



Residential and Small-Scale Ground-Source Heat Pump Program Participant's Agreement

Updated: May 13, 2016

The following Participant's Agreement (the "Agreement") is issued by the Massachusetts Clean Energy Technology Center ("MassCEC"), an independent public instrumentality of the Commonwealth of Massachusetts as part of the Residential and Small-Scale Ground-Source Heat Pump Program (the "Program"). Any changes or electronic alterations to the official version of this form shall be void. Each Party acknowledges and agrees that they have read and understand all of the terms and conditions of this Agreement and the Residential and Small-Scale Ground-Source Heat Pump Program Manual (the "Program Manual") and specifically agrees to be bound by their contents upon the execution and submission of the Residential and Small-Scale Ground-Source Heat Pump Program Application ("the Application"). This Agreement shall become effective as of the date indicated on an Award Letter from MassCEC.

Accepting the following Agreement as part of the Application does not entitle the Parties to an Award by MassCEC.

Any capitalized terms not defined herein shall have the meanings ascribed to them in the Program Manual or Award Letter.

Whereas, MassCEC is offering financial assistance in the form of grants under the Program for the design and construction of residential and small-scale ground-source heat pump projects;

Whereas, the Applicant (the "Primary Installer") has submitted the Application on behalf of the ground-source heat pump System Owner (the "System Owner") (the Primary Installer and System Owner together the "Applicant Parties", together with MassCEC, the "Parties," and each alone a "Party") requesting rebate funding for the installation of a residential or small-scale ground-source heat pump system (the "GSHP Project" or the "Project"), as described in the Application; and

Whereas, as a condition of their participation in the Program, the Applicant Parties agree to abide by the terms of this Agreement.

Now, therefore, for good and valuable consideration, the Parties agree as follows:

1. **Eligibility.** Applicant Parties represent that they satisfy all eligibility requirements set forth in the Program Manual and that they will comply with all terms and conditions set forth herein and in the Program Manual and all related Program Documents, as that term is defined in the Program Manual.
2. **Installation Contract.** System Owner has entered or will enter into a contract with the Primary Installer to design and construct the GSHP Project which requires, in part, that the Primary Installer meet all requirements set forth in the Program Manual and incorporated by reference herein.



3. The GSHP Project.

- a. *Performance of the Work.* System Owner shall ensure that the GSHP Project is installed and completed in accordance with the specifications set forth in the Application and that the GSHP Project satisfies all eligibility requirements set forth in the Program Manual. System Owner is responsible for ensuring that the installed GSHP Project continuously complies with the Program Manual on an ongoing basis for its Useful Life. For purposes of this Agreement the term “Useful Life” shall mean a period not less than ten (10) years from the date of Project Completion.
- b. *Award Amendment/Reduction/Rescission.* MassCEC reserves the right, acting in the sole exercise of its discretion, to review, amend, rescind, or otherwise modify the Award in the event of noncompliance with this Agreement, the Program Manual or other documents incorporated by reference. MassCEC will not provide an adjusted Award that is more than the originally approved Award. Notwithstanding the foregoing, MassCEC reserves the right, at its sole discretion, to adjust the Award amount in a manner proportionate to proposed changes from the approved Application and to rescind the award in the event that the GSHP Project is not completed within six (6) months of the Award for retrofit projects or twelve (12) months of the Award for new construction and the System Owner has not received a waiver from MassCEC.
- c. *GSHP Project Location Change.* Changes to the physical location of some or all of the components, except in the case of warranty replacements, of an installed GSHP Project during the GSHP Project’s Useful Life are prohibited (a “Location Change”). In the event that MassCEC receives information concerning a Location Change and confirms that a Location Change has occurred, MassCEC shall rescind Awards that have not yet been paid to the designated Payee (as identified in the Application) and seek repayment of any portion of the Award that has been paid. System Owner agrees that if it has received the Award and subsequently makes a Location Change within the first ten (10) years after the GSHP Project Completion Date, it shall notify and return the full amount of the Award to MassCEC. Examples of a prohibited Location Change include, but are not limited to, moving the specific site of a ground-source heat pump installation or transferring a GSHP Project to a property other than the one set forth in the Application.
- d. *Project Completion.* The System Owner and Primary Installer shall work cooperatively to achieve GSHP Project Completion within the timeframe specified in the Award Letter. For purposes of the Agreement, “Project Completion” shall mean that the installation has been completed in accordance with the Program requirements, tested, and inspected and approved by the authorities having jurisdiction over official permitting. For GSHP Projects where a MassCEC inspection is designated, Project Completion shall additionally mean that the MassCEC inspection has been completed and that the project has been approved by the MassCEC inspector. Failure to achieve Project Completion within the specified timeframes may result, at MassCEC’s sole discretion, in forfeiture of all or a portion of the Award. MassCEC shall consider, at its sole discretion, written requests from the Applicant or System Owner (email acceptable) for an extension of the Project Completion Deadline specified in the Award Letter sent to the



System Owner. MassCEC has the right to audit Project cost claims throughout the Program on a random basis or if issues are suspected. MassCEC will give Projects fifteen (15) days of notice prior to audit. Consideration of a requested time extension shall be strictly limited to circumstances that are beyond the control of the System Owner or Primary Installer.

4. Award Payment. Within sixty (60) days after MassCEC's receipt and acceptance (as determined at its sole discretion) of the Project Completion Form and the associated back-up documentation demonstrating that the Project has reached Project Completion and has met all requirements as described in the Program Manual, the Payee shall be paid the grant Award in the amount designated in the Award Letter, or the adjusted Award amount in cases where the Award has been adjusted. MassCEC will not provide funding that would, in MassCEC's sole determination, exceed total Project costs.
5. Indemnification. To the fullest extent permitted by law, the Applicant Parties 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) Applicant Parties' breach of any of the terms of this Agreement or any false representation of the Applicant Parties under this Agreement and/or the Application, or (ii) any negligent acts or omissions or reckless or intentional misconduct of the Applicant Parties or any of the Applicant Parties' agents, officers, directors, employees, contractors or subcontractors. Without limiting the foregoing, the Applicant Parties, shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law, individually, or any of its agents, officers, directors, employees, contractors or subcontractors.
6. System Owner Responsibilities
 - a. The System Owner acknowledges that it is solely responsible for directing and controlling all GSHP Project decisions, including, but not limited to:
 - i. If applicable, applying for the Income-Based Rebate Adder through MassCEC's Income Verification Portal (<http://massceverify.com/>);
 - ii. Selecting and entering into a written contract with the Primary Installer, including confirming that the Primary Installer meets program eligibility requirements as written in the Program Manual and requiring documentation that any workers, contractors, or subcontractors employed on the GSHP Project have valid licenses issued by the Commonwealth of Massachusetts to perform the required work and are in compliance with all applicable laws, rules, and regulations related to employment in the Commonwealth including, but not limited to, those laws pertaining to workmen's compensation, non-discrimination and eligibility to work in the United States;



- iii. Preparing all plans, drawings, and specifications;
 - iv. Procuring equipment and obtaining appropriate warranties from the equipment vendor(s) and/or Primary Installer(s);
 - v. Obtaining all permits required by state, local, or federal law or regulation to perform the work required to complete the GSHP Project;
 - vi. Construction means, methods, techniques, sequences, and procedures;
 - vii. Supervising and directing work performed to complete the GSHP Project; and
 - viii. Safe operations and maintenance of the GSHP Project, including any required replacement of parts.
- b. System Owner agrees that it shall abide by the Commonwealth's rules regarding employment discrimination when selecting the Primary Installer, equipment vendor(s), and/or subcontractor(s) for the GSHP Project.
 - c. The Applicant Parties for themselves individually agree to comply with all local, state, and federal tax laws.
 - d. System Owner agrees to allow MassCEC, or its agents, to enter onto the site of the GSHP Project to inspect the installed GSHP Project during the first two (2) years of its Useful Life.
 - e. System Owner agrees to participate, upon MassCEC's request, in other information gathering activities required to prepare case studies, monitoring and evaluation studies, or other educational materials that may be beneficial to MassCEC or the public to disseminate knowledge gained as a result of the Program.
 - f. Direct Exchange System Owners must certify that they will undergo an end-of-life decommissioning that includes full refrigerant recovery.
7. Disclaimer: MassCEC has not investigated, and MassCEC expressly disclaims any duty to investigate any company, product, service, process, procedure, design, or other matter regarding the installation of the GSHP Project by the Primary Installer presented in the Application. The approval of the Award does not constitute an endorsement, warranty, or guaranty of any kind or circumstance by MassCEC of any company, product, service, process, procedure, design or other matter regarding the installation of the GSHP Project by the Primary Installer, equipment vendor and/or subcontractor(s) for the GSHP Project. The entire risk of use of any Primary Installer, equipment vendor, company, product, service, process, procedure, or design is assumed by the System Owner as part of its obligations under this Agreement.
8. Tax Forms and Grant Taxability: All non-residential System Owners (including tax-exempt and governmental entities) shall provide MassCEC with a properly completed United States Internal Revenue Service Tax Form W-9 (the "W-9") as part of the attached Application. In addition, all non-residential tax-exempt entities and governmental entities must provide a tax-exemption certification or IRS tax-exemption determination letter. W-9s and tax-exemption information (if applicable) should be emailed only to the secure email address finance@masscec.com. Grants may



be considered taxable income by the U.S. Internal Revenue Service and the Massachusetts Department of Revenue. All parties are strongly encouraged to consult with a tax professional to determine the federal and/or state tax implications of receipt of a grant. MassCEC will issue a Form 1099 to each non-residential Grantee who receives funds.

9. Audit: At any time period 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 funds under this agreement. If such audit reveals that any portion of such funds was utilized for purposes not permitted under the Agreement, then Grantee shall refund to MassCEC the amount determined by such audit within thirty (30) days of Grantee's receipt of such audit and demand. Grantee shall maintain books, records, and other compilations of data pertaining to the 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

10. Insurance and Warranty: MassCEC recommends that every Primary Installer purchase and maintain adequate insurance coverage until completion of the GSHP Project. MassCEC recommends that the Applicant Parties discuss the types and amounts of coverage maintained and the appropriateness of those coverages for the GSHP Project. Applicant Parties acknowledge the sufficiency of the types and amounts of insurance coverage maintained and the appropriateness of those coverages for the duration of the GSHP Project. The carrying of any of the insurance required hereunder shall not be interpreted as relieving the Applicant Parties of any responsibility to MassCEC, and the amount and type of insurance coverage will in no way be construed as limiting the scope of indemnification under this Agreement. MassCEC also requires that the GSHP Project be covered by a minimum five (5)-year manufacturer's warranty. Furthermore, the Primary Installer shall agree to fix any system defects or significant workmanship issues identified during the first year after the date of Project Completion.

11. Mediation / Arbitration: In the event of any dispute concerning the Parties' respective rights and obligations under this Agreement, the Parties hereby agree to submit such dispute to binding arbitration ("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. If any of the Parties' requests mediation prior to Arbitration, the Parties will work in good faith to mediate their dispute through a jointly selected mediator. The Parties to any such dispute shall share the fees of the mediator or arbitrator jointly, and shall be individually responsible for any legal fees they may respectively incur.

12. Metering and Monitoring: Upon request by MassCEC, the Applicant Parties agree to provide MassCEC or a designated contractor access to the installed system for a period of two years after the Project Completion Date in order to install and operate a thermal and electrical metering and monitoring system. Applicant Parties further agree to provide electrical utility, gas utility, and/or heating fuel consumption data for two years prior to installation and for two years after installation. Applicant parties agree to provide access and allow MassCEC or a designated contractor to access and maintain any metering and monitoring equipment for a period of up to six months after data collection is completed.
13. The following documents are incorporated by reference into this Agreement:
 - a. The Program Manual
 - b. The submitted Application, including any additional information submitted by the Applicant Parties as requested by MassCEC
 - c. Award Letter (to be issued by MassCEC if the Application is approved)

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Signature and Acceptance Form

Authorized Signatory. The undersigned represents and warrants that it is fully authorized and empowered to enter into this Agreement on behalf of the organization listed below and to bind the organization to the performance of its obligations under this Agreement.

Program Manual Terms and Conditions. The undersigned acknowledges that all of the terms and conditions of the Program Manual are mandatory.

Public Disclosure Requirements. The undersigned specifically agrees to the applicability of the Public Disclosure provisions set forth in the Program Manual.

Energy Efficiency Requirement. The undersigned agrees that if the energy efficiency requirement has not been completed before the submission of this Application that this requirement will be fulfilled as a condition to receive payment of the rebate.

Payee. The Applicant Parties authorize the Grant payment to be remitted directly to the Payee indicated on the Application upon Project Completion and submission of the required project completion documentation. Eligible Payees can either be the System Owner or the Primary Installer.

Metering and Monitoring. Upon MassCEC’s request, the Applicant Parties agree to allow MassCEC to install and uninstall metering and monitoring equipment on the Project and to collect data for up to two years from the Project Completion Date. Upon request, Applicant Parties also agree to provide energy consumption data for two years before and after project installation.

Participant’s Agreement Terms and Conditions. The undersigned agrees to all of the contract terms and conditions of this Participant’s Agreement and the Award Letter and acknowledges that by signing below, the undersigned shall be bound by the terms and conditions contained therein.

I certify that the statements made in this Application, including all attachments and exhibits, are true and correct to the best of my knowledge and I hereby agree and accept the Participant’s Agreement contained in the Application and shall be bound by all the terms and conditions contained therein.

System Owner	
System Owner Organization (Non-residential only):	Project Site Address:
Printed Name of System Owner:	
Signature of System Owner:	Date:

Primary Installer	
Printed Name of Primary Installer:	Primary Installer Address:
Signature of Primary Installer:	Date: