**ENERGY EFFICIENCY**

**FIELD SERVICES AGREEMENT**

This ENERGY EFFICIENCY FIELD SERVICES AGREEMENT (“Agreement”) is made by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and the organizational successor to the Cape Light Compact (the “Compact”), and [insert] (“EE Vendor”). The Compact and EE Vendor may be referred to herein collectively as the “Parties,” or either singularly as a “Party.” This Agreement is effective as of [insert].

WHEREAS, pursuant to G.L. c. 40, §4A, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, entered into an inter-governmental agreement, as amended from time to time, to act together as the Compact;

WHEREAS, in 2017, the Compact undertook a reorganization and began fully operating as a joint powers entity as of July 1, 2017;

WHEREAS, the purposes of the Compact include protecting and advancing the interests of residential, commercial and industrial customers in a competitive electric supply market, and administering an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management;

WHEREAS, the Compact is operating an Energy Efficiency Plan which is periodically updated and approved by the Massachusetts Department of Public Utilities;

WHEREAS, the Compact issued a [insert as applicable: request for proposals, invitation for bids, etc.] on [insert date] for the performance of [insert program name];

WHEREAS, the Compact seeks to enter into an agreement with EE Vendor for certain services which are defined in Section 2.1 in connection with the energy efficiency programs that it operates or will operate under the Energy Efficiency Plan; and

WHEREAS, EE Vendor has the expertise required to provide the Compact with the EE Vendor Services required pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, EE Vendor and the Compact do hereby agree as follows:

**SECTION 1 TERM OF AGREEMENT AND TERMINATION**

1.1 **Term**. This Agreement is effective as of the date set forth above and shall continue in force and effect until [insert], unless this Agreement is terminated before such date under the provisions of Section 1.2. In addition, the Compact may, in its sole discretion, extend the term of this Agreement for an additional [insert] year(s).

1.2 **Termination**. The Compact shall have the right to terminate or suspend this Agreement for any reason, including, but not limited to, in the event that the EE Vendor is in default under another EE Vendor Services or consulting agreement between EE Vendor and the Compact, or for convenience. EE Vendor may terminate this Agreement only if the Compact materially breaches its obligations under this Agreement. The terminating Party shall provide written notice to the other Party of any such termination or suspension, specifying the effective date thereof. If the terminating Party is the Compact, such notice shall be given at least fifteen (15) calendar days before such effective date; if the terminating Party is EE Vendor, such notice shall be given at least ninety (90) calendar days before such effective date. In addition, if the Compact terminates this Agreement for cause, the Compact shall be entitled to deduct and/or be reimbursed any costs of cure and transition costs (including reasonable attorneys’ fees) that it, a Member[[1]](#footnote-1) or a Customer (as defined herein) incurs related to engagement of a substitute EE Vendor.

1.3 **Termination or Suspension Due to Changes in Funding**.This Agreement is subject to the receipt of funds from various sources to support the Energy Efficiency Plan. If for any reason such funding is terminated, suspended, or restricted, this Agreement will become null and void, effective immediately upon notice to EE Vendor. The Compact shall provide written notice of such termination or suspension to EE Vendor. In the event of such termination or suspension, EE Vendor shall be paid for all authorized, satisfactory (in the reasonable discretion of the Compact) EE Vendor Services performed up to and including the date of termination or suspension.

1.4 **Obligations upon Termination**. Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the date of termination of this Agreement.

**SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS**

2.1 **EE Vendor Services**. EE Vendor agrees to provide the expertise, labor, materials and supplies necessary to perform the services and deliverables described in Exhibit A attached hereto from time to time and such other services as may be specifically requested by the Compact from time to time (the “EE Vendor Services”). All such EE Vendor Services and deliverables shall be designed to achieve the anticipated outcomes specified in the description of EE Vendor Services and shall be provided in accordance with the terms and conditions of this Agreement.

[Note to Compact staff: Use this provision for lead vendor contracts, or other contracts where the vendor is providing comprehensive program management services. Delete if not applicable.] *2.1A****Program Management Services****.  EE Vendor agrees that the Services include management and operation of the XYZ Program, including management, supervision and control of all subcontractors and independent contractors participating in XYZ Program.  EE Vendor agrees that it is responsible for entering into and managing the contractual relationships with the subcontractors and independent contractors and that it will ensure that such subcontractors and independent contractors understand, acknowledge, and agree that the Compact has no liability to them in connection with EE Vendor’s management and operation of the XYZ Program. Consultant understands and agrees that its indemnification obligations set forth in Section 7 include indemnifying the Compact from the acts and/or omissions of the subcontractors and independent contractors, and from any third-party claims relating to same.*

2.2 **Changes**. The Compact may, from time to time, require changes in the scope of the EE Vendor Services to be performed hereunder. Such changes must be evidenced in written amendments to this Agreement. Any EE Vendor Services performed or proposed by EE Vendor shall not be reimbursed unless they are approved in writing by the Compact prior to their rendering.

2.3 **Timing of Performance**. EE Vendor shall commence and complete the EE Vendor Services in accordance with the project milestone schedule incorporated into Exhibit A if applicable. If no schedule is incorporated, EE Vendor shall begin to render the EE Vendor Services on the effective date of this Agreement and shall continue to render the EE Vendor Services in a prompt and timely manner.

2.4 **Staffing; Background Check Requirements**. The Compact may require EE Vendor to remove from its project team such employees of EE Vendor or subcontractors of EE Vendor as the Compact, in its reasonable discretion, deems objectionable, or whose continued employment in connection with the EE Vendor Services is deemed by the Compact, in its reasonable discretion, to be contrary to the best interests of the Compact. EE Vendors working in the field having contact with Compact customers or program participants (“Customers”) must comply with the Compact’s background check requirements set forth in Exhibit B.

2.5  **Conflicts of Interest**. EE Vendor covenants that it presently has no interest, and shall not acquire any interest, directly or indirectly that would conflict in any manner or degree with the performance of the EE Vendor Services. EE Vendor agrees to diligently serve and endeavor to further the best interests of the Compact, as known or made known to EE Vendor. EE Vendor further agrees not to undertake activities that conflict, or are not in accordance with, the best interests of the Compact, and will disclose any other employment or engagements that could conflict with its obligations under this Agreement. EE Vendor further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

2.6 **Points of Contact**. EE Vendor names [insert],as the day-to-day point of contact for the Compact for all issues arising under this Agreement and the person responsible for ensuring over the entire term of this Agreement that the EE Vendor Services are performed and completed in a manner satisfactory to the Compact and in accordance with the terms of this Agreement. The Compact names [insert] to be the day-to-day point of contact for EE Vendor for all issues arising under this Agreement.

2.7 **Safety**.

If EE Vendor is performing installation or construction related services, the provisions in this Section 2.7 shall apply.

To the fullest extent allowed by law, EE Vendor shall assume responsibility for the general and overall safety of the work site, including the safety of any employee, client, guest, representative, contractor or subcontractor of EE Vendor, the Compact, and Customers.  Systems that have been disabled or otherwise affected in the course of performance of the EE Vendor Services will be left in a safe condition.  Out of service systems will be tagged by EE Vendor in a manner accepted by OSHA, state and local authorities, and the Compact.  EE Vendor shall at all times exercise reasonable precautions for the safety of its employees, subcontractors and the general public and will be responsible for the performance and maintenance of any appropriate safety procedures pursuant to which it, its subcontractors and its employees shall act.  Further, EE Vendor shall operate in complete compliance with OSHA regulations, as well as any and all applicable local, state or federal safety laws, regulations, or requirements.

            Imminent danger situations created by EE Vendor must be corrected immediately.  The Compact reserves the right, but has no obligation, to take corrective action and charge the costs associated with the same back to EE Vendor.

            EE Vendor shall immediately notify the Compact of any accident or damage to persons or property and, within forty-eight (48) hours, file a written report of the accident with the Compact.  If EE Vendor encounters any asbestos or other hazardous substances in the course of the EE Vendor Services, EE Vendor shall immediately notify the Compact and any agency required by state or federal law, and shall stop any EE Vendor Services that may disturb, damage or cause a release of asbestos or hazardous substances until EE Vendor receives written instruction from the Compact.  If any hazardous substances are to be handled in the execution of the EE Vendor Services, EE Vendor shall assume any and all liabilities associated with such handling and must AT ALL TIMES, provide proper storage and disposal of such hazardous substances.  Hazardous substances will be handled and disposed of in compliance with governing federal, state, and local laws and/or codes as originally written or subsequently modified.  UNDER NO CIRCUMSTANCES WILL THE COMPACT BE LIABLE FOR ANY INJURY TO a) EE VENDOR, b) ANY EMPLOYEE, CLIENT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF EE VENDOR, c) ANY CUSTOMER, ANY EMPLOYEE, CLIENT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF ANY CUSTOMER, OR d) ANY THIRD PERSON, THAT IS THE RESULT OF ANY SUCH PERSON’S EXPOSURE TO HAZARDOUS MATERIALS OR THAT IS OTHERWISE CAUSED BY A RELEASE OR THREAT OF RELEASE OF HAZARDOUS MATERIALS.

2.8 **Storage and Clean-up**.

If EE Vendor is performing installation or construction related services, the provisions in this Section 2.8 shall apply.

EE Vendor shall, at the end of each work day, leave the work area in a clean and safe condition, and shall comply promptly with any instructions from the Compact relating thereto.  As the EE Vendor Services covered by this Agreement are completed, EE Vendor shall remove from the work sites, to the Compact’s satisfaction, all of EE Vendor’s rubbish, debris, materials, tools and equipment, and if EE Vendor fails to do so promptly, the Compact may remove the same to any place of storage, or any dumping ground, at EE Vendor’s risk and expense and without incurring any responsibility to EE Vendor for loss, damage or theft.  All storage and removal costs thus incurred by the Compact shall be deducted from any payment or balance due to EE Vendor, and any excess shall be immediately due from EE Vendor to the Compact.

**SECTION 3 COMPENSATION AND RELATED MATTERS**

3.1 **Rates of** **Compensation; Prevailing Wage**. EE Vendor shall be compensated by the Compact for the EE Vendor Services in accordance with the terms and rates set forth in Exhibit C hereto. The Compact may reject any invoices using billing rates that are not consistent with Exhibit C, unless the Compact has previously accepted such substitute rates in a written amendment to this Agreement. To the extent that it applies to the EE Vendor Services (e.g., in the implementation of energy efficiency services that result in physical alterations to public buildings), EE Vendor shall comply with the requirements of G.L. c. 149, §§26-27H, as well as any and all other applicable local, state and federal wage laws.  When the EE Vendor Services are performed under prevailing wage rates, EE Vendor is required to submit Statements of Compliance and certified payrolls using appropriate state forms or, if a federal project, U.S. Department of Labor Form WH-347 and WH-348 (or similar), for each payroll period.  If these forms are not submitted with each invoice, payment will not be made.  EE Vendor shall keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by it in connection with the EE Vendor Services, and such records shall be preserved at least two (2) years from the date of payment.

3.2 **Invoicing and Payment**. EE Vendor shall submit monthly invoices to the Compact by the 10th day of each month, unless otherwise authorized in writing by the Compact. The Compact will remit payment within forty-five (45) calendar days of the Compact’s receipt of each monthly invoice in accordance with applicable municipal finance laws. Payment may be contingent upon final inspection and/or acceptance of the EE Vendor Services. Upon request, EE Vendor shall provide to the Compact all backup documentation required to establish the value of the EE Vendor Services performed to date as represented by EE Vendor’s monthly invoices.

3.3 **Effect of Payment**. The Compact shall not be deemed to have accepted any improper EE Vendor Services, materials or performance by virtue of any payment made to EE Vendor. Payments shall be deemed advances and are subject to adjustment for errors, overpayments, or the Compact’s good faith determination that the remaining balance of payments may be insufficient to ensure completion of the EE Vendor Services. EE Vendor shall not be entitled to any payment for any partial performance except for progress payments made in accordance with this Agreement. EE Vendor understands that the Compact is contracting for nothing less than full, complete and timely performance of the EE Vendor Services, and with the express agreement that the Compact shall be obliged only upon final completion of the EE Vendor Services.

* 1. **Withholding**. The Compact may withhold a payment of all or a part of any invoice to the extent as may be necessary to protect itself from loss caused by: (i) defective EE Vendor Services not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims by other parties against EE Vendor or the Compact in connection with the EE Vendor Services; (iii) EE Vendor’s failure to make payments properly to subcontractors for materials, labor or equipment; (iv) unsatisfactory performance of the EE Vendor Services; (v) EE Vendor’s failure to pay any amounts due to the Compact; or (vi) EE Vendor’s failure to perform any of its obligations under this Agreement. In addition, if the Compact has a reasonable indication that the unpaid balance will be insufficient to cover the cost to complete the EE Vendor Services or that the EE Vendor Services will not be completed within the project milestone schedule (if any), the Compact may withhold payment of all or a part of any invoice to the extent as may be necessary to protect itself from such anticipated losses. The Compact shall notify EE Vendor of the grounds for any withholding. When EE Vendor provides performance assurance satisfactory to the Compact that will protect the Compact for the amount withheld, payment will be made. When deemed reasonable by the Compact, the Compact may use such withheld funds to undertake remedial measures.

3.5 **Credits**. EE Vendor may not claim any governmental or other energy efficiency credits, tax credits, forward capacity payments, carbon offsets, rebates or incentives of any kind as a result of or in connection with the EE Vendor Services performed under this Agreement (collectively, the “Credits”) without the written consent of the Compact in its sole discretion.  To the extent any Credits are allocated to the Compact, a Compact project or Customer by operation of law or regulation, EE Vendor shall, upon request and without charge, cooperate fully with the Compact to disclaim any rights to such Credits and to assign or allocate all such Credits, and the value thereof to the party designated by the Compact.

3.6 **Bonds.**

If EE Vendor is performing installation or construction related services, the provisions in this Section 3.6 shall apply.

Upon request by the Compact, EE Vendor shall provide performance and payment bonds from a surety company in amounts, form and substance acceptable to the Compact, naming the Compact as a direct beneficiary of the surety’s obligations under such bonds.  Such bonds shall fully protect the Compact against any and all breaches by EE Vendor, including, but not limited to, payments of salaries, withholdings, union welfare funds and any other union or employee benefits.  Performance and payment bonds shall cover the EE Vendor Services and the warranty period described below.  Failure to provide the requested bonds, prior to the commencement of the EE Vendor Services or cancellation of requested bonds during the term of this Agreement or the warranty period, shall entitle the Compact to terminate this Agreement without recourse by EE Vendor.

Performance Bond                  [     ] required             [     ] not required

Payment Bond                        [     ] required             [     ] not required

                Premium(s) for requested bond(s) may be added to the Agreement price through a written request seeking approval from the Compact without additional markup by EE Vendor (except as specifically approved, in writing, by the Compact in advance of the EE Vendor Services).  EE Vendor must present to the Compact a copy of the invoice for the bonds signed by the agent with power of attorney for the bonding company. The Compact reserves the right to refuse any exception to the bond requirements if it determines that the exception is not in the best interest of the Compact.  EE Vendor's surety companies are to be licensed as “admitted” carriers in Massachusetts with minimum acceptable A.M. Best ratings of “A” and size Class VIII, or as otherwise acceptable to the Compact, in its discretion.  The Compact reserves the right of final approval of EE Vendor’s surety companies.

**SECTION 4 PERFORMANCE STANDARDS**

4.1 **General Performance Standard and Warranty**. EE Vendor assumes professional and technical responsibility for the performance of the EE Vendor Services in accordance with the terms of this Agreement and Good Industry Practice, and any additional guarantee or warranty specified in the description of EE Vendor Services as set forth in Exhibit A. If, during the performance of the EE Vendor Services or within one (1) year following completion thereof, the EE Vendor Services fail to meet such standards, EE Vendor shall promptly and timely (no more than five business days) furnish all remedial services and materials necessary to correct such deficiencies at EE Vendor’s sole cost and expense. EE Vendor shall also be responsible for reimbursement of the Compact’s losses related to such defective EE Vendor Services during the warranty period. For purposes of this Section 4.1, the term “Good Industry Practice” means the practices, methods and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the energy efficiency industry in the performance of evaluating and installing energy efficiency measures) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition. Good Industry Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

4.2 **Representations, Warranties and Continuing Covenants**. In performing its obligations hereunder during the term of this Agreement, EE Vendor represents and warrants that it shall: (i) exercise reasonable care to assure that its operations are prudently and efficiently managed; (ii) employ an adequate number of competently trained and experienced personnel to carry out the EE Vendor Services; (iii) spend such time in performing the EE Vendor Services as is reasonable and necessary to fulfill effectively its obligations under this Agreement; (iv) comply with all relevant industry standards and practices for the delivery of EE Vendor Services to the Compact; (v) comply with applicable laws and professional licensing requirements; (vi) ensure that it validly owns or licenses all intellectual property used in the performance of the EE Vendor Services, with a right to sublicense to the extent necessary, and that such licenses are maintained at all times during the term of this Agreement; and (vii) provide the required notice under Section 7.5 (Notice of Claims) of this Agreement.

4.3 **Correction of the EE Vendor Services**.EE Vendor is required to correct in a prompt and timely fashion any EE Vendor Services rejected by the Compact. EE Vendor shall correct at its own cost and bear the expense of additional services performed to correct non-conforming EE Vendor Services.If EE Vendor fails to cure the default or produce a plan acceptable to the Compact (in its reasonable discretion) to cure the default in a prompt and timely fashion, the Compact may take over the EE Vendor Services or any separable part thereof, and complete the same or have the same completed at EE Vendor’s expense. In taking over, the Compact shall have the right, for the purpose of completing the EE Vendor Services, to take possession of all equipment, supplies and materials belonging to EE Vendor and purchased or leased for the performance of the EE Vendor Services. For such purpose, this Agreement shall be construed as an assignment by EE Vendor to the Compact of said equipment, supplies and materials.

4.4 **Periodic Reporting**. Upon the request of the Compact, the EE Vendor shall promptly submit a report detailing the status of the EE Vendor Services including the progress toward achieving completion of any deliverables or project milestones. Additional reporting requirements may be set forth in Exhibit A.

**SECTION 5 INTELLECTUAL PROPERTY MATTERS**

5.1 **Intellectual Property Rights; Work for Hire**. EE Vendor agrees that any work of authorship created or developed by EE Vendor during performance or delivery of services to the Compact, either individually or jointly with others, in the course of the rendering the EE Vendor Services to the Compact shall be deemed a “work for hire,” and the exclusive property of the Compact. To the extent not deemed a “work for hire” by operation of law, with respect to any invention, trade secret, or work of authorship created or developed in the course of the rendition of services to the Compact, EE Vendor hereby irrevocably assigns, transfers, and conveys to the Compact all of EE Vendor’s right, title and interest in such property, including but not limited to, all rights of patent, copyright, trade secret or other proprietary right in such property. Further, EE Vendor agrees to execute any documents or take any action reasonably requested by the Compact to perfect the Compact’s ownership of any such property. EE Vendor further agrees that, to the best of its knowledge, all work created or developed by EE Vendor will be original and non-infringing.

5.2 **Dissemination of Information**. EE Vendor shall not disseminate any information, reports, information, data, etc., created, prepared, assembled or obtained in performance or delivery of EE Vendor Services to any third-party without the prior written consent of the Compact. EE Vendor shall not issue publicity, advertising, news releases, grant press interviews or create or distribute social media regarding the EE Vendor Services or the Compact during or after the performance or delivery of the EE Vendor Services without the prior written consent of the Compact.

**SECTION 6 INSURANCE**

EE Vendor shall, at its sole expense, procure and maintain, the following insurance:

(a) Until completion of the EE Vendor Services:

* + 1. Workers’ Compensation and Employers’ Liability Insurance covering

*each* *and every worker employed in, about or upon the EE Vendor Services*, as provided for in each and every statute applicable to the Workers’ Compensation and Employers’ Liability Insurance.

* + 1. Commercial General Liability Insurance, written on an occurrence form

including coverages for Bodily Injury, Broad Form Property Damage, Personal Injury, Products/Completed Operations, Liability arising out of Subcontractors, Contractual Liability (to specifically include coverage for the indemnification clause of this Agreement), and so-called Explosion, Collapse and Underground Hazards, with minimum limits of $1,000,000 per occurrence/$2,000,000 per project general aggregate; $1,000,000 aggregate for products and completed operations.

* + 1. Automobile Liability Insurance covering all owned, non-owned and/or hired

motor vehicles to be used in connection with the EE Vendor Services with a minimum combined single limit of $1,000,000 bodily injury and property damage, including Form MCS-90 and Broadened Pollution Coverage via ISO form CA9948 or its equivalent.

* + 1. Umbrella Liability Insurance covering over underlying General Liability,

Auto Liability and Employers’ Liability Insurance with a minimum limit of $5,000,000.

* + 1. Professional Liability Insurance covering EE Vendor’s errors and omissions

relating to the EE Vendor Services if the EE Vendor Services involve rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. Such insurance shall be provided at a limit of at least $1,000,000. Such insurance may be maintained on a “claims made” basis but in such case it shall always be subject to a retroactive date that is effective prior to the effective date of this Agreement.

(b) After the EE Vendor Services are complete:

* + 1. Products and Completed Operations for limits of $1,000,000/occurrence;

$1,000,000 aggregate as provided by the Commercial General Liability Insurance form for three years.

* + 1. Professional Liability Insurance if the EE Vendor Services involves rendering

of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. with a limit of at least $1,000,000 for three years.

The Compact reserves the right to refuse any exception to the standard limits and coverages if it is determined that the exception is not in the best interest of the Compact. EE Vendor’s insurance companies are to be licensed as “admitted” carriers in Massachusetts with minimum acceptable A.M. Best ratings of “A” and size Class VIII, or as otherwise acceptable to the Compact, in its discretion. The Compact reserves the right of final approval of EE Vendor’s insurance companies.

EE Vendor agrees to waive any rights of subrogation against the Compact, the Compact’s Customers, Member Municipalities, and their respective employees, subcontractors, engineers, workers and agents. EE Vendor shall name the Compact and its officials and employees as additional insureds on its commercial general liability insurance, automobile liability insurance and umbrella liability insurance policies.

EE Vendor shall not begin rendering EE Vendor Services without first submitting to the Compact the insurance certificate(s) that indicate the coverages required by this Agreement. The insurance certificate(s) shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to EE Vendor and EE Vendor shall in turn provide at least (thirty) 30 days advance notice of cancellation to the Compact. If the policy expires prior to completion of the EE Vendor Services, EE Vendor must submit replacement insurance certificate(s) prior to the policy expiration date. Failure to submit new certificates shall result in withholding payments and/or may lead to the termination of this Agreement. EE Vendor shall be solely responsible for tracking and reporting to the Compact the expiration of the policies shown on the insurance certificate(s) provided.

EE Vendor shall be solely responsible for any damage to or loss to its property, equipment or materials regardless of its insurance coverage.

**SECTION 7 INDEMNIFICATION BY EE VENDOR[[2]](#footnote-2) AND DAMAGES FOR BREACH**

7.1 **Indemnification**. To the fullest extent allowed by law, EE Vendor (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Compact, each Member (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact and each Member), and all Customers from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees and expenses), causes of action, suits, and/or judgments caused by, arising out of, or related to any act or failure to act of EE Vendor (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) related to this Agreement, including, but not limited to, any failure on the part of EE Vendor (and/or its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Agreement on its part to be performed or complied with. EE Vendor’s indemnification obligation includes claims related to the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. EE Vendor’s indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Compact. EE Vendor agrees to pay all costs relating to indemnification claims, including reasonable attorneys’ fees incurred in investigating and responding to claims, within thirty (30) days of receipt of a payment request.

7.2 **Duty to Mitigate**. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement.

7.3 **Limitations**. NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, EE Vendor acknowledges that the preceding sentence shall not limit the Compact’s rights to seek indemnification from EE Vendor for consequential, punitive, or incidental damages or other such losses claimed by third-parties.

7.4 **No Cap on EE Vendor’s Liability[[3]](#footnote-3)**. EE Vendor’s liability under this Agreement shall not be limited to the value of the EE Vendor Services rendered under this Agreement; further, EE Vendor’s liability shall not be limited by the availability of its insurance coverage.

7.5 **Notice of Claims**. EE Vendor will provide formal written notice to the Compact in the event that EE Vendor receives notice of pending or threatened litigation, claims or assessments against the EE Vendor or the Compact in connection with the EE Vendor Services rendered by the EE Vendor under this Agreement.

7.6 **Acknowledgment of JPE Status**.  EE Vendor understands that the Compact is a governmental entity, specifically a joint powers entity, and that its members are the governmental units set forth in footnote 1 of this Agreement.  EE Vendor understands and agrees that  the Members assume no liability whatsoever for any of the debts and liabilities of the Compact, including, but not limited to, any obligations under this Agreement.  EE Vendor further agrees and covenants that it will not sue or otherwise make any claim against any of the Members for any obligations, debts or liabilities of the Compact that may exist or accrue as a result of its obligations under this Agreement, or any acts or omissions related to the performance of such obligations.

7.7 **Governmental Immunities**. EE Vendor understands that the Compact is a governmental entity, and certain legal privileges, defenses and remedies are available to it at law. Nothing in this Agreement shall be construed to waive any of these privileges, defenses or remedies.

**SECTION 8 CHOICE OF LAW AND DISPUTE RESOLUTION**

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws.

Any dispute that arises regarding this Agreement that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the Parties cannot agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each Party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm. Exclusive venue for any judicial proceeding involving a dispute arising from this Agreement shall be Barnstable County Superior Court, Massachusetts. In any judicial action, the “Prevailing Party” shall be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to, attorneys’ fees arising from the civil action. “Prevailing Party” means the Party who most substantially prevails in its claims or defenses in the civil action. EE Vendor shall diligently carry on the EE Vendor Services and maintain the project milestone schedule during any dispute resolution proceedings, unless otherwise agreed to by the Compact in writing.

**SECTION 9 ASSIGNMENT AND SUBCONTRACTING**

Except as expressly permitted in Exhibit D, none of the EE Vendor Services shall be subcontracted or assigned, in whole or in part, without the prior written approval of the Compact, in its sole discretion. No subcontract or assignment shall relieve or discharge EE Vendor from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval, and EE Vendor shall continue to be liable, jointly and severally, with the assignee for the fulfillment of all of the terms and conditions arising under this Agreement subsequent to the assignment. EE Vendor shall provide prompt notice to the Compact of any such permitted subcontract or assignment, together with the name and address of the assignee, and a copy of the subcontract or assignment instrument.

EE Vendor agrees that it retains full liability for the acts and omissions of its subcontractors (regardless of whether such subcontractors have been approved by the Compact). In addition, EE Vendor must ensure that any subcontractor who has been subcontracted, assigned or delegated thirty percent (30%) or more of the EE Vendor Services must abide by all of the terms and conditions of this Agreement, including, but not limited to, insurance requirements. The Compact reserves the right to impose these requirements on subcontractors performing less than thirty percent (30%) of the EE Vendor Services.

**SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION**

10.1 **Confidentiality**. Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information. The disclosure and use of such information shall also be governed by the Non-Disclosure Agreement entered into by the Compact and the Commonwealth Electric Company d/b/a NSTAR Electric dated May 10, 2001 (attached hereto as Exhibit E),and any subsequent non-disclosure agreements in which the Compact is a party and that involves the Services or obligations under this Agreement. Consultant agrees to submit the acknowledgment form set forth as Exhibit E concurrently with execution of this Agreement.

10.2 **Customer Information**. To the extent EE Vendor (or its subcontractors or any other party acting by or on behalf of EE Vendor) is provided or has access to Customer information, the following provisions apply: EE Vendor warrants and represents that the EE Vendor and its subcontractors and all other persons or entities having access to the Customer information by or through the EE Vendor have the appropriate safeguards in place to prevent the disclosure or use of any Customer information received from the Compact or its Customers, and further agrees to use such information solely for the purpose of performing EE Vendor Services for the Compact under this Agreement. Such safeguards shall include, without limitation, security policies, tools and processes restricting access to such Customer information to persons on a need-to-know basis, adequately training and notifying its employees and contractors of the restrictions associated with such information, identifying and correcting any impermissible use or disclosure, and immediately reporting any such use or disclosure. EE Vendor also agrees to comply with all applicable state, federal and local laws, regulations, codes and policies regarding the protection of Customer information, and the avoidance of theft or fraud through the improper use or disclosure of such information, including, without limitation, G.L. c. 93H and the regulations promulgated thereunder (including, without limitation, the maintenance of a Written Information Security Program in accordance with 201 C.M.R. 17.00 et seq.). Upon the request of the Compact, the EE Vendor shall provide the Compact with detailed information and documentation regarding such safeguards, and with certifications regarding the same by an authorized officer of the EE Vendor, and the Compact shall have the right to monitor and audit the compliance of the EE Vendor at any time with the requirements of this provision. All such Customer information shall be returned to the Compact upon the Compact’s request (or destroyed if so directed by the Compact), and the EE Vendor shall retain no copy or other record thereof. EE Vendor shall give immediate notice to the Compact of any incident that may cause such Customer information to be disclosed or otherwise used in an unauthorized manner. Such notice shall set forth all relevant information regarding the incident, including the specific nature and extent of the disclosure/use, the measures taken and to be taken to retrieve and restore the Customer information and/or to otherwise prevent the unauthorized use or disclosure of the Customer information. EE Vendor shall, at its sole cost, cooperate fully with the Compact and, as necessary, any law enforcement, regulatory authority, insurance carrier, auditors, attorneys and other parties in the investigation and evaluation of such incident, and shall implement at its sole cost any remedial measures recommended by any such parties as approved by the Compact. Customer information shall remain confidential in all circumstances.

**SECTION 11 MISCELLANEOUS**

11.1 **Notices**. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to EE Vendor to:

[insert]

if to the Compact to:

Margaret T. Downey

Cape Light Compact JPE Administrator

Cape Light Compact JPE

261 Whites Path, Unit 4

South Yarmouth, MA 02664

mdowney@capelightcompact.org (email)

Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid. Notices given hereunder shall be deemed sufficiently given on: (i) the date of personal delivery if so delivered; (ii) the day after sending if sent by established overnight commercial courier delivery service; or (iii) the fifth day after sending if sent by registered or certified mail. Either Party may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the Party of the obligation to provide notice as specified above.

11.2 **Entire Agreement; Amendments**. This Agreement (including any addenda) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. To the extent any of the exhibits to this Agreement contain terms that conflict with the terms set forth in the main body of this Agreement or impose additional obligations on the Compact, the language in the exhibits shall be disregarded and shall be of no force and effect. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

11.3 **Independent Contractor; No Joint Venture**. EE Vendor will perform all EE Vendor Services under this Agreement as an independent contractor. EE Vendor understands and agrees that none of its employees are Compact employees by virtue of entering into this Agreement. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Compact and EE Vendor hereunder are individual and neither collective nor joint in nature.

11.4 **Joint Workproduct; Independent Counsel**. This Agreement shall be considered the workproduct of both Parties hereto. Each Party acknowledges that it has been represented by independent counsel or has had the opportunity to seek counsel in connection with this Agreement and all matters pertinent to it, and each Party waives the benefit of the rules of construction providing that an agreement should be construed against its drafter. Notwithstanding the foregoing, EE Vendor agrees that if Exhibit A (Services) is primarily drafted by EE Vendor, any ambiguous terms contained therein shall be construed against EE Vendor.

11.5 **Waiver**. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

11.6 **Records; Audit**. EE Vendor shall maintain books, records, and other compilations of data pertaining to the requirements of this Agreement to the extent and in such detail as shall properly substantiate claims for payment under this Agreement. EE Vendor agrees that the Compact may audit EE Vendor’s books, records, and other compilations of data associated with the performance of this Agreement to ascertain that the payments requested by EE Vendor represent the value of the EE Vendor Services. All records shall be kept for a period of six (6) years commencing on the first day after final payment under this Agreement. 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 the completion of the action and resolution of all issues resulting therefrom, or until the end of the retention period, whichever is later.

11.7 **Solicitation**. EE Vendor shall not solicit work from a Customer for two (2) years following termination of this Agreement for any reason, unless EE Vendor can prove that it has a pre-existing relationship with such Customer. For purposes of this section, “pre-existing relationship” means a relationship pursuant to which EE Vendor performed services for the Customer prior to performing services for that Customer under an energy efficiency services program run by the Compact, the Commonwealth Electric Company d/b/a Eversource Energy, or any other utility. EE Vendor may directly perform services for a Customer if such Customer has solicited EE Vendor. EE Vendor shall not engage in targeted solicitations using Customer information obtained as a result of its performance of the EE Vendor Services or otherwise related to this Agreement. The prohibitions in this section shall not apply to general marketing campaigns of EE Vendor.

11.8 **Headings and Captions**. The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing this Agreement.

11.9 **Political Activity Prohibited**. None of the services to be provided by EE Vendor hereunder shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or in connection with any referendum question or legislative or grass-roots lobbying activities.

11.10 **Anti-Boycott Warranty**.EE Vendor hereby warrants that, during the term of this Agreement, neither it nor any “affiliate of the EE Vendor,” as hereafter defined, shall participate in or cooperate with an international boycott, as defined in 26 U.S.C.A. §999 (b) (3) and (4), or engage in conduct declared unlawful by G.L. c. 151E, §2. An “affiliate of the EE Vendor” shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by EE Vendor, or by a person or persons or business entity or entities that directly or indirectly own at least 51% of the ownership interests of EE Vendor.

11.11 **Non-Discrimination in Employment and Affirmative Action**. EE Vendor shall take affirmative action to ensure that its employees, and any member of the public eligible for service under the Energy Efficiency Plan, are treated without regard to race, color, sex, marital status, sexual orientation, age, religion, national origin, ancestry, handicap, disability, or veteran status. EE Vendor agrees to comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination in employment and in public accommodations.

11.12 **Procurement Process**. [The Agreement is intended to be a contract for “energy” and/or “energy related services” within the meaning of G.L. c. 30B, §1(b)(33) and therefore this Agreement is exempt from the competitive procurement procedures set forth in G.L. c. 30B. It shall be the Compact’s obligation to comply with submission and reporting requirements of G.L. c. 30B, §1(b)(33)] **OR** [In entering into the Agreement, the Parties complied with the competitive procurement procedures required under G.L. c. 30B or [Insert reference to other applicable procurement law] and have executed this Agreement in accordance therewith.] If this Agreement was procured under G.L. c. 30B, EE Vendor represents that it has executed all certifications required by such statute, or will provide them concurrently with execution of this Agreement, including the certificates set forth in Exhibits F and G attached hereto.

11.13 **Third-Party Beneficiaries**. Each Member is an intended third-party beneficiary of this Agreement, entitled to the full rights of this Agreement.

11.14 **Savings Clause**.If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

11.15 **Further Assurances**. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other in order to effectuate the purposes and to carry out the terms of this Agreement.

11.16 **Survival of Obligations**. Termination of this Agreement for any reason shall not relieve

either Party of any obligation accrued or accruing prior to such termination. In addition, the terms of Section 7 (Indemnification) and Section 8 (Dispute Resolution) and any other term that by its nature should survive, shall survive the expiration of termination of this Agreement.

11.17 **COVID Addendum**. If EE Vendor is performing work in the field, it will execute a COVID Addendum, the form of which is set forth in Exhibit H hereto.

11.18 **Diversity, Equity and Inclusion**.  EE Vendor acknowledges that the Compact is strongly committed to ensuring that its programs provide contracting/supplier opportunities for businesses and individuals who historically have been underrepresented in the energy efficiency contracting field.  EE Vendor understands that the Compact is in the process of developing formal diversity, equity, and inclusion policies for its vendors and suppliers, and agrees to implement any such policies that are finalized by the Compact during the term of this Agreement.

11.19 **Counterpart Execution; Scanned Copy**.  This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.  The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the effective date first above written.

**EE VENDOR CAPE LIGHT COMPACT JPE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Signature

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Margaret T. Downey

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Cape Light Compact JPE Administrator &

Chief Procurement Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

**LIST OF EXHIBITS**

Exhibit A - EE Vendor Services

Exhibit B - Background Check Policy

Exhibit C - Compensation

Exhibit D - Pre-approved Subcontractors

Exhibit E - NDA Acknowledgment and NDA

Exhibit F - Tax Compliance Certification

Exhibit G - Certificate of Non-Collusion

Exhibit H - COVID Addendum

**EXHIBIT A**

**EE VENDOR SERVICES**

[The scope of Services developed, negotiated and finalized during the RFP process should be attached as Exhibit A.

**EXHIBIT B**

**BACKGROUND CHECK POLICY**

*REQUIREMENTS FOR EE VENDOR EMPLOYEE*

*AND SUBCONTRACTOR BACKGROUND CHECKS*

The requirements set forth below shall apply to any services to be performed by EE Vendor under the Agreement. The individuals who will perform the services under the Agreement, including employees, principals, and subcontractors are referred to herein as “EE Vendor Employees.”

These requirements for background checks represent the minimum requirements for EE Vendor, to be undertaken at EE Vendor’s expense. Additional requirements may be deemed appropriate by the Compact or EE Vendor, or may be required by law, regulation, or other bodies having jurisdiction over the services or EE Vendor. EE Vendor must comply with any such additional requirements as are known or should reasonably be known by it.

To the extent EE Vendor finds that any background check requirements are in conflict with State or Federal statutes, collective bargaining agreements, or other issues that would prohibit compliance, EE Vendor should notify the Compact so that EE Vendor and the Compact may discuss appropriate resolution of the issue.

EE Vendor must complete a background check before any EE Vendor Employee begins work under the Agreement, whether brought on at the outset of the Agreement or at any other point in the Agreement term. An EE Vendor Employee may only begin work under the Agreement in advance of the completion of background checks with the written approval of the Compact setting forth the number of calendar days for such allowance.

EE Vendor must be able to evidence that it has verified the identification of all EE Vendor Employees working for the Compact and that all such individuals are legally eligible to work in the country where the services are to be performed.

EE Vendor must ensure that all EE Vendor Employees working under the Agreement are subjected to a criminal history background check. Such checks must be conducted on all names, including alias names that are provided or developed, and include County, State and Federal checks based on jurisdictions of work and residence for the past 7 years, as well as international jurisdictions, if available. All checks must include both misdemeanors and felonies. If the EE Vendor has had a pre-employment criminal history check process in place and can provide documented evidence to the Compact that EE Vendor Employees working under the Agreement have been subjected to equivalent criminal history check, then additional checks are not necessary. If EE Vendor Employee has a felony or misdemeanor criminal record, the Compact reserves the right, in accordance with Section 2.4 (Staffing; Background Checks) of the Agreement, to require EE Vendor to remove such EE Vendor Employee from the work site. If at any time during the term of the Agreement, EE Vendor becomes aware of information concerning a criminal conviction of EE Vendor Employee that would fit the above criteria for reporting to the Compact, EE Vendor shall forward this information to the Compact and the Compact shall determine whether to remove the EE Vendor Employee from the work site.

All EE Vendor Employees required to operate a motor vehicle in conjunction with services provided to the Compact must be legally licensed and hold a valid driver’s license appropriate to the vehicle being driven. This requirement applies to both EE Vendor-owned or leased vehicles and the Compact’s owned/leased vehicles. If applicable, a motor vehicle driving record check to include a commercial driver license search must be annually conducted by EE Vendor to validate this requirement.

EE Vendor must maintain a record of all background checks completed in accordance with these requirements and correspondence with the Compact regarding background checks performed during the term of the Agreement and shall make all such records available to the Compact upon reasonable notice.

If it is determined at any time during the term of the Agreement that EE Vendor Employee performing services for the Compact does not meet the background qualifications set forth above, or has falsified a document that is or was part of the background check, EE Vendor shall immediately notify the Compact. The Compact will determine if the EE Vendor Employee should be removed from the work site.

In the event EE Vendor would like to utilize EE Vendor Employee to provide services under the Agreement despite adverse findings from any background check performed in accordance with these requirements, EE Vendor must submit a request in writing to the Compact, or its designee. The Compact shall evaluate all relevant background information and, in its sole discretion, shall make a determination whether the EE Vendor Employee should be allowed to perform services under the Agreement, and shall provide its determination in writing to EE Vendor.

The Compact reserves the right to perform, at its sole cost, audits of EE Vendor’s background check program and records for any EE Vendor Employee performing services under the Agreement.

The Compact reserves the right to revise these requirements at any time during the term of the Agreement, which EE Vendor must comply with. Any revisions to these requirements will be provided in writing to EE Vendor.

Upon written request of EE Vendor, the Compact, in its sole discretion, may provide EE Vendor with a written modification or waiver of any of any of the background check requirements marked above.

**EXHIBIT C**

**COMPENSATION**

**EXHIBIT D**

**PRE-APPROVED SUBCONTRACTORS**

None

**EXHIBIT E**

**NDA ACKNOWLEDGMENT AND NDA**

I hereby certify my understanding that the Confidential Information, as that term is defined in the Non-Disclosure Agreement between Barnstable County, Massachusetts and the Cape Light Compact, on the one hand, and Commonwealth Electric Company d/b/a NSTAR Electric, on the other, dated May 10, 2001 (the “NDA”), is being provided to me pursuant to the terms and restrictions of the NDA. I also certify that I have been given a copy of the NDA, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information and any parts of notes, memoranda, or any other form of information that contains such Confidential Information shall not be disclosed to anyone nor copied other than in accordance with the NDA, and shall be used only for the limited purposes stated therein. I also agree to protect the confidential and proprietary nature asserted for the Confidential Information.

I further acknowledge that, in the event that my role as a consultant or contractor of the Cape Light Compact JPE ceases, I shall return all copies of Confidential Information and destroy all parts of notes, memoranda, and other documents that contain such material in accordance with the NDA, and I shall continue to be bound by the terms and conditions of the NDA.

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Organization:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[COMPACT OR BCK STAFF TO ADD NSTAR NDA AS PART OF THIS EXHIBIT]

**EXHIBIT F**

**TAX COMPLIANCE CERTIFICATION**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

**EE VENDOR**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**EXHIBIT G**

**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that the bid or proposal it submitted in response to the RFP was made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of individual submitting bid or proposal

EE Vendor Name

**EXHIBIT H**

**COVID ADDENDUM**

THIS ADDENDUM #1 (“Addendum”) to the Energy Efficiency Field Services Agreement dated as of [insert] as such agreement may have been amended from time to time (collectively, the “Agreement”) between the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and the organizational successor to the Cape Light Compact (the “Compact”), and [insert] (“EE Vendor”) is made effective as of [insert]. The Compact and EE Vendor may be referred to herein collectively as the “Parties” or either singularly as a “Party.”

WHEREAS, under the Agreement, EE Vendor is providing services to the Compact in connection with the Compact’s Energy Efficiency Plan which is periodically updated and approved by the Massachusetts Department of Public Utilities;

WHEREAS, some of the services provided by EE Vendor are rendered at customer’s residences or businesses (“Customer Sites”);

WHEREAS, due to conditions related to the pandemic of coronavirus disease 2019 (“COVID-19”), the Parties agree that additional precautions and measures are necessary in order to properly perform the Services under Agreement, and to mitigate the safety and health risks associated with the Services;

WHEREAS, EE Vendor agrees to comply with the additional requirements set forth in this Addendum as set forth below; and

WHEREAS, the Parties have agreed to amend certain provisions in the Agreement as specifically set forth below.

NOW THEREFORE, in accordance with Section 11.2 of the Agreement, the Compact and EE Vendor, intending to be legally bound hereby, agree as follows:

1. ***Definitions***. As used in this Addendum, the term “Program” means [insert]. Terms not specifically defined in this Addendum shall have the meanings assigned to them in the Agreement.

2. ***Acknowledgment of Risks and Liabilities***. EE Vendor acknowledges, understands and agrees that there are additional risks in providing EE Vendor Services to customers related to COVID-19 and EE Vendor assumes all associated risks, including, without limitation, the risks associated with COVID-19 in performing the EE Vendor Services. EE Vendor acknowledges that EE Vendor is voluntarily agreeing to provide EE Vendor Services to customers with knowledge of the danger and risks involved*.* EE Vendor understands and agrees that it is assuming all liabilities associated with performing EE Vendor Services during the pandemic, including, but not limited to, worker exposure to COVID-19 from Customers, and potential claims from Customers relating to COVID-19 exposure.

3. ***Use of Disclaimers in Customer Communications***. In any material communications with Customers, EE Vendor shall include the following language: *The Compact has engaged [insert EE Vendor name] to perform work in connection with its program(s). Work performed by [insert EE Vendor name] is not guaranteed or subject to any representation or warranty, either expressed, implied or otherwise by the Compact. Any complaints, concerns or claims regarding the work are the sole responsibility of [insert EE Vendor name].*

4. ***Health and Safety Protocols.***

a.   Policies and Procedures. For all EE Vendor Services to be performed at Customer Sites, EE Vendor shall comply and ensure that all of its employees and subcontractors performing EE Vendor Services shall comply with all requirements, procedures, guidelines and protocols provided by the Compact or its contractors to EE Vendor including, without limitation, those specifically relating to COVID-19 (e.g., minimum PPE and use, distancing from Customer, health and safety protocols for taking measurements and product installation, compliance monitoring). EE Vendor will ensure that all of its employees and subcontractors will comply with all of such requirements, as the same may be updated from time to time by the Compact and provided to EE Vendor.

EE Vendor must agree to adopt and follow any additional policies and procedures provided by the Compact to it at any time after execution of this Addendum.  Notice of additional policies and procedure may be provided by email.  If EE Vendor has developed and adopted its own safety protocols to minimize exposure and spread of the COVID-19, or develops such policies and procedures, copies should be sent to the Compact.

b. Training. EE Vendor shall ensure that all employees and subcontractors performing any EE Vendor Services at Customer Sites have taken and successfully completed training and certifications required by the Compact prior to EE Vendor assigning any such EE Vendor employees or subcontractors to perform any EE Vendor Services at any Customer Sites.

c. Personal Protective Equipment (PPE). EE Vendor shall ensure that EE Vendor employees and subcontractors follow safety rules and regulations applicable to the PPE use, and comply with all the Compact and EE Vendor policies and procedures. EE Vendor shall provide EE Vendor employees and subcontractors with appropriate PPE as required and EE Vendor shall have the sole responsibility to see that EE employees and subcontractors are (1) informed on and properly trained as to PPE use and (2) that safety practices and PPE use is correctly followed.

d. Compliance. EE Vendor shall ensure that EE Vendor employees and subcontractors strictly observe and fully comply with all applicable federal, state, and local laws, rules, regulations, executive orders and OSHA requirements applicable to the EE Vendor Services, and/or the Customer Sites, including, without limitation, any of the federal, state, and local laws, rules, regulations and executive orders specifically related to COVID-19, soliciting or communicating with Customers regarding EE Vendor Services and performing any EE Vendor Services at Customer Sites. In no event shall any EE Vendor Services be performed at any Customer Site while there are any governmental or regulatory restrictions or prohibitions on performing any such EE Vendor Services at that Customer Site.

e. Tracking System. EE Vendor must develop and maintain a system to track the specific EE Vendor Services performed for each Customer and COVID-19 related issues.

f. Required Notifications.EE Vendor must notify the Compact if any of its employees or Compact Customers have been exposed to COVID-19, or it is aware of any parties asserting claims or issues related to exposure.

g. COVID-19 Points of Contact. For all COVID-19 related issues, the points of contact for each Party shall be:

Compact:

EE Vendor:

h. Subcontractors. If EE Vendor is serving as a lead vendor for the Program, EE Vendor agrees that it is responsible for implementation of the Program, and that this responsibility includes management, supervision of control of all independent contractors (including, but not limited to, home performance contractors and independent installation contractors) and subcontractors performing EE Vendor Services in connection with the Program.

5. ***Release and Assumption of Risk***.  EE Vendor hereby releases all COVID-19 related claims (past, present and future) relating to the pandemic and COVID-19 exposures and disruptions (including, but not limited to, claims for contract damages or personal injury). EE Vendor hereby agrees to accept and assume any and all risks relating to COVID-19 claims or exposures, including, but not limited to, risks of illness, injury, death or property damage.

6. ***Indemnification***. EE Vendor ratifies and affirms that the indemnification and liability protections in the Agreement afforded to the Compact apply to any claims (including, but not limited to, Customer claims) related to COVID-19.

7. ***No Joint and Several Liability****.* EE Vendor understands and agrees that the Compact assumes no liability or obligation with respect to the acts or omissions of any other statewide program administrator of the Program or related programs. EE Vendor understands and agrees that the Compact Members assume no liability whatsoever for any of the debts and liabilities of the Compact, including, but not limited to, any obligations under this Addendum and the Agreement.

8. ***Suspension or Termination***. EE Vendor acknowledges and agrees that the Compact’s suspension and termination rights under the Agreement apply to any noncompliance by EE Vendor of its obligations under this Addendum, as determined by the Compact, in its sole discretion.

9. ***Representations and Warranties***.EE Vendor represents and warrants to Compact as follows: (i) this Addendum and the underlying Agreement constitute the legal, valid, and binding obligation of EE Vendor enforceable in accordance with its terms; (ii) the execution, delivery, and performance of this Addendum are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents, any contract to which it is a party, or any applicable federal, state and local laws, regulations and executive orders applicable to it; and (iii) it has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Addendum or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due.

10. ***Insurance***. EE Vendor agrees that all of insurance obligations under the Agreement are hereby expanded to include insurance coverage for any third-party COVID-19 related claims arising from or related to the EE Vendor Services performed by EE Vendor.

11. ***Effect on Agreement***. All other provisions of the Agreement shall remain unchanged, binding, and effective.

12. ***Further Assurances***. From time to time and at any time at and after the execution of this Agreement, at the Compact’s request, EE Vendor shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the Compact and shall take any other action consistent with the terms of this Addendum or the Agreement for the purpose of effecting or confirming any of the transactions contemplated by this Addendum or the Agreement.  EE Vendor further agrees to reasonably modify the scope of EE Vendor Services under the Agreement to take into account special issues and considerations raised by COVID-19.

13. ***Conflicts***.The Parties agree that the Agreement (including any amendments to it) and this Addendum are intended to be construed harmoniously to the greatest practicable extent. Notwithstanding anything to the contrary contained in this Addendum, in the event of conflict between the terms contained in this Addendum and the terms contained in the Agreement, the terms set forth in this Addendum shall control.

14. ***Counterparts; Scanned Copy***. This Amendment may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.  The Parties agree that a scanned or electronically reproduced copy or image of this Addendum bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Addendum notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Addendum and without the requirement that the unavailability of such original, executed counterpart of this Addendum first be proven.

IN WITNESS WHEREOF, the Parties have executed this Addendum between the Compact and EE Vendor effective as of the date set forth above.

EE VENDOR CAPE LIGHT COMPACT JPE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Signature

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Margaret T. Downey

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Cape Light Compact JPE Administrator &

Chief Procurement Officer

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Date Date

1. For the purposes of this Agreement, the term “Member” means the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, Yarmouth, Dukes County, and any other governmental unit that becomes a member of the Compact during the term of this Agreement. [↑](#footnote-ref-1)
2. Note to EE Vendor: In accordance with guidance issued by the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties. [↑](#footnote-ref-2)
3. Note to EE Vendor: The Compact does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply to such caps. [↑](#footnote-ref-3)