

## **SREC SERVICES TERMS AND CONDITIONS**

Last Modified 10-26-11

These **TERMS AND CONDITIONS** shall apply to the quarterly verification and reporting services performed by the Massachusetts Clean Energy Technology Center ("**MassCEC**") for the New England Power Pool Generation Information System account holder's (the "**Client**") solar PV system (the "**System**").

### **DUTIES AND RESPONSIBILITIES OF MASSCEC**

Client hereby authorizes MassCEC to verify the amount of energy reported as generated by the System (the "**Data**") and to report such Data to New England Power Pool Generation Information System ("**NEPOOL GIS**") on Client's behalf (the "**Services**"). NEPOOL GIS will utilize this production data to create the appropriate number of SRECs in the designated GIS account. MassCEC shall use commercially reasonable efforts to collect and report the Data according to prevailing quality standards and reporting requirements of the electricity market.

If for any reason MassCEC determines that the Data differs materially from projected production levels, MassCEC may contact the Client to resolve any discrepancy. Once provided with new Data or an explanation, MassCEC or its agent will edit production data accordingly. If no reasonable data is provided, MassCEC or its agent will delete the production record. It is MassCEC's sole discretion to determine if the Data provided is reasonable. Any appeals or disputes must go to the Massachusetts Department of Energy Resources ("**DOER**"). If Data is repeatedly not reported or misreported, MassCEC may in its discretion audit the System and the Data for accuracy. However, MassCEC reserves the right to conduct on-site audits of any System, for any reason or for no reason, to verify the accuracy of the Data. Any deviations between the Data and observed audited production figures may be investigated, and MassCEC reserves the right to adjust or reconcile the Data in accordance with the results of any audit or investigation.

### **SERVICE FEE**

As partial consideration for the Services, MassCEC reserves the right to charge a service fee, provided that MassCEC will notify Client thirty (30) to sixty (60) days in advance.

### **DUTIES AND RESPONSIBILITIES OF CLIENT**

Client shall provide reasonable assistance to MassCEC or any agent thereof, including prompt responses to any inquiries by MassCEC, and to assist MassCEC in the performance of its obligations hereunder. Client shall notify MassCEC and DOER of any and all changes to the System, contact information, GIS account information, or other information that may materially affect the Data, the Services, or the System. As soon as MassCEC is notified by DOER that the change has been approved, MassCEC will make that change in the Production Tracking System ("**PTS**").

Client shall ensure (i) timely and accurate reporting of the Data on a monthly basis to MassCEC in accordance with the procedures laid out below; (ii) support and maintenance of any equipment, including meters and data acquisition systems, at System site(s) as required for the Services; and (iii) within a reasonable time after MassCEC request, physical access to the System, including but not limited to PV panels, inverter(s) and meter(s).

All meters attached to the System shall be "revenue quality" as per ANSI C-12 accuracy standards and shall be the responsibility of and at the sole cost of the System Owner unless otherwise agreed by the parties.

## **REPORTING PROCEDURES**

Systems with a nameplate capacity less than or equal to 10 kW (dc) must report production data on a monthly basis, either manually or electronically. Systems greater than 10 kW (dc) must be reported electronically and automatically through a Data Acquisition System (“DAS”). The DAS must meet the requirements described in the then current version of the PTS Automated Reporting Guide (posted on [www.masscec.com/pts](http://www.masscec.com/pts)) to report the System’s electrical output every month to MassCEC. Production Data must be reported every month during the ten (10) day reporting period, which is open during the last five (5) calendar days of the month and the first (5) five calendar days of the following month. Production data submitted by phone or email will not be accepted.

## **DEFAULT & DISPUTE RESOLUTION**

For the purposes of these Terms and Conditions, a “**Defaulting Party**” shall mean a party against which the other party is entitled to assert an Event of Default (as defined below) and a “**Non-Defaulting Party**” shall mean with respect to the occurrence of any Event of Default, the party that is not the Defaulting Party in connection with such Event of Default. “**Event of Default**” shall mean (i) a failure to report the Data to MassCEC on a monthly basis in the manner required herein, (ii) repeated reporting of inaccurate Data to MassCEC, or (iii) a failure to cooperate with MassCEC during any audit of the System or Data, including a failure to be reasonably and timely responsive to efforts to confirm, or make necessary adjustments to, the Data.

In the case of an Event of Default, MassCEC will notify DOER regarding non-compliance. The parties agree that, upon the occurrence of an Event of Default, MassCEC will suspend all the Services until it receives written notification from DOER that DOER has made a determination with respect to the Event of Default and instructing MassCEC to resume the Services. Pending DOER’s determination, MassCEC may delete inaccurate Data or cease reporting the Data to NEPOOL. In the case of a dispute related to or concerning the Services or Data, including reporting of the Data to NEPOOL, the parties agree to direct all such disputes to DOER for final determination. For systems that do not report the Data during the reporting period, Client acknowledges and agrees that DOER reserves the right to forfeit some or all of any SRECs generated during the unreported period. MassCEC assumes no responsibility for production data that is not reported.

## **OWNERSHIP OF DATA AND REPORTS**

Client agrees that in order to provide the Services, MassCEC is authorized by the System’s owner to collect Data and to share it with third parties as provided herein. MassCEC does not make, and does not have, any claims of ownership or of proprietary rights in the Data it collects in carrying out the Services (including monitoring and reporting).

## **DATA LICENSING & PUBLIC RECORDS**

Notwithstanding the foregoing, Client agrees that, in consideration of the Services provided hereunder, MassCEC is hereby granted a perpetual non-exclusive right to use the Data in aggregated or abstracted form and to supply it to third parties.

Client agrees and acknowledges that MassCEC, as a public entity, is subject to Massachusetts’ Public Records Law, codified at Chapter 66 of the Massachusetts General Laws. Client further agrees and acknowledges that certain materials submitted by it to MassCEC may be confidential and exempt from disclosure under the Public Records Law.

## **TERM AND TERMINATION**

These Terms and Conditions shall remain in effect until such time as MassCEC is no longer a designated independent third party meter reader, or the System ceases operating, whichever comes first.

Either party may terminate the Services at any time at will, without cause, by providing thirty (30) day written notice to the other party. MassCEC may terminate without notice upon receiving notification from DOER that the System is not in compliance with reporting protocol or DOER Regulations, 225 CMR 14.00.

Either party may terminate the Services if the other party materially breaches any of its obligations under these Terms and Conditions and fails to cure such material breach within sixty (60) days following written notice of such breach from the non-breaching party. In addition, either party may terminate the Services immediately upon written notice in the event the other party intends or expects to seek the protection of, or be placed under the jurisdiction of, any bankruptcy court, shall be or become insolvent or shall make an assignment for the benefit of creditors.

## **REPRESENTATIONS AND WARRANTIES**

Client warrants and represents that it has the right and authority to perform its obligations hereunder and further warrants and represents that it has the knowledge and/or ability to perform hereunder.

MassCEC will undertake commercially reasonable efforts to ensure the reliability of the Services and to maintain appropriate data security measures. However, Client acknowledges that routine maintenance or temporary service interruptions may occasionally cause Data losses or render the MassCEC customer portal and Services unavailable to Client.

## **ASSIGNMENT**

Client may, subject to DOER and MassCEC's consent, assign the Services, provided that any assignee agrees to be bound by the Terms and Conditions and duties and responsibilities hereunder, and provided further that thirty (30) days prior written notice of such assignment is given to MassCEC. Failure to obtain in advance DOER and MassCEC's consent to an assignment shall result in such assignment being null and void. MassCEC will reflect any approved changes to the NEPOOL GIS account holder in PTS at the beginning of the following quarter.

MassCEC may assign the Services, provided that any assignee agrees to be bound by the Terms and Conditions and duties and responsibilities of MassCEC hereunder, and provided further that thirty (30) days prior written notice of such assignment is given to the Client.

## **WAIVER**

Conditions, covenants, duties and obligations contained herein may be waived only by written agreement between the parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

## **FORCE MAJEURE**

MassCEC shall not be held liable nor considered in default hereof for any delay. Data losses or downtime caused by Client or any employee or agent thereof, or any other cause beyond the reasonable control of MassCEC, including (i) energy services failure (such as the failure of generation of electricity at any facility) (ii) third-party service interruption or business failure; (iii) cellular communications service failures; provided, that in the event of any such delay of more than sixty (60) days, Client shall have the right to terminate the Services.

Neither party shall be liable to the other, or be deemed to be in breach hereunder for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence ("Force Majeure"). Such causes may include, but are not limited to, acts of God or of a public enemy (including terrorist attacks), fires, floods, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather. Except as otherwise provided herein, dates or times of performance, shall be extended to the extent of delays excused by Force Majeure, provided that the party whose performance is affected notifies the other promptly in writing of the existence and nature of such delay.

### **NO CONSEQUENTIAL DAMAGES; DISCLAIMERS; INSURANCE**

In no event shall MassCEC or the Commonwealth be liable for any consequential, incidental, indirect, special, punitive, or other similar damages whatsoever (including but not limited to, any lost profits, lost savings, business interruption, loss of business information, costs associated with recreating lost data, cost of any substitute program, or other pecuniary loss) incurred by Client or any third party, arising out of or relating to the Services or the use of or inability to use the data, whether resulting from impaired or lost data, or any other cause, even if MassCEC has been advised of the possibility of such damages.

The warranties of MassCEC set forth herein are MassCEC's sole and exclusive warranties and are made in lieu of all other warranties, express or implied, statutory or otherwise. MassCEC hereby disclaims, and Client hereby waives, all warranties implied in law, including those of merchantability or fitness for a particular purpose.

Notwithstanding anything herein contained, MassCEC's entire liability, and Client's exclusive remedy, for damages from any cause whatsoever, and regardless of the form of actions, shall be limited to money damages equal to the lesser of (i) the Client's or System Owner's actual damages, or (ii) the amounts recoverable under MassCEC's general commercial liability insurance policy. Notwithstanding the foregoing sentence, Client's exclusive remedy for money damages to Client or System Owner caused by faulty data collection and/or delivery shall be limited to the amount of its actual damages.

### **INDEMNITY**

To the fullest extent permitted by law, Client shall indemnify and hold harmless the Commonwealth, MassCEC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MassCEC, the "**Covered Persons**") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "**Damages**") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of these Terms and Conditions or false representation of Client, their employees, agents, or assigns (together, the "**Participant**") hereunder, or (ii) any negligent acts or omissions or reckless misconduct of Client. Without limiting the foregoing, Client shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or are imposed because of the failure to comply with the provisions of applicable law by Client or System Owner or any of its agents, officers, directors, employees or subcontractors in connection with the performance of their duties for, or on behalf of, the Client or System Owner. The foregoing notwithstanding, Client shall not be liable for any Damages sustained, incurred or suffered by or imposed upon any Covered Person resulting from any negligent acts or omissions or reckless misconduct of MassCEC.

### **CHOICE OF LAW**

These Terms and Conditions shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles. The parties agree to bring any Federal or State legal proceedings arising under or relating to the Services in which the Commonwealth or MassCEC is a party in a court of competent jurisdiction within the Commonwealth of Massachusetts. This Section shall not be construed to limit any other legal rights of the parties. If any term or provision herein should be declared invalid by a court of competent jurisdiction, the remaining terms and provisions herein shall be unimpaired.