



MASSACHUSETTS CLEAN ENERGY TECHNOLOGY CENTER

RENEWABLE ENERGY TRUST FUND MEMBERSHIP AGREEMENT

This **Membership Agreement**, (the "Agreement") is made and entered into as of **[Date- Month,DD,YYYY]** (the "Effective Date"), by and between the **Massachusetts Clean Energy Technology Center**, an independent public instrumentality of the Commonwealth of Massachusetts with a principal business address of 294 Washington Street, Suite 1150, Boston, MA 02108 ("MassCEC"), the **[insert name and address of the MLP]** (the "New Member MLP") and a **[insert name and address of the municipality]** (the "Host Municipality") (MassCEC, the New Member MLP and the Host Municipality collectively as the "Parties")

WHEREAS, pursuant to the mandates of St. 2008, c. 169, § 11 (codified at G.L. c. 25, § 20(b)), a statutory vehicle and opportunity was created that allows for the New Member MLP to make an irrevocable decision to become a participant in and member of MassCEC's Renewable Energy Trust Fund and collect and provide to MassCEC's Renewable Energy Trust Fund a renewable energy surcharge from its customers;

WHEREAS, the New Member MLP desires to become a participant in and member of MassCEC's Renewable Energy Trust Fund;

WHEREAS, the New Member MLP resides within the Host Municipality;

WHEREAS, pursuant to the terms and conditions of this Agreement and any attachments hereto, the New Member MLP and Host Municipality represent and warrant that they have all requisite authority to enter into this Agreement and to facilitate the New MLP Member's irrevocable decision to join MassCEC's Renewable Energy Trust Fund;

WHEREAS, because such decision to join MassCEC's Renewable Energy Trust Fund is statutorily required to be irrevocable in nature, it is necessary and appropriate to contractually document the New MLP Member's decision and the Host Municipality's consent thereto, as well as to provide remedies for any subsequent actions taken by the New MLP Member that is/are contrary to the irrevocable decision; and

WHEREAS, in order to provide appropriate protections for the Parties, they collectively deem it reasonable and appropriate to enter into this Agreement;

NOW THEREFORE, the Parties agree as follows:

1. **Irrevocable Decision to Join MassCEC's Renewable Energy Trust Fund.** The New Member MLP hereby irrevocably determines and decides that it shall become a member of MassCEC's Renewable Energy Trust Fund (the "Irrevocable MassCEC Renewable Energy Trust Fund Membership Decision"). The New Member MLP hereby represents and warrants that it is fully and duly authorized to make the Irrevocable MassCEC Renewable Energy Trust Fund Membership Decision pursuant to its submission to MassCEC of written documentation, satisfactory to MassCEC in the sole exercise of its discretion, that it has all such power and authority, such written documentation collectively attached hereto as Exhibit A (the "Authority Documentation"). The Authority Documentation shall, among other things, definitively state whether a regular or special town meeting and/or town vote or any other official action by the Host Municipality is or is not legally required to duly authorize and effectuate the Irrevocable MassCEC Renewable Energy Trust Fund Membership Decision.
2. **Collection and Payment of MassCEC Renewable Energy Trust Fund Charge.** As a result of the Irrevocable MassCEC Renewable Energy Trust Fund Membership Decision, the New Member MLP hereby agrees that it shall impose on each of its customers an obligation to pay a renewable energy surcharge as a certain percentage of each bill the New Member MLP issues to its customers (the "MassCEC Renewable Energy Trust Fund Charge") and the New Member MLP hereby agrees that it will duly collect the MassCEC Renewable Energy Trust Fund Charge and timely remit it in its entirety to MassCEC's Renewable Energy

Trust Fund. The foregoing notwithstanding, the New Member MLP is not required to impose a charge on customers that are party to a long-term energy supply contract (the "Long Term Contract") with the New Member MLP that was executed and made effective prior to the Effective Date and that does not contemplate or require payment of MassCEC's Renewable Energy Trust Fund Charge. However, upon expiration or termination of the Long Term Contract, New Member MLP shall be required to impose and collect the MassCEC Renewable Energy Trust Fund Charge from such customers. So long as a customer is not paying the MassCEC Renewable Energy Trust Fund Charge, they are not eligible for funding from MassCEC's Renewable Energy Trust Fund. Furthermore, the New Member MLP shall cooperate with MassCEC to establish the mechanisms for payment of the MassCEC Renewable Energy Trust Fund Charge and the initial date of such payment.

3. Ratification by and Representations of Host Municipality. By way of a Town vote or a vote of the duly authorized representatives of the Host Municipality, the Host Municipality hereby ratifies and joins the New Member MLP's Irrevocable MassCEC Renewable Energy Trust Fund Membership Decision and represents and warrants that, based on the Host Municipality's review of the materials set forth in Exhibit A hereto and its own due diligence, understanding and required official actions taken pursuant to this provision, the New Member MLP is duly authorized to make the Irrevocable Renewable Energy Trust Fund Membership Decision and has taken all necessary and appropriate steps to do so.
4. Events of Default, Breach and Revocation Payments. The New Member MLP explicitly acknowledges and agrees that in the event that the New Member MLP, acting pursuant to its own authority, at the direction of the Host Municipality, or otherwise, commits an Event of Default as defined herein, then the New Member MLP shall be deemed to have materially breached this Agreement; provided, however, that if the New Member MLP cures or remedies any Event of Default to MassCEC's satisfaction within thirty (30) days of the first occurrence thereof, no material breach will be deemed to exist. For purposes of this Agreement, an "Event of Default" shall mean any event in which the New Member MLP (a) purports to revoke its Irrevocable Renewable Energy Trust Fund Membership Decision or in any way takes action contrary to it, (b) fails to impose or collect the MassCEC Renewable Energy Trust Fund Charge and/or timely remit the MassCEC Renewable Energy Trust Fund Charge to MassCEC's Renewable Energy Trust Fund, thereby revoking the Irrevocable MassCEC Renewable Energy Trust Fund Membership by default, or (c) is otherwise noncompliant with the material terms and conditions of this Agreement, including without limitation a breach of the representations and warranties set forth herein.
 - a. Revocation Payment. In the event that the New Member MLP has materially breached the Agreement, including without limitation any material breach arising as a result of an Event of Default, the MLP shall be required to repay MassCEC's Renewable Energy Trust Fund a capped revocation payment that is equal to the lesser of (i) the entire amount of any and all awards of financial assistance made by MassCEC's Renewable Energy Trust Fund to the New Member MLP, any resident or entity residing in the Host Municipality, the Host Municipality or any subdivision thereof and (ii) One Million Dollars (\$1,000,000) (the "Revocation Repayment"). In the event that the aggregate amount of all awards of financial assistance from MassCEC's Renewable Energy Trust Fund to the New Member MLP exceeds One Million Dollars, the Revocation Payment shall be amended and capped at Two Million Dollars (\$2,000,000), with successive increases in One Million Dollar increments thereafter. Calculation of a Revocation Payment shall include any and all awards of financial assistance made on or after the Effective Date of this Agreement. For the avoidance of doubt, examples of Revocation Repayment scenarios are set forth in the attached Exhibit B. The entire amount of the Revocation Repayment shall be remitted to MassCEC's Renewable Energy Trust Fund not later than sixty (60) days after the New Member MLP receives notice from MassCEC of the existence of a material breach.
 - b. Limitations to Revocation Payment. MassCEC awards for which the date of the award is greater than or equal to ten (10) years prior to the date of the revocation decision formally taken by the New Member MLP and/or Host Municipality shall not be included in the calculation of any amounts due to MassCEC as a Revocation Payment.

5. Public Records. As a public entity, MassCEC is subject to the Massachusetts Public Records Law (set forth at Massachusetts General Laws Chapter 66) and thus documents and other materials made or received by MassCEC and/or its employees are subject to public disclosure. Unless subject to a statutory or common law exemption, all information received by MassCEC shall be deemed to be subject to public disclosure. By signing this Agreement New Member MLP and Host Municipality acknowledge, understand and agree that any documents submitted by New Member MLP and/or Host Municipality to MassCEC may be subject to public disclosure.
6. Choice of Law and Forum; Equitable Relief. This Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles. The Parties agree that any Federal or State legal proceedings arising under this Agreement shall be commenced and maintained in court of competent jurisdiction within the Commonwealth of Massachusetts. However, no such action shall be instituted before the Parties submit the dispute to arbitration before the American Arbitration Association in Boston, Massachusetts and the arbitrator issues a final decision and award. Judgment upon any arbitration award may be entered in any court of competent jurisdiction. All parties shall cooperate in the process of arbitration for the purpose of expediting discovery and completing the arbitration proceedings. This Section shall not be construed to limit any other legal rights of the parties. New Member MLP and Host Municipality acknowledge and agree that any breach or threatened breach of this Agreement by New Member MLP and/or Host Municipality will result in substantial, continuing and irreparable damage to MassCEC. Therefore, in addition to any other remedy that may be available to MassCEC, MassCEC will be entitled, immediately and without first submitting the matter for arbitration, to seek injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach by New Member MLP and/or Host Municipality of the terms of this Agreement.
7. Force Majeure. No Party shall be liable to the other Parties, 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 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 Parties promptly of the existence and nature of such delay.
8. 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.
9. 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.
10. Binding Effect; Benefit; Entire Agreement and Amendments. This Agreement shall be binding on the Parties hereto 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 hereto, 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 hereto 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. All conditions, covenants, duties and obligations contained in the Agreement may be amended only through a written amendment signed by the Parties.
11. Headings. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

12. 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.

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

The Massachusetts Clean Energy Technology Center (MassCEC)

By:_____

Name: Emily Reichert

Title: Chief Executive Officer

Date: _____

[Insert Name] New Member MLP

By:_____

Name: _____

Title: _____

Date: _____

[Insert Name] Host Municipality

By:_____

Name: _____

Title: _____

Date: _____

Exhibit A Authority Documentation

See Attached.

Exhibit B

Examples of Revocation Payment Calculations

Assumption:

The example below assumes an Effective Date of the MassCEC Renewable Energy Trust Fund Participation Agreement of January 1, 2009. **Note:** the references to rebates and grants below are solely for purposes of illustration and are not indicative of any ongoing rebates or awards offered by MassCEC for which the Host Municipality and/or customers residing within the Host Municipality would be eligible to apply for because of the Irrevocable MassCEC Renewable Energy Trust Fund Membership Decision.

MassCEC Awards Since Effective Date	Year of Award Decision by MassCEC	Amount	Years Before Breach Condition	Amount Applicable to Revocation Payment
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Example 1. Breach of the Agreement **two years** after the Effective Date – January 1, 2011

Solar Rebates	2009 – 2010	\$60,000	0 to 2	\$60,000
Wind Feasibility Grants	2009 – 2010	\$120,000	0 to 2	\$120,000
Total Revocation Payment				\$180,000

Example 2. Breach of the Agreement **six years** after the Effective Date – January 1, 2015

Solar Rebates	2009 – 2010	\$60,000	4 to 6	\$60,000
Wind Feasibility Grants	2009 – 2010	\$120,000	4 to 6	\$120,000
Commonwealth Solar Rebates	2011 – 2014	\$100,000	0 to 4	\$100,000
Wind Feasibility Grants	2011 – 2014	\$200,000	0 to 4	\$200,000
Wind Development Grants	2011 – 2014	\$500,000	0 to 4	\$500,000
Total Revocation Payment				\$980,000

Example 3. Breach of the Agreement **twelve years** after the Effective Date – January 1, 2021

Solar Rebates	2009 – 2010	\$60,000	10 to 12	zero
Wind Feasibility Grants	2009 – 2010	\$120,000	10 to 12	zero
Solar Rebates	2011 – 2014	\$100,000	6 to 10	\$100,000
Wind Feasibility Grants	2011 – 2014	\$200,000	6 to 10	\$200,000
Wind Development Grants	2011 – 2014	\$500,000	6 to 10	\$500,000
Solar Rebates	2015 – 2020	\$125,000	0 to 6	\$125,000
Wind Feasibility Grants	2015 – 2020	\$250,000	0 to 6	\$250,000
Wind Development Grants	2015 – 2020	\$750,000	0 to 6	\$750,000
Total Revocation Payment				\$1,925,000