

INSTALLATION SERVICES AGREEMENT

This INSTALLATION SERVICES AGREEMENT (“Agreement”) is made by and between the Cape Light Compact, an inter-governmental association and aggregator formed pursuant to Massachusetts law, together with its fiscal agent, Barnstable County (collectively, the “Compact”), and [insert] (“Installer”). The Compact and Installer 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 (the “Member Municipalities”), entered into an inter-governmental agreement, as amended from time to time, to act together as the Compact;

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 promoting energy efficiency and the reduction of energy bills;

WHEREAS, the Compact is operating an Energy Efficiency Plan approved by the Massachusetts Department of Public Utilities on January 31, 2013, DPU 12-107, for plan years [2013 through 2015];

WHEREAS, Barnstable County (the “County”) provides fiscal and administrative services to the Compact, pursuant to an Administrative Services Agreement dated April, 2000, as may be amended from time to time;

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

WHEREAS, Installer has the expertise required to provide the Compact with the Installation Services required pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, Installer 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 or for convenience. Installer 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 Installer, 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 incurs related to engagement of a substitute Installer.

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 Installer. The Compact shall provide written notice of such termination or suspension to Installer. In the event of such termination or suspension, Installer shall be paid for all authorized, satisfactory (in the reasonable discretion of the Compact) Installation 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 the Agreement.

SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

2.1 **Installation Services.** Installer 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 "Installation Services"). All such Installation Services and deliverables shall be designed to achieve the anticipated outcomes specified in the description of Installation 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 Installation Services to be performed hereunder. Such changes must be evidenced in written amendments to this Agreement. Any Installation Services performed or proposed by Installer shall not be reimbursed unless they are approved in writing by the Compact prior to their rendering.

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

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

2.5 Conflicts of Interest. Installer 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 Installation Services. Installer agrees to diligently serve and endeavor to further the best interests of the Compact, as known or made known to Installer. Installer 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. Installer further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

2.6 Points of Contact. Installer 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 Installation 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 Installer for all issues arising under this Agreement.

2.7 Safety. To the fullest extent allowed by law, Installer 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 Installer, the Compact, and Customers. Systems that have been disabled or otherwise affected in the course of performance of the Installation Services will be left in a safe condition. Out of service systems will be tagged by Installer in a manner accepted by OSHA, state and local authorities, and the Compact. Installer 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, Installer 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 Installer 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 Installer.

Installer 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 Installer encounters any asbestos or other hazardous substances in the course of the Installation Services, Installer shall immediately notify the Compact and any agency required by state or federal law, and shall stop any Installation Services that may disturb, damage or cause a release of asbestos or hazardous substances until Installer receives written instruction from the

Compact. If any hazardous substances are to be handled in the execution of the Installation Services, Installer 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) INSTALLER, b) ANY EMPLOYEE, CLIENT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF INSTALLER, 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.** Installer 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 Installation Services covered by this Agreement are completed, Installer shall remove from the work sites, to the Compact's satisfaction, all of Installer's rubbish, debris, materials, tools and equipment, and if Installer fails to do so promptly, the Compact may remove the same to any place of storage, or any dumping ground, at Installer's risk and expense and without incurring any responsibility to Installer 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 Installer, and any excess shall be immediately due from Installer to the Compact.

SECTION 3 COMPENSATION AND RELATED MATTERS

3.1 **Rates of Compensation; Prevailing Wage.** Installer shall be compensated by the Compact for the Installation Services in accordance with the terms and rates set forth in Exhibit B hereto. The Compact may reject any invoices using billing rates that are not consistent with Exhibit B, unless the Compact has previously accepted such substitute rates in a written amendment to this Agreement. To the extent that it applies to the Installation Services (e.g., in the implementation of energy efficiency services that result in physical alterations to public buildings), Installer 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 Installation Services are performed under prevailing wage rates, Installer 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. Installer shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by it in connection with the Installation Services, and such records shall be preserved at least two (2) years from the date of payment.

3.2 **Invoicing and Payment.** Installer 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. Payment may be contingent upon final inspection and/or acceptance of the Installation Services. Upon request, Installer shall provide to the Compact all backup documentation

required to establish the value of the Installation Services in place as represented by Installer's monthly invoices.

3.3 Effect of Payment. The Compact shall not be deemed to have accepted any improper Installation Services, materials or performance by virtue of any payment made to Installer. 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 Installation Services. Installer shall not be entitled to any payment for any partial performance except for progress payments made in accordance with this Agreement. Installer understands that the Compact is contracting for nothing less than full, complete and timely performance of the Installation Services, and with the express agreement that the Compact shall be obliged only upon final completion of the Installation 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 Installation Services not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims by other parties against Installer or the Compact in connection with the Installation Services; (iii) Installer's failure to make payments properly to subcontractors for materials, labor or equipment; (iv) unsatisfactory performance of the Installation Services; (v) Installer's failure to pay any amounts due to the Compact; or (vi) Installer'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 Installation Services or that the Installation 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 Installer of the grounds for any withholding. When Installer 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. Installer 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 Installation 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, Installer 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. Upon request by the Compact, Installer 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 Installer, 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 Installation

Services and the warranty period described below. Failure to provide the requested bonds, prior to the commencement of the Installation 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 Installer.

Performance Bond	<input type="checkbox"/> required	<input type="checkbox"/> not required
Payment Bond	<input type="checkbox"/> required	<input type="checkbox"/> 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 Installer (except as specifically approved, in writing, by the Compact in advance of the Installation Services). Installer 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. Installer'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 Installer's surety companies.

3.7 County's Role as Fiscal Agent. Installer understands and agrees that the County is executing this Agreement as the Compact's fiscal agent. Should the Compact terminate the County's fiscal agent services, the Compact may, at its sole discretion, substitute a successor fiscal agent upon written notice to Installer. Installer agrees that the validity and/or enforceability of this Agreement shall not be affected by such termination or substitution.

SECTION 4 PERFORMANCE STANDARDS

4.1 General Performance Standard and Warranty. Installer assumes professional and technical responsibility for the performance of the Installation Services in accordance with the terms of this Agreement and the highest professional standards and practices, and any additional guarantee or warranty specified in the description of Installation Services as set forth in Exhibit A. If, during the performance of the Installation Services or within one (1) year following completion thereof, the Installation Services fail to meet such standards, Installer shall promptly and timely (no more than five business days) furnish all remedial services and materials necessary to correct such deficiencies at Installer's sole cost and expense. Installer shall also be responsible for reimbursement of the Compact's losses related to such defective Installation Services during the warranty period.

4.2 Representations, Warranties and Continuing Covenants. In performing its obligations hereunder during the term of this Agreement, Installer 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 Installation Services; (iii) spend such time in performing the Installation 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 Installation Services to the Compact; (v) comply with applicable laws and professional licensing requirements; and

(vi) ensure that it validly owns or licenses all intellectual property used in the performance of the Installation 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 Installation Services. Installer is required to correct in a prompt and timely fashion any Installation Services rejected by the Compact. Installer shall correct at its own cost and bear the expense of additional services performed to correct non-conforming Installation Services. If Installer 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 Installation Services or any separable part thereof, and complete the same or have the same completed at Installer's expense. In taking over, the Compact shall have the right, for the purpose of completing the Installation Services, to take possession of all equipment, supplies and materials belonging to Installer and purchased or leased for the performance of the Installation Services. For such purpose, this Agreement shall be construed as an assignment by Installer to the Compact of said equipment, supplies and materials.

4.4 Periodic Reporting. Upon the request of the Compact, the Installer shall promptly submit a report detailing the status of the Installation 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. Installer agrees that any work of authorship created or developed by Installer during performance or delivery of services to the Compact, either individually or jointly with others, in the course of the rendering the Installation 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, Installer hereby irrevocably assigns, transfers, and conveys to the Compact all of Installer'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, Installer agrees to execute any documents or take any action reasonably requested by the Compact to perfect the Compact's ownership of any such property. Installer further agrees that, to the best of its knowledge, all work created or developed by Installer will be original and non-infringing.

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

SECTION 6 INSURANCE

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

(a) Until completion of the Installation Services:

i. Workers' Compensation and Employers' Liability Insurance covering *each and every worker employed in, about or upon the Installation Services*, as provided for in each and every statute applicable to the Workers' Compensation and Employers' Liability Insurance.

ii. 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.

iii. Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Installation 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.

iv. Umbrella Liability Insurance covering over underlying General Liability, Auto Liability and Employers' Liability Insurance with a minimum limit of \$5,000,000.

v. Professional Liability Insurance covering Installer's errors and omissions relating to the Installation Services if the Installation 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 Installation Services are complete:

i. 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.

ii. Professional Liability Insurance if the Installation 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.

Installer'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 Installer's insurance companies.

Installer 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. Installer 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.

Installer shall not begin rendering Installation 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 Installer and Installer 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 Installation Services, Installer 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. Installer shall be solely responsible for tracking and reporting to the Compact the expiration of the policies shown on the insurance certificate(s) provided.

Installer shall be solely responsible for any damage to or loss to its equipment or materials regardless of its insurance coverage.

SECTION 7 INDEMNIFICATION BY INSTALLER¹ AND DAMAGES FOR BREACH

7.1 **Indemnification.** To the fullest extent allowed by law, Installer (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Compact, the individual Member Municipalities (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact, and each individual Member Municipality), 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 Installer (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 Installer (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. Installer's indemnification obligation includes claims related to the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. Installer's indemnification obligation

¹ Note to Installer: In accordance with guidance received from the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

is not limited in any way by the amount or type of damages or compensation payable by the Compact. Installer 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, Installer acknowledges that the preceding sentence shall not limit the Compact's rights to seek indemnification from Installer for consequential, punitive, or incidental damages or other such losses claimed by third-parties.

7.4 **No Cap on Installer's Liability².** Installer's liability under this Agreement shall not be limited to the value of the Installation Services rendered under this Agreement; further, Installer's liability shall not be limited by the availability of its insurance coverage.

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. Installer shall diligently carry on the Installation 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 Installation 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 Installer from any

² Note to Installer: 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.

obligation or liability under this Agreement except as specifically set forth in the instrument of approval. Installer 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.

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, and acknowledged by Installer on [insert] and any subsequent non-disclosure agreements in which the Compact is a party and that involves the Installation Services or obligations under this Agreement.

10.2 Customer Information. To the extent Installer (or its subcontractors or any other party acting by or on behalf of Installer) is provided or has access to Customer information, the following provisions apply: Installer warrants and represents that the Installer and its subcontractors and all other persons or entities having access to the Customer information by or through the Installer 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 Installation 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. Installer 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 Installer shall provide the Compact with detailed information and documentation regarding such safeguards, and with certifications regarding the same by an authorized officer of the Installer, and the Compact shall have the right to monitor and audit the compliance of the Installer 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 Installer shall retain no copy or other record thereof. Installer 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. Installer 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 Installer to:

[insert]

if to the Compact to:

Margaret T. Downey
Compact Administrator
Cape Light Compact
P.O. Box 427
Barnstable, MA 02630
mdowney@barnstablecounty.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, the language in the exhibits shall be disregarded. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

11.3 **No Joint Venture.** Installer will perform all Installation Services under this Agreement as an independent contractor. 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 Installer 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.

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. Installer 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. Installer agrees that the Compact may audit Installer's books, records, and other compilations of data associated with the performance of this Agreement to ascertain that the payments requested by Installer represent the value of the Installation 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. Installer shall not solicit work from a Customer for two (2) years following termination of this Agreement for any reason, unless Installer 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 Installer 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. Installer may directly perform services for a Customer if such Customer has solicited Installer. Installer shall not engage in targeted solicitations using Customer information obtained as a result of its performance of the Installation Services or otherwise related to this Agreement. The prohibitions in this section shall not apply to general marketing campaigns of Installer.

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 Installer 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. Installer hereby warrants that, during the term of this Agreement, neither it nor any “affiliate of the Installer,” 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 Installer” shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by Installer, or by a person or persons or business entity or entities that directly or indirectly own at least 51% of the ownership interests of Installer.

11.11 Non-Discrimination in Employment and Affirmative Action. Installer 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. Installer 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, Installer represents that it has executed all certifications required by such statute, or will provide them concurrently with execution of this Agreement.

11.13 Third-Party Beneficiaries. The County and each individual Member Municipality 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 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.

11.16 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.

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

INSTALLER

CAPE LIGHT COMPACT

Signature
Print Name: _____
Title: _____

Signature
Margaret T. Downey
Compact Administrator/Chief Procurement Officer

Date

Date

BARNSTABLE COUNTY, *as Fiscal Agent for the Cape Light Compact:*

Sheila Lyons
Chair

Mary Pat Flynn
Vice Chair

Leo G. Cakounes
Commissioner

Date: _____

LIST OF EXHIBITS

- Exhibit A - Installation Services
- Exhibit B - Compensation
- Exhibit C - Background Check Policy
- Exhibit D - Pre-approved Contractors

EXHIBIT A
INSTALLATION SERVICES

EXHIBIT B
COMPENSATION

EXHIBIT C
BACKGROUND CHECK POLICY

*REQUIREMENTS FOR INSTALLER EMPLOYEE
AND SUBCONTRACTOR BACKGROUND CHECKS*

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

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

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

Installer must complete a background check before any Installer 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 Installer 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.

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

Installer must ensure that all Installer 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 Installer has had a pre-employment criminal history check process in place and can provide documented evidence to the Compact that Installer Employees working under the Agreement have been subjected to equivalent criminal history check, then additional checks are not necessary. If Installer 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 Installer to remove such Installer Employee from the work site. If at any time during the term of the Agreement, Installer becomes aware of information concerning a criminal conviction of Installer Employee that would fit the above criteria for reporting to the Compact, Installer shall forward this information to the Compact and the Compact shall determine whether to remove the Installer Employee from the work site.

All Installer 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 Installer-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 Installer to validate this requirement.

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

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

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

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

EXHIBIT D
PRE-APPROVED CONTRACTORS