Agreement Documents, this Agreement shall remain in force and effect until all work described in the Scope of Work is completed and accepted by MCEC.

6.2 This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one document. Signatures provided by facsimile or other electronic means, for example, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

6.3 Thia Agreement may not be modified or amended except by a writing which is signed by authorized representatives of each of the parties hereto.

6.4 Any notice, consent or other communications in connection with this Agreement shall be in writing and delivered in person, by certified mail with return receipt, or by a nationally recognized courier to the address for the party as set forth below and will be effective upon delivery. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it will become effective.

If delivered to the Owner:	Maryland Clean Energy Center 5000 College Avenue, Suite 31010 College Park, MD 20740 Attention: Executive Director
If delivered to the Contractor:	____________________ ____________________ ____________________ ____________________ ____________________

6.5 This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to conflicts of law principles. The parties irrevocably waive any right to a trial by jury for any claim or counterclaim arising hereunder.

6.6 Notwithstanding anything contained herein to the contrary, it is specifically acknowledged and agreed that, to the extent of its rights hereunder, [CLIENT] is a third-party beneficiary of this Agreement entitled to enforce such rights in its own name.

Exhibit E: MCEC Change Order Template

Agreement Change Order Control Form **Page ___ of ___**

Project Name:	Change Order #:
Change Request Submitted by:	Date Submitted:
Submitter Phone #:	Submitter eMail:
Title of Change:	
Description of Change:	
Performance Period & Schedule	
Work Shall Begin On:	Work Shall Be Completed By:

Original Contract Amount	**Plus Any Previous Changes (+ or -)**	**Amount of this Change (+ or -)**	**New Contract Amount**
$	$	$	$

All Labor and/or Materials to Conform to Specifications
All Terms and Conditions of the Agreement referenced above between MCEC and [CONTRACTOR NAME] are to be part of this order. In billing this order, add or deduct the same to the amount of the contract and state number of this order on all invoices.
THIS IS A CONTRACT AND EACH PARTY MUST SIGN, DATE AND RETURN TO MCEC WITHIN 7 DAYS OF THE DATE OF THIS CHANGE ORDER.

Change Order accepted by:

Name: I. Katherine Magruder
Title: Executive Director
Maryland Clean Energy Center

____
Signature Date

Change Order submitted for [CONTRACTOR NAME] by:
Name:
Title:

____
Signature Date

APPENDIX 3: CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _________________________ (name of affiant) am the ____________________ (title) and duly authorized representative of ____(name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

(1) Corporation — ☐ domestic or ☐ foreign;
(2) Limited Liability Company — ☐ domestic or ☐ foreign;
(3) Partnership — ☐ domestic or ☐ foreign;
(4) Statutory Trust — ☐ domestic or ☐ foreign;
(5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

*Name and Department ID Number:*_____________________________*Address:*________________________________

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

*Name and Department ID Number:*_____________________________*Address:*________________________________

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate $100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches $100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of $200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of $500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business's policy of maintaining a drug and alcohol free workplace;
(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and
(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or
(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit dated ________, 202___, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: ______________

By: __________________________ (printed name of Authorized Representative and Affiant)

_________________________________ (signature of Authorized Representative and Affiant)