



## ATTACHMENT D

# Massachusetts Clean Energy Technology Center

## General Terms and Conditions

The following General Terms and Conditions are issued by the Massachusetts Clean Energy Technology Center (“MassCEC”), an independent public instrumentality of the Commonwealth of Massachusetts. *Any changes or electronic alterations to the official version of this form shall be void.* Grantees shall be bound by these General Terms and Conditions upon execution and submission to MassCEC. These General Terms and Conditions will be incorporated by reference into any Task Order for any financial assistance award executed by the Grantee and MassCEC.

### 1. Definitions

“Agreement” means these General Terms and Conditions and all Task Orders entered into hereunder and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of these General Terms and Conditions.

“Commonwealth” means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).

“Deliverable” means any tangible product to be delivered as an element of performance under a Task Order.

“Award” means the funding awarded by MassCEC’s Board of Directors as set forth in the applicable Task Order.

“Governmental Authority” means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Grantee” means any Person who has sought funding or other financial support from, or has submitted one or more proposals for projects to, MassCEC and has been awarded such financial support or funding under any of MassCEC's programs or initiatives as in effect from time to time.

“Project” means services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by MassCEC, programs provided or other commitments authorized under a Task Order.

“Project Administrator” means the individual, set forth in the applicable Task Order, employed by MassCEC who shall have secondary responsibility for managing the Project for MassCEC.

“Project Budget” means the costs associated with the tasks set forth in the Project Plan which shall be reimbursed by MassCEC pursuant to the terms and conditions of this Agreement and the applicable Task Order.

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“Project Manager” means the individual, set forth in the applicable Task Order, employed by MassCEC and by Grantee, respectively who shall have primary responsibility for managing the Project.

“Project Plan” means the set of tasks required to complete the Project as set forth in the applicable Task Order.

“Public Records Act” means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto.

“Task Order” means the documentation that sets forth the Award awarded, the specifics of the Project for which the Award was awarded and all terms and conditions for the application and use of such Award funds, including the Project Plan and Budget.

### **2. Term and Termination**

- a) The effective start date of performance under a Task Order shall be the stated effective date of such Task Order that has been executed by an authorized signatory of the Grantee and MassCEC.
- b) This Agreement may be terminated by either MassCEC or Grantee at any time for a material breach of any term of the Agreement. In the event of such termination, compensation shall be paid to the Grantee for the actual costs of allowable expenses incurred for work performed and the reasonable and necessary actual direct costs incurred in the performance of the work pursuant to the applicable Task Order prior to the effective date of the termination.
- c) MassCEC may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate MassCEC action inconsistent with performing its obligations under this Agreement.

### **3. Payments and Compensation**

The Grantee shall only be compensated for performance delivered and accepted by MassCEC in accordance with the specific terms and conditions of the applicable Task Order. Acceptance by the Grantee of any payment or partial payment, without any written objection by the Grantee, shall in each instance operate as a release and discharge of MassCEC from all claims, liabilities or other obligations relating to the performance of a Task Order.

### **4. Insurance**

- a) Specific requirements for insurance shall be set forth in the applicable Task Order.
- b) *Insurance Requirements for Public Agencies:* Notwithstanding the foregoing provision of this Section 4, in the event the Grantee is a public agency (as defined in Chapter 7, Section 39A of the Massachusetts General Laws), then MassCEC agrees that Grantee may self insure to the extent permitted by law as though Grantee were the insurer under all insurance required for its activities under the applicable Task Order. Grantee hereby waives all offsets and defenses that it may otherwise have with respect to the insurance

required to be maintained hereunder. The grant of the right to self insure is subject to the requirements that (i) the Grantees and subGrantees of Grantee carry insurance of the types and levels required for their activities under the applicable Task Order; (ii) that such insurance shall name MassCEC, and such other entities as MassCEC may request, as additional insureds, and (iii) no settlement or payment, for any claim or loss, injury or damage or other matter as to which MassCEC may be charged with an obligation to make any payment or reimbursement, shall be made by the Grantee without the written approval of MassCEC

**5. Tax Forms and Grant Taxability**

Grantee shall provide MassCEC with a properly completed United States Internal Revenue Service Tax Form W-9 (the “W-9”). Failure to provide the W-9 shall be grounds for withholding grant payments until such W-9 is received. **W-9s should be emailed to the secure email address [finance@masscec.com](mailto:finance@masscec.com).**

Grants may be considered taxable income by the U.S. Internal Revenue Service and the Massachusetts Department of Revenue. All parties are strongly encouraged to consult with a tax professional to determine the federal and/or state tax implications of receipt of a grant.

MassCEC will issue a Form 1099 to each Grantee who receives funds. A template W-9 Form and instructions will be provided for the Grantee to complete and return to MassCEC’s finance department.

**6. Publicity; Access and Use**

- a) The Grantee shall collaborate with MassCEC on any press releases, events, signs and to plan for any news conference concerning the Project. In any media produced by Grantee, Grantee will not represent that positions taken or advanced by it represent the opinion or position of MassCEC.
- b) Grantee agrees to license or otherwise make available to MassCEC in perpetuity, without charge, all materials, work products, reports or other information prepared and produced for the Project, including, without limitation, all plans, specifications and analyses developed in connection with the Project for MassCEC’s use and dissemination, subject to any confidentiality obligations as described in Section 10.

**7. Assignment and Subcontracting**

MassCEC may assign its rights and obligations under this Agreement to any natural or legal person or entity who succeeds to all or any portion of MassCEC's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. Grantee shall not assign or in any way transfer any interest in, or any of Grantee's rights or obligations under this Agreement, including by operation of law, without the prior written consent of MassCEC, nor shall Grantee subcontract any services to anyone without the prior written consent of MassCEC.

**8. Nondiscrimination**

The Grantee agrees to comply with all applicable Federal and State statutes, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, or for exercising any rights afforded by law.

**9. Indemnification**

- a) To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the Commonwealth, MassCEC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MassCEC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Grantee under this Agreement, or (ii) any negligent acts or omissions or reckless misconduct of Grantee. Without limiting the foregoing, Grantee 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 Grantee or any of its agents, officers, directors, employees or subGrantees. The foregoing notwithstanding, Grantee 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.
- b) In no event shall either party be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to Grantee's performance of the Project under this Agreement.
- c) Furthermore, as a condition of receipt of any award, Grantee does hereby release, remise, discharge, indemnify and hold harmless MassCEC (defined for purposes of this Section 9 to include MassCEC and/or any of its parents, subsidiaries or affiliates, predecessors, successors or assigns, and its respective current and/or former partners, directors, shareholders/stockholders, officers, employees, attorneys and/or agents, all both individually and in their official capacities), from any and all actions or causes of action, suits, claims, complaints, liabilities, torts, debts, damages, controversies, judgments, rights and demands, whether existing or contingent, known or unknown, suspected or unsuspected, as of the date of this Agreement.

**10. Public Records**

As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at Chapter 66 of the Massachusetts General Laws. Thus, except for those documents

exempted from disclosure, any documentary material, data, or other information received by the MassCEC from a Grantee is a public record subject to disclosure. Materials that fall under certain categories, however, may be exempt from public disclosure under a statutory or common law exemption, including the limited exemption at Massachusetts General Laws Chapter 23J, Section 2(k) regarding confidential information submitted to MassCEC by an applicant for any form of assistance.. Specifically, materials that fall under one of the following categories may be determined to be not public records and thus not subject to disclosure:

- Information, documents, or data that consist of trade secrets;
- Information, documents, or data that consist of commercial or financial information regarding the operation of any business conducted by the Applicant; and
- Information, documents, or data regarding the Applicant's competitive position in a particular field of endeavor.

Grantee may assert a claim of confidentiality for these categories of materials by clearly identifying the documents, reports, or other information for which it wishes to receive confidential treatment and by attaching the Notice of Confidentiality Cover Letter.

#### **11. Audit**

MassCEC will have the right to audit Grantee's or its other agents' records to confirm the use of the Award proceeds at any time from the Effective Date of the applicable Task Order through the end of the Retention Period, as defined herein. If such audit reveals that any portion of the Award was utilized for purposes not permitted under the applicable Task Order, then Grantee shall refund to MassCEC the amount determined by such audit within thirty (30) days of Grantee's receipt of such audit and demand. Grantee shall maintain books, records, and other compilations of data pertaining to the Award payments made under an applicable Task Order to the extent and in such detail as shall properly substantiate use of such payments. All such records shall be kept for a period of seven (7) years, starting on the first day after final payment under an applicable Task Order (the "Retention Period"). If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MassCEC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy at reasonable expense, the books, records, and other compilations of data of the Grantee which pertain to the provisions and requirements of this Award. Such access may include on-site audits, review and copying of records.

#### **12. Conflict of Interest**

Grantee acknowledges that all MassCEC employees are subject to the Massachusetts Conflict of Interest statute, located at Massachusetts General Laws Chapter 268A.

**13. Lobbying**

No Award funds may be used to pay for or otherwise support any activities intended to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing “legislative agents” or “executive agents” set forth in the Massachusetts Lobbying Law, M.G.L. c.3, §39.

**14. Choice of Law**

This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles. The Grantee agrees to bring any Federal or State legal proceedings arising under this Grant 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.

**15. Force Majeure**

Neither party shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance including the Term of this Agreement may be extended to account for delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

**16. Waivers**

Conditions, covenants, duties and obligations contained in this Agreement 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.

**17. Severability**

Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.

**18. Notice**

All communications to MassCEC regarding legal issues shall be mailed or delivered to the following address, or sent by facsimile to the following number:

Massachusetts Clean Energy Center  
55 Summer Street, 9<sup>th</sup> Floor  
Boston, MA 02110  
617-315-9355 (phone)  
617-315-9356 (fax)  
Attn: Roberto Ramirez, Chief Financial Officer

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Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by MassCEC.

**19. Amendments, Entire Agreement and Attachments**

All conditions, covenants, duties and obligations contained in the Agreement may be amended only through a written amendment signed by the Grantee and MassCEC. The parties understand and agree that this Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the matters contained herein.

**[Remainder of page intentionally blank]**

**General Terms and Conditions**

The Grantee hereby acknowledges and agrees to the General Terms and Conditions as detailed above.

AUTHORIZED SIGNATORY: \_\_\_\_\_  
(signature)

Print Name: \_\_\_\_\_

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

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

(Check One): \_\_\_\_\_ Organization \_\_\_\_\_ Individual

Full Legal Organization or Individual Name: \_\_\_\_\_

Doing Business As Name (If Different): \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_ URL: \_\_\_\_\_