



Residential Air-Source Heat Pump Program Participant's Agreement

(posted December 23, 2015)

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. 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 Air-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 Air-Source Heat Pump Program Application. This Agreement shall become effective as of the date of Application submission subject to approval of the Application.

Accepting the following Agreement as part of the Residential Air-Source Heat Pump Program 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, in partnership with the Massachusetts Department of Energy Resources, is offering financial assistance in the form of grants under the Residential Air-Source Heat Pump Program (the "Program") for the design and construction of residential air-source heat pump projects;

Whereas, the Applicant (the "Primary Installer") has submitted the Application on behalf of the Residential Air-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") for the installation of a residential air-source heat pump system (the "ASHP Project"), as described in the Residential Air-Source Heat Pump Program Application (the "Application"); and

Whereas, as a condition of their participation in the Program, the Applicant Parties agrees 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 into a contract with the Primary Installer to design and construct the ASHP Project (the "Installation Contract") which requires, in part, that the Primary Installer meet all requirements set forth in the Program Manual and incorporated by reference herein.
3. **The ASHP Project.**
 - a. *Performance of the Work.* System Owner shall ensure that the ASHP Project is installed and



completed in accordance with the specifications set forth in the Application and that the ASHP Project satisfies all eligibility requirements set forth in the Program Manual. System Owner is responsible for ensuring that the installed ASHP 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 Rescission/Reduction.* MassCEC reserves the right, acting in the sole exercise of its discretion, to rescind the Award in the event of noncompliance with this Agreement, including the Program Manual or other document 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.
 - c. *ASHP 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 ASHP Project during the first ten (10) years of the ASHP 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 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 of the ASHP 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 an air-source heat pump installation or transferring an ASHP Project to a property other than the one set forth in the Application.
 - d. *Application Demonstrating Project Completion.* For purposes of the Agreement, “Project Completion” shall mean that the installation has been completed in accordance with the Program Manual and inspected and approved by the authorities having jurisdiction over official permitting. For 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.
4. Award Payment. MassCEC shall pay the grant Award to the Payee designated in the attached Application within sixty (60) days after MassCEC’s receipt and acceptance (as determined at its sole discretion) of the complete Application and the associated back-up documentation demonstrating that the installation has reached Project Completion and has met all requirements as described in the Program Manual. Upon meeting the aforementioned requirements and with no changes to the system or its ownership, the Payee shall be paid a grant in an amount indicated in the Program Manual.
 5. Indemnification. To the fullest extent permitted by law, the Applicant Parties, for themselves individually, 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, for themselves individually, 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 by the Applicant Parties, 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 ASHP Project decisions, including, but not limited to:
 - i. 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 ASHP 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;
 - ii. Preparing all plans, drawings, and specifications;
 - iii. Procuring equipment and obtaining appropriate warranties from the equipment vendor(s) and/or Primary Installer(s);
 - iv. Obtaining all permits required by state, local, or federal law or regulation to perform the work required to complete the ASHP Project;
 - v. Construction means, methods, techniques, sequences, and procedures;
 - vi. Supervising and directing work performed to complete the ASHP Project;
 - vii. Safe operations and maintenance of the ASHP Project, including any required replacement of parts; and
- 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 ASHP 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 ASHP Project to inspect the installed ASHP Project during the first two (2) years of its useful life.

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.
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 ASHP 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 ASHP Project by the Primary Installer, equipment vendor and/or subcontractor(s) for the ASHP 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. Insurance: MassCEC recommends that every Installer purchase and maintain adequate insurance coverage until completion of the ASHP Project. MassCEC also recommends that the Applicant Parties discuss the types and amounts of coverage maintained and the appropriateness of those coverages for the ASHP 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 ASHP 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.
9. 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"). 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.
10. The following documents are incorporated by reference into this Agreement:
 - a. The Program Manual
 - b. The Residential Air-Source Heat Pump Program Application submitted, 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)



Signature and Acceptance Form

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.

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 Initials

_____ I certify that the air-source heat pump/s will be used for heating (not just for cooling).

_____ I certify that the Project Site has had or will have an energy audit on _____ (mm/dd/yyyy), either within the last 48 months or the upcoming six months.

_____ I authorize the grant payment to be remitted directly to (check one of the following):

- myself, the System Owner
- the Primary Installer.

System Owner	
Printed Name of System Owner:	Project Site Address:
Signature of System Owner:	Date:

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