

CAPE LIGHT COMPACT JPE

REQUEST FOR PROPOSALS FOR MARKETING SERVICES

SECTION 1. GENERAL OVERVIEW

A. Background

The Cape Light Compact JPE (the “Compact”) is a regional energy services governmental organization comprised of and serving its twenty-one towns of Cape Cod and Martha’s Vineyard. The Compact is a joint powers entity and municipal aggregator pursuant to M.G.L. c. 40, §4A ½ and M.G.L. c. 164, §134. More information about the Compact is available at <https://www.capelightcompact.org>.

The Compact’s mission is to serve its 210,000 customers through the delivery of proven energy efficiency programs, effective consumer advocacy and renewable competitive electricity supply.

The Compact is operating an Energy Efficiency Plan which is periodically updated and approved by the Massachusetts Department of Public Utilities.

Through this Request for Proposals (“RFP”), the Compact seeks marketing services related to these energy efficiency offerings, as well as the power supply program.

B. Project Overview/Scope of Work

The Compact’s Chief Procurement Officer hereby requests proposals from qualified professionals (“Proposers”) to provide marketing services. The Compact may award one or more of the two enumerated scopes to one or more Proposers.

See Attachment A to this RFP for more details on the Project and scopes of work requested.

The Compact is strongly committed to ensuring that the Project provides opportunities for businesses and individuals who historically have been underrepresented in the energy efficiency contracting field. In accordance with applicable laws, the Compact seeks proposals that incorporate participation by minority-owned and women-owned business enterprises (“M/WBEs”) in as many aspects of the Project as possible. In issuing this RFP, the Compact reviewed the Massachusetts Supplier Diversity Office (“SDO”) list of certified businesses to identify potential Proposers.

SECTION 2. RFP SCHEDULE AND RELATED MATTERS

A. RFP Schedule

The following is a tentative schedule noting target dates for phases and tasks to be completed:

July 21, 2025	Publication of RFP advertisement
July 21, 2025	RFP issued
August 8, 2025	Written inquiries due by 4:00 PM
August 15, 2025	Responses to inquiries posted
September 19, 2025	Proposals due
October 6, 2025 – October 10, 2025	Vendor interviews (if needed)
October 17, 2025	Vendor selected
November 17, 2025	Kick-off meeting and transition (tentative)
January 1, 2026	Project implementation (tentative)

B. Questions and Clarifications

Questions or clarifications related to this RFP must be submitted to the Chief Procurement Officer in writing prior to the deadline stated above in order to afford the Compact adequate time to respond with a correction or additional information prior to the deadline for submission of Proposals. Requests for clarification or interpretation must specifically reference the relevant RFP section number, unless such request is of general application (in which case the request for clarification should so note). Should it be found necessary or useful, a written addendum will be incorporated into this RFP. Parties who have received a copy of this RFP will be notified of issuance of an addendum.

C. Interviews

The Compact may elect to interview Proposers in person or via Zoom teleconference. In the event that the Compact elects to do so, interviews shall be given to the top three Proposers ranking highest in comparative evaluation criteria as set forth in this RFP. The Compact strongly recommends that the key staff designated in its Proposal represent the Proposer at the interview presentation.

D. Notification of Contract Award

All Proposers will be notified of the contract award decision within forty-five (45) days of the date Proposals are due to the Compact unless otherwise notified by the Compact. In no case will the award be made beyond forty-five (45) days unless Proposer agrees to extend the period of time in which its Proposal is valid.

If a contract is not executed by the chosen Proposer by January 1, 2026, the Compact reserves the right to negotiate with alternative Proposer(s) in order to execute contract(s) by January 23, 2026

SECTION 3. **GENERAL QUALIFICATIONS**

The following general qualifications apply to all vendors engaged by the Compact and parties who cannot meet these requirements should not submit Proposals:

A. The Proposer must be organized or registered to do business in Massachusetts, and in good standing with the Secretary of the Commonwealth.

B. The Proposer must be an individual or established business, corporation, partnership, sole proprietorship, limited liability company, joint venture, firm, agency, or other entity engaged in the regular practice of providing such services as the principal business for which the entity was organized.

C. The Proposer must have all necessary current licenses and registrations required to perform the requested services.

D. The Proposer cannot be debarred under M.G.L. c. 149, §44C, or disqualified under M.G.L. c. 7, §38H, as applicable.

E. The Proposer must be able to demonstrate that it is financially solvent.

SECTION 4. SPECIFIC QUALIFICATIONS

The Compact has identified the following specific qualifications that are unique to the Project. Parties who cannot meet these requirements should not submit Proposals:

- A minimum of having successfully delivered at least two (2) similar projects and/or scope areas or equivalent experience during the past five (5) years.
- Proposer must have demonstrated experience in: media buys and management; developing and executing a comprehensive marketing plan; and analysis of media performance metrics.

SECTION 5. CONTRACT

The Compact's standard form of agreement is set forth as Attachment B to the RFP (the "Contract"). The Compact reserves the right during Contract negotiations to expand, modify, supplement and/or add to the form of Contract.

The Contract term shall be tied to contract deliverables, but in no event shall it exceed two (2) years.

The following Contract terms are considered to be material and are generally non-negotiable:

Payment Terms. In accordance with municipal finance laws, the Compact cannot hire vendors on a retainer basis and prepayment for services is prohibited. The Compact will only pay for services satisfactorily rendered.

Termination for Convenience. The Compact will have the right to terminate the Contract for convenience.

Indemnification. Proposers will be required to indemnify the Compact. The following types of indemnity-related contract provisions will not be accepted by the Compact: (i) provisions that limit Proposer's indemnity provisions to third-party claims only; (ii) provisions that require the Compact to indemnify or defend the Proposer; and (iii) provisions that authorize the Proposer to have sole control over the defense or settlement of claims against the Compact.

Liability. The Compact's liability will be limited to the Contract price. The following types of limitation of liability contract provisions will not be accepted by the Compact: (i) provisions that disclaim or limit the liability of the Proposer, or the types of claims that may be brought against the Proposer; (ii) provisions that limit the ability of the Compact to seek any contractual legal or equitable remedies against the Proposer; (iii) and provisions that cap the Proposer's liability.

Assignment/Subcontracting. Each Proposer acknowledges that if selected by the Compact to perform the requested services, it will be based upon the Proposer's demonstrated expertise and experience. Proposers will not be permitted to assign, subcontract or otherwise transfer the contract in whole or in part without the prior written consent of the Compact, which the Compact may, in its sole discretion, approve or deny for any reason.

If a Proposer believes that a mandatory Contract term will affect its liability risk, it should adjust its Contract price accordingly.

Non-mandatory Contract terms may be modified and expanded through negotiations. Proposer must identify the specific language in the Compact's form of Contract that it would like to modify, and submit with its Proposal all requested edits to the Contract.

Proposers may not submit their own standard contract form as a response to this RFP.

SECTION 6. NON-PRICE PROPOSAL FORMAT AND CONTENTS

A. Cover Letter and Signature

Proposer must submit a cover letter which includes its business name(s), address and telephone number, signed by someone authorized to sign such documents. Proposer must acknowledge any addenda, if any. All Proposals must include a statement that the Proposal is in accordance with this RFP and that Proposer has read and understands all sections and provisions herein.

The Proposal cover letter must be signed by an officer or authorized representative who has authority to bind the Proposer to a firm price.

B. General Background Information

Proposer must provide its full official business name, any other names that it uses to conduct its business, tax identification number, and its main office address.

Proposer must provide a company profile including length of time in business and core competencies.

Proposer must provide the following statements: (i) statement as to whether the business or affiliate has commenced, or been forced into, any insolvency proceeding within the last five (5) years; (ii) statement as to whether the business or affiliate has been subject to any litigation in the last five (5) years; (iii) statement as to whether the business or affiliate has been subject to any investigation by a state or federal agency within the last five (5) years; and (iv) statement as to the number, if any, of consumer complaints filed with a state, federal, or local agency, against the business or affiliate within the last five (5) years. For each event of litigation, investigation or consumer complaint, please provide an explanation.

C. Staffing Requirements

1. Proposer should identify the Project managers, and all individuals to be assigned to the Project. Describe what each individual's role will be, their duties and responsibilities.
2. Proposer must provide resumes for specific key staff to be assigned to the Project that include education, relevant past experiences, qualifications, licenses, current projects being worked on, area(s) of expertise within the work scopes set forth in Attachment A and any other pertinent information that will assist the Compact in making its selection.
3. Proposer must briefly describe its organizational capacity to provide the services to be rendered in connection with the Project. More specifically, it should briefly describe the percentage of staff that would work on these services relative to its entire staff (using full-time equivalents). For example, if Proposer would use one (1) full time staffer on the Project and Proposer has a staff of ten (10), the percentage would be ten percent (10%).
4. The Proposal must include resumes, experience, and qualifications of any proposed subcontractors or consultants that would be utilized by Proposer in the performance of the Contract.
5. Proposer must provide a schematic diagram showing organizational overview including identification of key staff and any supporting vendors or subcontractors, if applicable.

D. Proposed Scope of Work and Related Experience

1. Scope of Work.

Proposer should provide a general explanation of its proposed plan/approach to each of the scopes listed in Attachment A of this RFP. A Proposer may be chosen to perform one or multiple scopes listed in Attachment A of this RFP.

The proposed plan should include sample written copy and design elements that could be utilized in the execution of the proposed plan.

A draft Scope of Work is attached to this RFP as Attachment A. Proposer must submit its proposed edits to the Scope of Work. This should be submitted in redline format. Proposers may include clarifications, enhancements, improvements and additions to the Scope of Work. This proposed Scope of Work will be used as the basis for negotiating the final scope for inclusion in Exhibit A of the Contract, Attachment B to this RFP.

Questions on the draft Scope of Work shall be submitted in accordance with Section 2(B) above.

2. Related Experience.

Proposers should submit statements regarding the following to evidence its experience delivering services to those similar in the Scope of Work:

- a. A summary of current services contracts similar to the services described in this RFP, including descriptions of services performed, types of subcontractors used, and performance results (if applicable).

E. References

Proposer must provide a list of clients that it has performed similar work for in the past three (3) years and any other relevant references with the names and telephone numbers of contact persons for each client.

F. Redlined Form of Contract or Contract Acceptance Letter

Proposer must provide a redlined Microsoft Word version of any requested changes to the Vendor Services Agreement set forth in Attachment B. It may not request changes to the non-negotiable provisions listed in Section 5. If Proposer is not requesting any changes to the form of Contract, it should submit a letter to the Compact with its Proposal stating that it accepts all of the terms and conditions of the form of Contract as set forth in this RFP.

G. Supplier Diversity

The Compact encourages supplier diversity among its vendors. Proposers should provide information on their efforts to encourage supplier diversity in their workforce and in the selection of subcontractors when permitted.

Proposers are encouraged to submit business diversity certification information in their Proposals. This certification may be from the Commonwealth of Massachusetts, regionally or nationally based organizations and industry sources, including, but not limited to:

- Minority Business Enterprise (“MBE”)
- Women Business Enterprise (“WBE”)
- Veteran Business Enterprise (“VBE”)
- Service-Disabled Veteran-Owned Business Enterprise (“SDVOBE”)
- Disability-Owned Business Enterprise (“DOBE”)
- Lesbian Gay Bisexual Transgender Enterprise (“LGBTBE”)
- Portuguese Business Enterprise (“PBE”)
- Disadvantaged Business Enterprise (“DBE”)
- Airport Concession-DBE (“ACDBE”)
- Supplier Diversity Office – State (“SDO”)
- City of Boston (“COB”)
- Women’s Business Enterprise National Council (“WBENC”)
- National Minority Supplier Development Council (“NMSDC”)
- National Gay and Lesbian Chamber of Commerce (“NGLCC”)
- Small Business Administration (“SBA”)
- National Veteran Owner Business Association (“NAVOBA”)
- MassDOT Office (“UCP”)
- Massport

H. Ancillary Documents

Proposer must have signed the Certificate of Non-Collusion (see Attachment C), and all other required Proposal forms (including the Proposal Checklist set forth in Attachment E), and have included them in the Proposal.

I. Other

Any other information that Proposer considers relevant for the purpose of evaluating its qualifications for the Project.

SECTION 7. **SEPARATE PRICING PROPOSAL**

Proposals must include a pricing proposal (“Pricing Proposal”) to be submitted separately as set forth in Section 8(A). A pricing schedule for each scope being proposed, with all labor, overhead, travel, and other direct costs associated with the services must be submitted. If Proposer offers a discount for being awarded multiple scopes, its Pricing Proposal should state so. All general and administrative costs must be included in hourly labor rates and direct expenses. These terms apply to subcontractor costs as well. Proposer must submit a budget proposal for each of the enumerated Scopes of Work, including, but not limited to, all labor, materials, and other direct costs for all of the services and deliverables to be provided under this RFP.

SECTION 8. SUBMISSION PROCEDURES

A. Number of Copies and Format

The Proposal must be submitted as an electronic file in pdf format without the Pricing Proposal component, and one (1) original and three (3) hard copies of the Proposal are also to be submitted separate from the Pricing Proposal.

The Pricing Proposal must be submitted as a separate electronic file in pdf format and it must be clearly designated as the Pricing Proposal, and one (1) hard copy must be submitted in a separate sealed envelope.

Proposers must submit Proposals that are typewritten on 8 ½ x 11 paper and each page must be numbered.

B. Proposal Due Date and Labeling

The Proposal and the Pricing Proposal must be signed and delivered simultaneously to the Compact within the time set forth in Section 2 of this RFP. Proposals and Pricing Proposals must be enclosed in sealed envelopes and marked as follows:

RFP Title:	RFP for Website Services
Proposer’s Name:	[insert]
Delivered to:	Cape Light Compact JPE 261 Whites Path, #4 South Yarmouth, MA 02664 Attention: Margaret T. Downey mdowney@capelightcompact.org Cape Light Compact JPE Chief Procurement Officer

The envelope of the Pricing Proposal must be clearly marked as “Separate Pricing Proposal” and Proposer’s name must also appear on the envelope.

C. Modification or Withdrawal of Proposals

A Proposer may correct, modify or withdraw its original Proposal on or before the date and time set forth in Section 2. Corrections or modifications must be in sealed envelopes, clearly marked to indicate the contents, with the name and address of Proposer. Any late correction or modification to the Proposal will not be accepted. A Proposer who wishes to withdraw a Proposal must make a request in writing.

D. Late Proposals

Any Proposal received after the due date and time stated in Section 2 will be deemed non-responsive and will not be opened. Unopened Proposals will be returned to Proposer.

E. Offer to Provide Services

Proposer understands and agrees that its Proposal to the Compact to provide services will remain valid until January 23, 2026.

SECTION 9. **SELECTION PROCESS**

A. Minimum Comparative Evaluation Criteria

The final selection of the winning Proposer will be based on the following set of minimum evaluation criteria:

1. Satisfaction of all qualifications set forth in Sections 3 (General Qualifications) and 4 (Specific Qualifications).
2. Timely submission of the Proposal.
3. Inclusion of all required forms and documentation.
4. Compliance with the terms and conditions required in this RFP

The Chief Procurement Officer will review all Proposals to ensure minimum requirements are met. Proposals that meet all of the minimum requirements set forth in this RFP will be further reviewed and evaluated according to the specific comparative evaluation criteria enumerated in this RFP.

B. Comparative Evaluation Criteria

In addition to the minimum threshold criteria, each Proposal will be further evaluated and rated solely on the basis of the comparative evaluation criteria using the following scale: Highly Advantageous, Advantageous, Not Advantageous and Unacceptable. The specific comparative evaluation criteria to be used in connection with this RFP is set forth in Attachment D.

C. Contract Award

The Chief Procurement Officer shall award the contract to the Proposer offering the most advantageous proposal, taking into consideration all quality requirements and comparative criteria set forth in this RFP as well as price. The Chief Procurement Officer shall award the

Contract by written notice to the selected Proposer within the time for acceptance specified in this RFP. The parties may extend the time for acceptance by mutual agreement.

Proposals which are incomplete, conditional or obscure, will be rejected. No award will be made to any Proposer who cannot satisfy the Compact that it has sufficient ability and resources to enable it to meet the requirements of this RFP. The Compact's decision or judgment on these matters shall be final, conclusive and binding.

SECTION 10. CONFIDENTIALITY/RETENTION OF RFP PROPOSALS

Each Proposal will be held confidential by the Compact until such time as the evaluation and selection process has been completed.

If any proprietary information is contained in the Proposal and Proposer wishes that the Compact treat such information as confidential, it should be clearly identified. The Compact will take commercially reasonable efforts to protect such information. Under Massachusetts law, the Compact cannot assure the confidentiality of any material or information that may be submitted by a Proposer in response to this RFP.

Proposers who choose to submit confidential material or proprietary information do so at their own risk. The Compact is not liable for any action taken or omitted to be taken related to such proprietary information.

In general, Proposals are public documents available for inspection by interested parties after the completion of this procurement. Upon completion of the evaluation and the award of the Contract, all Proposals and information submitted in response to this RFP are subject to the Massachusetts Public Records Law, M.G.L. c. 66, §10 and M.G.L. c. 4, §7, cl. 26 and the Massachusetts Open Meeting Law, M.G.L. c. 30A, §§18-25. Any statements in submitted responses that are inconsistent with these statutes will be disregarded.

Further, as the Compact is a public entity it may become necessary to provide Proposer or Contract information to regulatory agencies for review. At Proposer's specific request, and if commercially reasonable, the Compact will request that such information be treated confidentially by the regulatory agencies.

SECTION 11. MISCELLANEOUS

A. Proposal Costs

All costs involved in preparing the Proposal will be borne by Proposer. Proposer must be familiar with all state, local and other laws relating to these services and must obtain all permits required and must pay all expenses for same.

B. Cancellation

The Compact may cancel this RFP, in whole or in part, or may reject all Proposals, or may procure only some goods and/or services outlined in this RFP whenever such action is determined to be fiscally advantageous to the Compact, or if it is otherwise in the best interest of the Compact.

ATTACHMENTS

ATTACHMENT A	Scope of Work
ATTACHMENT B	Vendor Services Agreement
ATTACHMENT C	Certification of Non-Collusion
ATTACHMENT D	Comparative Evaluation Criteria
ATTACHMENT E	Proposal Checklist

ATTACHMENT A

SCOPE OF WORK

1. **Program Description.**

Cape Light Compact is soliciting proposals from qualified firms to provide marketing services and assist with campaigns for all the Compact's programs.

2. **Project Objectives and Expected Outcome.**

The Marketing Vendor will be expected to plan and execute an integrated customer education, outreach, and marketing strategy in order to assist the Compact in reaching its goals. The Compact's goals include, but are not limited to: increasing customer awareness of and participation in all of the Compact's programs, including energy efficiency programs and power supply; and the goals outlined in the 3-Year Energy Efficiency Plan, [linked here](#). The selected Vendor will develop a plan to submit to the Compact for approval prior to implementation. Then, the Vendor and any prospective sub-contractors will be expected to provide at least the services listed below. The Compact's marketing plan is supplemental to and should not conflict with the Statewide Mass Save marketing campaign.

3. **Services.**

A Marketing Vendor will be chosen to perform one or more of the following Scopes. Proposers may bid on any number of the scopes below. In the event that multiple vendors are selected to cover the various scopes, vendors will be expected to collaborate with the other selected vendors as necessary to complete the work. The Marketing Vendor will perform the following tasks within each of the Scopes chosen:

Scope 1: Marketing/Media Plan and Management

- *Marketing Campaign* - Create and execute an integrated customer education and awareness, outreach, and marketing campaign for the Compact that aligns with the Cape Light Compact goals and targets designated stakeholders, as well as builds general brand awareness on Cape Cod and Martha's Vineyard.
- *Media Strategy* - Develop and execute an integrated media strategy, including a mass media communications plan that features paid digital, print, radio and television, including management of media placements and communication with media vendors. Actual media placement should not be included in the price proposal. Media outlets will be paid directly by the Compact, or by the vendor and billed to the Compact as pass-through costs. Any applicable estimates should be provided in the scope for expected media buys by calendar year.
 - Marketing Campaign and Media Strategy creation should include a scheduled planning meeting with Cape Light Compact program staff.
- *Reporting* - Create quarterly reports (four per year) for the Compact documenting the previous months' efforts and including analytics data for all digital media and website traffic.

- The final quarterly report should be presented to Cape Light Compact staff and include cumulative results for the year.

Scope 2: Materials and Design

- *Annual Report* - Create format and design of report.. These reports will be distributed to all Cape Cod and Martha's Vineyard towns and included on the website on an annual basis, starting with fall 2026. Compact staff to approve format and proof before distribution.
 - NOTE- Provide a quote for design, format, and populating of information, with an option for Compact staff to populate information. Cape Light Compact staff will provide the content.
- *Graphic Design* – Design digital and print advertisements to be utilized within the marketing/media plan.
- *Materials* – Create brochures, rack cards, and flyers for distribution at local businesses and events that feature a general overview of the Compact's offerings. Specific program materials may be asked to be made as well.
- *Blog Posts*- Create six (6) blog posts per year highlighting Compact programs or the latest energy efficiency news to be posted on the Compact's website.

Scope 3: Social Media Management

- *Social Media Planning* - Develop an organic social media strategy for the Compact's social media accounts (Facebook, Instagram, and LinkedIn) to increase engagement and followers.
- *Social Media Copy* – Create social media content to be posted on the Compact's platforms in alignment with the media plan.
- *Social Media Design* – Create custom graphics for the Compact's social media
- *Reporting* - Create quarterly reports (four per year) for the Compact documenting the previous months' efforts and including analytics data for all social platforms

Scope 4: Video Creation

- *Videos* – Develop and produce short videos as needed, highlighting the Compact's programs, to be utilized on the Compact's website, social media, and, if in alignment with the Proposer's marketing plan, as part of paid media placements.

Vendors chosen to perform any of the above Scopes will be required to perform the following services:

- *Communication* - Maintain weekly communications with the Compact to ensure that needs are being met and identify additional marketing and public relations opportunities. A biweekly virtual meeting will be required stating the tasks that are currently being worked on and the status of each task.
- *Billing* – Provide the Compact with monthly invoices that include time tracking for services related to each of the Compact's programs, as well as any pass through media expenses

4. **Deliverables/Work-Product; Timing.**

The Marketing Vendor(s) chosen to provide the services within Scopes 1 and 2 will provide the following deliverables to the Compact in accordance with the following schedule:

- Create a marketing and media plan or social media plan for submission to the Compact within three (3) months of execution of the Agreement.
- Implementation of the marketing or social media plan should begin no later than one (1) month after approval of the plan.
- If the contract is extended, the Vendor should submit a new or updated marketing and media plan or social media plan within 3 months of the execution of the contract extension.

5. **Reports.**

The Vendor chosen to provide the services within Scopes 1 and 2 will deliver quarterly reports to the Compact detailing the performance of all the Compact's media or social media channels for that time period.

6. **Additional Training, Required Certifications and/or Performance Standards.** In addition to the requirements set forth in Sections 4.1 and 4.2 of the Agreement, the following additional training, required certifications and performance standards apply:

Not applicable.

7. **Quality Controls.**

Not applicable.

8. **Project Team.**

The Marketing Vendor's shall ensure that services will be performed by marketing professionals with at least three (3) years of experience in media management, graphic design, copywriting, creative development, and/or any additional fields relevant to the requirements of fulfilling the marketing contract.

9. **Compact Responsibilities.**

The Compact is responsible for the following:

The Compact will provide a primary point of contact (Marketing & Communications Coordinator) who will:

1. Communicate with Vendor regarding marketing needs
2. Submit information and updates about Compact programs to Vendor to assist with marketing
3. Review vendor materials for accuracy and alignment with current brand, goals, and program offerings, including proposed marketing and media plans
4. Coordinate and publish Vendor-provided items to the Compact website
5. Coordinate and publish Vendor-provided items to Compact social media accounts (Facebook, LinkedIn, Instagram, and YouTube)
6. Review and approve Vendor invoices

ATTACHMENT B
FORM OF CONTRACT

VENDOR SERVICES AGREEMENT

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

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

WHEREAS, the Compact issued a [statewide if applicable] [insert as applicable – generally a request for proposals] on [insert date] for the performance of [insert program name] (the “RFP” [or other document]);

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

WHEREAS, 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 the Services are completed, unless this Agreement is terminated before such date under the provisions of Section 1.2. In no event shall the term exceed two years.

1.2 **Termination.** The Compact shall have the right to terminate or suspend this Agreement for any reason, including, but not limited to, in the event that Vendor is in default under another services agreement between Vendor and the Compact, or 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 any costs of cure and transition costs (including reasonable attorneys' fees) that it, a Member¹ or a Customer (as defined herein) incurs related to the engagement of a substitute Vendor.

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

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

SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

2.1 **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.

Vendor agrees that if the Services include comprehensive management and operation of a Compact program and such Services include management, supervision and control of subcontractors and independent contractors participating in the program, the following will

¹ For the purposes of this Agreement, the term "Member" means the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, Yarmouth, Dukes County, and any other governmental unit that becomes a member of the Compact during the term of this Agreement.

apply: (i) Vendor is responsible for entering into and managing the contractual relationships with the subcontractors and independent contractors; (ii) Vendor shall ensure that such subcontractors and independent contractors understand, acknowledge, and agree that the Compact has no liability to them in connection with Vendor's management and operation of the program; and (iii) Vendor understands and agrees that its indemnification obligations set forth in Section 7 include indemnifying the Compact from the acts and/or omissions of the subcontractors and independent contractors, and from any third-party claims relating to same.

2.2 Changes. The Compact may, from time to time, require changes in the scope of the 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 or subcontractors 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.

[] 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 [insert] to be the day-to-day point of contact for Vendor for all issues arising under this Agreement.

SECTION 3

COMPENSATION AND RELATED MATTERS

3.1 Rates of Compensation; Budgets. 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.

In the event that a budget or multiple budgets apply to the Services, the budget(s) shall be set forth in Exhibit C. For each budget set forth in Exhibit C, there shall be an accompanying statement as to whether such budget is an estimated budget for planning purposes or not-to-exceed budget. If a budget is not-to-exceed, in no event shall the total amount paid under this Agreement exceed such not-to-exceed budget amount, unless a contract amendment has been executed by the Compact incorporating such budget increase.

The compensation set forth in Exhibit C shall remain firm for the initial term. If Vendor's RFP response included compensation terms for any extensions of the term and such terms were accepted by the Compact, such terms shall be set forth in Exhibit C. If Vendor proposes a compensation increase for any extended term(s), the proposed increase must be submitted to the Compact for approval at least one hundred twenty (120) days prior to expiration of the term. Any requested compensation increase must be presented to the Compact in writing along with documentation supporting the requested increase. Approved compensation changes shall become effective on the date set forth in the Compact's approval notice (if any).

The Compact may treat all or a portion of the information in Exhibit C (Compensation) as confidential, competitively sensitive information to the extent permitted by the Massachusetts Public Records Law (G.L. c. 4, §7, cl. 26(s)) or other applicable law.

3.2 Invoicing and Payment. Vendor shall submit monthly invoices to the Compact by the 10th day of each month, unless otherwise authorized in writing by the Compact. The Compact 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. If a budget(s) is applicable, each invoice submitted by Vendor shall state the total amount of Services billed against such budget(s).

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) Vendor's failure to make payments properly to subcontractors for materials, labor or equipment; (iv) unsatisfactory performance of the Services; (v) Vendor's failure to pay any amounts due to the Compact; or (vi) 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.

3.5 Credits. Vendor may not claim any governmental or other energy efficiency credits, tax credits, forward capacity payments, carbon offsets, rebates or incentives of any kind as a result of or in connection with the 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 to a Compact customer/program participant ("Customer"), by operation of law or regulation, Vendor shall, upon request and without charge, cooperate fully with the Compact to disclaim any rights to such Credits and to assign or allocate all such Credits, and the value thereof to the party designated by the Compact.

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 the representations, warranties and covenants set forth in Section 4.2 below. All Services shall be free from defects in design, workmanship, and materials of any kind, for a period of twelve (12) months from the date placed in service or twenty-four (24) months from the date of receipt, whichever is later. Additional guarantees or warranties may be specified in the description of Services in Exhibit A.

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 or its subcontractors 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 Subcontractor Warranties. Vendor shall obtain from each subcontractor, and extend to the Compact for its benefit, warranties for all Services performed or supplied by such subcontractor, substantially identical to the warranties Vendor is required to provide hereunder. Any such warranties are in addition to and are not limited by or themselves limit, the warranties of Vendor otherwise provided in the Agreement. Vendor shall deliver to the Compact copies of any subcontractor warranties.

4.5 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.

SECTION 5 INTELLECTUAL PROPERTY MATTERS

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 rendition 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.

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 \$5,000,000 per each occurrence/claim.

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 Customers, Members, 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) and (g), 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) and (g) 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 (including Vendor's subcontractors), Vendor shall cause such persons to maintain insurance 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 VENDOR² AND DAMAGES FOR BREACH

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, (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), and (iii) all Customers (the three 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

² Note to Vendor: In accordance with guidance issued by the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

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 right to seek indemnification from Vendor for consequential, punitive, or incidental damages or other such losses claimed by third parties.

7.4 Liability.³ 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.

³ Note to Vendor: The Compact does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply.

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 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 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 Vendor from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval, and Vendor shall continue to be liable, jointly and severally, with the assignee for the fulfillment of all of the terms and conditions arising under this Agreement subsequent to the assignment. Vendor shall provide prompt notice to the Compact of any such permitted subcontract or assignment, together with the name and address of the assignee, and a copy of the subcontract or assignment instrument.

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

SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION

10.1 Confidentiality. Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information. The disclosure and use of such information shall also be governed by the Mutual Confidentiality and Nondisclosure Agreement dated March 18, 2022

(embedded or attached hereto as Exhibit E), and any subsequent non-disclosure agreements in which the Compact is a party and that involves the Services or obligations under this Agreement. Vendor agrees to submit the acknowledgment form set forth as Exhibit E concurrently with execution of this Agreement.

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

[insert]

if to the Compact to:

Margaret T. Downey
Cape Light Compact JPE Administrator
Cape Light Compact JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664
mdowney@capelightcompact.org (email)

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

11.2 Entire Agreement; Amendments. This Agreement 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.

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

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

11.9 Political Activity Prohibited. None of the Services to be provided by 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.

11.10 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.

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

11.12 Procurement Process. This Agreement was procured pursuant to G.L. c. 30B, §1(b)(33). Vendor shall provide the Compact with all certifications required by Massachusetts law, including the certificates set forth in Exhibits F (Tax Compliance Certification) and G (Certificate of Non-Collusion) attached hereto.

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

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

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

11.16 Survival of Obligations. Termination of this Agreement for any reason shall not relieve either Party of any obligation accrued or accruing prior to such termination. In addition, the terms of Section 7 (Indemnification) and Section 8 (Dispute Resolution) and any other term that by its nature should survive, shall survive the expiration or termination of this Agreement.

11.17 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.

11.18 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.

11.19 **Special Contract Terms and Conditions.** If the Services were procured as part of a statewide procurement (or other process) with other Massachusetts program administrators, the provisions set forth in Exhibit I apply. For statewide procurements, Vendor acknowledges that it has received the Common Mandatory Contract Terms set forth in Exhibit J and agrees to abide by all such terms. If the Services involve performing work in the field or on Customer premises, the provisions in Exhibit K apply.

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

LIST OF EXHIBITS TO VENDOR SERVICES AGREEMENT

- Exhibit A - Services
- Exhibit B - Background Check Policy
- Exhibit C - Compensation
- Exhibit D - Pre-approved Subcontractors
- Exhibit E - Mutual Confidentiality and Nondisclosure Agreement dated March 18, 2022 and
NDA Acknowledgment
- Exhibit F - Tax Compliance Certification
- Exhibit G - Certificate of Non-Collusion
- Exhibit H - Diversity Certification and Languages Questionnaire
- Exhibit I - Statewide Procurement Provisions
- Exhibit J - Common Mandatory Contract Terms
- Exhibit K - Work in the Field Provisions

EXHIBIT A TO VENDOR SERVICES AGREEMENT SERVICES

[The scope of Services developed, negotiated and finalized during the RFP or other procurement process should be attached as Exhibit A along with the two provisions set forth below.]

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

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 main body of the Agreement, the terms set forth in the main body of the Agreement shall control.

EXHIBIT B TO VENDOR SERVICES AGREEMENT 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.

The Compact may treat all or a portion of the information on this Exhibit C as confidential, competitively sensitive information to the extent permitted by the Massachusetts Public Records Law (G.L. c. 4, §7, cl. 26(s)) or other applicable law.

EXHIBIT C TO VENDOR SERVICES AGREEMENT COMPENSATION

The [estimated budget for planning purposes/not to exceed budget] [statewide] budget for the Services for [the contract term/specific year] is: [insert]. [The Compact is only responsible for a portion of the budget, specifically [xx percent/insert dollar amount]].

Vendor shall be compensated by the Compact for the Services in accordance with the rates set forth in Exhibit C-1.

[For statewide contracts: The Compact is only responsible for its portion of the Program Administrator (“PA”) statewide percentage allocation. Should another PA terminate its program contract with Vendor, Vendor understands and agrees that the Compact will not be responsible for any increased costs, or any absorption of another PA’s administrative fees. Vendor further understands and agrees that PA statewide percentage allocations are adjusted annually. Vendor will be notified of any such adjustments, and agrees that the Compact’s compensation obligations under this Agreement will be adjusted accordingly.]

**EXHIBIT D TO VENDOR SERVICES AGREEMENT
PRE-APPROVED SUBCONTRACTORS**

List subcontractors: [insert]

If Vendor lists any pre-approved subcontractors, it agrees to furnish a diversity questionnaire (Exhibit H) for each subcontractor listed in this Exhibit. The subcontractor diversity questionnaires must be provided at the time of Vendor contract execution.

If there are no subcontractors, insert “None.” and delete the above.

EXHIBIT E TO VENDOR SERVICES AGREEMENT

Mutual Confidentiality and Nondisclosure Agreement dated March 18, 2022

NDA ACKNOWLEDGMENT

I hereby certify my understanding that the Confidential Information, as that term is defined in the Mutual Confidentiality and Nondisclosure Agreement dated March 18, 2022 (the “NDA”), is being provided to me pursuant to the terms and restrictions of the NDA. I also certify that I have been given a copy of the NDA, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information and any parts of notes, memoranda, or any other form of information that contains such Confidential Information shall not be disclosed to anyone nor copied other than in accordance with the NDA, and shall be used only for the limited purposes stated therein. I also agree to protect the confidential and proprietary nature asserted for the Confidential Information.

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

By: _____

Name: _____

Title: _____

Organization: _____



Mutual PA NDA.pdf

**EXHIBIT F TO VENDOR SERVICES AGREEMENT
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 TO VENDOR SERVICES AGREEMENT
CERTIFICATE OF NON-COLLUSION**

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

Signature of individual submitting bid or proposal

Vendor Name

**EXHIBIT H TO VENDOR SERVICES AGREEMENT
DIVERSITY CERTIFICATION AND
LANGUAGES QUESTIONNAIRE**

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

Minority Business Enterprise (MBE)	Y / N
Women Business Enterprise (WBE)	Y / N
Veteran Business Enterprise (VBE)	Y / N
Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)	Y / N
Disability-Owned Business Enterprise (DOBE)	Y / N
Lesbian Gay Bisexual Transgender Enterprise (LGBTBE)	Y / N
Portuguese Business Enterprise (PBE)	Y / N
Disadvantaged Business Enterprise (DBE)	Y / N
Airport Concession-DBE (ACDBE)	
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?

Supplier Diversity Office – State (SDO)	Y / N
City of Boston (COB)	Y / N
Women's Business Enterprise National Council (WBENC)	Y / N
National Minority Supplier Development Council (NMSDC)	Y / N

National Gay and Lesbian Chamber of Commerce (NGLCC) Y / N

DISABILITY:IN

Small Business Administration (SBA) Y / N

National Veteran Owner Business Association (NAVOBA) Y / N

DCAMM

MassDOT Office (UCP) 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:

Name of Vendor

Date

**EXHIBIT I TO VENDOR SERVICES AGREEMENT
STATEWIDE PROCUREMENT PROVISIONS**

The provisions in this Exhibit I apply:

☐ YES ☒ NO

If the Services were procured as part of a statewide procurement (or other statewide process) with other Massachusetts program administrators, these statewide procurement provisions are incorporated into the Agreement.

a. The following language is added to the end of Section 4.1 (**General Performance Standard and Warranty**):

If Vendor is suspended, terminated, put on probation or receives a notice of nonperformance by another program administrator who participated as part of the group procurement in the RFP, Vendor must immediately notify the Compact and must describe the performance issues alleged by the program administrator and identify (i) any remedies and corrective actions it takes or proposes to take in response to such allegations and (ii) any credits or refunds it offers to the program administrator to resolve the dispute.

b. The following language is added to the end of Section 7.5 (**Notice of Claims**):
“including any claims brought against Vendor for services rendered by other program administrators in connection with the RFP.”

c. The following Section is added to Section 7:

7.8 **No Joint and Several Liability.** Vendor understands and agrees that the Compact assumes no liability or obligation with respect to the acts or omissions of any other statewide program administrator, including, but not limited to, its financial and payment obligations.

d. Section 11.12 (**Procurement Process**) is stricken and replaced with the following:

11.12 **Procurement Process.** This Agreement is a result of a statewide RFP issued on behalf of all program administrators of electric energy efficiency plans. In entering into this Agreement, the Parties complied with the competitive procedures set forth in the RFP. Vendor shall provide the Compact with all certifications required by Massachusetts law, including the certificates set forth in Exhibits F (Tax Compliance Certification) and G (Certificate of Non-Collusion) attached hereto.

EXHIBIT J TO VENDOR SERVICES AGREEMENT

FOR STATEWIDE RFPS

COMMON MANDATORY CONTRACT TERMS REGARDING WARRANTY, INSURANCE, INDEMNIFICATION AND LIABILITY

[April 2023]

In order to assist prospective vendors, the PAs have established certain minimum requirements for the four most frequently negotiated contract provisions (warranty, insurance, indemnification and liability). The selected vendor must be willing and able to meet the minimum terms set forth below. They are non-negotiable. Prospective vendors that cannot meet the terms below should not submit proposals. NO EXCEPTIONS TO THESE TERMS SHALL BE PERMITTED. ANY PROSPECTIVE VENDOR THAT SUBMITS EXCEPTIONS TO THESE TERMS SHALL BE DISQUALIFIED.

Each PA has its own contract form that the selected vendor will be required to sign. Each of these forms is provided as part of the RFP package. While some of the individual PA contracts may contain terms less stringent and/or different than those set forth below, the PAs have determined that it is in the best interest of the PAs collectively as participants in a joint procurement to establish these minimum requirements.

1. WARRANTY

- a. The minimum warranty period is two (2) years from completion of the work/services.
- b. Vendor shall promptly remedy any defects in the work/services at its sole cost and expense.

2. INSURANCE

- a. The following types of insurance and minimum amounts are required:

- | | | |
|-------|------------------------|---|
| (i) | Automobile Liability | - 1 million combined single limit |
| (ii) | Comm. Gen. Liability | - 1 million "per occurrence"; 2 million aggregate |
| (iii) | Professional Liability | - 2 million "per claim" |
| (iv) | Umbrella | - 1 million single limit |
| (v) | Workers' Comp. | - Statutory |
| (vi) | Employer's Liability | - 1 million |

- b. A vendor using, handling, processing or storing private, nonpublic or confidential information in connection with the services it renders must obtain network security/privacy liability (cyber liability) insurance covering potential claims against the PAs by third-parties or a governmental authority arising from unauthorized access, unauthorized use, theft of data, virus transmission, denial of service, internet liability and failure to protect privacy and intellectual property; minimum limits of \$2,000,000 per occurrence/aggregate.

- c. Vendor must name each PA as an additional insured.
- d. Vendor must waive all rights of recovery/subrogation against the PAs.

3. INDEMNIFICATION

The following types of indemnity-related contract provisions will not be accepted by the PAs:

- a. Provisions that require a PA to indemnify or defend a vendor.
- b. Provisions that authorize the vendor to have sole control over the defense or settlement of claims against the PAs.
- c. Provisions that limit vendor indemnity provisions to third-party claims.

4. LIMITATION OF LIABILITY AND RELATED MATTERS

The following types of limitation of liability contract provisions will not be accepted by the PAs:

- a. Provisions that disclaim or limit the liability of the vendor, or the types of claims that may be brought against the vendor.
- b. Provisions that limit the ability of the PA to seek any contractual, legal or equitable remedies against the vendor.
- c. Provisions that cap the vendor's liability.

The following liability related provisions must be included in vendor contracts:

- d. A provision that disclaims the liability of both parties for consequential, incidental, punitive or indirect damages.
- e. A provision that limits each PA's liability for claims arising out of the contract to direct damages only.
- f. In general, with respect to any claim (whether based in contract, tort or any other theory of legal liability) by vendor pursuant to or in connection with the vendor contract, the maximum liability of a PA for all such claims shall not exceed the lesser of (i) the budget amount allocated to a particular PA in the agreement (if any), or (ii) the amount of the compensation paid to vendor for the twelve (12) month period immediately preceding the date of the claim. The foregoing may be modified/customized by the PAs depending on the particular circumstances of a vendor engagement.

EXHIBIT K TO VENDOR SERVICES AGREEMENT WORK IN THE FIELD PROVISIONS

The provisions in this Exhibit K apply:

☐ YES ☒ NO

If the Services involve performing work in the field or on customer premises, these work in the field provisions are incorporated into the Agreement.

a. The following sections are added to Section 2:

2.7 Safety.

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

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

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

 Vendor shall immediately notify the Compact of any accident or damage to persons or property and, within forty-eight (48) hours, file a written report of the accident with the Compact. If Vendor encounters any asbestos or other hazardous substances in the course of the Services, Vendor shall immediately notify the Compact and any agency required by state or federal law, and shall stop any Services that may disturb, damage or cause a release of asbestos or hazardous substances until Vendor receives written instruction from the Compact. If any hazardous substances are to be handled in the execution of the Services, Vendor shall assume any and all liabilities associated with such handling and must AT ALL TIMES, provide proper storage and disposal of such hazardous substances. Hazardous substances shall 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) VENDOR, b) ANY EMPLOYEE, THE COMPACT,

GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF VENDOR, c) ANY CUSTOMER, EMPLOYEE, THE COMPACT, GUEST, REPRESENTATIVE, CONTRACTOR, OR SUBCONTRACTOR OF ANY CUSTOMER, OR d) ANY THIRD PERSON, THAT IS THE RESULT OF ANY SUCH PERSON'S EXPOSURE TO HAZARDOUS MATERIALS OR THAT IS OTHERWISE CAUSED BY A RELEASE OR THREAT OF RELEASE OF HAZARDOUS MATERIALS.

2.8 Storage and Clean-up.

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

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

b. Section 3.1 is stricken and replaced with the following:

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

In the event that a budget or multiple budgets apply to the Services, the budget(s) shall be set forth in Exhibit C. For each budget set forth in Exhibit C, there shall be an accompanying statement as to whether such budget is an estimated budget for planning purposes or not-to-exceed budget. If a budget is not-to-exceed, in no event shall the total amount paid under this Agreement exceed such not-to-exceed budget amount, unless a contract amendment has been executed by the Compact incorporating such budget increase.

The compensation set forth in Exhibit C shall remain firm for the initial term. If Vendor's RFP response included compensation terms for any extensions of the term and such terms were accepted by the Compact, such terms shall be set forth in Exhibit C. If Vendor proposes a compensation increase for any extended term(s), the proposed increase must be submitted to the Compact for approval at least one hundred twenty (120) days prior to expiration of the term. Any requested compensation increase must be presented to the Compact in writing along with documentation supporting the requested increase. Approved compensation changes shall become effective on the date set forth in the Compact's approval notice (if any).

The Compact may treat all or a portion of the information on Exhibit C (Compensation) as confidential, competitively sensitive information to the extent permitted by the Massachusetts Public Records Law (G.L. c. 4, §7, cl. 26(s)) or other applicable law.

c. Section 3.3 is stricken and replaced with the following:

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. Vendor shall not be entitled to any payment for any partial performance except for progress payments made in accordance with this Agreement. Vendor understands that the Compact is contracting for nothing less than full, complete and timely performance of the Services, and with the express agreement that the Compact shall be obliged only upon final completion of the Services.

d. The following Section is added to Section 3 of the Agreement:

3.6 Bonds.

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

Upon request by the Compact, Vendor shall provide performance and payment bonds from a surety company in amounts, form and substance acceptable to the Compact, naming the Compact as a direct beneficiary of the surety's obligations under such bonds. Such bonds shall fully protect the Compact against any and all breaches by Vendor, including, but not limited to, payments of salaries, withholdings, union welfare funds and any other union or employee benefits. Performance and payment bonds shall cover the Services and the warranty period described below. Failure to provide the requested bonds, prior to the commencement of the 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 Vendor.

Performance Bond	☐ required	☐ not required
Payment Bond	☐ required	☐ not required

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

e. The following section is added to Section 11 of the Agreement:

11.20 COVID-19/Health and Safety Protocols. If Vendor is performing work in the field, Vendor agrees to follow and implement all commercially reasonable COVID-19 or other health and safety protocols that may be adopted or promulgated by the Compact from time to time in its role as a participant in the Mass Save program that it deems necessary to protect Customers and other third-parties.

ATTACHMENT C

CERTIFICATE OF NON-COLLUSION

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

Signature of individual submitting bid or proposal

Proposer Name/Title

ATTACHMENT D

COMPARATIVE EVALUATION CRITERIA

1. General Quality of Response

Highly Advantageous: Proposer submits the most extensive and clear Proposal; met the RFP requirements (including format), understands the Project, and completeness of Proposal.

Acceptable: Proposer meets all RFP requirements (including format), understands the Project, and completeness of Proposal.

Not Advantageous: Proposer meets all basic Proposal requirements, some follow-up for clarification and amplification of Proposal elements may be allowed.

Unacceptable: Proposer does not meet one or more RFP requirements.

2. General Background Statements (Section 6(B))

Highly Advantageous: Proposer's background statements indicate that (i) there have not been insolvency proceedings in the last five (5) years; (ii) there has been no litigation in the last five (5) years; (iii) there has been no investigation by a state or federal agency in the last five (5) years; and (iv) there have been no consumer complaints filed with a state, federal, or local agency, against the business or affiliate within the last five (5) years.

Acceptable: Proposer's background statements indicate that (i) there has been no insolvency proceedings in the last five (5) years; and (ii) there has been one (1) or more instances of litigation, investigation or complaints in the last five (5) years, but Proposer provided a reasonable and satisfactory explanation of such events.

Not Advantageous: Proposer's background statements indicate that either (i) there has been insolvency proceedings in the last five (5) years; or (ii) there has been numerous instances of litigation, investigation or complaints in the last five (5) years.

Unacceptable: Proposer's background statements indicate that (i) there has been insolvency proceedings in the last five (5) years; and (ii) there has been numerous instances of litigation, investigation or complaints in the last five (5) years.

3. Project Team/Staffing Requirements (Section 6(C))

Highly Advantageous: Proposer's Project Team resumes demonstrate continuous involvement in the relevant fields including demonstrated experience [with governmental organizations], and show a broad range of skills sufficient to complete the Project. Key staff has outstanding personal recommendations and specifically relevant experience. Organizational capacity available to complete the Project is strong.

Advantageous: Proposer’s Project Team resumes demonstrate involvement in the relevant fields and show adequate skills sufficient to complete the Project. Key staff has good personal recommendations. Organizational capacity available to complete the Project is adequate.

Not Advantageous: Proposer’s Project Team resumes show sporadic involvement in the relevant fields and some of the skills sufficient to complete the Project.

Unacceptable: Proposer’s resumes show sporadic involvement in the relevant fields and show few of the skills sufficient to complete the Project.

4. Redlined Scope of Work (Section 6(D)(1))

Highly Advantageous: Proposer submits no or few changes to the Scope of Work, or the changes submitted provided clarity or improved the Scope of Work.

Advantageous: Proposer submits some changes to the Scope of Work.

Not Advantageous: Proposer submits many changes to the Scope of Work.

Unacceptable: Proposer submits a heavily redlined Scope of Work.

5. Related Experience (Section 6(D)(2))

Highly Advantageous: Proposer cites three (3) or more examples of past work on similar projects.

Advantageous: Proposer cites two (2) or more examples of past work on similar projects.

Not Advantageous: Proposer cites one (1) or more examples of past work on similar projects.

Unacceptable: Proposer has no experience with similar projects.

6. Reference Checks (Section 6(E))

Highly Advantageous: Outstanding recommendations from all reference checks, at least one (1) of which involved similar projects.

Advantageous: Outstanding recommendations from all reference checks.

Not Advantageous: Good or “would-repeat” recommendations.

Unacceptable: Some references which indicate caution or express reservations.

7. Redlined Contract (Section 6(F))

Highly Advantageous: Proposer submits no or few changes to the Contract, or the changes submitted provided clarity or improved the Contract.

Advantageous: Proposer submits some changes to the Contract.

Not Advantageous: Proposer submits many changes to the Contract.

Unacceptable: Proposer submits a heavily redlined Contract or proposes changes to the non-negotiable terms.

8. Supplier Diversity (Section 6(G))

Highly Advantageous: Proposer is currently certified by the Commonwealth of Massachusetts Supplier Diversity Office, or similar qualifying agency or organization.

Advantageous: Proposer provides documentation of a diverse workforce (for example, Equal Opportunity Employer Information Report or equivalent).

Not Advantageous: Proposer has a published policy to support diversity, but has no documentation of a diverse workforce.

Unacceptable: Proposer has no diversity initiatives or policies.

Supplier diversity status is one component of this procurement, and it is not a determinative factor.

9. Interviews (Section 2C)) (if applicable)

Highly Advantageous: Members of Proposer's key staff represented Proposer at the interview presentation. Proposer demonstrated in a clear and effective oral presentation/interview a high level of expertise and experience in the services required in this RFP. Proposer provides complete, highly satisfactory answers and provides a presentation that demonstrates good understanding of the Compact's particular needs.

Advantageous: Members of Proposer's key staff represented Proposer at the interview presentation. Proposer demonstrated in a clear and effective oral presentation/interview a moderate level of expertise and experience in the services required in this RFP. Proposer provides thoughtful, well-considered answers and a thorough presentation at interview.

Not Advantageous: Proposer was not able to demonstrate in a clear and effective oral presentation/interview a moderate level of expertise and experience in the services required in this RFP. Proposer provides satisfactory answers and presentation at interview.

Unacceptable: Proposer provides unsatisfactory answers, a poor presentation, or does not attend interview.

ATTACHMENT E

PROPOSAL CHECKLIST

Proposer has submitted the following as part of its Proposal:

- ___ 1. Cover letter with signature. [Section 6(A)]
- ___ 2. Statement that the Proposal is submitted in accordance with this RFP, and that Proposer has read and understands all sections of the RFP. [Section 6(A)]
- ___ 3. Business names, address, taxpayer identification. [Section 6(B)]
- ___ 4. Company profile. [Section 6(B)]
- ___ 5. Four background statements. [Section 6(B)]
- ___ 6. Identification of Project staff and assigned roles. [Section 6(C)]
- ___ 7. Resumes for key staff. [Section 6(C)]
- ___ 8. Organizational capacity. [Section 6(C)]
- ___ 9. Resumes and qualifications of subcontractors or consultants. [Section 6(C)]
- ___ 10. Schematic diagram. [Section 6(C)]
- ___ 11. **Proposed plan** and proposed edits to Scope of Work. [Section 6(D)]
- ___ 12. Statements regarding related experience. [Section 6(D)]
- ___ 13. References. [Section 6(E)]
- ___ 14. Redlined Contract or Contract acceptance letter. [Section 6(F)]
- ___ 15. Diversity certification documentation. [Section 6(G)]
- ___ 16. Pricing Proposal (including pricing schedule and budgets). [Section 7]
- ___ 17. Certificate of Non-Collusion. [Attachment C]
- ___ 18. Checklist (this document). [Attachment E]