CAPE LIGHT COMPACT JPE

REQUEST FOR PROPOSALS
FOR ENERGY RELATED 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 the 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, §4A½ 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 205,000 customers through the delivery of proven energy efficiency programs, effective consumer advocacy and renewable competitive electricity supply.

The Compact is operating an Energy Efficiency and Decarbonization Plan approved pursuant to M.G.L. c. 25, §§19, 21 which is periodically updated and approved by the Massachusetts Department of Public Utilities (the "Plan").

Through this Request for Proposals ("RFP"), the Compact seeks the following services: energy services related to the implementation of its commercial energy efficiency programs.

B. Project Overview/Description of Services

The Compact's Chief Procurement Officer hereby requests proposals from qualified professionals to provide energy related services for commercial retrofit services (program management and turnkey installation), commercial new construction services (program management and QA/QC inspection services) and QA/QC inspections for commercial retrofit projects (the "Project"). The Compact will be selecting multiple vendors for each of the commercial retrofit and commercial new construction services, and up to two (2) vendors for commercial retrofit QA/QC services.

See Attachment A to this RFP for more details on the Project and description of Services 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 encourages submission of proposals that incorporate participation by diverse and small business enterprises in as many aspects of the Project as possible. In issuing this RFP, the Compact reviewed the Massachusetts Supplier Diversity Office's 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:

October 21, 2026	Publication of RFP advertisement
October 21, 2026	RFP issued
November 12, 2026	Informational conference call
November 12, 2026	Written inquiries due
November 18, 2026	Responses to inquiries posted
December 4, 2026	Proposals due no later than 12:00 p.m. EST
December 17, 2026	Interviews scheduled, if necessary
January 15, 2027	Vendor selected
February 9, 2027	Kick-off meeting
February 9, 2027	Project implementation

- If you are interested in participating in the Informational Conference Call, please notify Margaret Song via email at msong@capelightcompact.org no later than 12 p.m. EST on November 9, 2026.

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 (3) 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.

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 sixty (60) days unless Proposer agrees to extend the period of time for which its Proposal is valid.

If a contract is not executed by the chosen Proposer by February 12, 2027, the Compact reserves the right to negotiate with alternative Proposer(s) in order to execute contracts by February 28, 2027.

SECTION 3. **GENERAL QUALIFICATIONS**

The following general qualifications apply to all vendors engaged by the Compact and Proposers 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.

F. The Proposer will appropriately staff a monthly one-hour virtual meeting to discuss relevant program implementation topics for commercial programs with Compact staff. Additional ad-hoc meetings or in person meetings may be necessary as well.

G. The Proposer must be able to demonstrate their ability to appropriately staff, schedule, and implement all services of the program in a reasonable timely manner.

H. The Proposer should demonstrate staffing expertise, technical expertise, contractor relationship and readiness to implement the program described in “Attachment A”.

SECTION 4. **SPECIFIC QUALIFICATIONS**

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

- A minimum of having successfully delivered at least two (2) similar projects or equivalent experience during the past five (5) years in Massachusetts.

- The winning Proposer(s) will be responsible for implementation of the Commercial Energy Efficiency Program(s) described in Attachment A (the "Program). This means it will manage and/or operate the Program, including management, supervision and control of all subcontractors and independent contractors participating in the Program. The winning Proposer(s) will be required to fully indemnify the Compact from the acts and/or omissions of the subcontractors and independent contractors, and from any third-party claims relating to same. The winning Proposer(s) will need to ensure that it has adequate insurance to cover these responsibilities. In addition, the winning Proposer(s) will be responsible for entering into and managing the contractual relationships with the subcontractors and independent contractors and ensuring that such subcontractors and independent contractors understand, acknowledge, and agree that the Compact has no liability to them in connection with winning Proposer(s) management and/or operation of the Program.

- Proposer(s) is/are required to have/obtain suitable office, dispatch and warehouse facilities and vehicles as necessary, located within easy access to all parts of the Compact's service territory. Proposer(s) should describe the planned facilities and equipment to be used in Program implementation and identify the extent to which such facilities and equipment are already on hand. If acquisition of facilities and equipment is required a timeline should be stated in its response.

- Professional Engineer license and/or Certified Energy Manager (CEM) certifications are desired, but not required for Vendor program staff who will be involved in developing proposals or project management. A Professional Engineer license may be required if designing systems.

- If Proposer(s) is providing a proposal for Commercial Retrofit Services which includes turnkey installations, Proposer(s) must have the ability to furnish materials and install eligible equipment either through internal staff or subcontractors, or a combination of both.

SECTION 5. **CONTRACT**

The Compact's standard Vendor Services Agreement (the "VSA") is set forth as Attachment B to the RFP. The Compact reserves the right during contract negotiations to expand, modify, supplement and/or add to the VSA.

The VSA has a term of three (3) years, with option to renew for up to three one-year extensions. After expiration of the original term and all extended terms, this Agreement may be extended for additional term(s), up to a maximum not-to-exceed term of ten (10) years (from the original effective date through the last date of all extended terms) if the Compact's Chief Procurement Officer deems such additional extensions to be in the best interest of the Compact and this Agreement is related to the Compact's implementation of the Plan.

The following VSA 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 VSA for convenience.

Insurance Requirements. Section 6 of the VSA contains the Compact's insurance requirements. Proposer(s)s should assume that they will be required to have all insurance listed and described in the VSA, including cyber liability insurance. When submitting contract exceptions to the VSA, Proposer(s)s should note: (i) any insurance that they do not carry; (ii) state if they will be seeking a waiver from a particular insurance requirement, or if they believe a requirement is inapplicable; (iii) the justification for such waiver request; and (iv) if they are willing to obtain all required insurance at their own expense if awarded the contract. Contract insurance costs should be built into Proposer(s)'s pricing proposal.

Indemnification. Proposer(s)s 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)'s indemnity provisions to third-party claims only; (ii) provisions that require the Compact to indemnify or defend the Proposer(s); and (iii) provisions that authorize the Proposer(s) to have sole control over the defense or settlement of claims against the Compact.

Liability. The Compact's liability will be limited to the total price for the Services rendered. 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(s), or the types of claims that may be brought against the Proposer(s); (ii) provisions that limit the ability of the Compact to seek any contractual legal or equitable remedies against the Proposer(s); and (iii) provisions that cap the Proposer(s)'s liability.

Assignment/Subcontracting. Each Proposer(s) acknowledges that if selected by the Compact to perform the requested services, it will be based upon the Proposer(s)'s demonstrated expertise and experience. Proposer(s)s will not be permitted to assign, subcontract or otherwise transfer the VSA 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(s) believes that a mandatory VSA 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(s) must identify the specific language in the VSA that it would like to modify, and submit with its Proposal all requested edits to the VSA.

Proposer(s)s may not submit their own standard contract forms as responses to this RFP.

SECTION 6. **NON-PRICE PROPOSAL FORMAT AND CONTENTS**

A. Cover Letter and Signature

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

B. General Background Information

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

Proposer(s) must provide the following statements: (i) statement as to whether Proposer or any affiliate has commenced, or has been forced into, any insolvency proceeding within the last five (5) years; (ii) statement as to whether Proposer or any affiliate has been subject to any litigation in the last five (5) years; (iii) statement as to whether Proposer or any 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 Proposer or any affiliate within the last five (5) years. For each event of litigation, investigation or consumer complaint, please provide an explanation.

C. Staffing Requirements

The Compact will be selecting multiple vendors for each of the commercial retrofit and commercial new construction services, and up to two (2) vendors for commercial retrofit QA/QC services. Proposer(s) should identify which scopes they are bidding on, and reference staff and resources available for each scope.

1. Proposer(s) 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(s) 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 and any other pertinent information that will assist the Compact in making its selection.

3. Proposer(s) 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(s) would use one (1) full time staffer on the Project and Proposer(s) 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(s) in the performance of the VSA.

5. Proposer(s) must provide a schematic diagram showing organizational overview including identification of key staff and any supporting vendors or subcontractors, if applicable.

6. Proposer(s) should describe the sales training provided to field staff (if none, please provide a plan to provide sales training). This includes experience working with a variety of end uses, and engineering experience (if applicable).

7. Proposer(s) intends to hire additional staff in order to provide requested services, a description of its approach to hiring and the qualifications it will require of prospective employees should be included.

D. Proposed Scope of Services and Related Experience

1. Scope of Services

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

In addition to the above, the Services may include other energy related services associated with management and delivery of the statewide energy efficiency programs set forth in the Plan. These energy related services are necessary for the Compact to provide customers uninterrupted access to program offerings that may evolve over the term of the Compact's energy efficiency plan(s) as a result of changes in applicable law, regulatory directives and/or other changes in statewide programming.

2. Related Experience

Proposer(s) should submit statements regarding the following to evidence its experience delivering services to those similar in the description of Services (note N/A if not applicable):

1. Clear indication of which scopes and which segments are part of the bid response.
2. Detailed description of the proposed approach for implementing the applicable services.
3. Describe how you would provide comprehensive services to our customers. How would you engage other Vendors in order to serve a customer comprehensively?
4. Indicate the approach to providing services to non-English speakers, as needed.
5. Detailed explanation of how the Bidder proposes to coordinate and develop subcontracting relationships.
6. Detailed description of the proposed approach to electronically communicate with Cape Light Compact
7. Detailed description of the proposed approach to ensuring an exceptional customer experience (i.e., initial scheduling, implementation scheduling, backlog management, addressing barriers). All information must be tracked in a project management database that Compact staff has access to.
8. Detailed description of the tracking and follow up process that will be used to implement comprehensive measures over multiple years (include how data will be tracked so as to allow both calendar year reporting of savings and total savings by customer for these multi-year projects).
9. Detailed description of the proposed approach for following-up with customers on recommendations they have not acted on (must include mechanism for assessing the effectiveness of the approach).
10. Complete description of Bidder's technological capabilities in the areas of Information Management Systems hardware and software, electronic data transfer, and rebate processing capabilities.
11. List other similar contracts in force in Massachusetts and/or nationally along with the names or references to be contacted regarding performance for programs that are within the size and scope of the Compact's Commercial Program.
12. Assurances that the Bidder has the ability to be in the field at the appropriate start up time given the proposed services(s), such that Cape Light Compact's anticipated delivery projections will not be adversely delayed.
13. Detailed description of quality control policies and procedures (turnkey delivery services, measure installations and post-installation inspections). Installations must conform to program rules and guidelines.
14. Customer scheduling policies and procedures for installations or other services as identified in Attachment A.

15. Protocols for resolving customer dissatisfaction, either at the time of the site visit or installation, or after.
16. Current warranty policy, if applicable.
17. Describe the ability for Compact Staff to have access to project management database to view customer project details, dashboards and reporting, and if there are any limits on licenses available..
18. Please list and describe any deviations from the Scope as outlined in this Request for Proposals.
19. For Commercial Retrofit Services, please provide two (2) examples of an installation project including the initial proposal, customer contract sample, and corresponding materials given to customers after installation.
20. For Commercial New Construction, please describe knowledge of program and building codes, and expertise in the new construction area.
21. For QA/AC Inspections, please provide two (2) examples of inspections that were completed including the detailed results and outcome.

E. References

Proposer(s) 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. List the role your firm played and any coordination your firm did with other supporting Vendor(s) on each.

F. Redlined Contract or Contract Acceptance Letter

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

G. Supplier Diversity

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

Proposer(s)s are required to submit business diversity certification information in their Proposals. See Attachment C.

H. Ancillary Documents

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

I. Other

Proposer(s) may submit any other information it 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). The Proposer must use the format in Attachment G to submit their pricing proposal for each scope, and the Compact will use that method to determine the lowest proposal price. Please note that travel to Martha's Vineyard will be required. If Proposer(s) offers a discount for being awarded multiple scopes, its Pricing Proposal should so state. All general and administrative costs must be included in hourly labor rates and direct expenses. These terms apply to subcontractor costs as well. Proposer(s) must submit a budget proposal for each of the enumerated scopes, 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. In addition, please include the methodology for how the prices are derived and determined for each project.

For multi-year contracts, Proposer(s) should submit a single price that will apply to each year of the contract term.

Pricing Proposals should also state if the same rates would apply for out-of-scope work relating to the requested Services which may be contracted for during the original VSA term.

Pricing Proposals must state if the pricing schedule would remain in effect should the Compact elect to extend the VSA. If Proposer(s) would seek a price increase for any extended term(s), it must state the pricing for such extended term(s) or set forth a formula/price escalation clause to determine such pricing for the extended term(s).

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.

The Pricing Proposal must be submitted as a separate electronic file in pdf format and it must be clearly designated as the Pricing Proposal.

Proposals can be emailed to Margaret Song at msong@capelightcompact.org.

B. Proposal Due Date and Labeling

The Proposal and the Pricing Proposal must be signed and emailed to the Compact within the time set forth in Section 2 of this RFP. Proposals and Pricing Proposals must be sent in separate documents and clearly marked:

Email Title:	Commercial and Industrial Program RFP for Cape Light Compact JPE for [Proposers Name and Scope(s)]
Delivered to:	Margaret Song at msong@capelightcompact.org

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. Proposers who wish 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 of this RFP will be deemed non-responsive and will not be opened. Unopened Proposals will be returned to Proposers.

E. Offer to Provide Services

Proposer(s) understands and agrees that its Proposal to the Compact to provide services will remain valid for sixty (60) days past the submission deadline.

SECTION 9. **SELECTION PROCESS**

A. Minimum Comparative Evaluation Criteria

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

1. Responsiveness to the Project goals and desired outcomes as set forth in this RFP.

2. Satisfaction of all qualifications set forth in Sections 3 (General Qualifications) and 4 (Specific Qualifications).

3. Timely submission of the Proposal.

4. Inclusion of all required forms and documentation.

5. 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.

Proposals which are incomplete, conditional or obscure, will be rejected. No award will be made to any Proposer(s) who cannot satisfy to 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.

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 E.

C. Contract Award

The Chief Procurement Officer will make a preliminary determination of the most advantageous proposal from responsible and responsive Proposer(s) taking into consideration the Pricing Proposal and the evaluation criteria set forth above. The Chief Procurement Officer may negotiate all terms of the VSA not deemed mandatory or non-negotiable with each Proposer. If after negotiation with each Proposer the Chief Procurement Officer determines that it is in the best interest of the Compact, the Chief Procurement Officer may determine the proposal which is the next most advantageous proposal from a responsible and responsive Proposer taking into consideration the Pricing Proposal and the comparative evaluation criteria set forth in this RFP, and may negotiate all terms of the VSA with each Proposer. The Chief Procurement Officer will award the VSA to the Proposer who submitted the most advantageous proposal taking into consideration the Pricing Proposal, the comparative evaluation criteria set forth in this RFP, and the terms of the negotiated VSA. The Chief Procurement Officer shall award the VSA by written notice to the selected Proposer(s) within the time for acceptance specified in this RFP. The parties may extend the time for acceptance by mutual agreement.

The Compact will be selecting multiple vendors for each of the commercial retrofit and commercial new construction services, and up to two (2) vendors for commercial retrofit QA/QC services.

D. Minor Informalities

The Compact will waive minor informalities when awarding the VSA in accordance with M.G.L. c. 30B, §2. The Compact may also allow a Proposer to correct minor informalities if doing so is in the Compact's best interest and if the correction will not prejudice other Proposers.

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 VSA, 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 the 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.

C. Additional Information

The Compact may request that additional information be furnished to assure the Compact that a Proposer has the technical competence, and the business and financial resources adequate to successfully perform the requested services.

ATTACHMENTS

ATTACHMENT A	Services
ATTACHMENT B	Vendor Services Agreement
ATTACHMENT C	Diversity Certification Information
ATTACHMENT D	Certificate of Non-Collusion
ATTACHMENT E	Comparative Evaluation Criteria
ATTACHMENT F	Proposal Checklist
ATTACHMENT G	Cost Bid Sheet

ATTACHMENT A

ENERGY RELATED SERVICES

1. **Program Description**. The Compact is looking for the following services: (a) support for its Commercial Retrofit programs, which includes municipal and large commercial customers, (b) Commercial New Construction program, and (c) Commercial Retrofit QA/QC inspections (onsite and/or virtual).

Municipal customers are defined as those accounts for which a town or county (or special districts thereof) is responsible for the building ownership and/or energy use. These customers are not defined by usage.

Large customers are defined as using more than 1.5 million kWh in aggregate for all buildings on site.

The Program serves customers with all types of heating fuels (electric, oil, propane, other) except natural gas which are served through the natural gas company, with the exception of custom electrification projects for gas displacement, where Cape Light Compact is the lead[1]. The programs and policies may change with the subsequent Three-Year Plans.

2. **Project Objectives and Expected Outcome**. The Compact's objective is to engage a vendor who can provide turnkey installation services for its municipal customers, and large customers as needed, and a vendor or vendor(s) who will provide other miscellaneous non-engineering services such as program and project management support, QA/QC onsite inspection services for the Compact's large customers, new construction projects and ancillary services.

The goals of the Program are to:

a) Achieve a maximum level of cost-effective energy savings per dollar spent;
b) Provide cost and value-added services;
c) Achieve persistence of energy savings through effective and appropriate choice of energy efficiency measures; and
d) Deliver cost effective energy efficiency measure installations.

3. **Services**.

A. Vendor Will Perform the Following Services.

The Vendor(s) will perform the following services depending on sub-initiative awarded.

[1] This policy is subject to change.

A. Commercial Retrofit Services – Municipal and Large Commercial Customers

Program and Project Management Support

Vendor will provide the following services to the Compact upon request:

- Serve as a resource to the Compact for any technical issues on equipment performance, facilities operation, equipment load shapes, advances in commercial energy efficiency equipment and technology, experience with C&I projects, and otherareas of technical relevance in the energy efficiency field.
- For municipal projects, must have an understanding of municipal procurement laws, grants available from Green Communities, etc.
- Serve as a resource for energy-related training on all levels;
- Serve as a subject matter expert/resource for presentations on behalf of the Compact;
- Perform energy usage trend analysis (based on monthly usage and demand) as needed
- Install and monitor metering of existing and/or installed equipment
- Provide support calculations and analysis for custom or specialized energy related projects.
- Develop Minimum Requirements Documents to ensure savings;
- Program and Project Management Support
    - Vendors providing Program and Project Management Support will be contracted by the Compact for a specific not to exceed contract value for the purpose of supporting the Compact, as well as on an as-needed basis as mutually agreed upon with such vendors.
    - Other miscellaneous tasks as needed on an ad-hoc basis

Turnkey and Direct Installation Vendor Services

The components to these services are: (i) Program Management; (ii) Scheduling, Follow-up; (iii) Implementing Efficiency Measures; and (iv) Promoting, Distributing, and Processing Initiatives.

(i) Program Management

Vendor is responsible for overall Program management and providing technical assistance to internal field staff and their direct subcontractors. Vendor and subcontractors must have applicable licenses for installation work. The Compact will not compensate Vendor for any training costs associated with essential requirements, unless otherwise specified in advance. Vendor's Program management duties include:

a) Training for staff and subcontractors on Program policies and procedures.

b) Managing multiple contractual relationships. Vendor will enter into contracts withpermitted subcontractors, and have the ability to work with a customer's preferred contractor, if applicable. Vendor will also be responsible for verifying proof of insurance and applicable licenses from installers and permitted subcontractors prior to commencing any work under the Program.
c) Execute agreements with customers for direct install energy efficiency services.
d) Delivering, supervising and enforcing Program requirements.
e) Supervising and managing staff, installers and permitted subcontractors.
f) Developing all forms and other printed materials necessary (if applicable) for successful and efficient implementation of the Program, including permitted subcontractors, installers and customer participation agreements. All Vendor-developed forms must be submitted to Compact for approval and finalized prior to Program implementation.
g) Maintaining a computerized database tracking system that meets all necessary regulatory and Program Administrator (PA) specific reporting requirements. Vendor system, interface, or software will be utilizing existing customer data and capable of aggregating all information for customer reports/invoices and reporting to the Compact.
h) Maintaining a data tracking system capable of tracking recommendations and implementation of work that may be completed over a multi-year period and that willallow for appropriate follow-up with Program participants. In addition, tracking by segment (or sub-segment) for regulatory purposes may be required.
i) Implementing a systematic process for following up with Program participants who donot act on recommendations for additional services, contracts issued for measures directly installed by Vendor or subcontractor, or recommendations for measures installed outside of this initiative.
j) Other than as expressly specified herein, internal personnel recruitment, managementand training of its own staff, permitted subcontractors, and installers.
k) Procuring all equipment and materials necessary for Program implementation forinternal responsibilities.
l) Reasonably ensuring eligibility of participants (in case Program participants areassigned incorrectly).
m) Coordinating and identifying the resources available through the existing market infrastructure which includes private sector energy products and services vendors.
n) Collecting all data necessary for continuing Program management, monitoring, andevaluation needs.
o) Performing ongoing Program development and refinement, in conjunction withCompact and other PAs.

p) Coordinating all on-site crews performing work related to the Program.
q) Complete large commercial and municipal installations within a reasonable time from date of signed contract (subject to customer availability) unless special circumstances arise. If Vendor is unable to meet this request with internal staff, the use of additional energy service providers should be implemented, where applicable.
r) Toll free or local hotline, email or text capability that allows for customers to contact if needed regarding their project or to reschedule appointments
s) Adhere to all applicable state and local regulations and code.
t) Submission of monthly implementation and management reports to Compact, where applicable.
u) Performing quality control functions for internal staff, as well as subcontractors
v) Taking appropriate action upon identification of any potential hazards at municipality, or large commercial business (e.g., improperly vented combustion equipment, gas leaks etc.)
w) Maintain a central calendar for Vendor and subcontractors, including installers. Ideally, the Compact would have access to calendar in order to assist customers that may call in with questions about when their installation is scheduled for.
x) Develop all forms and other printed materials necessary (if applicable) for successful and efficientimplementation of the Program. All Vendor-developed forms must be submitted toCompact for approval and finalized prior to Program implementation.

(ii) Scheduling/Follow-up/Customer Assistance Services

The Vendor scheduling, follow-up and customer assistance services will consist of the following:

a. Supporting the Compact's Program participant intake process. Program participants that call the Compact directly will be interviewed by the Compact in order to determine their need and reason for calling. Inquiries also come via email and will be forwarded to Vendor as appropriate.
b. Schedule Installations. Vendor will be responsible for scheduling the installation of measures with the Program participant.
c. Providing a single point of contact for internal crews, permitted subcontractors, andinstallers performing Program related work.
d. Providing Program participants with Program and educational materials regardingenergy use, efficiency opportunities and how to operate and maintain installed equipment.
e. Staffing and training of representatives who will be assisting customers throughout the proposal and installation process. Vendor will ensure that its

representatives possess: (i) extensive knowledge of energy efficiency and applicable renewable technology including but not limited to lighting, HVAC, and refrigeration, and weatherization. (ii) additional training in the area of heating system fundamentals for a wide array of systems including high efficiency commercial and municipal equipment; (iii) knowledge of all commercial and municipal energy efficiency, demand-side management, renewable energy and demand response program offerings; (iv) familiarity with a comprehensive building approach; (v) in-field experience.

(iii) Implementing Efficiency Measures

Customers typically receive a comprehensive building assessment or another type of scoping study that they are looking to implement the recommended measures. Vendor will work with the customer to determine the energy efficiency or electrification measures for installation they wish to have installed and will determine the cost, savings, incentives and cost-effectiveness for the customer to review and proceed with install. In order to meet the Program goals while controlling costs, Vendor approaches, protocols, and procedures used will be designed to identify not just the obvious and most cost-effective opportunities, but also more subtle and "niche" energy retrofit opportunities.

If the Compact receives grants which provide for additional enhanced incentives and services, Vendor will work with the Compact and the customer/grantee to report and adhere to grant guidelines.

(iv) Promoting, Distributing and Processing Incentives

Vendor will promote all available/applicable incentives offered via applicable statewide commercial and municipal energy efficiency programs. Vendor understands and agrees that electric and gas PAs work together in order to offer available energy efficiency and electrification measures. Vendor will work with the natural gas company to coordinate projects related to natural gas measures and/or perform installations with approved incentives. Vendor will work with state and applicable grants that may be available to Compact customers.

Vendor understands and agrees that the Compact reserves the right to change the incentive pricing at any time. Vendor understands and agrees that as the Program continues to evolve, additional incentives are likely to be changed and that the incentive structure may also change in the future, based on regulatory or evaluation results.

Vendor will be responsible for timely incentive payment directly to permitted subcontractors for qualified/completed installations.

- Vendor will work with Compact and any leveraged program that may also

enhance the customer experience. Awarded grants in specific areas may require that projects through the program have an added element of reporting for grants and services (e.g., Green Communities). Compact will work with Vendor to ensure that this is also seamless for the customer.

Quality Assurance Tasks for Internal Vendor Operations

Vendor will provide effective project-level Quality Assurance/Quality Control (QA/QC) procedures.

Vendor will implement the following QA/QC policies and procedures: (i) documentation and record keeping (paper or electronic) protocols; (ii) regular and consistent supervision of Program work, including work performed by permitted subcontractors; (iii) review and inspection of Program work; and (iv) preparation of monthly quality assurance reports to Compact.

Vendor understands that the Compact will quarterly review its performance in the following areas: (i) program participant relations and service; (ii) data collection; (iii) Program participant education; (iv) testing and diagnostic procedures; (v) measures installed; (vi)materials used; (vii) sales and presentation; (viii) rebate processing; (ix) Program participant problem resolution; (x) scheduling and backlog; (xi) accuracy of work measures and costs; and (xii) timeliness of services. Additional reporting may be required based on the needs of the program.

Vendor shall require the same level of quality assurance from permitted subcontractors and installers that it requires of its own employees.

Vendor understands that the Compact may engage with the statewide QA/QC Vendor to perform additional quality assurance inspections of Program services and installations based on Compact requirements. These may include both in-field, pre and post evaluations. Vendor will ensure that any areas of concern identified by the statewide QA/QC Vendor are resolved andreported to Compact.

Vendor will promptly respond to any Program participant complaints or inquiries and third-party QA/QC results, within 1 business day of receipt.

B. Commercial New Construction Services

QA/QC inspection services

- Vendors providing inspection services will perform on-site inspections of pre and/or post installation conditions for participating customers. As part of these services, Vendor will work with the Compact to determine an appropriate timeline for various inspection and reporting milestones, and will:
    - Schedule the Pre or Post Installation Inspection with the customer or their representative and travel to the site.

- Bring appropriate employee identification as well as all necessary equipment to properly inspect the respective projects, including but not limited to Personal Protective Equipment (PPE), ladder, tape measure, screwdrivers, and camera or camera-ready smartphone/tablet.
- Verify that the existing conditions and quantity of equipment on site is as stated in the submitted application for the pre-installation condition, or for the post-installation inspection verify that the proposed energy efficiency measures were installed accordingly, in the appropriate number, and are operating. If a minimum requirements document (MRD) was a part of the application preapproval, the MRD should be reviewed and tasks verified during the post-install inspection.
- Submit the Pre or Post Installation Inspection report, including a signed MRD if applicable, to the Compact identifying any discrepancies, per the timeline agreed to with the Compact. Site inspections are typically required to be onsite, but there may be times when a virtual inspection is warranted.

Program and Project Management Support

Vendor will provide the following services to the Compact upon request:

- Serve as a resource to the Compact for any technical issues on equipment performance, facilities operation, equipment load shapes, advances in commercial energy efficiency equipment and technology, experience with C&I projects, and otherareas of technical relevance in the energy efficiency field.
- Serve as a resource for energy-related training on all levels;
- Serve as a subject matter expert/resource for presentations on behalf of the Compact;
- Perform energy usage trend analysis (based on monthly usage and demand) as needed
- Install and monitor metering of existing and/or installed equipment
- Provide support calculations and analysis for custom or specialized energy relatedprojects.
- Develop Minimum Requirements Documents to ensure savings;
- Program and Project Management Support
  - Vendors providing Program and Project Management Support will be contracted by the Compact for a specific not to exceed contract value for the purpose of supporting the Compact, as well as on an as-needed basis as mutually agreed upon with such vendors.
  - Vendors will be required to coordinate receipt of necessary signatures from authorized approvers for project
  - Other miscellaneous tasks as needed on an ad-hoc basis

C. Commercial Retrofit QA/QC on-site inspection services

- Vendors providing inspection services will perform on-site inspections of pre and/or post installation conditions for participating customers. As part of these services, Vendor will work with the Compact to determine an appropriate timeline for various inspection and reporting milestones, and will:
    - Schedule the Pre or Post Installation Inspection with the customer or their representative and travel to the site.
    - Bring appropriate employee identification as well as all necessary equipment to properly inspect the respective projects, including but not limited to Personal Protective Equipment (PPE), ladder, tape measure, screwdrivers, and camera or camera-ready smartphone/tablet.
    - Verify that the existing conditions and quantity of equipment on site is as stated in the submitted application for the pre-installation condition, or for the post-installation inspection verify that the proposed energy efficiency measures were installed accordingly, in the appropriate number, and are operating. If a minimum requirements document (MRD) was a part of the application preapproval, the MRD should be reviewed and tasks verified during the post-install inspection.
    - Submit the Pre or Post Installation Inspection report, including a signed MRD if applicable, to the Compact identifying any discrepancies, per the timeline agreed to with the Compact. Site inspections are typically required to be onsite, but there may be times when a virtual inspection is warranted.

Additional Tasks

Data Transfer and Reporting Functions

Vendor will provide the Compact with all applicable Program participant data including, installation information, work order records and other reports in a timely manner in accordance with Attachment A as an example of information required for reporting and invoicing. This Attachment is specific to the Commercial Retrofit programs, however, there are similar requirements for Commercial New Construction Services and Commercial QA/QC Inspection Services for invoicing.

Vendor will be responsible for continuous Program activity tracking and monitoring. Vendor must collect and manage data necessary for its own monitoring and project management, Compact oversight of the Program, required reporting for Program evaluations to be conducted by outside evaluation vendors engaged by Compact.

Vendor will establish data collection and tracking procedures at Program initiation and submitted to Compact for approval prior to Program delivery (if applicable). For the Commercial Retrofit Services, Vendor will be required to develop and maintain a computerized data tracking system that tracks applicable fields such as:

1. Monitor Program progress (number of participants, installations, costs, etc.).
2. Meet regulatory reporting requirements.
3. Support the Compact's ability for early identification of major issues that would jeopardize the ability of the Program to meet its goals.
4. Support the calculation of energy impacts, by measure and for the Program, using acceptable engineering algorithms and/or Compact provided savings calculation tools.
5. Upload project information (signed contract, backup documents, etc.) by customer and location to the Compact'sdatabase.
6. Track detailed information on all measures installed, includingsize, location, number of units, usage, type and model of equipment removed andinstalled.
7. Track information relating to efficiency measures that were recommended to the Program participant but were not installed.

Specific data needs and inputs may be expanded, at the request of Compact. Upon the Compact's request, Vendor will perform periodic and ad hoc electronic transfers of any or all of these inputs from their computerized data tracking systems. Vendor understands and agrees that the timing, format, and contents of these transfers will be specified by the Compact and may be changed for any reason at any time at no additional cost to the Compact.

Vendor will upload (at least monthly), a detailed file including all energy efficient measures installed or inspections performed, services provided and an invoice for reconciliation with the Compact's internal database. Vendor will ensure that the data transfers will be of the highest integrity in order to avoid additional administrative burden and payment requests on the Compact.

Financial Accounting EE Vendor Services

Vendor agrees that it will be responsible for the financial management of the Program(s) it is awarded. It will use accounting systems sufficient to efficiently implement all aspects of the Program, and keep track of all payments made, liabilities incurred, receivables, and material and equipment inventories.

Vendor understands and agrees that it is solely responsible for developing compensation systems between itself and subcontractors as well as with its own staff. Vendor understands that the Compact may audit Vendor's financial and accounting records pertaining to the Program at any time.

Duplicates of all invoices, supporting documentation and financial reports submitted shallbe kept on file at Vendor's place of business.

B. Other Energy Related Services. In addition to the above, the Services may include other energy related services associated with management and delivery of the statewide energy efficiency programs set forth in the Compact's energy efficiency plan(s) approved pursuant to M.G.L. c. 25, §§19, 21. These energy related services are necessary for the Compact to provide customers uninterrupted access to program offerings that may evolve over the term of the Compact's energy efficiency plan(s) as a result of changes in applicable law, regulatory directives and/or other changes in statewide programming.

C. Deliverables/Work-Product; Timing. Vendor shall deliver the work-product set forth in the description of EE Vendor Services above, including developing Program forms, creating and maintaining certain database systems. The timing of such deliverables/Work-Product is set forth in the description of EE Vendor Services above.

D. Reports. Vendor shall deliver the work-product set forth in the description of EE Vendor Services above, including monthly implementation and management reports, monthly quality assurance reports, as well as any additional reports deemed necessary or useful by the Compact.

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

8. All field staff will have additional training such as sales experience, engineering experience, assessments training, and experience working with a variety of end uses, as applicable.
9. PE or CEM certifications are desired, but not required for Vendor program staff who will be involved in developing proposals or project management.
10. In performing the EE Vendor Services, Vendor will ensure that permitted subcontractors also comply:
    i. Materials will not be installed without prior approval of the Program participantor building owner (if applicable).
    ii. The Program participant work site free will be kept free from accumulations of waste material or rubbish caused by performance of the work. Upon completion of the work, all rubbish, tools, equipment, surplus material and supplies shall be collected leaving the location free from any debris in "broom clean" condition or vacuumed to its original condition.
11. All items used or removed during implementation of the Program including, without limitation any substances considered hazardous and/or toxic under

stateor federal law or regulation will be properly, safely, and lawfully disposed of.

12. Upon request, Vendor will (1) advise the Compact and the applicable Program participant(s) of the practices, use, storage, treatment, handling and disposal of such hazardous and/or toxic materials, and other material and equipment removedfrom the Program participant's location in the course of the work, and (2) providethe Compact with documentation (including, without limitation, certificates and manifests) evidencing proper use, storage, treatment, transportation, handling, anddisposal or such material and associated property and equipment.

F. Quality Controls. Quality Controls and Quality Assurance standards are set forth in the description of services above.

G. Project Team. Vendor's services will be performed by Vendor staff meeting the qualifications set forth in Section E above. In addition, Vendor will ensure that all installations will be performed by licensed contractors with at least one (1) year of experience and managed by Vendor staff with at least three (3) years of experience.

ATTACHMENT B

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, the Compact is a governmental entity and municipal aggregator under G.L. c. 164, §136 that provides energy services to consumers on Cape Cod and Martha's Vineyard;

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 and decarbonization 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 (the "Plan");

WHEREAS, the Massachusetts Program Administrators (also known as the Mass Save® Sponsors) [or 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 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 [insert], unless this Agreement is terminated before such date under the provisions of Section 1.2. In addition, the Compact may, in its sole discretion, extend the term of this Agreement for up to an additional [insert] year(s) by providing sixty (60) days' notice to Vendor of its intent to extend the term of this Agreement. [Note: If there is a different term specified in the RFP, that term will be inserted here in lieu of the foregoing language.] After expiration of the original term and all extended terms, this Agreement may be extended for additional term(s), up to a maximum not-to-exceed term of ten (10) years (from the original effective date through the last date of all extended terms) if the Compact's Chief Procurement

Officer deems such additional extensions to be in the best interest of the Compact and this Agreement is related to the Compact's implementation of the Plan.

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 Member[2] 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 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. After termination, Vendor shall cooperate with the Compact to the fullest extent for the purpose of allowing the Compact or its designee to fully perform all functions previously performed by Vendor under 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 (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/or 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 apply: (i) Vendor is responsible for entering into and managing the contractual relationships with

[2] 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.

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**. To the extent permitted by law, the Compact shall have the right to require Vendor to delete from, change or add to the Services, in each case to the extent that any such deletions, changes, additions or other alterations are of the character described in Exhibit A, and to the extent such deletions, changes or additions are within Vendor's general expertise. Such changes must be evidenced in written amendments to this Agreement in accordance with Section 11.2. 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 or its Customers.

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 and budgets set forth in Exhibit C attached hereto. The Compact may reject any invoices using billing rates that are not consistent with Exhibit C, or are over budget unless the Compact has previously accepted such substitute rates in a written amendment to this Agreement.

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, along with documentation supporting the requested increase, must be submitted to the Compact in writing for approval at least one hundred twenty (120) days prior to expiration of the term.

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)), G.L. c. 25, §5D, 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. The Compact's payments are subject to the procedures set forth in applicable municipal finance laws (including, but not limited to G.L. c. 41, §56) and are subject to limitations set forth therein. 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 Vendor fails to invoice the Compact for any amount within six (6) months of the latter of (i) the month in which the Services in question are rendered or the expense incurred, or (ii) the date Vendor has the right to issue an invoice to the Compact for payment, Vendor shall be deemed to have waived any right it may otherwise have to invoice for and collect such amount.

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. Further, the Compact's acceptance of a payment arrangement or term shall not be construed to mean that the Compact agrees that such arrangement or term complies with Massachusetts municipal finance laws.

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 any loss caused by or attributable to Vendor, including, but not limited to: (i) defective Services not remedied; and/or (ii) claims filed or

asserted by third-parties relating to 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 portion of any invoice to the extent as may be necessary to protect itself from such anticipated losses or 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; (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; and (viii) it has the insurance required in Section 6 and any applicable schedule and will ensure that it and its subcontractors have all required insurance for the time periods set forth therein. Additional representations and warranties regarding Vendor's use of artificial intelligence are set forth in Exhibit A-1.

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 and (ii) 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. 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.

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 this Agreement. Vendor shall deliver to the Compact copies of any subcontractor warranties upon request.

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 **Vendor's Pre-Existing Intellectual Property**. Vendor's Pre-Existing Intellectual Property means any intellectual property (such as inventions, designs, software code, documents, trademarks, patents, copyrights, or know-how) that Vendor can show was created, developed, or owned by Vendor prior to the commencement of this Agreement. Vendor shall use its best efforts to identify Vendor Pre-Existing Intellectual Property to the Compact in writing prior to or at the time of incorporating it into any deliverables. Where deliverables incorporate or rely upon the Vendor's Pre-Existing Intellectual Property, the Compact is granted a limited, non-exclusive, non-transferable license to use such Vendor Pre-Existing Intellectual Property for the Compact's use in implementing its governmental purposes and its role as a Massachusetts Program Administrator, including, but not limited to, regulatory filings, program implementation, policy development, etc.

5.3 **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[3]

6.1 **Types and Amount of Insurance Coverage**. 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 procure and maintain the following insurance:

(a) Workers' Compensation Insurance 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) For Vendors (x) with access to customer information, employee personally identifiable information, financial data, or other sensitive or proprietary information, or (y) who provide information technology, software or computer programming related services, data storage or cloud hosting services, Network Security and Privacy Liability (a/k/a Cyber Liability)

[3] Note to Proposers/Vendors: If you do not have the required insurance, you should request quotes from your insurance advisor and build these costs into your rates/proposed budget. Proposers/Vendors should assume that they will be required to have all insurance listed and described in this Agreement including Cyber Liability insurance. When submitting exceptions to this Agreement, Proposers should note (i) any insurance that they do not carry; (ii) state if they will be seeking a waiver from a particular insurance requirement; (iii) the justification for such waiver; and (iv) if they are willing to obtain all required insurance at their own expense if awarded this contract.

Insurance including coverage for covering financial losses and/or claims 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 $3,000,000 per each occurrence/claim. If the Services involve access or use of customer information, or other significant cyber related risks, additional insurance requirements may be set forth in Exhibit L (Special Terms and Conditions).

(h) For Services involving demolition or transport, disposal or handling of hazardous materials or pollutants, Vendor's Pollution Liability Insurance with a limit of at least $1,000,000. Coverage shall include clean up expenses and liability associated with any on site, off site or other transit/disposal pollution events arising out of the Services.

(i) For Services involving handling or having access to Compact accounts or funds, Crime/Employee Dishonesty Insurance inclusive of coverage for theft of client funds with a limit of at least $1,000,000.

All insurance coverages, including, but not limited to, professional liability, shall cover the Services.

6.2 **Insurer Rating**. 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.

6.3 **Claims Made Coverage**. If any coverage required is written on a claims-made coverage form: (a) the retroactive date must be shown on the certificate of insurance, and this date must be before the Agreement effective date or before the Services begin to be rendered; (b) insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services or termination of this Agreement, whichever is later; and (c) if coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective or start of work date, Vendor must purchase extended reporting period coverage for a minimum of three (3) years after completion of the Services.

6.4 **Additional Insured**. The Compact, its officials and employees and all other parties designated by the Compact shall each be included as additional insureds on all insurance policies except coverages (a), (b), (f), (g) and (i) and no such policy shall exclude claims brought by an additional insured against a named insured.

6.5 **Certificates of Insurance**. Vendor shall provide certificates of insurance and copies of additional insured endorsements and all applicable endorsements to the Compact to evidence Vendor's insurance policies within thirty (30) days of the award of this Agreement, but in no event later than prior to the commencement of the Services and at such other times as may be requested by the Compact. Vendor shall ensure that its broker shall provide the Compact with replacement certificates and additional insured endorsements evidencing required insurance

coverage prior to the expiration of prior certificates. Failure to provide such certificates and additional insured endorsements shall be grounds for withholding payment and/or termination of this Agreement. The Compact shall have the right to review policy documents in the event a claim is filed thereunder.

6.6 **Subcontractors**. Vendor shall require and verify that all subcontractors engaged by Vendor under this Agreement obtain and maintain insurance coverage in types and amounts reasonable and appropriate to that part of the Services being performed. Vendor acknowledges that Vendor accepts liability for any loss or claim that may arise out of Vendor's use of subcontractors of every tier including any deficiencies in coverage and/or limits maintained by Vendor's subcontractors. In addition, Vendor must ensure that any subcontractor who has been subcontracted, assigned or delegated thirty percent (30%) or more of the Services must meet all of the requirements set forth in Section 6.1.

6.7 **Notice of Cancellation**. Vendor's insurer or Vendor shall be required to provide thirty (30) days' advance written notice of cancellation or non-renewal to the Compact.

6.8 **Insurance Costs**. Vendor shall bear all responsibility for deductibles, self-insured retentions and premium payments. Vendor shall build all insurance costs into its rates of compensation.

6.9 **Assumption of Risk by Vendor**. 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.

6.10 **Rights of Recovery/Subrogation**. 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), (g) and (i), shall include provisions in which the insurer waives its subrogation rights against the Compact or other party entitled to indemnification hereunder or permits Vendor to waive such rights.

6.11 **Insurance Requirements Are Not Limits**. The foregoing requirements and any approval or waiver of said insurance by the Compact are not intended to and will not in any manner limit or qualify Vendor's liabilities, whether imposed by applicable law or assumed pursuant to this Agreement, including, but not limited to, Vendor's indemnification obligations. The Compact in no way warrants that the types of insurance or minimum limits contained herein are sufficient to protect Vendor or is subcontractors from liabilities that might arise out of the performance of the Services, service, products and/or operation under this Agreement by Vendor or its agents, representatives, employees, or subcontractors; and Vendor is free to purchase such additional insurance as Vendor may deem necessary.

6.12 **Availability of Other Vendor Insurance**. If Vendor's insurance coverage is broader than/exceeds the coverages and limits set forth in this Agreement, Vendor agrees that such coverage shall be made available to the Compact in the event of a loss caused by Vendor.

6.13 **Primary and Non-Contributory**. Vendor's insurance shall be primary to and without the right of contribution from any insurance policy(ies) maintained by and/or available to the Compact. Any insurance or self-insurance maintained by the Compact shall be excess of Vendor's insurance.

6.14 **Severability of Interest**. The Commercial General Liability policy shall contain a severability of insureds clause indicating the insurance applies as if each insured is the only insured, and separately to each insured against whom a claim is made or suit is brought.

6.15 **Additional Insurance; Compact's Election to Modify Insurance Requirements**. If Vendor provides lead vendor services, additional insurance requirements will be set forth in Exhibit L (Special Terms and Conditions). Depending on the nature of Vendor's Services, additional insurance requirements may be set forth in Exhibit L (Special Terms and Conditions). The Compact may, for any reason, modify the required insurance coverages upon thirty (30) days written notice. Upon such notice, Vendor shall obtain and thereafter maintain such modified insurance coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to the Compact's reasonable approval. Additional terms relating to insurance may be set forth in Exhibit L (Special Terms and Conditions).

SECTION 7 INDEMNIFICATION BY VENDOR[4] AND DAMAGES FOR BREACH

7.1 **Indemnification**. The following shall constitute the "Indemnified Parties" as used in this Agreement: (i) the Compact (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns); (ii) each Member (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of each Member); and (iii) all Customers.

To the fullest extent allowed by law, Vendor shall indemnify and hold harmless the Indemnified Parties from:

(a) 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 (i) property of an Indemnified Party (including real property, personal property and environmental damages), (ii) property of Vendor and/or third-parties (including real property, personal property and environmental damages), or (iii) persons (including injuries resulting in death); and/or

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

(b) 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 or willful misconduct of Vendor (or 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 the deliverables completed by Vendor (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, owned, leased or supplied by Vendor (or its agents, subcontractors, and suppliers), or (v) failure of Vendor or its subcontractors to comply with applicable law.

The Indemnified Parties shall not be indemnified or held harmless against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Indemnified Parties. Vendor's indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Compact. Vendor agrees to pay all costs relating to indemnification claims, including reasonable attorneys' fees incurred in investigating and responding to claims, within thirty (30) days of receipt of a payment request.

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

7.3 **Limitations**. IN DIRECT ACTIONS BETWEEN THE PARTIES, 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, or for damages or losses covered by Vendor's insurance.

7.4 **Liability**.[5] 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. In addition, for Vendors entering into Customer contracts related to the Vendor's performance of the Services, the Compact's liability to Vendor shall be preconditioned on Vendor's inclusion of the following language in such Customer contracts (or such other language relating to program liabilities that may be approved by the Compact in writing): to the fullest extent allowed by law and as part of the consideration for participation in the program, Customer waives and releases the Compact from all obligations, and for any liability or claim associated with the program, program

[5] 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.

offerings (including installed energy efficiency measures or technologies), and the performance of the program offerings.

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. Vendor shall also provide formal written notice to the Compact in the event that Vendor receives notice of pending or threatened litigation, claims or assessments against Vendor that exceed the sum of one hundred thousand dollars ($100,000.00).

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.

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 as amended (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 (the "NDA"). Vendor agrees to submit the acknowledgment form set forth as Exhibit E concurrently with execution of this Agreement. The Compact may also 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)), G.L. c. 25, §5D, or other applicable law.

10.2 **Protection of 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 (as such term is defined in the NDA, 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.

10.3 **Cyber Security and Controls**. Vendor will maintain written cyber security policies and procedures which implement commercially reasonable administrative, technical, and physical safeguards that are aligned with industry security standards and that, among other things, protect against anticipated threats or hazards to the security or integrity of Vendor's systems and data. Such cybersecurity policies and procedures shall require that all Confidential Information be encrypted.

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:

Cape Light Compact JPE Administrator
Cape Light Compact JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664

Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established

overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid. Notices given hereunder shall be deemed sufficiently given on: (i) the date of personal delivery if so delivered; (ii) the day after sending if sent by established overnight commercial courier delivery service; or (iii) the fifth day after sending if sent by registered or certified mail. Either Party may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the Party of the obligation to provide notice as specified above.

11.2 **Entire Agreement; Amendments**. This Agreement (including all exhibits and addenda) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. The Parties agree that the exhibits are intended to be construed harmoniously to the greatest practicable extent. 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 understands and agrees that Customer Information may only be used for the purpose of rendering the Services. Vendor shall not engage in any solicitations or marketing campaigns using Customer Information except as required under this Agreement. The prohibitions in this Section 11.7 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 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 is intended to be a contract for "energy" and/or "energy related services" within the meaning of G.L. c. 30B, §1(b)(33) and therefore this Agreement is exempt from the competitive procurement procedures set forth in G.L. c. 30B. [delete or modify preceding sentence if not applicable] If applicable, it shall be the Compact's obligation to comply with submission and reporting requirements of 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 6 (Insurance), Section 7 (Indemnification), Section 8 (Dispute Resolution), Section 10 (Confidentiality), and Section 11.7 (Solicitation) 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 in 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 electronic signatures may be used to execute this Agreement and 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 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 and understands the PA Contract Terms set forth in Exhibit J. If the Services involve performing work in the field or on Customer premises, the provisions in Exhibit K apply. Other special terms and conditions may be set forth in Exhibit L, including, but not limited to, terms relating to insurance.

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

VENDOR	**CAPE LIGHT COMPACT JPE**
_____	_____
Signature	Signature
Print Name:_____	Print Name:_____
Title: _____	Cape Light Compact JPE Chief Administrative Officer & Chief Procurement Officer
_____	_____
Date	Date

LIST OF EXHIBITS TO VSA

Exhibit A - Services
Exhibit A-1 - Artificial Intelligence
Exhibit B - Background Check Policy
Exhibit C - Compensation
Exhibit D - Pre-approved Subcontractors
Exhibit E - Mutual Confidentiality and Nondisclosure Agreement dated March 18, 2022 as amended 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 - PA Contract Terms
Exhibit K - Work in the Field Provisions
Exhibit L - Special Terms and Conditions

EXHIBIT A TO VSA
SERVICES

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 A 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 A-1 TO VSA
ARTIFICIAL INTELLIGENCE

If Vendor is using artificial intelligence or AI in connection with the Services, it shall make the disclosures and abide by the covenants set forth in this Exhibit A-1. For purposes of this Agreement, AI means "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action," or such other definition as may be used and adopted by the Massachusetts Office of the Attorney General in its guidance and advisories.

Vendor will use AI in connection with the Services? _____**Yes** _____**No**

If a Vendor answers no, it agrees that it will notify the Compact if it begins to use AI in connection with the Services during the term of the Agreement.

If yes, Vendor to insert a description as to how it intends to use AI in connection with the Services:

Representations, Warranties and Continuing Covenants. Vendor represents, warrants and covenants as follows:

(i) It will notify the Compact if the description of AI related Services is no longer accurate, or it expands its use of AI.
(ii) It complies with industry standards and best practices regarding use of AI.
(iii) It will provide comprehensive training for its employees regarding the proper use of AI, and such training will include how to protect Confidential Information.
(iv) It is familiar with the AI guidance issued by the Massachusetts Office of the Attorney General issued in April of 2024.
(v) It has determined that its insurance will adequately cover claims and losses related to its use of AI.
(vi) Vendor is responsible for all losses and damage caused by its use of AI.

EXHIBIT B TO VSA
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 checks, 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's 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 in this Exhibit C as confidential, competitively sensitive information to the extent permitted by the Massachusetts Records Law (G.L. c. 4, §7, cl. 26(s)), G.L. c. 25, §5D or other applicable law.

EXHIBIT C TO VSA
COMPENSATION

The [estimated budget for planning purposes OR not-to-exceed budget] 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.

EXHIBIT D TO VSA
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 D. 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 VSA

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") as amended, 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 NDA &
Extension for Vendc

EXHIBIT F TO VSA
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 VSA
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 VSA
DIVERSITY CERTIFICATION AND
LANGUAGES QUESTIONNAIRE
[To be completed and returned with contract execution package**]**

1. Has Vendor been certified by the Massachusetts Supplier 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

Small Business Purchasing Program (SBPP) Y / N

Service-Disabled Veteran-Owned Business Enterprise (SDVOBE) Y / N

Disability Owned Business Enterprise (DOBE) Y / N

Lesbian Gay Bisexual Transgender Business Enterprise (LGBTBE) Y / N

Portuguese Business Enterprise (PBE) Y / N

Disadvantaged Business Enterprise (DBE) Y / N

Airport Concession-DBE (ACDBE) Y / N

Small Business Enterprise (SBE) Y / N

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

_____M/NPO ____W/NPO ____M/W/NPO

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 Owned Business Association (NAVOBA) Y / N

DCAMM Y / N

MassDOT Office (UCP) Y / N

Massport Y / N

4. Do any of the following additional diversity designations apply to Vendor?

Alaskan Native Corporation or Indian Tribe (ANC) Y / N

Historically Black College and University/Minority Institutions (HBCU/MI) Y / N

Historically Underutilized Business Zone (HUBZ) Y / N

Small Disadvantaged Business (SDB) Y / N

Veteran Owned Small Business (VOSB) Y / N

Service-Disabled Veteran Owned Small Business (SDVOSB) Y / N

Woman Owned Small Business (WOSB) Y / N

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

6. The Compact allows diverse-owned businesses to confirm their ownership status through self-certification. If Vendor's business is greater than 50% owned, operated, and controlled by an individual or individuals that fall into one of the categories listed in questions 1-5 above, please state Vendor's diversity status: _____

Provide a brief description of the ownership structure or other criteria that qualifies Vendor for the status(es) described above:

7. 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):

8. 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? Y / N

If yes, please list the languages:

ATTESTATION/CERTIFICATION STATEMENT

I affirm that the diversity information provided by Vendor is to the best of my knowledge true, accurate, and complete. Furthermore, I affirm that I am authorized to make this attestation on behalf of Vendor.

_____ _____

Vendor Name **Date**

_____

Name & Title of Individual Attesting Status

EXHIBIT K TO VSA
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 (Scope of Services and Related Matters):

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 and budgets set forth in Exhibit C hereto. The Compact may reject any invoices using billing rates that are not consistent with Exhibit C or are over budget, 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 for at least two (2) years from the date of payment.

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)), G.L. c. 25, §5D, 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 (Compensation and Related Matters) 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.

ATTACHMENT C
DIVERSITY CERTIFICATION AND
LANGUAGES QUESTIONNAIRE
[To be completed and returned with contract execution package**]**

1. Has Vendor been certified by the Massachusetts Supplier 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

Small Business Purchasing Program (SBPP) Y / N

Service-Disabled Veteran-Owned Business Enterprise (SDVOBE) Y / N

Disability Owned Business Enterprise (DOBE) Y / N

Lesbian Gay Bisexual Transgender Business Enterprise (LGBTBE) Y / N

Portuguese Business Enterprise (PBE) Y / N

Disadvantaged Business Enterprise (DBE) Y / N

Airport Concession-DBE (ACDBE) Y / N

Small Business Enterprise (SBE) Y / N

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

_____M/NPO ____W/NPO ____M/W/NPO

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 Owned Business Association (NAVOBA) Y / N

DCAMM Y / N

MassDOT Office (UCP) Y / N

Massport Y / N

4. Do any of the following additional diversity designations apply to Vendor?

Alaskan Native Corporation or Indian Tribe (ANC) Y / N

Historically Black College and University/Minority Institutions (HBCU/MI) Y / N

Historically Underutilized Business Zone (HUBZ) Y / N

Small Disadvantaged Business (SDB) Y / N

Veteran Owned Small Business (VOSB) Y / N

Service-Disabled Veteran Owned Small Business (SDVOSB) Y / N

Woman Owned Small Business (WOSB) Y / N

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

6. The Compact allows diverse-owned businesses to confirm their ownership status through self-certification. If Vendor's business is greater than 50% owned, operated, and controlled by an individual or individuals that fall into one of the categories listed in questions 1-5 above, please state Vendor's diversity status: _____

Provide a brief description of the ownership structure or other criteria that qualifies Vendor for the status(es) described above:

7. 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):

8. 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? Y / N

If yes, please list the languages:

ATTESTATION/CERTIFICATION STATEMENT

I affirm that the diversity information provided by Vendor is to the best of my knowledge true, accurate, and complete. Furthermore, I affirm that I am authorized to make this attestation on behalf of Vendor.

_____ _____

Vendor Name **Date**

_____

Name & Title of Individual Attesting Status

ATTACHMENT D

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

ATTACHMENT E

COMPARATIVE EVALUATION CRITERIA

1. General Quality of Response

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

Acceptable: Proposer meets all RFP requirements (including format), understanding of Project, 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 have 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 have 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 have 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, 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 changes to the Scope of Work, or the changes submitted provided clarity or improved the Scope of Work.

Advantageous: Proposer submits 1-5 non-clarifying and substantial edits to the Scope of Work.

Not Advantageous: Proposer submits between 6-10 non-clarifying and substantial edits changes to the Scope of Work.

Unacceptable: Proposer submits more than 11 non-clarifying and substantial redlined Scope of Work.

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

Highly Advantageous: Proposer cites five (5) or more examples of past work on similar projects.

Advantageous: Proposer cites three (3) 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 three (3) 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 changes to the Contract, or the changes submitted provided clarity or improved the Contract.

Advantageous: Proposer submits 1-5 changes that are not material and are generally non-negotiable to the Contract as noted in Section 5 of the RFP.

Not Advantageous: Proposer submits more than 6 and less than 10 changes that are not material and are generally non-negotiable changes to the Contract as noted in Section 5 of the RFP.

Unacceptable: Proposer submits more than 11 changes that are not material to the redlined Contract or proposes changes to the non-negotiable terms as noted in Section 5 of the RFP.

8. Interviews (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 F

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 and 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, experience and qualifications of subcontractors or consultants. [Section 6(C)]

___ 10. Schematic diagram. [Section 6(C)]

___ 11. Proposed edits to Scope of Work. [Section 6(D)] [Attachment B]

___ 12. Statements regarding related experience. [Section 6(D)]

___ 13. References. [Section 6(E)]

___ 14. Redlined Contract (incl. insurance exceptions) or Contract acceptance letter [Section 6(F)] [Attachment B]

___ 15. Diversity certification documentation. [Section 6(G)] [Attachment C]

___ 16. Certificate of Non-Collusion. [Section 6(H)] [Attachment D]

___ 17. Pricing Proposal (including pricing schedule and budgets). [Section 7]

___ 18. Proposal Checklist (this document). [Section 6(H)] [Attachment F]

___ 20. Other from Specific Qualifications. [Section 6(I)]

ATTACHMENT G

CONFIDENTIALITY AGREEMENT
between
THE CAPE LIGHT COMPACT JPE
and
_____ [Company]

This CONFIDENTIALITY AGREEMENT ("Agreement") is entered into by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to M.G.L. c. 40, §4A½ (the "Compact") and _____, a _____ [**insert jurisdiction and state of organization**] (the "Company"), and is effective as of the date of execution by the Company as set forth below.

WHEREAS, pursuant to M.G.L. c. 40, §4A½, 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 Dukes County (collectively, the "Members") entered into a joint powers agreement to organize and act collectively as the Compact;

WHEREAS, the Compact issued a request for proposals [insert project description] (the "RFP");

WHEREAS, the Compact, for itself and for its Members, desires to supply certain confidential information to the Company so that the Company may submit a proposal in response to the RFP;

WHEREAS, the Company may also disclose certain confidential information in its proposal; and

WHEREAS, the parties desire to maintain the confidentiality of such information to the greatest extent allowed by law.

NOW THEREFORE, the parties hereby agree and state as follows:

1. *Confidential Information.* The term "Confidential Information" means all non-public or proprietary customer information, trade secrets or confidential, competitively sensitive or other proprietary commercial and financial information provided by either party in connection with the RFP and/or the execution or performance of the [**insert activity description**] that the parties may enter into (the "Energy Activity"), whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the disclosing party with the words "Confidential" or "Proprietary" or marking of similar import, or if disclosed orally, is identified as confidential at the time of disclosure and in a written notice delivered to the receiving party promptly following disclosure. Confidential Information includes "Customer Information" which includes, but is not limited to, customers' names, addresses, email addresses, account numbers, billing information, load information and usage information. Confidential Information does not include:

(i) information already in the possession of the receiving party at the time of disclosure by the disclosing party, as long as such information was not provided by the disclosing party;

(ii) information that is now or later becomes publicly available, unless such information becomes publicly available as a result of any action or inaction on the part of the receiving party;

(iii) information received by the receiving party from a third-party, unless such third-party was under a duty of confidentiality with respect to such information;

(iv) information for which disclosure is required under the Massachusetts Public Records Law, including, without limitation, M.G.L. c. 4, §7, cl. 26 and M.G.L. c. 66, §10, or the Massachusetts Open Meeting Law, M.G.L. c. 30A, §§18-25; or

(v) information that is not designated or identified by the disclosing party as "Confidential" or "Proprietary" at the time of its initial submission. Such information shall be presumptively subject to disclosure under the Public Records Law.

2. *Use of Confidential Information.* The parties shall use the Confidential Information exclusively in connection with the Energy Activity. Each party shall receive all Confidential Information in strict confidence and shall protect the Confidential Information against disclosure using the same degree of care, but no less than a reasonable degree of care, that each party uses to protect its own confidential information.

3. *Disclosure to Third-Parties.* The receiving party agrees that it will not disclose any Confidential Information to any third-party without the prior written consent of the disclosing party. After having obtained the written consent of the disclosing party, the receiving party agrees that it will: (i) advise the third-party of the terms of this Agreement; (ii) advise such party that it will be bound by the terms of this Agreement; and (iii) have such party execute a Non-Disclosure Certificate in the form attached to this Agreement as Exhibit A. Notwithstanding the foregoing, the receiving party may disclose Confidential Information to consultants, contractors and other agents of the receiving party that have a "need to know" such information to carry out their functions in connection with the Energy Activity and who execute Non-Disclosure Certificates.

4. *Ownership of Confidential Information; No Implied License or Warranty.* Each party acknowledges that it has no ownership or proprietary rights in the disclosing party's Confidential Information, and that, as between the disclosing party and the receiving party, the Confidential Information is the sole property of the disclosing party. Nothing in this Agreement will be construed as granting any rights to the receiving party by license or otherwise, to any of the disclosing party's Confidential Information, except as specifically stated in this Agreement. Neither party makes any warranty or guaranty as to the accuracy of Confidential Information disclosed hereunder, nor is any assurance provided that Confidential Information is fit for any particular intended use or purpose. Each party shall rely on Confidential Information only at its own risk.

5. *Notes, Copies and Abstracts.* To the extent necessary to carry out the Energy Activity, the receiving party may make notes, copies or abstracts of the Confidential Information, provided that all such notes, copies and abstracts themselves are marked as confidential and provided that the receiving party maintains a written record of the distribution of all such copies and abstracts.

6. *Return of Confidential Information*. Within fourteen (14) days of receiving notice that it is not the winning bidder/respondent, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contain Confidential Information, and will provide to the Compact a written certification from an

officer of the receiving party that it has done so. If the Company is the winning bidder/respondent, within fourteen (14) days after the Company has ceased to provide services to the Compact, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contains Confidential Information, and will provide to the Compact a written certification from an officer of the receiving party that it has done so. If requested in writing, the Compact will return any Confidential Information received from any bidder/respondent (including the winning bidder/respondent), upon expiration of the relevant document retention period under Massachusetts law. Each party agrees that upon the return of the Confidential Information, it shall continue to be bound by the terms of this Agreement.

7. *Scope of Agreement.* This Agreement is binding upon the employees, officers, directors, agents, representatives, attorneys, contractors, consultants and affiliates of each party.

8. *Consent of the Disclosing Party.* As to any instance under this Agreement whereby the receiving party is required to obtain the consent of the disclosing party prior to taking certain actions, the disclosing party reserves the right to withhold consent for any reason.

9. *Term.* This Agreement shall become effective when executed by both parties and shall continue in effect until either: (i) in the event that the Company is the successful bidder/respondent, two (2) years after the Company has ceased to provide services to the Compact, or until sooner terminated by the written agreement of both parties hereto, or (ii) in the event that the Company is not the successful bidder/respondent, two (2) years after termination of the solicitation process. The obligations of confidentiality contained herein shall survive and continue following the expiration or termination of this Agreement, unless otherwise agreed to in writing by both parties hereto.

10. *Required Disclosures.* The Company acknowledges that the Compact and its Members are subject to the Massachusetts public records laws, including without limitation, M.G.L. c. 4, §7, cl. 26 and M.G.L. c. 66, §10, and the Massachusetts Open Meeting Law, M.G.L. c. 30A, §§18-25.

If the Company fails to mark its written information as "Confidential", or "Proprietary" or otherwise specifically identify information as Confidential Information, the Compact will make a good faith, reasonable determination as a governmental entity as to whether the Company's information is in fact Confidential Information. The Compact shall not in any way be liable or responsible for disclosing information based on such determination.

In the event that the Compact is requested or required under the Massachusetts Public Records Law, statutory law or case law, oral questions administered under oath in a court or investigative proceeding, interrogatories, depositions, subpoena or other judicial or investigative process to disclose any Confidential Information supplied to the Compact, the Compact shall provide to the Company prompt notice of a request/requirement to disclose so that the Company may seek a protective order or other appropriate relief from such request or requirement to disclose Confidential Information. In the absence of the Company's obtaining a timely protective order or other relief, if, upon the advice of counsel of its own choosing, the Compact determines that disclosure of any Confidential Information is compelled by law, by court order, or by order of the Supervisor of Public Records, the Compact may disclose such Confidential Information without liability hereunder. The Company agrees that it will not make any claim against the Compact for such disclosure. Further, in the event the Compact is required to defend an action on a Public Records Law request for any of the Company's Confidential Information (or does so at the Company's request), Company agrees to indemnify the Compact from all costs and expenses, including reasonable attorneys' fees, in action or liability arising under the Public Records Law. The Company shall be obligated to provide the Compact with the legal

justification for withholding such information under the Public Records Law in order for the Compact to undertake any such defense.

In the event that the Company is requested or required by statutory law or case law, oral questions administered under oath in a court or investigative proceeding, interrogatories, depositions, subpoena or other judicial or investigative process to disclose any Confidential Information disclosed by the Compact, the Company shall provide the Compact prompt notice of the request/requirement to disclose so that Compact may seek a protective order or other appropriate relief from such request or requirement to disclose Confidential Information.

11. *Representations and Warranties.* Each party hereby represents and warrants to the other party as follows: (i) it shall use the Confidential Information only in connection with the Energy Activity; (ii) this Agreement constitutes the legal, valid and binding obligation of the party enforceable in accordance with its terms; and (iii) it has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder. The representations and warranties contained in this Agreement shall survive execution and delivery of this Agreement.

12. *Governing Law; Enforcement.* 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. The parties agree that the venue for judicial enforcement of this Agreement shall be Barnstable County Superior Court. The parties acknowledge and agree that the extent of damage to the disclosing party in the event of a breach by the receiving party of any of the covenants contained in this Agreement will be difficult or impossible to ascertain and that there may be no adequate remedy at law available to the disclosing party. The parties therefore agree that, in the event of such breach, the disclosing party, in addition to receiving damages for breach, shall be entitled to enforce any and all of the covenants contained in this Agreement by injunctive or other equitable relief.

13. *Notices.* 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 and addressed as follows:

FOR THE COMPACT:

Cape Light Compact JPE Administrator
Cape Light Compact JPE
261 White's Path, Unit 4
South Yarmouth, MA 02664
[xx] (phone)
[xx] (email)

FOR THE COMPANY:

[insert contact information]

With a copy to:

[**insert contact information**]

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.

14. *Waiver.* No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by either party to insist upon strict compliance with any term of this Agreement shall be deemed a waiver of such term. No waiver or relinquishment of any right under this Agreement at any one or more times shall be deemed as a waiver or relinquishment of such power or right at any other time.

15. *Assignment; Successors and Assigns.* No party may assign any of its rights or delegate any of its obligations under this Agreement to any third-party without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

16. *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. This Agreement may only be amended or modified by a written instrument signed by both parties hereto.

17. *Further Agreements.* Nothing contained in this Agreement shall be deemed, by implication or otherwise, to convey to the receiving party any rights in any Confidential Information, nor shall this Agreement be deemed a commitment of any kind by the Compact or the Company to enter into any further agreements with respect to any Confidential Information.

18. *Severability.* If any of the provisions of this Agreement shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect the validity or enforceability of any other provision of this Agreement to the maximum extent permissible by law.

19. *No Joint Venture.* Nothing in this Agreement is intended or shall be deemed to make the Compact a partner or joint venturer of the Company.

20. *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 electronic signatures may be used to execute this Agreement and that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates written below.

FOR THE COMPACT:	FOR THE COMPANY:
_____	_____
Name: Margaret Song Title: Cape Light Compact JPE Chief Administrative Officer	Name: Title:
Dated: _____	Dated: _____

EXHIBIT A

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that the Confidential Information, as that term is defined in the Confidentiality Agreement between the Cape Light Compact JPE and [the Company] dated _____, 202__ (the "Agreement"), is being provided to me pursuant to the terms and restrictions of the Agreement. I also certify that I have been given a copy of the Agreement, 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, abstracts, 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 Agreement, 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 _____ of [the Company] 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 Agreement, and I shall continue to be bound by the terms and conditions of the Agreement.

By: _____

Name: _____

Title: _____

Organization: _____

Representing: _____

Date: _____