

**CAPE LIGHT COMPACT JPE  
SCOPE OF SERVICES FOR TREASURER  
(October 2023)**

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**General Description:** Receive and administer all money belonging to the Cape Light Compact JPE (the “Compact”), including the payment of all bills approved by the Compact Administrator and Comptroller.

**Essential Tasks:**

1. Establish and monitor all bank accounts of the Compact.
2. The Treasurer and the Compact authorized alternate shall be the only signatories on the Compact bank accounts.
3. Reconcile all bank accounts monthly to the Compact General Ledger balances within 30 days of the close of the previous month.
4. Assumes responsibility for all receipts and disbursements of t the Compact.
5. Establish and maintain an on-site weekly work schedule to print, sign/approve Accounts Payable Checks/ACH/Electronic Funds Transfers and authorize Payroll Checks/Direct Deposit Advices (with the warrant listings attached for review).
  - Weekly warrants with approximately 35-75 checks and EFTs
  - Bi-weekly Payroll with Outside Payroll Service
6. Prepares bank transfers within the Compact bank accounts.
7. Stays current with banking practices, interest rate environment, and economic conditions.
8. Invest funds prudently in a manner that will maximize interest income according to Massachusetts General Laws, Chapter 44, Section 55B.
9. Give bond for the faithful performance of the tasks in an amount prescribed by the Compact Governing Board. The Compact will pay the premium of the bond.
10. Provide copies of certain documents in preparation of the annual audit (i.e., copies of bank statements and bank reconciliations).
11. Upon request, be available to the Compact Governing Board and/or the Department of Public Utilities, and prepare reports, if needed.
12. Coordinate borrowing, if necessary, with a fiscal advisor and bond counsel, and issue debt on behalf of the Compact.
13. Perform Treasurer functions related to establishment, maintenance and investment of a pension stabilization fund.
14. Serve as Trustee for the Compact’s OPEB trust fund pursuant to a written trust agreement.
15. Perform Treasurer duties as established by Massachusetts law as requested by the Compact Board.
16. Perform other tasks related to the treasury function, if needed, to be assigned by the Compact Administrator.
17. Individual or company should be able to execute the attached Vendor Services Agreement.

**Education and Experience:** Bachelor's degree in Accounting. Experience with municipal or fund accounting, cash management, and financial reporting. Demonstrated knowledge of financial software. Certification as a Certified Public Accountant preferred but not required.

The Treasurer will be appointed by the Compact Governing Board for a one year term (in general).

Enclosure

# **VENDOR SERVICES AGREEMENT**

## **(Treasurer and Treasury Related Services)**

This VENDOR 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 (the “Compact”), and [insert] (“Vendor”). The Compact and 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, in 1997, 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, as a joint powers entity, the Compact is required, pursuant to G.L. c. 40, §4A½, to have a treasurer, with certain duties as enumerated in the statute;

WHEREAS, the Compact issued a Request for Quotes on October xx, 2023 for treasurer and treasury related services; and

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

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, 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 March 1, 2026, unless this Agreement is terminated before such date under the provisions of Section 1.2 or Section 2.7 (Appointment of Treasurer).

1.2 **Termination.** The Compact shall have the right to terminate or suspend this Agreement for any reason, including for convenience. 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 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 for any costs of cure and transition costs (including reasonable attorneys' fees) that it incurs related to engagement of a substitute Vendor.

1.3 **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. Vendor agrees to provide transition services requested by the Compact as may be necessary in connection with appointment of a replacement Treasurer in order to ensure that the transition of Treasurer and related functions occurs in an orderly and professional manner. Such transition services shall be billed at the rates set forth in Section 3.1.

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

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

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

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

2.4 **Staffing; Background Check Requirements.** The Compact may require Vendor to remove from its project team such employees of Vendor as the Compact, in its reasonable discretion, deems objectionable, or whose continued employment in connection with the Services is deemed by the Compact, in its reasonable discretion, to be contrary to the best interests of the Compact.

Vendor shall comply with the Compact's written requirements for employee background checks, as set forth in Exhibit B, and as may be amended from time to time by the Compact, unless *not required* is checked below.

[ X ]                      required                      [   ]                      not required

2.5 **Conflicts of Interest.** 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 Services. Vendor agrees to diligently serve and endeavor to further the best interests of the Compact, as known or made known to Vendor. Vendor further agrees not to undertake activities that conflict, or are not in accordance with, the best interests of the Compact, and shall disclose any other employment or engagements that could conflict with its obligations under this Agreement. Vendor further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

2.6 **Points of Contact.** 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 Services are performed and completed in a manner satisfactory to the Compact and in accordance with the terms of this Agreement. The Compact names the Compact Comptroller, Philip Moffit, to be the day-to-day point of contact for Vendor for all issues arising under this Agreement.

2.7 **Appointment of Treasurer.** Vendor appoints the person designated in Exhibit A to serve as the Compact's Treasurer. The designation of the Treasurer shall be subject to the review, approval and election by the Compact's Governing Board. Officer elections generally occur

annually at the January board meeting. Vendor and Treasurer agree that the Treasurer shall abide by all provisions of the Joint Powers Agreement of the Compact, as in effect as of July 21, 2021, and as may be amended from time to time (the "JPA"). Vendor and Treasurer each understand and agree that the Treasurer shall perform the Services in accordance with the votes of the Compact's Governing Board (with the guidance and direction of the JPE Administrator in accordance with such votes), which may occur after execution of this Agreement. Vendor and Treasurer each understand and agree that the Treasurer shall be primarily responsible for the performing the Services. Unless approved by the Compact's Governing Board, only administrative or clerical tasks set forth in Exhibit A or administrative or clerical tasks related thereto may be performed by other Vendor staff.

As set forth in Exhibit A, the Treasurer shall perform certain OPEB Custodian Trustee duties in accordance with (i) G.L. c. 32B, Section 20; (ii) votes of the Compact's Governing Board taken on October 11, 2023 set forth in Exhibit A-1 (the "Board Votes"), and (iii) the Declaration of Trust set forth in Exhibit A-2. Concurrently with the execution of this Agreement, the Treasurer will execute the Declaration of Trust and undertake the steps necessary to implement the Board Votes.

Vendor shall also designate a person to serve as Assistant Treasurer in the event that the Treasurer is unavailable due to disability, prolonged or extended absence from work, termination from employment or emergency circumstances. The designation of the Assistant Treasurer shall be subject to the review, approval and election by the Compact's Governing Board. The Assistant Treasurer shall be bound by all provisions applicable to the Treasurer under this Agreement. In accordance with Massachusetts law, the Assistant Treasurer may not assume the OPEB related duties described in Exhibit A, and the Compact's Governing Board may elect a successor Treasurer to perform such duties.

In addition, Vendor understands and agrees that the Treasurer designated by Vendor and approved by the Compact's Governing Board in accordance with Section 2.1 serves at the pleasure of the Governing Board. Vendor agrees and acknowledges that at any time, the Governing Board may vote to remove the Treasurer and vote to appoint another employee of Vendor to serve as Treasurer, or may vote to terminate this Agreement and appoint another Treasurer.

### **SECTION 3                      COMPENSATION AND RELATED MATTERS**

3.1 **Rates of Compensation.** Vendor shall be compensated by the Compact for the Services in accordance with the terms and rates set forth in Exhibit C attached 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.

3.2 **Invoicing and Payment.** Vendor shall submit monthly invoices to the Compact by the 10<sup>th</sup> day of each month, unless otherwise authorized in writing by the Compact. The Compact shall 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 Services. Upon request, Vendor shall provide to the Compact all backup documentation required to establish the value of the Services performed to date as represented by Vendor's monthly invoices.

3.3 **Effect of Payment.** The Compact shall not be deemed to have accepted any improper Services, materials or performance by virtue of any payment made to 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 Services.

3.4 **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 Services not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims by other parties against Vendor or the Compact in connection with the Services; (iii) unsatisfactory performance of the Services; (iv) Vendor's failure to pay any amounts due to the Compact; or (v) 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 Services or that the 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 Vendor of the grounds for any withholding. When Vendor provides performance assurance satisfactory to the Compact that will protect the Compact for the amount withheld, payment shall be made. When deemed reasonable by the Compact, the Compact may use such withheld funds to undertake remedial measures.

#### **SECTION 4 PERFORMANCE STANDARDS**

4.1 **General Performance Standard and Warranty.** Vendor assumes professional and technical responsibility for the performance of the Services in accordance with the terms of this Agreement and Good Industry Practice, and any additional guarantee or warranty specified in the description of Services set forth in Exhibit A. If, during the performance of the Services or within one (1) year following completion thereof, the Services fail to meet such standards, Vendor shall promptly and timely (no more than five (5) business days) furnish all remedial services and materials necessary to correct such deficiencies at Vendor's sole cost and expense.

Vendor shall also be responsible for reimbursement of the Compact's losses related to such defective 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 accounting and financial services industries in the performance of professional accounting and financial services) 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, economy and expedition. Good Industry Practice includes generally accepted accounting principles, and 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, Vendor represents, warrants and covenants that: (i) all Services shall conform to all requirements of the Agreement; (ii) it shall exercise reasonable care to assure that its operations are prudently and efficiently managed; (iii) it shall employ an adequate number of competently trained and experienced personnel to carry out the Services; (iv) all Services shall be performed by qualified, competent, and experienced personnel, and in accordance with the highest standards of care, skill, and diligence, and consistent with recognized and sound professional practices and procedures; (v) it shall comply with all relevant industry standards and practices for the delivery of Services to the Compact; (vi) it shall comply with applicable laws and professional licensing requirements; and (vii) it shall ensure that it validly owns or licenses all intellectual property used in the performance of the 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.

**4.3 Correction of the Services.** If the Services provided by Vendor fail to conform to the warranties set forth above, in addition to all other remedies available at law or equity, Vendor shall, at its sole expense and at the Compact's option, promptly: (i) re-perform the nonconforming Services; (ii) refund the amount of money paid by the Compact for such nonconforming Services; or (iii) reimburse the Compact for the cost of replacing, repairing, curing, or re-performing the nonconforming Services or having the nonconforming Services re-performed, cured, repaired, or replaced by a third-party. The Compact may require Vendor to use overtime services at no cost to the Compact if such additional effort shall shorten the time the Services are nonconforming. All warranty services performed by Vendor shall be scheduled by and at times acceptable to the Compact. If any warranty services are provided, Vendor's warranties shall recommence upon the Compact's acceptance of such repaired, re-performed, cured, or replaced Services and shall be in effect for the duration of the warranty period or for



twenty-four (24) months after completion of the warranty services, whichever is later. The terms of this section shall survive termination of the Agreement and delivery, inspection, tests, acceptance, and use of the Services. In addition to all remedies permitted by law, the Compact reserves the right to reject and return to Vendor for full credit and at Vendor's expense, all Services that do not conform to the Compact's specifications or requirements. Further, the Compact may, at its option, and without limiting its other rights, cancel all or any unfilled part of the Agreement if conforming performance of the Services are not made within the time specified. The Compact reserves the right to charge Vendor, and Vendor shall be liable for any loss or expense incurred as the result of Vendor's failure to make timely performance of the Services. The acceptance of any late performance of the Services shall not constitute waiver to reject subsequent performance not made as originally scheduled.

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

4.5 **Fiduciary Duty.** Vendor and Treasurer agree that they have fiduciary duties to the Compact.

## **SECTION 5                      INTELLECTUAL PROPERTY MATTERS; OWNERSHIP OF BOOKS AND RECORDS**

5.1 **Intellectual Property Rights; Work for Hire.** Vendor agrees that any work of authorship created or developed by Vendor during performance or delivery of Services to the Compact, either individually or jointly with others, in the course of the rendering of the 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 rendering of Services to the Compact, Vendor hereby irrevocably assigns, transfers, and conveys to the Compact all of 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, 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. Vendor further agrees that, to the best of its knowledge, all work created or developed by Vendor will be original and non-infringing.

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

**5.3 Ownership of Books and Records.** The books and records (including electronic and digital records) pertaining to the Compact which are in the possession or under the control of Vendor shall be the property of the Compact. The Compact shall have access to such books and records at all times during Vendor's normal business hours. Copies of all such books and records shall be provided by Vendor to the Compact at the Compact's expense. The Compact shall have view only permissions to electronically view and access the Compact's accounts at all times.

## **SECTION 6                      INSURANCE**

Unless waived by the Compact in writing, upon a finding under special circumstances giving rise to minimal liability under this Agreement and risk to the Compact, Vendor shall, at its sole expense, procure and maintain the following insurance:

(a)     **Workers' Compensation** covering each employee performing the Services, in the amount of full statutory benefits in each jurisdiction where the Services will be performed.

(b)     **Employers' Liability Insurance** covering employees performing the Services, with minimum limits of \$1,000,000 per accident and per disease policy limit, or limits meeting umbrella insurer requirements.

(c)     **Commercial General Liability Insurance**, written on an occurrence form including coverages for bodily injury, broad form property damage, personal injury, products/completed operations, personal and advertising injury, liability arising out of subcontractors, and contractual liability (to specifically include coverage for the indemnification clause of this Agreement), 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.

(d)     **Automobile Liability Insurance** covering all owned, non-owned and/or hired

motor vehicles to be used in connection with the Services with a minimum combined single limit of \$1,000,000 bodily injury and property damage.

(e) Umbrella Liability Insurance covering over underlying Commercial General Liability, Automobile Liability and Employers' Liability Insurance with a minimum limit of \$2,000,000 each occurrence.

(f) Professional Liability Insurance covering Vendor's errors and omissions relating to the Services if the 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.

(g) Network Security and Privacy Liability (a/k/a Cyber Liability) Insurance including coverage for covering financial losses and/or claims against the Compact arising from unauthorized access, unauthorized use, theft of data, denial of service, internet liability, failure to protect intellectual property, destruction or corruption of data, including, but not limited to, privacy and data security breaches, virus transmission, violation of privacy laws or confidentiality agreements, investigation and breach notification expenses, denial of service and loss of income from network security failures, with minimum coverage limits of \$2,000,000 per each occurrence/claim.

(h) Crime/Employee Theft Coverage including Client Property coverage extension (Including Client Property coverage extension) with minimum coverage limits of \$15,000,000 per each loss.

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. All insurance policies shall be issued by insurers authorized to do business in the jurisdictions where work will be performed and with an A.M. Best rating of no less than A-, VIII. Vendor shall bear all responsibility for deductibles, self-insured retentions and premium payments. Self-insured retentions shall be disclosed and shall be no greater than \$50,000 without prior approval from the Compact. All insurance coverages, including, but not limited to, professional liability, shall cover the Services. Any claims-made coverage retroactive dates shall be no later than the date the Services were first rendered to the Compact and shall be maintained for a

period not less than three (3) years following the date Services are last rendered to the Compact.

Vendor hereby waives all rights of recovery (including rights of subrogation) against the Compact, the Compact's Members<sup>1</sup>, and their respective employees, subcontractors, workers and agents or other party entitled to indemnification hereunder for any claim, injury, loss or damage arising from any occurrence covered by insurance maintained (or required to be maintained) by Vendor. All policies of insurance carried by Vendor, except (f), (g) and (h), shall include provisions in which the insurer waives its subrogation rights against the Compact or other party entitled to indemnification hereunder.

The Compact, its officials and employees and all other parties designated by the Compact shall each be included as additional insureds on all insurance policies except coverages (a), (b), (f), (g) and (h) and no such policy shall exclude claims brought by an additional insured against a named insured. All of Vendor's insurance shall apply on a primary and non-contributory basis to the Compact and any other required additional insureds' coverage.

Prior to the commencement of any Services hereunder and no less than five (5) days prior to each renewal, Vendor shall provide certificates of insurance meeting or exceeding the above coverages, listing the Compact and any other parties requested by the Compact, each as certificate holder and additional insured, and showing coverage applicable on a primary and non-contributory basis.

If the policy expires prior to completion of the Services, Vendor must submit a replacement certificate of insurance 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. Vendor's insurer or Vendor shall be required to provide thirty (30) days' advance written notice of cancellation or non-renewal to the Compact.

In the event that any of the Services under this Agreement are to be rendered by persons other than Vendor's employees, Vendor shall cause such persons to maintain insurance

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<sup>1</sup> 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.

subject to the same terms and conditions as set forth above applicable to Vendor prior to commencement of Services by such person(s).

Vendor assumes all risk for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Services contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under this Agreement or in connection in any way whatsoever with the Services.

## **SECTION 7                    INDEMNIFICATION BY VENDOR AND DAMAGES FOR BREACH; BOND AND RELATED MATTERS**

**7.1 Indemnification.** To the fullest extent allowed by law, Vendor (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify and hold harmless (i) the Compact, and (ii) 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) (the two foregoing categories of parties constituting collectively the “Indemnified Parties”) from any loss, damage, liability, cost (including, but not limited to, reasonable attorneys’ fees and costs), charge, expense, or third-party claim or cause of action arising out of any damage or injury to property of an Indemnified Party, Vendor and/or third-parties (including real property, personal property and environmental damages), persons (including injuries resulting in death), or economic damages, directly or indirectly caused by or arising out of or in any way connected with (i) any act or omission of Vendor in breach of this Agreement, (ii) any negligence, willful misconduct, or breach of law of Vendor, its agents, employees, subcontractors, and suppliers, (iii) any third-party claim under federal law pertaining to copyright infringement, trademark infringement, libel, slander, defamation, invasion of privacy, piracy, or plagiarism arising from the Compact’s use, consistent with the terms of this Agreement, of Vendor’s final deliverables (except to the extent that such third-party claim arises from materials supplied by the Compact, or any unauthorized modifications to the deliverables by the Compact), (iv) any equipment, property or facilities used by Vendor, its agents, employees, subcontractors, and suppliers, or (v) failure of Vendor or its subcontractors to comply with applicable law. The Indemnified Parties shall not be indemnified or held harmless against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Indemnified Parties. Vendor’s indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Compact. 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 shall 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, Vendor acknowledges that the preceding sentence shall not limit the Compact's rights to seek indemnification from Vendor for consequential, punitive, or incidental damages or other such losses claimed by third parties.

7.4 **Liability.** Vendor's liability under this Agreement shall not be limited to the value of the Services rendered under this Agreement; further, Vendor's liability shall not be limited by the availability of its insurance coverage. In no case shall the Compact's liability to Vendor exceed the total price for the Services rendered under this Agreement.

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

7.6 **Acknowledgment of Joint Powers Entity (JPE) Status.** 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. 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. 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.** Vendor understands that the Compact is a governmental entity, and certain legal privileges, defenses and remedies are available to it. Nothing in this Agreement shall be construed to waive any of these privileges, defenses or remedies.

7.8 **Bond.** Vendor and Treasurer understand and agree that the Treasurer shall be required to post a bond in accordance with Massachusetts law. The Compact shall reimburse Vendor and/or Treasurer for the costs of the bond. Vendor and Treasurer each agree that in the event of a breach by Vendor or Treasurer under this Agreement, the bond shall be the last resort to cover losses related to such breach. Vendor shall be liable in the first instance.

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

This Agreement, all relations and any claims between the Parties shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of law. 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. Vendor shall diligently carry on the Services during any dispute resolution proceedings, unless otherwise agreed to by the Compact in writing.

## **SECTION 9 ASSIGNMENT AND SUBCONTRACTING**

None of the Services shall be subcontracted or assigned, in whole or in part, without the prior written approval of the Compact, in its sole discretion.

## **SECTION 10 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.

## **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 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](mailto: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 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.** Vendor will perform all Services under this Agreement as an independent contractor. 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 Vendor hereunder are individual and neither collective nor joint in nature.

Vendor and Treasurer each agree to be performing the Services as an officer of the Compact and is subject to all legal constraints that arise by the JPA and by law.

**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, Vendor agrees that if Exhibit A (Services) is primarily drafted by Vendor, any ambiguous terms contained therein shall be construed against 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.** 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. Vendor agrees that the Compact may audit Vendor's books, records, and other compilations of data associated with the performance of this Agreement to ascertain that the payments requested by Vendor represent the value of the Services. All records shall be kept for a period of seven (7) 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 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.

**11.8 Political Activity Prohibited.** None of the Services to be provided by 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 grassroots lobbying activities.

**11.9 Anti-Boycott Warranty.** Vendor hereby warrants that, during the term of this Agreement, neither it nor any “affiliate of 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 Vendor” shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by 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 Vendor.

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

**11.11 Procurement Process.** In entering into the Agreement, the Parties complied with the competitive procurement procedures required under G.L. c. 30B and have executed this Agreement in accordance therewith. If this Agreement was procured under G.L. c. 30B, Vendor represents that it has executed all certifications required by such statute, or will provide them concurrently with execution of this Agreement.

**11.12 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.

**11.13 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.

**11.14 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 or termination of this Agreement.

**11.15 Diversity Certification and Languages Questionnaire.** Vendor shall provide the information requested on Exhibit H and shall provide updated diversity information during the term of Agreement upon request by the Compact.

**11.16 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.

**11.17 Obligation to Modify.** Vendor understands and agrees that the Compact may submit this Agreement to the Massachusetts Department of Revenue (“MA DOR”) for its review and comment. Vendor agrees that it is obligated to modify this Agreement to conform to any guidance received from MA DOR to the extent that such modifications are commercially reasonable. The Parties shall use their best efforts to conform such modifications to the original intent of this Agreement and to do so in a timely fashion.

**11.18 Provisions Applicable to Treasurer.** The Treasurer shall not be a Party to this Agreement, but agrees to be personally bound by and to the following provisions: Sections 2.7 (Appointment of Treasurer), 4.5 (Fiduciary Duty), 7.7 (Waiver of Immunities), 7.8 (Bond), 11.3 (Independent Contractor) and the provisions applicable to the Trustee in the Declaration of Trust set forth in Exhibit A-2. By signing below, the Treasurer affirms that they have read the

entirety of this Agreement and understands and agrees his/her obligations under this Agreement.

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

**VENDOR**

**CAPE LIGHT COMPACT JPE**

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Margaret T. Downey  
Cape Light Compact JPE Administrator &  
Chief Procurement Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**TREASURER**

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

\_\_\_\_\_  
Date

## LIST OF EXHIBITS

Exhibit A - Services

A-1 Board Votes

A-2 Declaration of Trust

Exhibit B - Background Check Policy

Exhibit C - Compensation

Exhibit D - Intentionally Omitted

Exhibit E - Intentionally Omitted

Exhibit F - Tax Compliance Certification

Exhibit G - Certificate of Non-Collusion

Exhibit H - Diversity Certification and Languages Questionnaire

## **EXHIBIT A SERVICES**

The Services shall consist of the services, expertise, labor, materials, supplies and deliverables described in this Exhibit A.

[insert from RFQ]

Any terms not defined in this Exhibit shall have the meanings assigned to them in the main body of the Agreement.

In the event of a conflict between the terms and conditions in this description of Services and the terms in the body of the Agreement, the terms in the body of the Agreement shall control.

**EXHIBIT A-1**  
**BOARD VOTES**

**EXHIBIT A-2**  
**DECLARATION OF TRUST**



**CAPE LIGHT COMPACT JPE  
OTHER POST-EMPLOYMENT BENEFITS DECLARATION OF TRUST**

THIS OTHER POST-EMPLOYMENT BENEFITS DECLARATION OF TRUST is dated and made this \_\_\_\_ day of \_\_\_\_\_ 2023 by the Treasurer of the Cape Light Compact JPE (the “Compact”). This Trust Agreement is effective as of the date set forth in Section 18.6 below.

WHEREAS, the Compact is a joint powers entity and public employer pursuant to G.L. c. 40, §4A½;

WHEREAS, the Compact voted to accept the provisions of G.L. c. 32B, §20 and to establish an Other Post-Employment Benefits Liability trust fund;

WHEREAS, the Compact voted to designate the Compact’s Treasurer as Trustee of the trust fund;

WHEREAS, the Compact provides certain Other Post-Employment Benefits (“OPEB”) other than pensions, for eligible retired employees of the Compact and their dependents and/or beneficiaries;

WHEREAS, the Treasurer of the Compact wishes to establish an irrevocable trust to be known as the “Compact OPEB Trust” (the “Trust”) for the purpose of funding OPEB obligations as required by G.L. c. 32B, §20 and the Governmental Accounting Standards Board (“GASB”) statements in relation to OPEB; and

WHEREAS, the Trust is established by the Treasurer with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code (as defined below) and the regulations issued thereunder and as a trust for OPEB under G.L. c. 32B, §20.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth, the Trustee hereby establishes the Trust as follows:

**ARTICLE 1  
DEFINITIONS**

As used herein, the following terms shall have the following meanings:

- 1.1. “Act” means Chapter 32B, Section 20 of the Massachusetts General Laws, as amended by Chapter 218, Section 15 of the Acts of 2016 (the “Act”), as amended from time to time.
- 1.2. “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 1.3. “Compact” means the Cape Light Compact JPE.

1.4. “Dependents” has the meaning set forth in G.L. c. 32B, §2. As of the date of execution of this Declaration of Trust, the statutory definition of “dependents” is as follows: an employee’s spouse, an employees unmarried children under 19 years of age and any child 19 years of age or over who is mentally or physically incapable of earning the child’s own living; provided, however, that any additional premium which may be required shall be paid for the coverage of such child 19 years of age or over; provided further, that “dependent” shall also include an unmarried child 19 years of age or over who is a full-time student in an educational or vocational institution and whose program of education has not been substantially interrupted by full-time gainful employment, excluding service in the armed forces; provided further, that any additional premium which may be required for the coverage of such student shall be paid in full by the employee. The standards for such full-time instruction and the time required to complete such a program of education shall be determined by the appropriate public authority. This definition of “Dependents” shall be read as conforming to any applicable future amendments to the statutory definition of “Dependents” set forth in G.L. c. 32B, §2 (or any successor statute).

1.5. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute, and the regulations issued thereunder.

1.6. “GASB 74 and 75,” means Governmental Accounting Standards Board, Statement No. 74 (Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans) and Statement No. 75 (Accounting and Financial Reporting Postemployment Benefits Other Than Pensions).

1.7. “Governing Board” means the Governing Board of the Cape Light Compact JPE.

1.8. “Other post-employment benefits” or “OPEB,” means post-employment benefits other than pensions as that term is defined in GASB 74 and 75 (and/or including relative revisions or rescissions to those specific Statements, and subsequently issued GASB statements applicable to OPEB administration, management, and reporting) including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

1.9. “OPEB Trust Fund” means all the money and property, of every kind and character, including principal and income, held by the Trustee under the Trust.

1.10. “Retired Employees” means those persons who have retired from employment with the Compact and who are qualified to receive retirement benefits pursuant to G.L. c. 32 or as otherwise provided by law.

1.11. “Trust” means the Compact OPEB Trust.

1.12. “Trust Agreement” means this Declaration of Other Post-Employment Benefits Trust.

1.13. “Trustee” means the duly serving trustee designated by the Governing Board, as provided pursuant to Article 5, and any successor Trustee.

**ARTICLE 2  
PURPOSE**

2.1. This Trust Agreement is for the sole purpose of documenting the establishment of a Post-Employment Benefits Liability Trust Fund consistent with the requirements of the Act. The assets held in the Trust shall not be used for or diverted to any other purpose except as expressly provided herein and except as expressly allowed by the Act.

2.2. It is intended that the Trust shall meet the specified criteria set forth in GASB 74 and 75 and that it qualifies as an integral part of the Compact for all purposes under Section 115 of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

2.3. In fulfillment of the above-stated purpose, the Trust may engage in any lawful act or activity for which a trust may be formed under the Act and Massachusetts law, including, without limitation, holding and managing the Trust and engaging in all activities and transactions as deemed reasonably necessary, advisable, or convenient in connection with holding and managing the Trust in accordance with the conditions set forth herein, to the extent consistent with the Act.

**ARTICLE 3  
ESTABLISHMENT OF TRUST**

3.1. In order to implement and carry out the provisions of the Act, the Compact hereby establishes this Trust which shall be known as the "Compact OPEB Trust."

3.2. The OPEB Trust Fund shall be an expendable trust subject to appropriation.

3.3. The Trust shall be irrevocable, and none of the OPEB Trust Fund shall revert to the Compact until all benefits owed to Retired Employees have been satisfied or released.

3.4. The principal location of the Trust shall be the office of the Treasurer of the Compact, located at 261 Whites Path, Unit #4, South Yarmouth, MA 02664.

3.5. The Trustee hereby accepts the duties imposed upon them by this Trust Agreement and agrees to perform said duties as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement and the Act.

3.6. The Trustee shall hold legal title to all property of the Trust and neither the Compact, nor any employee, official, or agent of the Compact, nor any individual, shall have any right, title or interest to the Trust.

3.7. The assets in the OPEB Trust Fund shall be held solely to meet the Compact's OPEB obligations for Retired Employees and their Dependents.

3.8. The OPEB Trust Fund shall consist of such assets as shall from time to time be paid or delivered to the Trustee by the Compact, which together with all earnings, interest, profits, increments and accruals thereon, without distinction between principal and such income, shall constitute the Trust hereby created and established. Any obligation of the Compact to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB. Any contributions made by the Compact or by non-employer contributing entities and the earnings on those contributions are irrevocable.

#### **ARTICLE 4 TRUST FUNDING**

4.1. The OPEB Trust Fund shall be credited with all amounts appropriated or otherwise made available by the Compact as a contribution to the Trust for the purposes of meeting the current and future OPEB costs payable by the Compact, or any other funds donated, gifted or granted specifically to the Compact for the Trust, or to the Trust directly.

4.2. The Trustee shall be accountable for all delivered contributions but shall have no duty to determine that the amounts received are adequate to provide the OPEB determined by the Compact.

4.3. The Trustee shall have no duty, expressed or implied, to compel any contribution to be made by the Compact, but shall be responsible only for the corpus received and held by the Trustee under this Trust Agreement.

4.5. The obligation of the Compact to pay or fund OPEB obligations, if any, shall be determined by the Compact or applicable law. Distributions of the corpus of the Trust are not debts of the Compact within the meaning of any constitutional or statutory limitation or restriction. The Compact's obligation to pay OPEB is not a debt of the Trust.

4.6. Earnings or interest accruing from investment of the OPEB Trust Fund shall be credited to the Trust. Amounts in the OPEB Trust Fund, including earnings or interest, shall be held for the exclusive purpose of, and shall be expended only for, the payment of the costs payable by the Compact for OPEB obligations to Retired Employees and their Dependents and/or beneficiaries, and defraying the reasonable expenses of administering any plan providing OPEB as provided for in this Trust Agreement.

4.7. Amounts in the OPEB Trust Fund shall in no event be subject to the claims of the Compact's creditors, general or otherwise. The OPEB Trust Fund shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of the Compact, or of Retired Employees or their Dependents and/or beneficiaries who are entitled to OPEB.

**ARTICLE 5  
TRUSTEE**

- 5.1. The Trust shall be administered by a Trustee, who shall be the Treasurer of the Compact, pursuant to G.L. c. 32B, §20(d) pursuant to the vote of the Governing Board on October 11, 2023.
- 5.2. Upon resignation from or sooner termination or removal from employment/outside engagement of the individual serving as Treasurer of the Compact, the position of Trustee shall be held by the successor Treasurer.
- 5.3. Each successor Trustee shall accept in writing the office of Trustee and the terms and conditions of this Trust Agreement.
- 5.4. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust's principal office location any and all records, documents, or other documents in its possession or under its control belonging to the Trust.
- 5.5. Upon appointment of any successor Trustee, such individual shall, immediately upon appointment as a successor Trustee, become vested with all of the property, writings, powers, duties and immunities of a Trustee hereunder, and notice of the appointment of the successor Trustee shall be given to any bank or banks used as a depository for the OPEB Trust Fund, as well as to any other institution or person holding or investing any of the property and assets of the OPEB Trust Fund.

**ARTICLE 6  
POWERS, DUTIES AND RESPONSIBILITIES OF THE TRUSTEE**

- 6.1. The Trustee shall have the general supervision of the management, investment, and re-investment of the OPEB Trust Fund and shall have all of the powers and duties to control and manage the Trust and the OPEB Trust Fund as set forth in the Act. In addition to the powers set forth elsewhere in this Trust Agreement or in the Act, the powers of the Trustee, in connection with their managing and controlling the Trust and the OPEB Trust Fund, shall include, but shall not be limited to, the following to the extent consistent with the Act:
- 6.1.1. To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the Trustee shall comply with the provisions of Article 7 of this Trust Agreement, applicable law and any investment policy adopted by the Trustee concerning the investment and management of the OPEB Trust Fund.
- 6.1.2. To hold cash, uninvested, for such length of time as the Trustee may determine without liability for interest thereon.

6.1.3. To employ reputable and knowledgeable investment Vendors to assist in determining appropriate investments and pay for those services from the OPEB Trust Fund if authorized by the Governing Board.

6.1.4. To continue to have and to exercise, after the termination of the Trust as permitted by law and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustee hereunder.

6.1.5. To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.

6.1.6. To maintain bank accounts for the administration of the Trust and the OPEB Trust Fund and to authorize other appropriate persons to make payments from any appropriate account for purposes of the Trust.

6.1.7. To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the OPEB Trust Fund.

6.1.8. To adopt investment policies, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as deemed advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement, and the Act.

6.1.9. To the extent consistent with the Act, to enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as, in their discretion, may deem necessary or advisable.

6.1.10. To accept and/or receive gifts, grants, contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.

6.1.11. To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.

6.1.12. To the extent consistent with the Act, to compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or OPEB Trust Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust.

6.1.13. To serve as custodian with respect to the Trust assets, in accordance with the Act.

6.1.14. To comply with all requirements imposed by applicable provisions of law.

6.1.15. If so authorized in accordance with G.L. c. 32A, §24 and the Act, take all steps necessary to invest the OPEB Trust Fund in the State Retirement Benefits Trust Fund, established pursuant to G.L. c. 32A, §24.

6.1.16. To keep true and accurate books and account and records of all of the transactions of the OPEB Trust Fund.

6.1.17. To issue such financial statements as requested by the Governing Board. .

6.1.18. To delegate any of their ministerial powers and duties to any agent or employee of the Compact, to the extent consistent with the Act.

6.1.19. To do all acts, whether or not expressly authorized herein, which the Trustee may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.

## **ARTICLE 7 APPROPRIATIONS FROM THE OPEB TRUST FUND**

7.1. Amounts from the OPEB Trust Fund may be appropriated by a two-thirds vote of the Governing Board to pay the Compact's share of health insurance benefits for Retired Employees and Dependents and/or beneficiaries upon certification by the Trustee that such amounts are available in the OPEB Trust Fund.

7.2. The Treasurer, after consulting with the Governing Board, shall determine the amount to be appropriated from the OPEB Trust Fund to the annual budget for OPEB costs and notify the Trustee of that amount at the earliest possible opportunity in the annual budget cycle.

7.3. Upon the notification described in Section 7.2, the Trustee shall take diligent steps to certify those funds as available for appropriation by vote of the Governing Board available by the time the appropriation would become effective or provide an explanation why the funds are or will not be available or should not be made available.

## **ARTICLE 8 LIMITATION OF TRUSTEE'S POWERS, DUTIES AND RESPONSIBILITIES**

8.1. Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustee other than those set forth in this Trust Agreement, or the Act.

8.2. The Trustee shall: (a) act in a fiduciary capacity; (b) discharge their duties for the primary purpose of enhancing the value of the OPEB Trust Fund; (c) act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and with like aims; and (d) diversify the investments in the OPEB Trust Fund to

minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

8.3. The Trustee shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA.

8.4. The Compact, in its discretion, also may purchase liability insurance for the Trustee, and as the Compact may elect, for any person or persons who serve in a fiduciary capacity with respect to the Trust.

8.5. The Compact shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustee, any insurance company, or any beneficiary of the OPEB Trust Fund. The Trustee shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the Compact, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.

8.6. The Trustee shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to G.L. c. 44, §54.

## **ARTICLE 9 LIABILITY OF THE TRUSTEE**

9.1. The Trustee shall not be personally liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith and with the reasonable care typically exercised by trustees of similarly situated trust funds, nor for any action taken or omitted by any agent or employee selected with reasonable care, and the duties and obligations of the Trustee hereunder shall be expressly limited to those imposed upon the Trustee by this Trust Agreement.

9.2. No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.

9.3. In any civil action brought against the Trustee, acting within the scope of their official duties, the defense or settlement of which is made by legal counsel for the Compact, the Trustee shall be indemnified from the OPEB Trust Fund for all expenses incurred in the defense thereof and for damages to the same extent as provided for public employees in G.L. c. 258. If the Treasurer is an independent contractor (and not a treasurer of one of the Compact's participating governmental units as permitted by G.L. c. 40, §4A½;), the Trustee shall first look to its own insurance policies to cover such damages and expense costs. No Trustee shall be indemnified for expenses in an action or damages awarded in such action in which there is: (a) a breach of fiduciary duty, (b) an act of willful dishonesty, or (c) an intentional violation of law by the Trustee.



**ARTICLE 10  
TAXES AND EXPENSES**

10.1. It is intended that the Trust will be a Code Section 115 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustee shall use the assets of the OPEB Trust Fund to pay for any taxes owed.

10.2. To the extent consistent with the Act, all reasonable costs and expenses of managing and administering the Trust and the OPEB Trust Fund, and reimbursement for reasonable fees incurred through the use of third-party vendors or agents, shall be paid from the OPEB Trust Fund unless the Compact chooses to pay the expenses directly.

10.3. If the Treasurer is an independent contractor (and not a treasurer of one of the Compact's participating governmental units as permitted by G.L. c. 40, §4A½), the Trustee shall be compensated for their trust related duties in accordance with their contract with the Compact.

**ARTICLE 11  
ACCOUNTS**

11.1. The Trustee shall keep complete and accurate accounts of all of the Trust's receipts, investments and disbursements under this Trust Agreement. Such records, as well as all other Trust records, shall be retained and made available for public inspection and or copying in accordance with the requirements of the Public Records Law, G.L. c. 66, §10 and G.L. c. 4, §7, clause 26th, as amended from time to time, and their implementing regulations. The Compact's Governing Board, officers, agents and representatives shall be entitled to inspect such records upon request at any reasonable time.

11.2. The books and records of the Trust shall be audited annually in accordance with accepted accounting practices by an independent auditor, which is an independent public accounting firm within the meaning of the American Institute of Certified Public Accountants' Code of Professional Conduct. The results of the audit shall be provided to the Compact at the same time as it is presented to the Trustee.

11.3. The OPEB Trust Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit, and any other audits that may be required by law or deemed desirable by the Governing Board.

**ARTICLE 12  
ANNUAL REPORTS**

12.1. The Trustee shall furnish to the Compact annually by the end of the fiscal year, or more frequently if the Compact so requests, a statement of account showing the condition of the OPEB Trust Fund and all investments, sales, income, disbursements and expenses of the Trust and the OPEB Trust Fund.

12.2. The Compact shall comply with the requirements of G.L. c. 32B, §20A with regard to filing reports with the Commonwealth of Massachusetts Public Employee Retirement Administration Commission.

**ARTICLE 13  
INVESTMENT OF OPEB TRUST FUND**

13.1. The Trustee hereby authorizes and directs the Treasurer to invest and reinvest the amounts in the OPEB Trust Fund not needed for current disbursement, consistent with Section 8.6 above.

**ARTICLE 14  
CUSTODY OF THE OPEB TRUST FUND**

14.1. The Trustee shall be the custodian of the OPEB Trust Fund and shall be bonded in any additional amounts necessary to protect fund assets pursuant to the Act.

14.2. All funds in the OPEB Trust Fund shall be accounted for and reported separately from all other funds of the Compact.

14.3. The Trustee shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the OPEB Trust Fund, and the Trustee may draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

**ARTICLE 15  
AMENDMENTS**

15.1. The Trust may only be amended as set forth herein. The Compact may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the standards set forth in GASB statements concerning OPEB trust funds to be treated as funded through a qualifying trust or equivalent arrangement.

15.2. This Trust Agreement may be amended, but not revoked, from time to time by the Governing Board, subject to the following limitations:

15.2.1. The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the Compact's OPEB obligations, and reasonable expenses of administering the Trust.

15.2.2. Any amendment to this Trust Agreement shall be executed in writing.

15.2.3. Any amendments to this Trust Agreement shall be filed with the secretary/clerk of the Governing Board and take effect ninety (90) days after the date filed, unless the Governing Board votes to disapprove the declaration or amendment within that period.

**ARTICLE 16  
MERGER**

16.1. The Compact may provide for the merger of the Trust with one or more other trusts established by the Compact or other government entities for similar purposes as may be provided by law.

**ARTICLE 17  
SEVERABILITY OF INVALID PROVISIONS**

17.1. If any provision of this Trust Agreement is determined invalid, illegal, or unenforceable for any reason, then the provision shall be severed from the remaining provisions of the Trust Agreement and the remaining parts of the Trust Agreement shall be construed to give the maximum practical effect to the purposes stated herein, as if the invalid, illegal, or unenforceable provision was never a part.

**ARTICLE 18  
MISCELLANEOUS**

18.1. This Trust Agreement shall be interpreted, construed and enforced, and the Trust hereby created shall be administered in accordance with and governed by the laws of the United States and of the Commonwealth of Massachusetts.

18.2. The titles to Articles of this Trust Agreement are placed herein for convenience of reference only, and the Trust Agreement is not to be construed by reference thereto.

18.3. No person shall be obliged to see to the application of any money paid or property delivered to the Trustee, or as to whether or not the Trustee has acted pursuant to any authorization herein required, or as to the terms of this Trust Agreement. In general, each person dealing with the Trustee may act upon any advice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustee that they are acting in accordance with this Trust Agreement shall be conclusive in favor of any person relying thereon.

18.4. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart, which counterparts may be executed and/or transmitted electronically via facsimile, email of a portable document format ("PDF"), or other electronic means.

18.5. Until advised to the contrary, the Trustee may assume this Trust is entitled to exemption from taxation under Section 115 of the Code or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Code.

18.6. This Trust Agreement and any amendments thereto shall be filed with the Governing Board and the Secretary of the Compact and shall take effect ninety (90) days after the date filed.

**ARTICLE 19**  
**PARAMOUNT CLAUSE**

Notwithstanding anything to the contrary set forth in this Trust Agreement, the Trustee shall have all the powers, duties and obligations set forth in the Act and shall have no powers, duties or obligations which are not consistent with the provisions of the Act, it being the intent that this Trust Agreement and all of its contents shall in all respects be consistent with the Act.

IN WITNESS WHEREOF, the Trustee has executed this Trust Agreement as of the day and year first above written.

\_\_\_\_\_  
[Name], Trustee

**EXHIBIT B**  
**BACKGROUND CHECK POLICY**

*REQUIREMENTS FOR VENDOR EMPLOYEE  
AND SUBCONTRACTOR BACKGROUND CHECKS*

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

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

To the extent 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, Vendor shall notify the Compact so that Vendor and the Compact may discuss appropriate resolution of the issue.

Vendor must complete a background check before any 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. A 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.

Vendor must be able to evidence that it has verified the identification of all 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.

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

All 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 Vendor owned/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 Vendor to validate this requirement.

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 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, Vendor shall immediately notify the Compact. The Compact will determine if Vendor Employee should be removed from the work site.

In the event Vendor would like to utilize Vendor Employee to provide Services under the Agreement despite adverse findings from any background check performed in accordance with these requirements, 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 Vendor Employee should be allowed to perform Services under the Agreement, and shall provide its determination in writing to Vendor.

The Compact reserves the right to perform, at its sole cost, audits of Vendor's background check program and records for any 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 Vendor must comply with. Any revisions to these requirements will be provided in writing to Vendor.

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

**EXHIBIT C**  
**COMPENSATION**



**EXHIBIT D**

**INTENTIONALLY OMITTED**

**EXHIBIT E**  
**INTENTIONALLY OMITTED**

**EXHIBIT F**

**TAX COMPLIANCE CERTIFICATION**

Pursuant to 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 of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

TAXPAYER ID: \_\_\_\_\_

**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.

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Signature of individual submitting bid or proposal

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Vendor Name

**EXHIBIT H**  
**DIVERSITY CERTIFICATION AND**  
**LANGUAGES QUESTIONNAIRE**

**1. Has Vendor been certified by the Massachusetts Diversity Office (SDO) as one of the following:**

Minority (MBE) business Y / N

Women (WBE) business Y / N

Portuguese (PBE) business Y / N

Veteran (VBE) business Y / N

If yes, please confirm that Vendor is listed in the Commonwealth of Massachusetts Directory of Certified Businesses on the SDO's website or provide other evidence of certification. Y / N

**2. Is Vendor a non-profit organization (NPO) that has been certified by the SDO as a M/NPO, W/NPO or M/W/NPO?**

M/NPO     W/NPO     M/W/NPO

If yes, please confirm that Vendor is listed in the Commonwealth of Massachusetts Directory of Certified Businesses on the SDO's website or provide other evidence of certification. Y / N

**3. Has Vendor been certified by any of the following certain third-party organizations recognized by the SDO as providing valid diversity certifications?**

Greater New England Minority Supplier Development Council (GNEMSDC) Y / N

Center for Women & Enterprise (CWE) (New England – WBENC) Y / N

City of Boston Y / N

VetBiz/U.S. Department of Veterans Affairs Y / N

NGLCC – National LGBT Chamber of Commerce Y / N

Disability: IN (formerly The US Business Leadership Network – USBLN) Y / N

UCP – MassDOT Office Y / N

Massport Y / N

If yes, please confirm that Vendor is listed in the Commonwealth of Massachusetts Directory of Certified Businesses on the SDO's website or provide other evidence of certification. Y / N

4. **Is Vendor federally certified as a Disadvantaged Business Enterprise (DBE)?** Y / N

If yes, please confirm that Vendor is listed in the Commonwealth of Massachusetts Directory of Certified Businesses on the SDO's website or provide other evidence of certification. Y / N

5. **Please provide any other pertinent information related to diversity certification (e.g., Vendor is in the process of applying for one or more of the above certifications):**

6. **Does Vendor provide the Services set forth in Exhibit A in one more of the following languages: Spanish, Portuguese, Mandarin, Cantonese, Haitian Creole, or other?**

**If yes, please list the languages:**