# GRANT AGREEMENT

This Grant Agreement (the “Agreement”) is effective as of [Date – M/D/YYYY] (the “Effective Date”), is by and between the **Massachusetts Clean Energy Technology Center** (“MassCEC”), an independent public instrumentality of the Commonwealth of Massachusetts (the “Commonwealth”) with a principal office and place of business at 63 Franklin Street, 3rd Floor, Boston, MA 02110, and **[Grantee Name]** with a principal office and place of business at [Grantee Address] (“Grantee”). Each of MassCEC and Grantee are at times referred to herein as a “Party,” and together the “Parties”.

**WHEREAS**, [provide an introduction to the Agreement, why it is being entered into, provide facts about the relationship and goals of the parties, the nature of the contract, and mention other related transactional documents];

**WHEREAS,** the project “[project name]” (the “Project”) was awarded $[monetary amount] in funding by the [Prime Award Entity] (the “Prime Award”);

**WHEREAS,** [use as many clauses as necessary]; and

**WHEREAS,** MassCEC has determined that the Project will support its goals to [benefits].

**NOW, THEREFORE**, in consideration of the recitals, the mutual promises, and covenants contained in this Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, MassCEC and Grantee agree as follows:

## Performance of the Work

### Grantee shall complete the Project and provide the deliverables (the “Deliverables”) described in the Scope of Work set forth in Attachment 1 (the “Scope of Work”).

### Grantee is solely responsible for all Project decisions, the preparation of all plans and specifications, and for completing the Project in accordance with the Scope of Work. Grantee will, for the full duration of the Agreement, ensure that the Project qualifies as “clean energy” or “clean energy research” as such terms are defined in the Massachusetts General Laws, Chapter 307 of the Acts of 2008, An Act Relative to Green Jobs in the Commonwealth, as such provisions have been and may be amended from time to time (collectively, the “Clean Energy Project Qualifications”).

## Term

The term of this Agreement shall commence on the Effective Date, and shall continue until the end of the Project’s period of performance of the Prime Award, including any subsequent extensions, unless terminated sooner pursuant to the terms of Section 8 except where provisions explicitly survive the termination of this Agreement (the “Term”). [NOTE: The term should be updated based on whether the funding provided by MassCEC is as a cost share for a federal award or if we are merely providing funding for a research project. Please work with legal to refine this provision.]

## Payments and Invoices

### *Total Funds*. In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, MassCEC agrees to provide Grantee with funds in an amount not to exceed **[write out amount] Dollars ($numerical amount)** (the “Grant”). The Parties agree that this is a maximum authorization, and MassCEC is under no obligation to transfer the full amount to Grantee, or any amount, in the event Grantee does not satisfy the requirements under this Agreement. Grantee acknowledges and agrees that receipt of this Grant, or any portion thereof, does not create any rights of preferences to receive subsequent funding from MassCEC. In no event shall the Grant exceed the amount specified in this section.

### *Payment of Funds*. Grant funds will be paid in installments in accordance with the Schedule and Deliverables Table set forth in Attachment 1 (each installment a “Grant Installment”) within forty-five (45) days of approval of the corresponding Deliverable and receipt of a written invoice describing the work performed with Grant funds during the invoice period. Invoices must be submitted to Project Managers (as defined below) at MassCEC no more than monthly. Invoices shall be accompanied by all required documentation setting forth the Deliverables produced or Milestones achieved, and any other documentation required in the Scope of Work.

## Project Managers

### MassCEC and Grantee have designated the following persons to serve as Project Managers to support effective communication between MassCEC and Grantee and to report on the Project’s progress (the “Project Managers”).

**For MassCEC:**

[First Name Last Name], ([phone number] / [email]@masscec.com)

[First Name Last Name], ([phone number] / [email]@masscec.com)

**For Grantee:**

 [First Name Last Name], ([phone number] / [email]@)

### Grantee shall be required to obtain prior written approval from MassCEC to make any change to its Project Manager. For the avoidance of doubt, MassCEC may update the Project Manager(s) listed without amending this Agreement, if done in compliance with the notice provisions of Section 5.

## Notice

### Any notice hereunder shall be in writing and shall be sent either by (i) facsimile, email, or other electronic transmission, (ii) courier, or (iii) first class mail, postage prepaid, addressed to the Project Manager listed in Section 4(a) at the address indicated in the preamble of this Agreement (or to such other address as a Party may provide by notice to the Party pursuant to this Section), and shall be effective (x) at dispatch, if sent by facsimile, email, or other electronic transmission, (y) if sent by courier, upon receipt as recorded by courier, or (z) if sent by first class mail, five (5) days after its date of posting.

## Publicity; Use of Name

### Grantee shall collaborate directly with MassCEC to prepare any public statement, media strategy or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which MassCEC is concerned or discussed, including, but not limited to, any media pitches, interviews, embargoed materials, photo opportunities, blogs, guest columns, media events or editorial boards which relate to this Agreement or MassCEC (each, a “Public Statement”) and shall in no event be permitted to publish, release, or otherwise disseminate any such Public Statement without MassCEC’s prior written consent.

### Grantee agrees that MassCEC shall have the right to make use of and disseminate, in whole or in part, all work products, reports, and other information produced in the course of the Project's completion, and to use the information therein contained to produce summaries, case studies, or similar information resources.

## Other Requirements

### *Program Evaluation*. Grantee agrees to support MassCEC’s Program evaluation activities, and MassCEC’s dissemination of information regarding Grantee’s experiences. To this end, Grantee agrees that its key personnel and contractors working on the Project will be available at reasonable times with advance notice to be interviewed by MassCEC or its authorized representatives for purposes of Program evaluation or case study development.

### *Grant Administration.* Grantee shall use the Grant only for the activities described in the approved Scope of Work. Grantee shall maintain financial records relating to the receipt and expenditure of all Grant funds in accordance with the terms set forth under this Agreement for a period of seven (7) years from the Effective Date.

### *Grant Expenditure.* All expenses incurred by Grantee before the Effective Date are incurred voluntarily, at Grantee’s risk and upon its own credit and expense, and Grantee shall not incur any expenses to be charged against Grant funds prior to the Effective Date.

### *Patent Filings.* Grantee shall notify MassCEC in writing (email acceptable) of the filing of all patent applications and all issuances to it of any and all patent(s) directed to an invention conceived, made and/or obtained, in whole or in part, by Grantee in the course of, and/or resulting or stemming from, research or development funded in whole or in part by the Grant that may result in a patent or patent application or patent rights within thirty (30) days following such filing(s) which commitment shall survive termination of this Agreement.

### *Licensing of Technologies.* Grantee shall notify MassCEC in writing (email acceptable) of the licensing of any technologies conceived, made and/or obtained, in whole or in part, by Grantee in the course of, and/or resulting or arising from, research or development funded in whole or in part by this MassCEC award within thirty (30) days of such licensing, which commitment shall survive termination of this Agreement. Under no circumstances shall Grantee be permitted to deny or fail to disclose the existence of such a licensing arrangement, regardless of whether such a nondisclosure obligation exists under the arrangement. To the extent such licensing arrangement restricts Grantee from revealing confidential terms of the arrangement, Grantee shall provide MassCEC with a non-confidential description of the arrangement by withholding or redacting any information that would violate such confidentiality obligations.

### *Creation of Companies.* Grantee shall notify MassCEC in writing of the founding of any companies spun off by the Project team as a direct result of research and development funded in whole or in part by this Grant within thirty (30) days of incorporation, which commitment shall survive termination of this Agreement.

### *Massachusetts Presence.* During the Term of this Agreement, Grantee shall be required to maintain (i) an office in the Commonwealth with an employee headcount of greater than four (4) or with over than 50% of the total number of company employees; and (ii) one (1) of the following business operations in the Commonwealth: (a) primary Project-related research and development operations, (b) primary manufacturing operations, or (c) the Project site (the “Massachusetts Presence Requirement”). Grantee shall immediately notify MassCEC in writing in the event at any time during the term of this Agreement it is no longer in compliance with the Massachusetts Presence Requirements.

### ***(IF APPLICABLE*)** *Reporting.* Upon MassCEC’s request, Grantee shall provide MassCEC with a copy of reports prepared by Grantee pursuant to its Prime Award, and corresponding Prime Award memoranda, within thirty (30) days of such request. To the extent the aforementioned materials contain confidential information (as such term is defined in Section 15 of this Agreement), Grantee shall redact such confidential information prior to making such reports available to MassCEC.

## Termination

### This Agreement may be terminated by either Party at any time for a material breach of any term of the Agreement.

### 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 action inconsistent with MassCEC performing its obligations under this Agreement.

### Except as otherwise provided in the Agreement, the rights and obligations of each of the Parties under Sections: 5, 6(b), 7(d), 7(e), 7(f), 8, 10, 11, 14, 15, 18, 19, 20, 21, 23, and 25 of this Agreement shall survive and remain in effect after the termination or expiration of this Agreement.

### Throughout the term of this Agreement, Grantee agrees and acknowledges that in order to receive disbursements of Grant Installments Grantee must ensure the Project conforms with (i) the Clean Energy Project Qualifications, (ii) the Massachusetts Presence Requirement, and (iii) the Scope of Work. The Parties hereby agree that in the event it is determined by MassCEC, in its sole discretion, that Grantee failed to deploy the Grant funds in accordance with the Scope of Work or such Project fails to maintain the Clean Energy Project Qualifications or Massachusetts Presence Requirement, MassCEC shall have the right immediately to terminate this Agreement in accordance with Section 8 and discontinue disbursing Grant Installments; provided, however, that pursuant to Section 11 herein, Grantee shall be required to refund any and all non-complying Grant Installments made by MassCEC prior to the effective date of such termination (“Termination Date”), in the event an audit reveals the existence of a Nonconformance Event (as that term is defined in Section 11) at any other time on or after the Effective Date.

## Tax Forms and Grant Taxability

1. Grantee shall provide MassCEC with a properly completed United States Internal Revenue Service (“IRS”) Form W-9 (the “W-9”). Failure to provide the W-9 shall be grounds for withholding Grant Installments until such W-9 is received. W-9s shall be emailed to finance@masscec.com.
2. Grants may be considered taxable income by the IRS and the Massachusetts Department of Revenue. Grantee is solely responsible for any failure to timely consult with a tax professional to determine the federal and/or state tax implications of this Agreement. MassCEC will issue an IRS Form 1099 to each Grantee. For all tax-exempt entities (including government entities), a tax-exemption certificate or IRS tax-exemption determination letter must be emailed to finance@masscec.com.

## Access and Use

Grantee agrees to license or otherwise make available to MassCEC in perpetuity, without charge, Grantee’s interest in, and copyright (if any) to, all non-confidential materials prepared and produced in relation to the Project, including, without limitation, all plans, specifications, and analyses developed in connection with the Project and specified as being for MassCEC’s use and public dissemination.

## Audit

## At any time prior to the completion of the Project and as otherwise provided in this Section, MassCEC shall have the right to audit Grantee’s or its other agents’ records to confirm the use of the Grant awarded under this Agreement. If such audit reveals that any portion of such funds was used for purposes not permitted under the Agreement (a “Nonconformance Event”), then Grantee shall refund to MassCEC the amount determined by such audit to have been improperly used within thirty (30) days of Grantee’s receipt of such audit and demand. In the event such audit reveals a Nonconformance Event, MassCEC shall be entitled to immediately terminate this Agreement and discontinue disbursing Grant Installments to Grantee from the date the audit is completed, subject to any limitations set forth by Section 8. Grantee shall maintain books, records, and other compilations of data pertaining to the funds paid pursuant to this Agreement to the extent and in such detail as to 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 the Agreement (the “Retention Period”). If any litigation, claim, negotiation, audit, or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MassCEC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy at reasonable expense, the books, records, and other compilations of data of Grantee which pertain to the provisions and requirements of this Agreement. Such access may include on-site audits, review, and copying of records.

## Assignment and Subcontracting

Grantee shall not assign or in any way transfer any interest in Grant funds without the prior written consent of MassCEC.

## Compliance with Laws

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

## Indemnification

### 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, its employees, agents, or assigns 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 due to the failure to comply with the provisions of applicable law by Grantee or any of its agents, officers, directors, employees, or subcontractors.

###  In no event shall either Party be liable for any indirect, incidental, special, punitive, or consequential damages whatsoever (including, but not limited to, lost profits or interruption of business) arising out of or related to Grantee's, its employees', agents', or assigns' performance of the Project under this Agreement.

## Public Records and CTHRU

As a public entity, MassCEC is subject to the Commonwealth’s Public Records Law, codified at M.G.L. c. 66 (the "Public Records Law"). Grantee acknowledges and agrees that any documentary material, data, or other information submitted to MassCEC are presumed to be public records. An exemption to the Public Records Law may apply to certain records, including materials that fall under certain categories under a statutory or common law exemption, including the limited exemption set forth in M.G.L. c. 23J, Section 2(k) regarding certain types of confidential information submitted to MassCEC by an applicant for any form of assistance. Grantee shall be solely responsible for considering what documents, materials, data, and other information are submitted to MassCEC in connection with this Agreement.

## Grantee agrees and acknowledges that MassCEC shall have the right to disclose the name of Grantee and/or payee, the amount of the payment pursuant to this Agreement, and any other information it may deem reasonably necessary on CTHRU, the Commonwealth’s online database of state spending, or any other applicable state spending website.

## Insurance

Grantee certifies that appropriate insurance coverage for all activities under this Agreement has been obtained and shall be maintained in effect through the term of this Agreement. GRANTEE ACKNOWLEDGES THE SUFFICIENCY OF THE TYPES AND AMOUNTS OF INSURANCE COVERAGE MAINTAINED AND THE APPROPRIATENESS OF THOSE COVERAGES FOR THE DURATION OF THE TERM. At MassCEC’s request, Grantee will provide MassCEC with copies of the certificates of insurance evidencing such coverage. The insurance requirements for the Project and pursuant to this Agreement are solely Grantee’s responsibility and shall not relieve Grantee of any responsibility to MassCEC.

## Conflict of Interest

Grantee acknowledges that all MassCEC employees are subject to the Commonwealth’s Conflict of Interest statute, codified at M.G.L. c. 268A.

## Lobbying

No funds awarded by this Agreement 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 Commonwealth’s Lobbying Law, codified at M.G.L. c. 3, Section 39.

## Choice of Law and Forum; Arbitration; Equitable Relief

### This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to its conflict of laws principles. Any dispute arising out of or relating to this Agreement or its breach, termination, or invalidity, whether before or after termination of this Agreement, if not resolved by negotiation among the Parties within thirty (30) days after such dispute is raised by either Party in writing, will be settled by binding arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over this Agreement. Any such arbitration will be conducted in or near Boston, Massachusetts. The prevailing Party shall be entitled to receive from the other Party its reasonable attorney’s fees and costs incurred in connection with any action, proceeding, or arbitration hereunder.

### This Section 19 shall not be construed to limit any other legal rights of the Parties. Each Party acknowledges and agrees that any breach or threatened breach of this Agreement by the other Party may result in substantial, continuing, and irreparable damage to the first Party. Therefore, before or during any arbitration, either Party may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction, where such relief is necessary to protect its interests pending completion of the arbitration proceedings.

## 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.

## Amendments and Waivers

## MassCEC may amend Section 15 (without any action by Grantee) to reflect changes in law or MassCEC policies and shall promptly deliver any and all such amendments to Grantee in the manner provided in Section 5. Except as provided in the immediately preceding sentence, no amendments to or modifications of this Agreement, and no waiver of any provision of this Agreement, shall be effective unless the same shall be in writing and shall be signed by each of the Parties. Any waiver by MassCEC of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a Party shall not be construed as a waiver, or in any way limit the remedies available to that Party.

## Force Majeure

Neither Party shall be liable or responsible to the other Party, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) actions, embargoes, or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; and (f) strikes, labor stoppages or slowdowns. The Impacted Party shall give notice within two (2) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon fifteen (15) days' written notice.

## Independent Status

## Nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, partner, joint venturer, or principal and agent between MassCEC and Grantee, its employees, agents, or officers.

## Counterparts

This Agreement may be executed in two or more counterparts, and by the Parties on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

## Binding Effect; Entire Agreement

## This Agreement shall be binding on the Parties and their respective successors and permitted assigns, and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person shall be regarded as a third party beneficiary of this Agreement. This Agreement embodies the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant, or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change, or restrict, the express terms and provisions of this Agreement. Furthermore, neither Grantee’s nor any of its subcontractors’ provision of services under this Agreement implies, establishes or otherwise creates any rights or expectations of additional contracts with the MassCEC, whether related or unrelated to the subject matter of this Agreement. The following (together with all exhibits, schedules, and attachments) are hereby incorporated into this Agreement by reference:

### Attachment 1— Scope of Work: Project Plan, Deliverables, and Schedule

### Attachment 2 – [***IF APPLICABLE***] Prime Award

**[Remainder of Page Intentionally Blank]**

**In witness whereof**, the Parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

**Massachusetts Clean Energy Technology Center [Grantee]**

**By: By:**

**Name:**  **Name:**

**Title:**   **Title:**

**Date: Date:**

**Federal Tax ID No.**:

# Attachment 1

#  SCOPE OF WORK: Project Plan, Deliverables, and Schedule

1. Project Plan [provide a description of the project]
2. Payment Terms [describe payment terms and the invoicing process. Make sure this section is consistent with the terms of Section 3]
3. Schedule and Deliverables Table

EXAMPLE TABLE

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Task # | Milestone | Date Due | Deliverable | Milestone Funding |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
|  |  |
|  | **TOTAL** | **$** |