

## **GRANT AGREEMENT**

This Grant Agreement (the “Agreement”), effective as of [Date – Month DD, 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 294 Washington Street, Suite 1150, Boston, MA 02108, and [Grantee Name], a [include brief description i.e. “a Massachusetts nonprofit organization”] with a principal office and place of business at [Grantee Address] (“Grantee”). Each of MassCEC and Grantee are at times referred to in this Agreement as a “Party,” and together the “Parties”.

**WHEREAS**, pursuant to Section 2 of Chapter 238 of the Acts of 2024, entitled “An Act Relative to Strengthening Massachusetts Economic Leadership”, capital dollars are provided to the Climatetech Investment Fund at MassCEC for the purpose of to promoting job creation, economic development and workforce development through capital grants in order to support and stimulate research and development, innovation, manufacturing, commercialization and deployment of climatetech technologies in Massachusetts;

**WHEREAS**, Grantee submitted an application for [insert project title and clearly define the project (“Project”) as that term is used below] the Board of Directors of MassCEC desires to invest capital dollar in the Project; and

**WHEREAS**, Grantee understands that the Grant (defined below) is funded using capital dollars and therefore may only be used to purchase the capital assets for the Project and is subject to other restrictions set forth in this Agreement;

**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:

### **1. Performance of the Work**

- a. 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”).
- b. Grantee is solely responsible for all Project decisions, the preparation of all plans and specifications, and completing the Project in accordance with the Scope of Work.
- c. Grantee is solely responsible for selecting and entering into written contracts with contractors as necessary to provide the Deliverables and complete the Scope of Work, and for ensuring that the contractors Grantee retains comply with all applicable provisions of this Agreement. Grantee acknowledges that MassCEC shall have no responsibility for managing such contractors or the relationship between Grantee and its contractors. Further, Grantee shall indemnify and hold harmless MassCEC from any Damages (as defined in Section 14) associated with any disputes occurring between Grantee and its contractors arising from or in relation to the Project.
- d. Grantee acknowledges that MassCEC has no responsibility for management of the Project, including obtaining any local, state, and federal permits, as applicable.

e. Grantee shall be responsible for completing all required steps to receive funding from any other entity besides MassCEC, as applicable.

## **2. Term**

The term of this Agreement shall commence on the Effective Date, and shall expire on [Date – Month DD, YYYY] (the “Term”) unless otherwise terminated in accordance with this Agreement or extended by mutual agreement between the Parties through an amendment to this Agreement.

## **3. Grant Amount; Payment; Rescission**

- a. *Grant Amount.* In consideration of the 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 acknowledge and agree that this is a maximum authorization. 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 of this Grant, does not create any right of preference to receive subsequent funding from MassCEC. In no event shall the Grant exceed the amount specified in this section.
- b. *Payment.* MassCEC will pay Grant funds to Grantee in installments in accordance with the Schedule and Deliverable table set forth in Attachment 1 (each installment a “Grant Installment”) within forty-five (45) days of approval by MassCEC of the corresponding Deliverable, receipt of a written invoice describing the work performed with Grant funds during the invoice period, and receipt of a completed and signed [IF APPLICABLE: Cost Share and] Expenditure Certification (Attachment 2). Grantee shall submit invoices by email to MassCEC’s Project Managers listed in this Agreement and a copy to ap@masscec.com. In addition, Grantee shall provide the additional capital expenditure documentation set forth in Attachment 2 or as otherwise reasonably requested by MassCEC. Grantee shall enroll in MassCEC’s Automated Clearinghouse (“ACH”) system to receive payment by completing the ACH enrollment form attached to this Agreement in Attachment 3 and submitting it to ap@masscec.com at or before the submission of their first invoice. Any changes to the information in the ACH form must be submitted to ap@masscec.com through an updated ACH enrollment form within thirty (30) days of any such change.
- c. *Rescission.* If Grantee materially breaches any term of the Agreement, in addition to the ability to terminate as set forth elsewhere in this Agreement, MassCEC shall have the right to rescind Grant payments; provided, however, that Grantee shall have the opportunity to cure such breach within thirty (30) days of the breach and if Grantee does so, MassCEC shall not exercise the right to rescind Grant payments. If Grantee becomes insolvent, makes an assignment of rights or property for the benefit of creditors, or files for or has bankruptcy proceedings instituted against it under the federal bankruptcy law of the United States, or if MassCEC reasonably believes that such an event is imminent, MassCEC, acting in its sole discretion, may rescind the remaining undisbursed portion of the Grant.

#### 4. Project Managers

a. 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 (each a "Project Manager").

**For MassCEC:**

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

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

**For Grantee:**

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

b. Grantee shall obtain prior written approval from MassCEC to make any change to its Project Manager(s). Upon approval by MassCEC, Grantee shall provide MassCEC with all updated contact information for its Project Manager(s). Grantee shall promptly notify MassCEC of any other changes to its Project Manager(s) contract information. For the avoidance of doubt, MassCEC may update its Project Manager(s) listed without amending this Agreement, if done in compliance with the notice provision contained herein. Grantee represents and warrants that its Project Manager is authorized to communicate with MassCEC on behalf of Grantee.

#### 5. Notice

Any notice pursuant to this Agreement shall be in writing and shall be sent to the designated Project Manager(s) listed herein either by (i) email or other electronic transmission, (ii) courier, or (iii) first class mail, postage prepaid, addressed to the Project Manager(s) at the address indicated herein and shall be effective (x) at dispatch, if sent by 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.

#### 6. Publicity; Use of Name and Work Product

a. 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 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.

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

#### 7. Other Requirements

a. *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.

b. *Grant Administration.* Grantee shall use the Grant funds 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 starting on the first day after final payment under the Agreement.

d. *Grant Expenditure.* All costs incurred by Grantee before the Effective Date are incurred voluntarily, at Grantee's risk and upon its own credit and expense. Grantee shall not incur any costs to be charged against Grant funds prior to the Effective Date. All grant expenditures ("Grant Expenditures") must be capital costs and considered actual capital costs and be capitalized as such on Grantee's books. All Grant Expenditures must be in the performance of the Project Scope of Work and specified on a line item of the Project Budget, as follows:

- i. Capitalized Equipment, Land with existing Facilities, and Buildings: capital assets purchased in accordance with the Project Budget;
- ii. Capitalized Subcontractors/Consultants: capital services provided by Grantee's subcontractors/consultants at the actual cost paid for project services which shall not exceed the amount set forth in the Project Budget;
- iii. Capitalized Materials: the cost of capitalized materials purchased which shall not exceed the amounts set forth in the Project Budget; and
- iv. Other Capitalized Costs: the cost of capital items purchased, or any other capital costs incurred which shall not exceed the amounts set forth in the Project Budget.

e. *Cost Share.* Grantee agrees to meet and maintain a minimum [twenty-five] percent (25%) cost share for the Project ("Cost Share"). Grantee's Cost Share for the full Grant amount is [write out amount] Dollars (\$numerical amount). MassCEC and Grantee will share in any cost savings that result from Project expenses that are less than the amount identified in the Project Budget by maintaining the minimum Cost Share.

f. *[Allowable Expenses.* Grantee's costs uniquely associated with the Project and incurred directly in the completion of Milestones set forth in the Scope of Work and identified in the Project Budget (the "Allowable Expenses"), shall be eligible for Cost Share. For the avoidance of doubt, Allowable Expenses shall not include general administration, overhead, mark-ups, travel (either by Grantee or by subcontractors to Grantee), Grantee's own labor, or general purpose facilities, equipment, materials, or software.

g. *Restriction on Use.* Grantee covenants and agrees that Grantee shall use all or substantially all of the Grant for the Project for the purposes of supporting and stimulating research and development, innovation, manufacturing, commercialization, and deployment of climatetech technologies in Massachusetts ("Purpose") as described in its application and the Scope of Work attached hereto. During the useful life of the asset, Grantee shall publicly market such equipment and make it available to internal and external academic researchers,

as well as climatetech start-ups and scientists from industry, subject to an appropriate agreement in accordance with a core services model. Use of the Grant for purposes other than the Purpose defined herein could result in a Change Event, as defined below.

h. *Recapture on Change in Use.*

- a. For purposes of this Agreement, the following definitions shall apply:
  - i. "Asset" shall mean and refer to the capital expenses reimbursed by MassCEC for the Project, as identified in Attachment 1.
  - ii. "Change Event" shall mean and refer to (A) the sale or liquidation of the Asset, (B) the voluntary destruction or demolition of all or substantially all of the Asset, (C) the use of all or substantially all of the Grant or Assets for purposes other than the Purpose defined in this Agreement, (D) any other act or omission of Grantee and their respective successors or assigns that materially impairs the use of all or substantially all of the Asset for the uses described above, or (E) failure to comply with reporting obligations for Project, as well as for any other project performed by Grantee under a grant agreement with the MassCEC, (F) failure to make the Asset publicly available in accordance with the provisions of this Agreement, or (G) any transfer of the Asset or use of the Asset outside of Massachusetts.
  - iii. "Depreciated Grant Amount" shall mean and refer to an amount equal to the product obtained by multiplying the (A) Depreciation Rate by (B) the time elapsed between when the Asset is placed in service (defined as when the capital equipment and renovations are substantially complete) and the date on which the Change Event occurred.
  - iv. "Depreciated Grant Value" shall mean and refer to an amount equal to the difference obtained by subtracting (A) the Depreciated Grant Amount from (B) the Total Amount received under this Grant.
  - v. "Depreciation Period" shall mean and refer to ten (10) years (commencing on the Effective Date) on a straight-line basis, as defined in Grantee's accounting policies and in accordance with Generally Accepted Accounting Principles ("GAAP"), which period shall be approved by Grantee's external auditors and shall be reasonably acceptable to MassCEC.
  - vi. "Depreciation Rate" shall mean and refer, consistent with the Depreciation Period defined above, to 10% per year, which rate shall be approved by Grantee's external auditors and shall be reasonably acceptable to MassCEC.
  - vii. "Total Amount received under this Grant" shall mean and refer to the total funds received from MassCEC pursuant to the Agreement; provided that such amount shall not exceed **[\$Insert Grant Amount]**.
- b. Notwithstanding anything to the contrary contained herein, a Change Event may be deemed a material breach of this Agreement by Grantee, and be subject to MassCEC's termination right set forth in this Agreement.
- c. In the event of a Change Event, if caused by an act or omission of Grantee prior to expiration of the Depreciation Period, Grantee shall, within five (5) business days of the occurrence of such event, deliver written notice of such Change Event to MassCEC in accordance with the Notice section of the Agreement, which notice shall set forth in reasonable detail the facts and circumstances of such Change Event.

- d. Within twenty (20) business days of MassCEC's receipt of the notice described above, Grantee shall pay to MassCEC, by check or wire transfer, an amount equal to the Depreciated Grant Value which shall be the Depreciated Grant Value of the Grant in effect as of the date of the Change Event; unless the Change Event is a change in use as described in Section 7.i.a.ii.(C), in which case the Depreciated Grant Value shall be determined by subtracting (A) that portion of the Depreciated Grant Value associated with the change in use by (B) that portion of the Total Amount received under this Grant associated with the change in use.
- e. Upon Grantee's payment of the Depreciated Grant Value to MassCEC, the Agreement shall be terminated and MassCEC shall have no liability or other obligation with respect to the Grant, nor shall Grantee have any liability or other obligation with respect to the Grant or the MassCEC.
- f. Grantee Liability. With regard to Grantee's liability under this Grant for the period after completion of the Project through the remainder of the Depreciation Period, in the event of the occurrence of a Change Event, Grantee shall be exclusively liable for the Depreciated Grant Value for Change Events or breaches relating to the Asset.
- i. *Operating Expenses Attributable to Public Entities.* In the event that the Asset, at any point during its useful life, is used by a state entity, such as a state college or university or subdivision thereof ("State User"), Grantee represents and warrants that it shall require such State User shall pay a fair pro rata share of operating costs attributable to the State User's use of the Asset. Grantee shall develop, implement, and maintain (a) a methodology for calculating a State User's fair share of operating expenses as well as (b) a process for charging and collecting such fair share from the applicable State User.

## **8. Termination**

- a. MassCEC may terminate this Agreement at any time if Grantee has materially breached any term of the Agreement, including the occurrence of a Change Event as defined above, and fails to cure such breach as provided in Section 3(c) (Rescission).
- b. MassCEC may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate action inconsistent with MassCEC performing its obligations under this Agreement.
- c. In the event the Scope of Work contains a "Go/No-Go" decision, MassCEC may terminate this Agreement at the applicable decision point in its sole discretion and in accordance with any metrics, milestones, or criteria indicated in the Scope of Work, at which point Grantee shall not submit any additional invoices to MassCEC.
- d. Except as otherwise provided in the Agreement, termination or expiration of this Agreement shall not affect the rights and obligations of each Party under any provision of this Agreement which by its nature would be intended to survive any such termination or expiration, which shall include the following Sections: 5 (Notice), 6 (Publicity; Use of Name and Work Product), 7 (Other Requirements), 8 (Termination), 10 (Use and Access), 11

(Audit), 14 (Indemnification), 15 (Public Records and CTHRU), 18 (Lobbying), 19 (Choice of Law and Forum; Arbitration; Equitable Relief), 21 (Severability), 22 (Amendments and Waivers), 24 (Independent Status), 26 (Headings; Interpretation), and 27 (Binding Effect; Entire Agreement). For the avoidance of doubt the *Recapture on Change in Use* provisions in Section 7 shall survive for the useful life of the Asset.

## **9. Tax Forms and Grant Taxability**

a. 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 all Grant Installments until such W-9 is received. W-9s shall be emailed to [ap@masscec.com](mailto:ap@masscec.com).

b. 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 [ap@masscec.com](mailto:ap@masscec.com).

## **10. 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 materials prepared and produced in relation to the Project or embedded in or essential to the use of the Deliverables, 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. Any and all inventions that are conceived of, or first reduced to use, by Grantee prior to or during the course of the Project shall be the sole property of Grantee, except that if jointly invented, title shall flow in accordance with United States patent law, and any licensing requests for such inventions shall be subject to good faith negotiations between the Parties. Grantee represents and warrants that Deliverables will not infringe on any copyright, right of privacy, or personal or proprietary rights of others.

## **11. 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 to have been improperly used within thirty (30) days of Grantee's receipt of a demand from MassCEC. 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 (Termination). 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 from audit or other action, 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 (during business hours) 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.

## **12. Assignment and Subcontracting**

Grantee shall not assign or in any way transfer any interest in Grant funds without the prior written consent of MassCEC, nor shall Grantee subcontract any of its obligations hereunder without the prior written consent of MassCEC. Any subcontract entered into by Grantee pursuant to this Section 12 shall not relieve Grantee from any of its obligations pursuant to this Agreement, any act or omission by a subcontractor of Grantee shall be deemed an act or omission by Grantee, and Grantee shall be responsible for each of its subcontractors complying with all obligations of Grantee pursuant to this Agreement.

## **13. 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.

## **14. 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, its officers, directors, employees, agents, subcontractors, or assigns under this Agreement; (ii) any negligent acts or omissions or reckless misconduct of Grantee, its officers, directors, employees, agents, subcontractors, or assigns; and (iii) the failure to comply with applicable law or regulation by Grantee or any of its agents, officers, directors, employees, subcontractors, or assigns.
- b. 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 officers', directors', employees', agents', subcontractors' or assigns' performance of the Project under this Agreement,

regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise.

c. *[Note: this or similar language to be included where applicable consultant roles are part of the program]* The Parties acknowledge that the Technical Consultant (as defined in the Scope of Work) is an independent contractor, and in no event shall any Covered Person be liable to Grantee or any other party for any Damages sustained, incurred, or suffered by or imposed upon the Grantee or any of its officers, directors, employees, agents, subcontractors, or assigns associated with the Technical Consultant's actions, omissions, negligence, or misconduct in relation to the Project. Further, except to the extent such Damages are determined to have resulted from the willful misconduct or fraudulent behavior of the Technical Consultant, the Technical Consultant shall not be liable for any Damages sustained, incurred, or suffered by or imposed upon the Grantee or any of its officers, directors, employees, agents, subcontractors, or assigns, associated with the Technical Consultant's actions, omissions, negligence, or misconduct in relation to the Project.

## **15. Public Records and CTHRU**

As a public entity, MassCEC is subject to the Commonwealth's Public Records Law, codified at M.G.L. c. 66 (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 subject to disclosure. An exemption to the Public Records Law may apply to certain records, such as materials that fall under certain statutory or common law exemptions, 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 informing MassCEC in advance of any information it plans to submit to MassCEC that it considers exempt from the Public Records Law. Notwithstanding the foregoing, Grantee acknowledges and agrees that MassCEC, in its sole discretion, shall determine whether any document, material, data, or other information is exempt from or subject to public disclosure. Grantee shall not send MassCEC any confidential or sensitive information that may be subject to public disclosure.

Grantee agrees and acknowledges that MassCEC shall have the right to disclose the name and address 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.

## **16. 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.

## **17. Conflict of Interest**

The Grantee represents that to its knowledge none of its officers, directors, employees, agents, contractors, managers or other representatives have or will have a personal financial interest in the Grant awarded under this Agreement. Grantee acknowledges that MassCEC employees are subject to the Massachusetts Conflict of Interest statute, M.G.L. c. 268A. Grantee agrees to notify MassCEC in the event that Grantee becomes aware of any real or perceived conflict of interest with respect to this Agreement.

## **18. 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.

## **19. Choice of Law and Forum; Arbitration; Equitable Relief**

- a. This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to its conflict of laws principles. Any dispute arising out of or relating to this Agreement or its breach, termination, or invalidity, whether before or after termination of this Agreement, if not resolved by negotiation among the Parties within thirty (30) days after such dispute is raised by either Party in writing, will be settled by binding arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over this Agreement. Any such arbitration will be conducted in or near Boston, Massachusetts. The prevailing Party shall be entitled to receive from the other Party its reasonable attorney’s fees and costs incurred in connection with any action, proceeding, or arbitration under this subsection.
- b. This section shall not be construed to limit any other legal rights of the Parties. Each Party acknowledges and agrees that any breach or threatened breach of this Agreement by the other Party may result in substantial, continuing, and irreparable damage to the first Party. Therefore, before or during any arbitration, either Party may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction, where such relief is necessary to protect its interests pending completion of the arbitration proceedings.

## **20. Registration**

Grantee represents and warrants that Grantee is or will become registered and maintain good standing with the Secretary of State’s Office of the Commonwealth of Massachusetts for the duration of the Term.

## **21. 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.

## **22. Amendments and Waiver**

MassCEC may amend this Agreement without any action by Grantee to the extent that such amendment is necessary to reflect changes in law, regulation, or public policy that apply to MassCEC or the Project. MassCEC shall promptly deliver any such amendment to Grantee in the manner provided in Section 5. Except for amendments required to comply with law or regulation, 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.

## **23. 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.

## **24. 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 officers, directors, employees, agents, or assigns.

## **25. Counterparts**

This Agreement may be executed in two (2) 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.

## **26. Headings; Interpretation**

The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective legal counsel.

**27. 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 MassCEC, whether related or unrelated to the subject matter of this Agreement. The following (together with all exhibits, schedules, and attachments) are hereby incorporated into this Agreement by reference:

- a. Attachment 1—Scope of Work
- b. Attachment 2 – [Cost Share and Expenditure Certification] OR [Expenditure Certification]
- c. Attachment 3 – ACH Enrollment Form

*[Remainder of Page Intentionally Blank]*

**In witness whereof**, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the Effective Date.

**Massachusetts Clean Energy Technology Center**

**[Grantee's full legal entity name]**

**By:**

**By:**

**Name:**

**Name:**

**Title:**

**Title:**

**Date:**

**Date:**

**Federal Tax ID No.:**

**Attachment 1**  
**SCOPE OF WORK: Project Plan, Deliverables, and Schedule**

I. Project Plan [provide a description of the project]

II. Payment Terms [describe payment terms and the invoicing process. Make sure this section is consistent with the terms of Section 3]

III. Schedule and Deliverables

**EXAMPLE TABLE**

| <b>Task Number</b> | <b>Task Description</b> | <b>Milestone/Deliverable</b> | <b>Completion Date</b> | <b>Payment Amount</b> |
|--------------------|-------------------------|------------------------------|------------------------|-----------------------|
| 1                  |                         |                              |                        |                       |
| 2                  |                         |                              |                        |                       |
| 3                  |                         |                              |                        |                       |
|                    | <b>TOTAL</b>            |                              |                        | \$                    |

MassCEC shall have the right at its sole discretion to allow for additional time for the completion of Milestones/Deliverables without need to amend this Agreement. If Grantee cannot satisfy a Completion Date, it shall seek MassCEC's prior written approval, email acceptable, of a later Completion Date and provide reasoning for its request. MassCEC shall approve or deny Grantee's request, email acceptable, within a reasonable time period.

**Attachment 2— [IF APPLICABLE: Cost Share and] Expenditure Certification**

**For submission with Grantee's invoice**

| <b>Grantee Contact and Project Financing Information</b>      |  |
|---|--|
| Project Title   |  |
| Grantee Contact Name, Title                                   |  |
| Company/Organization  |  |
| Milestone # and Name  |  |
| Grant Installment Amount Requested                            |  |
| MassCEC Contract Reference Number                             |  |
| <b>IF APPLICABLE:</b> Grantee Cost Share Amount for Milestone | <b>[DELETE THESE 4 CELLS IF NO COST SHARE]</b>   |
| <b>IF APPLICABLE:</b> Cost Share Source(s)                    | <i>I.e. Investors, in-kind, labor, cash, etc. Please include names of entities contributing to each type of cost share, amounts for each</i> |

**Additional Capital Expense Documentation:** Additional supporting documentation to support costs may be requested by MassCEC from time to time:

- a) Equipment, Land, Buildings: copies of invoices for the purchase of construction of capital assets;
- b) Other Capital Costs: all costs shall be itemized on the invoice and supported by documentation such as vendor invoices, receipts or other documentation as required by MassCEC; and
- c) Other Non-Capital Match Costs: all costs shall be itemized on the invoice and supported by documentation such as vendor invoices, receipts or other documentation as required by MassCEC.

This Certification is subject to the Agreement by and between Grantee and MassCEC. By signing below, the undersigned certifies that:

- 1. They are authorized to sign on behalf of Grantee;
- 2. MassCEC, pursuant to Section 11 of the Agreement, has the right to audit records to confirm the use of funds is consistent with the Grant requirements and may do so at any time in compliance with the terms of the Agreement; and
- 3. Grantee has used and/or will use all Grant funds for the Project.

By: \_\_\_\_\_  
(Signature of Authorized Representative)

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**Attachment 3 – ACH Enrollment Form**  
Please submit completed form to [AP@masscec.com](mailto:AP@masscec.com)

|   |  |  |
|---|--|--|
| <b>Part I: Reason for Submission</b>    |  |  |
| <input type="checkbox"/> New Enrollment | <input type="checkbox"/> Change Enrollment | <input type="checkbox"/> Cancel Enrollment |
| Document Included                       |  |  |
| <input type="checkbox"/> Voided Check   | <input type="checkbox"/> Bank Letter       |  |

|   |
|---|
| <b>Part II: Account Holder Information</b>                        |
| Account Holder Legal Name   |
| dba Name  |
| Legal Address   |
| Number, Street, Apartment/Suite Number                            |
| City, State, Zip Code   |
| Account Holder Tax Identification Number                          |
| Employer Identification Number (EIN) Social Security Number (SSN) |

|  |                    |  |
|--|--------------------|--|
| <b>Part III: Financial Institution Information</b>   |                    |  |
| Financial Institution Name   |                    |  |
| Routing Number   | Account Number     | Account Type<br><input type="checkbox"/> Checking <input type="checkbox"/> Savings     |
| If this is an Enrollment Modification, you must include your old financial institution information or your request will be returned. |                    |  |
| Old Financial Institution Name   |                    |  |
| Old Routing Number   | Old Account Number | Old Account Type<br><input type="checkbox"/> Checking <input type="checkbox"/> Savings |

|   |                        |
|---|------------------------|
| <b>Part IV: Vendor/Customer Information</b>   |                        |
| This is the person we will contact for any questions regarding this ACH Authorization |                        |
| Contact Person's Name   | Contact Person's Title |
| Contact Person's Phone  | Contact Person's Email |

|  |
|--|
| <b>Part V: Authorization</b>   |
| By signing below, I hereby certify that the account(s) indicated on this form is under my direct control and access; therefore, I authorize the Massachusetts Clean Energy Center to initiate, change, or cancel credit entries to the account(s) as indicated on this form. |
| For ACH debits consistent with the International ACH Transaction (IAT) rules check one:  |

☐ I affirm that payments authorized by this agreement are not to an account that is subject to being transferred to a foreign bank account

☐ I affirm that payments authorized by this agreement are to an account that is subject to being transferred to a foreign bank account.

This authority is to remain in full force and effect until the Massachusetts Clean Energy Center has received written notification from either me or an authorized officer of the organization of the account's termination in such time and in such a manner as to afford MCEC a reasonable opportunity to act upon it.

|                                     |            |
|-------------------------------------|------------|
| Account Holder Authorized Signature | Print Name |
| Title                               | Date       |