

## ATTACHMENT F: SAMPLE STANDARD INNOVATEMASS GRANT AGREEMENT

### GRANT AGREEMENT

This Grant Agreement (the “Agreement”) is effective as of [fill in date] (the “Effective Date”) by and between the **Massachusetts Clean Energy Technology Center** (“MassCEC”) an independent public instrumentality of the Commonwealth of Massachusetts with a principal office and place of business at 63 Franklin Street, 3<sup>rd</sup> Floor, Boston, MA 02110, and [fill in counterparty] with a principal office and place of business at [fill in address] (“Grantee”) (each a “Party,” together the “Parties”).

**Whereas**, the development of clean energy technologies requires a successful demonstration and validation of the technology in order to make it viable for investment and ready for mass production; and

**Whereas**, MassCEC created the InnovateMass program (the “Program”) to help bring to market new technologies or novel combinations of existing technologies, finding demonstration projects that address the energy and climate challenges facing the Commonwealth; and

**Whereas**, MassCEC created a special challenge round of InnovateMass to address Massachusetts service station resiliency; and

**Whereas**, pursuant to this agreement, MassCEC will provide Grantee (with CRITICAL PARTNERS) a grant of up to \$XXX,XXX (with Grantee providing a cost share of at least equal to the Matched Grant Funds (as such term is defined herein)), to demonstrate ET CETERA (the “Project”).

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

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

- a. The Grantee shall conduct the Project and provide the deliverables (the “Deliverables”) described in the Scope of Work set forth in Attachment 1 (the “Scope of Work”) and the Project Workplan (the “Project Workplan”), which shall be developed after the execution of this Agreement by Grantee in collaboration with a technical consultant retained by MassCEC and subject to final approval in writing (e-mail acceptable) by the MassCEC Project Personnel named in Section 4 below.
- b. The Project Workplan shall be attached to and incorporated into this Agreement as Attachment 1 without the need to amend this Agreement. For the avoidance of doubt, the Parties agree that MassCEC’s obligations under Section 3 herein are subject to and conditioned upon a finalized approved Project Workplan in accordance with the terms of this Section 1.

- c. The Grantee is solely responsible for all Project decisions, the preparation of all plans and specifications, and performing the Project in accordance with the Scope of Work and the Project Workplan.

**2. Term**

The term of this Agreement shall commence on the Effective Date, and shall expire on [fill in date].

**3. Grant Amount and Payment**

- a. *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 [fill in total 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 any requirements upon it to be completed prior to disbursement, including, but not limited to, the development of the finalized and approved Project Workplan. Grantee acknowledges and agrees that this receipt of the Grant does not create any rights of preferences to receive subsequent funding from MassCEC.
- b. *Payment of Funds.* Grant funds will be paid in installments in accordance with the payment amount schedule described in Attachment 1 by MassCEC to Grantee (each installment a “Grant Installment”) within forty-five (45) days after approval of the corresponding Deliverable and receipt of (1) a written invoice describing the work performed with Grant funds during the invoice period and (2) the completed Cost Share Certification in the form of Attachment 2. Upon satisfying the foregoing, MassCEC will transfer a Grant Installment to Grantee equal to the payment amount described in the Project Workplan.
- c. If, after a period of six (6) months from the date of the award notification, Grantee has not completed an approved Project Workplan, the award may be rescinded by MassCEC in its sole discretion.
- d. If after one (1) term extension or twenty-four (24) months from the award Effective Date, the project has not been completed, MassCEC reserves the right to reduce or rescind the remaining unfunded portion of the Grant, provided that MassCEC may waive this penalty in its sole discretion.

**4. Project Personnel**

- a. Both MassCEC and Grantee have designated the following Persons to serve as Project Manager to support effective communication between MassCEC and the Grantee and to report on the Project progress.

For MassCEC:

For Grantee:

- b. Each Party will endeavor to maintain the continuity of its Project Personnel, and Grantee shall be required to obtain prior written approval from MassCEC in order to make any change to its Project Personnel. For the avoidance of doubt, MassCEC may update the Project Personnel listed without the need to amend this Agreement, if done in writing to the Grantee and in compliance with the notice provisions of Section 5.

## 5. Notice

Any notice hereunder shall be in writing and shall be sent either (i) by facsimile, email, or other electronic transmission, (ii) by courier, or (iii) by 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 5), and shall be effective (i) at dispatch, if sent by facsimile, email, or other electronic transmission, (ii) if sent by courier, upon receipt as recorded by courier, (iii) if sent by first class mail, five days after its date of posting.

## 6. Publicity; Use of Name

- 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 (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. In addition to the foregoing, Public Statement includes, but is not limited to, any media pitches, interviews, embargoed materials, photo opportunities, blogs, guest columns, media events or editorial boards which relates to this Agreement or MassCEC.
- b. 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, and to use the information therein contained to produce summaries, case studies, or similar information resources.

## 7. Other Requirements

- a. *Program Evaluation.* Grantee agrees to support MassCEC’s Project evaluation activities, and MassCEC’s goal to disseminate information regarding Grantee’s experiences. To this end, the 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 Project evaluation or case study development.
- b. *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 funds received as Grant Installments in accordance with the terms set forth under this Agreement.

- b. *Grant Expenditure.* All costs incurred by Grantee before the Effective Date of this Agreement are incurred voluntarily, at the Grantee's risk and upon its own credit and expense, and Grantee's authority to be reimbursed from the Grant funds shall be governed by the provisions of this Agreement. Grantee may not incur any costs to be charged against Grant Installments prior to the Effective Date of this Agreement.
  
- d. *Matching Funds Requirement.* Certain funds awarded to Grantee shall be paid by MassCEC only upon the payment by Grantee of an amount no less than [50% of the award amount], payable in accordance with the Project Plan, Deliverables, and Schedule, which may include any funds that may be received by Grantee from unaffiliated third parties pursuant to arms-length negotiations solely for use in connection with the Project (collectively, the "Matched Grant Funds"). Grantee agrees that, in the absence of such Matched Grant Funds, MassCEC shall not be bound by this Agreement to provide such Matched Grant Funds and MassCEC may reduce the Grant by an amount it deems appropriate. MassCEC shall determine, in its sole discretion, whether any funds that Grantee seeks to categorize as Matched Grant Funds for purposes of this Agreement satisfy the requirements hereof, provided, however, that the Parties agree that Matched Grant Funds shall not include any administrative expenses, overhead (including, but not limited to, telephone, electricity, rent for office/lab space), postage, printing, and fringe benefits (including, but not limited to, health insurance, 401K plans or the cost of any other employee benefits).

## 8. Termination

- a. 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 made pursuant to this Agreement prior to the effective date of the termination.
  
- 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 MassCEC action inconsistent with performing its obligations under this agreement.
  
- c. The rights and obligations of each of the Parties under Sections 5, 6(b), 8, 10, 11, 14, 15, 18, 19, 22 and 24 of this Agreement shall survive and remain in effect after the termination or expiration of this Agreement.

## 9. Tax Forms and Grant Taxability

- a. Grantee shall provide MassCEC with a properly completed United States Internal Revenue Service Tax Form W-9 (the "W-9") and returned to MassCEC's finance department. 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 [finance@masscec.com](mailto:finance@masscec.com).

- b. Grants may be considered taxable income by the U.S. Internal Revenue Service and the Massachusetts Department of Revenue. All parties are strongly urged to consult with a tax professional to determine the federal and/or state implications of a receipt of a grant. MassCEC will issue a 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](mailto:finance@masscec.com).

## **10. Access and Use**

Grantee agrees to license or otherwise make available to MassCEC in perpetuity, without charge, the Grantee's interest in and copyright (if any) to all non-confidential materials prepared and produced for 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, provided, however, that any and all inventions that are conceived or first reduced to use during the course of the Project shall be the sole property of Grantee (except that if jointly invented, title shall flow in accordance with US patent law), and any licensing requests for such inventions shall be subject to good faith negotiations between the parties hereto.

## **11. Audit**

At any time prior to the completion of the Project and as otherwise provided in this Section, MassCEC will 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 utilized 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 permitted to immediately terminate this Agreement and discontinue disbursing Grant Installments to Grantee effective as of 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 under the Agreement 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 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 the 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 funds awarded by this Agreement or in the Agreement without the prior written consent of MassCEC, including subcontracting any services except as otherwise included in the Project Plan.

**13. Compliance with Laws**

Grantee agrees to comply, in the performance of the Project, with all applicable Federal and State statutes, rules, and regulations, 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 employees, agents, or assigns (together, the "Participant") 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 subcontractors.
- 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 Participant's performance of the Project under this Agreement.

**15. Public Records and Open Checkbook**

As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at Chapter 66 of the Massachusetts General Laws ("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 at Massachusetts General Laws Chapter 23J, Section 2(k) regarding certain types of confidential information submitted to MassCEC by an applicant for any form of assistance. Thus, MassCEC urges Grantee to carefully consider what documents, materials, data and other information are submitted to MassCEC in connection with this Agreement.

In line with Public Records Law requirements, MassCEC generally considers the following types of information as confidential:

- Intellectual property, including trademarks, service marks, copyrights, patents and trade secrets.

Grantee agrees and acknowledges that MassCEC shall have the right to disclose the name of Grantee and/or payee, the amount of the payment under the Agreement, and any other information it may deem reasonably necessary on Open Checkbook, the Commonwealth of Massachusetts' online database of state spending.

**16. Insurance**

Grantee shall obtain and maintain in effect through the term of this Agreement appropriate insurance coverage for its activities under 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 carrying of any of the insurance required hereunder shall not be interpreted as relieving the Grantee of any responsibility to MassCEC.

**17. Conflict of Interest**

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

**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 Massachusetts Lobbying Law, M.G.L. c.3, § 39.

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

- a. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to the conflict of laws principles thereof. Any dispute arising out of or relating to this Agreement or the breach, termination or invalidity hereof, whether before or after termination hereof, 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.
- b. 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.

**20. 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 in accordance with the requirements of Section 5 of the existence and nature of such delay.

**21. Independent Status**

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

**22. 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.

**23. Counterparts**

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

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

All conditions, covenants, duties, and obligations contained in this 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 Project set forth herein. The following are attached and incorporated to this Agreement:

- a. Attachment 1—Scope of Work

**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**

**[Name of counterparty]**

**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. Schedule and Deliverables

<b>Task Number</b>	<b>Task Description</b>	<b>Milestone/Deliverable</b>	<b>Completion Date</b>	<b>Payment Amount</b>	<b>Matching Funds</b>
1	Develop Project Workplan with InnovateMass technical consultant	Project Workplan reviewed and approved by MassCEC Project Personnel	TBD	TBD	TBD