



## Decarbonization Pathways Pilot

### Participant Agreement

Posted: July 12, 2023

The following Participant Agreement (“Agreement”) is issued by the Massachusetts Clean Energy Technology Center (“MassCEC”), as part of the Decarbonization Pathways Pilot (“Pilot”). Any changes or electronic alterations to the official version of this form shall be void. By signing below, the Pilot participant (“Participant”) acknowledges and agrees that they have read and understand all the terms and conditions of this Agreement and the Decarbonization Pathways Pilot Program Manual (“Program Manual”) and specifically agrees to be bound by the contents of this Agreement and the Program Manual upon the signing and submission of the Agreement. This Agreement shall become effective as of the date indicated on an Award Letter from MassCEC.

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

1. **Eligibility.** The Participant represents 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 Pilot Documents (as defined in the Program Manual).
2. **Noncompliance.** 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 Pilot Documents.
3. **Project Completion.** For purposes of the Agreement, “Project Completion” shall mean that, in accordance with the Program Manual, the Participant has completed a Decarbonization Assessment, generated a Decarbonization Plan, and completed Decarbonization Measures (as defined in the Program Manual), which have been inspected and approved by the authorities having jurisdiction over official permitting if applicable (collectively, the “Project”).
4. **Incentives.** MassCEC will provide financial incentives that will partly or in-full cover the cost for the Participant to implement Decarbonization Measures.
5. **Indemnification.**
  - a. To the fullest extent permitted by law, the Participant 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) the Participant’s breach of any of the terms of this Agreement or any false representation of the Participant under this



Agreement and/or the Application, or (ii) any negligent acts or omissions or reckless or intentional misconduct of the Participant or any of the Participant's agents, officers, directors, employees, contractors or subcontractors. Without limiting the foregoing, the Participant, 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.

- b. In no event shall any Covered Persons or Participant be liable for any indirect, incidental, special, punitive, or consequential damages whatsoever (including, but not limited to, lost profits or interruption of business) arising out of or related to Grantee's, its employees', agents', or assigns' performance of the Project under this Agreement.
- c. The Parties acknowledge that Abode Energy Management LLC ("Abode") is an independent contractor and in no event shall any Covered Person be liable to Participant 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 Abode'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 Abode, Abode 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 Abode's actions, omissions, negligence, or misconduct in relation to the Project.

#### 6. Participant Responsibilities

- a. The Participant will allow the Home Decarbonization Advisor to conduct a Decarbonization Assessment in their home.
- b. The Participant acknowledges that it is solely responsible for controlling all Decarbonization Pathways Pilot decisions, including, but not limited to:
  - i. If applicable, verifying eligibility to receive an enhanced income-based incentive; and
  - ii. Selecting and entering into a written contract with all Decarbonization Measure Vendors (as defined in the Program Manual) who provide services in relation to the Project.
- c. Participant shall ensure that the Decarbonization Measures are installed and completed in accordance with the specifications set forth in the Decarbonization Plan and that the Decarbonization Measures satisfy all eligibility requirements set forth in the Program Manual.
- d. Participant agrees to allow MassCEC, or its agents, to enter onto the site of the Project to inspect the installed Project during the first two (2) years after installation.
- e. Participant 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 Pilot. Notwithstanding the foregoing, Participant shall enter into an Energy Usage Account Data Release Authorization for electrical utility, gas utility, and/or



heating fuel consumption data in the format provide to Participant as a condition of participation in the Pilot.

7. Disclaimer: MassCEC expressly disclaims any duty to investigate any company, product, service, process, procedure, design, or other matter regarding the installation of the Decarbonization Measures by the Decarbonization Measure Vendors. 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 Decarbonization Measures by the Decarbonization Measure Vendors, equipment vendor(s), and/or subcontractors of Decarbonization Measure Vendors. The entire risk of use of any Decarbonization Measure Vendor(s), equipment vendor(s), subcontractor(s), product, service, process, procedure, or design is assumed by the Participant as part of its obligations under this Agreement, and Participant agrees to hold harmless all Covered Persons from all Damages arising out of or otherwise in connection with Decarbonization Measure Vendors' activities in relation to the Project, including, without limitation, any Decarbonization Measure Vendors that Participant learns of through Abode.
8. Tax Forms and Grant Taxability: All non-residential Participants (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 [finance@masscec.com](mailto:finance@masscec.com). Grants may be considered taxable income by the United States Internal Revenue Service and the Massachusetts Department of Revenue. All Participants 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 the Participant'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 (a "Nonconformance Event"), then Participant shall refund to MassCEC the amount determined by such audit within thirty (30) days of Participant's receipt of such audit and demand. Participant 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 of Massachusetts 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 Participant which pertain to the provisions and requirements of this Agreement. Such access may include on-site audits, review, and copying of records.

10. Public Disclosure and C-THRU: As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at Chapter 66 of the Massachusetts General Laws ("Public Records Law"). Applicants acknowledge and agree 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. Applicants acknowledge and agree that MassCEC, in its sole discretion, shall determine whether any particular document, material, data or other information is exempt from or subject to public disclosure. Thus, MassCEC urges Applicants to carefully consider what documents, materials, data and other information is submitted to MassCEC in connection with this Pilot.

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

- Personal email addresses
- Personal cell phone numbers
- Account numbers and other sensitive financial information from utility bills

Participant agrees and acknowledges that MassCEC shall have the right to disclose the name of any grant recipient and/or Participant, the amount of the payment under the Pilot and any other information it may deem reasonably necessary on C-THRU, the Commonwealth of Massachusetts' online database of state spending, or other applicable state spending website.

11. Insurance and Warranty: Participant shall select Decarbonization Measure Vendors that have purchased and maintain adequate insurance coverage through completion of the relevant portion of the Project. It shall be Participant's responsibility to discuss the types and amounts of coverage maintained by their Decarbonization Measure Vendors and the appropriateness of those coverages for the relevant portion of the Project. Participant acknowledges the sufficiency of the types and amounts of insurance coverage maintained by Participant individually and the appropriateness of those coverages for the duration of the Project. The carrying of any of the insurance required hereunder shall not be interpreted as relieving the Participant 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.
12. Governing Law; Arbitration: 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.

13. Utility Bill Data and Post-completion Monitoring: Upon request by MassCEC, the Participant agrees to provide MassCEC or its agents access to the Project Site for a period of two (2) years after the Project Completion date to monitor the building's electrical energy performance using an Emporia Vue energy monitor or substantially similar energy monitor, as well as access to the Project Site to maintain such equipment during the same two (2) year period. The Participant further agrees to provide electrical utility, gas utility, and/or heating fuel consumption data for two (2) years prior to installation of the Project, during the Project, and for two (2) years after Project Completion. With the Energy Usage Account Data Release Authorization(s) executed by Participant, MassCEC and Abode may seek to get electrical and gas consumption data directly from the Participant's utilities. However, if this is not feasible or successful, the Participant will work with Abode to directly provide electrical utility, gas utility, and/or heating fuel consumption data for two years prior to installation of the Project, during the Project, and for two (2) years after Project Completion.

**[Remainder of Page Intentionally Blank; Signature Page Follows]**



### Signature and Acceptance Form

**Authorized Signatory.** The undersigned represents and warrants that they are fully authorized and empowered to enter into this Agreement, be it on their own behalf or on behalf of an entity.

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

Participant Signature	
Project Site Address:	
Printed Name of Participant (including Name and Title of Signatory, if Participant is an entity):	
Signature of Participant:*	
Date:	

\*Signatures cannot be typed.