



Request for Proposals

**Commercial and Industrial (C&I) Programs
Quality Control / Quality Assurance (QA/QC) and Ancillary Services**

2019-2021 Program Years

Issued: Monday, February 4, 2019

Proposals due: Monday, March 4, 2019

Cape Light Compact, JPE - 261 Whites Path, Unit 4 – South Yarmouth, MA 02664
www.capelightcompact.org

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Commercial and Industrial (C&I) Quality Assurance / Quality Control (QA/QC) and Other Ancillary Services

2019-2021 Program Years

I. Introduction

The Cape Light Compact JPE (“the Compact”) is soliciting competitive bid proposals from qualified vendors for Quality Assurance & Quality Control (“QA/QC”) of Commercial & Industrial Energy Efficiency projects. The scope includes the pre and post installation inspections of Commercial & Industrial retrofit projects. The scope will also include, on an ad-hoc basis, the calculation of energy savings of prescriptive (non-custom) and custom Large Retrofit & New Construction applications.

Bidders may choose to bid on any subset of the service areas specified, and the Compact may select multiple vendors for some or all of this work. The contract(s) for these services are scheduled to begin April 16, 2019 (estimated) and continue through December 31, 2021 with an option to extend in one year increments for up to an additional three years.

Vendor(s) selection will be based on a scored selection criteria detailed in the body of this proposal.

II. Cape Light Compact

Cape Light Compact JPE, is an award-winning energy services organization operated by the 21 towns on Cape Cod and Martha’s Vineyard and Dukes County. 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. For more information, visit www.capelightcompact.org.

III. Background

The Compact administers its Commercial & Industrial (C&I) Energy Efficiency Programs to roughly 20,000 commercial customers on Cape Cod and Martha’s Vineyard. These robust programs include New Buildings and Renovations, Existing Buildings, and New and Replacement Equipment.

The Compact is seeking one or more engineering and/or technical service vendors as part of its 2019-2021 Energy Efficiency Plan, to support the Compact’s C&I program implementation with

a variety of engineering, QA/QC and other ancillary support services on an as needed basis. The successful vendor(s) will be familiar with the workings of the existing Massachusetts C&I Programs, be willing and capable of supporting the Compact's new initiatives, and have the technical expertise, skills and experience to be able to perform a variety of tasks on an ad hoc, as-needed basis, as well as develop reports, and interact as needed with the Compact's customers in the field and remotely.

Program History and Anticipated Volume

Below are sample ancillary service volumes, by scope role, for the most recent 3 years of program activity, during the 2016-2018 Three Year Plan, as well as anticipated volume during the 2019-2021 Three Year Plan.

Past Projects with Pre or Post Inspectable Measures

	Martha's Vineyard			Cape Cod		
	2016	2017	2018	2016	2017	2018
Small Business	12	9	24	141	197	394
Medium Business	1	2	2	59	29	31
Retrofit Applications	1	3	3	90	74	62
IP/EUL Applications	1	0	1	20	4	21

Anticipated Pre/Post On-Site Inspections

	Martha's Vineyard			Cape Cod		
	2019	2020	2021	2019	2020	2021
Small Business	3-5	3-5	3-5	30-40	30-40	30-40
Medium Business	2-3	2-3	2-3	10-20	10-20	10-20
Retrofit Applications	2	2	2	50-75	50-75	50-75
IP/EUL Applications	1	1	1	15-25	15-25	15-25
New Construction	-	-	-	3-5	3-5	3-5

IV. Ancillary Services Vendor Roles and Scope(s) of Work

All vendors, regardless of specific ancillary services role, will be expected to:

- **Have working knowledge** of the Massachusetts statewide C&I Programs, the C&I Retrofit application process in particular, as well as the Massachusetts TRL (Technical Reference Library).

- **Create and maintain individual project file records electronically¹**, utilizing vendor access to the Compact's EECP database to upload documents and other project related data for customer records.²
- **Deliver regular updates and status reports to Compact management** on activities/services provided, on a timeline agreed to with Compact management, and utilizing vendor access functions available within the Compact's EECP database.
- **Interact with the Compact's commercial customers with professionalism, courtesy and competence**, treating their employees, project management associates, and their places of business with respect and sensitivity at all times.
- **Have sufficient professional skill diversity** of project team, to be able to employ the most appropriate and cost-efficient level of expertise for given ancillary service tasks, while maintaining consistency for customer and Compact interaction.
- **Provide all equipment necessary** to properly inspect any applicable projects.
- **Provide electronic invoices for upload** through the Compact's database.
- **Finalize contract** terms with the Compact for provision of their respective ancillary service(s).³

Specific Ancillary Service Area Roles are outlined below in A through D. Bidders may choose to bid on any one or more of the indicated service roles A through D.

A. Engineering Peer Review Services

The vendor(s) providing Engineering Peer Review Services will be called upon to review program application energy calculations, simulations and analyses submitted by 3rd party vendors on behalf of the customer for correctness. In this role, the vendor may also:

1. As requested, conduct pre-installation and post-installation inspections for specific sites for Quality Control of installed retrofit (or applicable new construction) measures and projects with Incentive applications or QC inspections of installations performed as part of a turnkey program by other Compact vendors;
2. Review schematic, design document, or construction specifications for all proposed equipment that may qualify for incentives, including electric and other fueled equipment. This review determines whether the equipment will qualify, and if it does not, will provide recommendations on upgrades that will earn an incentive or a rebate through the Compact's programs
3. Install and monitor metering of existing or proposed equipment

¹ Final details on vendor permissions for workflow steps in CLC database to be determined between the vendor and the Compact once the contract is awarded.

² Please refer to www.capelightcompact.org/rfp/ for sample EECP file upload user guide and import specifications, provided as part of this RFP

³ See sample contract for QA/QC on-site inspection services in Exhibit B attached

B. QA/QC On Site Inspection Services⁴

The vendor(s) providing inspection services will be called upon to perform site inspections of pre and/or post installation conditions for participating customers. As part of these services, the vendor(s) will be expected to work with the Compact to determine an appropriate timeline for various inspection and reporting milestones, and:

1. Schedule the Pre or Post Installation Inspection with the customer or their representative and travel to the site
2. 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, camera or camera-ready smartphone/tablet, and ballast discriminators.
3. Verify that the existing condition 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.
4. Submit the Pre or Post Installation Inspection report to the Compact identifying any discrepancies, per the timeline agreed to with the Compact.
5. In coordination with the turn-key vendor(s), provide on-site verifications to approx. 10% of installation projects that have been completed through the direct install initiatives. This includes: site selection, scheduling the visit with the customer, on-site verifications and reporting of results to the Compact. Please note that the Compact may revise the percentage over time.

C. Application Processing and Management Services

The Vendor providing Application Processing and Management Services is expected to utilize the Compact database to perform intake, review, process and report on applications on behalf of the Compact, including:

1. Providing application intake on behalf of the Compact and its customers by maintaining a Compact email box and phone line;
2. Reviewing the submitted application for completeness and working with customer or their representative to complete application accordingly;
3. Continuously track the application and its status in Cape Light Compact's database, including attaching documents and noting interactions.
4. Confirm that proposed equipment meets all application requirements, including, but not limited to, checking to ensure that any proposed lighting equipment is on the Qualified Products list, and that minimum efficiency requirements are met;
5. Queue the application for Pre-Installation Inspection, where appropriate⁵;

⁴ Note that QA/QC On Site Inspection Services may be combined with Application Processing and Management Services, or be offered separately.

6. Receive the Pre-Installation Inspection report and work with customer or their representative to remediate submittal should any discrepancies be found in the pre-installation inspection, including but not limited to incorrect equipment quantities or hours of operation submitted, or the incorrect application being utilized.
7. Calculate energy savings associated for the proposed prescriptive measures according to the inspected conditions and calculation methodologies provided in the Massachusetts TRL (Prescriptive Applications only)
8. Work with Cape Light Compact to issue a Pre-Approval Letter to the customer for each project requiring pre-approval with all applicable information such as photos and materials.
9. Upon notification of project completion by the customer, queue the application for Post-Installation Inspection
10. Work with customer or their vendor to obtain invoices and proof of payment for the project
11. Receive the post-installation inspection report and work with the customer to resolve any discrepancies, and amend energy calculations as necessary based on the inspection and invoices from the customer or their representative
12. Submit a completed application package to Cape Light Compact for processing through the database.

In addition, the Application Processing and Management vendor will coordinate with the Compact's Engineering Services vendor in instances of Custom Applications or other instances where Engineering analysis and or equipment inspection/monitoring is required beyond the processing vendor's scope of work.

D. Other Miscellaneous Non-Engineering Program and Project Management Support

Vendors providing Miscellaneous Non-Engineering Program and Project Management Support will be contracted with by the Compact for a specific not to exceed contract value for the purpose of supporting the Compact on both specified projects, as well as on an as needed basis as mutually agreed upon with such vendors for work as yet to be determined.

V. Cape Light Compact Responsibilities

Cape Light Compact responsibilities will include, but are not limited to:

- Providing a principal Cape Light Compact point of contact for coordination and approvals;
- Providing the vendor(s) with database portal access for the purpose of creating and maintaining project files, inspection reports and preapproval letters, and other specified reports and invoicing module;

⁵ Note, QA/QC Services may be combined with Application Processing and Management Services in one vendor, or they may be provided by a separate vendor/contractor with whom the Application Processing and Management Services vendor will have to coordinate with.

- Providing a copy of the Massachusetts TRL and confirming appropriate calculation methodologies;
- Providing timely signoff on customer reports and other agreed upon deliverables;
- Overseeing and monitoring program performance including:
 - Reviewing and approving any change orders or modifications to program implementation procedures
 - Reviewing and approving all forms, procedures, and protocols for use in providing the specified ancillary services
 - Reviewing all management reports
 - Monitoring and tracking the resolution of customer inquiries or complaints
 - Verifying, approving and processing invoices

VI. Proposal Requirements

Proposals should first identify which of the four service areas, outlined in section IV, numbered A to D, the bidder's proposal is being submitted for. For the indicated services, proposals should include a conceptual overview that demonstrates an understanding and ability to meet the stated objectives that align with the scope for each applicable service as outlined above. Creative approaches utilizing the latest technology available to meet these objectives are encouraged, understanding that the respondent should explain how the approach will meet the objectives of the scope in different ways. In addition, please:

- Explain your proposed approach to each of these requested services being bid on;
- Describe the team that will be assigned to each of these services. Describe what each person's role will be and include a brief background summary for each key staff member assigned;
- Briefly describe your firm's organizational capacity to provide each of the support services being bid on;
- Provide a company profile including length of time in business and core competencies;
- Briefly describe the specific staff that would work on these services as well as the entire available staff List the three most recent proposals for similar services your firm has developed that best reflects your work and relevancy to applicable services. Briefly list the role your firm played in each proposal and any coordination your firm did with other supporting vendors on each;
- Incorporate a schematic diagram showing organizational overview including identification of key staff and any supporting vendors or sub-contractors, if applicable, and;
- Please list and describe any deviations from the Scope as outlined in this Request for Proposals.
- Submit any exceptions to the form of Contract (Appendix B)
- Submit the Certificate of Non-Collusion Attachment 1 referenced

VII. Pricing

Vendors' proposals should include a pricing schedule, for each ancillary service role being proposed (A-D), with all labor, overhead, travel, other direct costs associated with these Engineering, QA/QC and Other Ancillary Services. Include all general and administrative costs in hourly labor rates and direct expenses. These terms apply to sub-contractor costs as well.

VIII. Schedule

- | | |
|------------------------------|---|
| 1. RFP issued: | Monday, February 4, 2019 |
| 2. Pre-bid conference call: | Friday, February 15, 2019, 11 am EST* |
| 3. Written inquiries due: | Friday, February 15, 2019 by 4:00 p.m. EST |
| 4. Inquiry responses posted: | Friday, February 22, 2019 (to Cape Light Compact website) |
| 5. All proposals due: | Monday, March 4, 2019 by 2:00 p.m. EST |
| 6. Oral Presentations: | Week of March 18, 2019, if needed |
| 7. Vendor(s) selected: | Friday, March 29, 2019 (estimated) |
| 8. Kick-off meeting(s): | Within 2 weeks of Vendor Selection (tentative) |
| 9. Implementation: | April 16, 2019-December 31, 2021 |

*Please indicate via e-mail to Margaret Downey (mdowney@capelightcompact.org) your interest in participating in the call by Wednesday, February 13, 2019

IX. Proposal – Number of Copies and Format

Proposals, to be entitled for consideration, must be submitted in accordance with the following instructions. The Bidder shall be responsible for submitting one (1) electronic, one (1) original and three (3) copies of the proposal in such form as set forth below.

Proposals shall be:

- Type written on 8 1/2" x 11" paper;
- The pages numbered; and
- The Proposal must also be signed in longhand in accordance with the instructions as stated in Section XV, "Bidder's Submission Statement"

Acceptance of any proposals remains in the sole discretion of Cape Light Compact JPE. Proposals which in the judgment of Cape Light Compact JPE fail to meet the requirements of this RFP or which are incomplete or obscure, or in which errors occur, will be rejected.

X. Bid Due Date

The bound Proposal must be signed and shall be delivered to the Compact within the time set forth in this RFP. Proposals will be enclosed in sealed envelopes and marked as follows:

RFP Title: C&I Ancillary Services Vendor

Dated:
Bidders Name:
Delivered to: Cape Light Compact, JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664
Attention: Margaret T. Downey
mdowney@capelightcompact.org

Bids must be received by Monday, March 4, 2019 by 2:00 p.m. EST. Proposals received after this time will not be considered.

XI. Additional Requirements for Vendor Bids

In addition to the budget requirements in Section VI the narrative should identify tasks and major milestones for commencing the requested work. The Compact anticipates that the same hourly rates would apply for out-of-scope work relating to the requested services which may be contracted for during the original purchase order period. If not, indicate a cap on any increases in labor costs for out-of-scope work and when they would take effect.

XII. Written Inquiries on the RFP

The Compact is seeking one or more qualified firm(s) to provide the requested services. Proposals shall be in accordance with all requirements set forth in this request for proposals (RFP). Should a Bidder find any ambiguity, discrepancy or omission in the RFP, the bidder should notify the Compact in writing. Such information must be received by February 15, 2019 by 4:00 p.m. ET, to afford The Compact an opportunity to send any instructions or interpretations to other Bidders who have received an Invitation to Bid. The Compact will not be responsible for any oral instructions or interpretations. Please send all inquiries to

Cape Light Compact
261 Whites Path, Unit 4
South Yarmouth, MA 02664
Attn: Margaret Downey
mdowney@capelightcompact.org

XIII. Rights to Modify This Specification

The Compact reserves the right to modify any aspect of this RFP if the change will make the program more customer-responsive.

XIV. Selection Criteria

The final selection of vendor(s) shall be based on the following sets of criteria:

Minimum Evaluation Criteria

- (i) Responsiveness to the issues identified in the RFP
- (ii) Proposed approach to manage the work
- (iii) Team qualifications and experience
- (iv) Submission of all required documentation and certifications detailed in Proposal Contents.
- (v) A minimum of five (5) years related experience in Commercial & Industrial energy efficiency

Contract negotiations will commence in order to complete a signed contract within 15 days of contract award. All contracts will incorporate the general terms and conditions included with the bid package and the written documents provided by the Bidder in its bid.

If a contract is not executed by the chosen Vendor(s) within one week of selection, Cape Light Compact JPE reserves the right to negotiate with alternative Bidder(s) in order to execute contracts by June 1, 2019. All exceptions to the contract must be noted in writing and included within the body of the proposal.

XV. Proposal Confidentiality

All proposals will become the property of the Compact. As a public entity it may become necessary to supply price information to regulatory agencies for review. The Compact will request that all such information be treated confidentially by the regulatory agencies and the Compact will furnish such information when required. If any proprietary information is contained in the Proposal, it should be clearly identified and will be treated as such provided that the Compact shall be liable for any action taken, or omitted to be taken, in good faith by it or them hereunder or be responsible for the consequences of any oversight or error in judgment thereof except for direct losses due to its or their willful misconduct or gross negligence.

XVI. Return of Proposal Materials

Proposal materials will not be returned to Bidders. All costs incurred by Bidders in the preparation and submission of a proposal and/or oral presentation shall be the sole responsibility of Bidders.

XVII. Oral Presentations

Bidders whose Proposals are deemed as competitive may be required, upon request, to make an oral presentation. The location of the presentation will be stated on the invitation; presentations will be limited to two (2) hours. The first half hour will be allocated to a formal presentation by the Bidder. The balance of the presentation period will be devoted to questions by and discussion with the Compact's representatives.

The oral presentation will be arranged through the Compact. Bidders will receive at least 48 hours' notice to prepare for the presentation. Attendance must include the Bidder's proposed Project Manager. The Compact may disqualify a Bidder on the basis of its refusal to honor its request for an oral presentation.

Results of the oral presentations will be used in part to arrive at ranking the finalist(s) and may result in adjustments to the final rankings assigned. In addition to, or as an alternative to additional technical data provided in a written or oral format, the Compact reserves the right to request a "best and final offer" from said Bidders in order to arrive at a final selection.

Based upon all information, the Compact will select a finalist with which contract negotiations will commence. An electronic copy of the bid must be submitted as part of each proposal. Electronic submission shall be sent to the individual listed below no later than 2:00 p.m. ET on the date all proposals are due:

Margaret Downey mdowney@capelightcompact.org

The selected Vendor(s) will be required to sign a Non-Disclosure Confidentiality Agreement upon the start of the project. The confidentiality will specifically pertain to any use of the data provided by the Compact or their representatives. The Vendor(s) will also need to meet all the Terms and Conditions of the Compact. Please refer to APPENDIX B.

XVIII. Certification of Non-Collusion

Certification of Non-Collusion

The following must be completed and included in each Bidder's proposal

The undersigned certifies under penalties of perjury that this bid or proposal has been 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

Name of business

XIX. Bidder's Submission Statement

Bidder's Submission Statement

The following must be completed and included in each Bidder's proposal:

The undersigned Bidder hereby offers to perform the Services as described in the Request For Proposal (RFP) dated February 4, 2019, prepared by Cape Light Compact, in accordance with the Proposal attached hereto. This bid offer is firm and shall remain in effect for a period of sixty (60) days after receipt thereof by Cape Light Compact.

In connection with such offer, the undersigned represents and warrants to Cape Light Compact that it has carefully and thoroughly reviewed the entire RFP and that it possesses the special experience, skills, and abilities necessary to perform the Services bid on in accordance with the specifications detailed in the RFP.

Name of Bidding Firm

Signature

Name of Signatory (print or type)

Position with (print or type)

EXHIBIT A - SAMPLE SERVICE LEVEL AGREEMENT for QA/QC INSPECTION

Vendor will provide Cape Light Compact (CLC) with the following:

1. **Confirmation of receipt of any request for inspection.**
2. **Weekly email status updates of requested inspections**, in simple bulleted or table format, that includes information on which jobs have been inspected or scheduled for inspection during the week, as well as expected estimated time to completion on outstanding jobs.
3. **Monthly conference call status updates with accompanying excel spreadsheet** to be completed by vendor and issued to CLC program planner by close of business on business day preceding monthly conference call.
4. **Fully documented QC Reports with counts by individual measure/lamp type** and detailed notes as necessary, even in cases where no discrepancies are found.
5. **Turnaround of inspections (with completed inspection report) within 2 weeks (10 business days) of assignment**, unless otherwise agreed upon in a specific instance. In certain instances, CLC may request faster than 2 week turnaround. If requested turnaround cannot be met, vendor will inform CLC at the time of the request or as soon as possible afterwards, so that other arrangements can be made.
6. **Completed QC Inspection Reports scanned and emailed to CLC program planner within 2 business days of completed QC visit.**

When material discrepancies are found, the vendor will:

7. **Notify the CLC program planner via email within 1 business day** (i.e. Count on application is off of actuals by greater than 10%, existing fixture wattage is off of actuals by greater than 10%, application states that T-12s exist but instead are T8s) and
8. **Work directly with customer or customer's representative to resolve and correct any misinformation.**

QC inspector shall have the necessary equipment to perform inspections in the field adequately and safely, including:

9. **Personal protective equipment;**
10. **Ladder** to climb closer to fixtures for proper identification;
11. **Sensor Switch discriminator** or similar unit to determine if existing ballasts are magnetic or electronic;
12. **Camera** for the purpose of photographing existing equipment when further investigation is needed to identify/document existing equipment/conditions; and
13. **Company Picture ID.**

EXHIBIT B - SAMPLE CONTRACT

ENERGY EFFICIENCY FIELD SERVICES AGREEMENT

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

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

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

WHEREAS, the purposes of the Compact include protecting and advancing the interests of residential, commercial and industrial customers in a competitive electric supply market, and promoting energy efficiency and the reduction of energy bills;

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

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

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

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

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

SECTION 1 TERM OF AGREEMENT AND TERMINATION

1.1 **Term.** This Agreement is effective as of the date set forth above and shall continue in force and effect until [insert], unless this Agreement is terminated before such date under the

provisions of Section 1.2. In addition, the Compact may, in its sole discretion, extend the term of this Agreement for an additional [insert] year(s).

1.2 Termination. The Compact shall have the right to terminate or suspend this Agreement for any reason, including, but not limited to, in the event that the EE Vendor is in default under another EE Vendor Services or consulting agreement between EE Vendor and the Compact, or for convenience. EE Vendor may terminate this Agreement only if the Compact materially breaches its obligations under this Agreement. The terminating Party shall provide written notice to the other Party of any such termination or suspension, specifying the effective date thereof. If the terminating Party is the Compact, such notice shall be given at least fifteen (15) calendar days before such effective date; if the terminating Party is EE Vendor, such notice shall be given at least ninety (90) calendar days before such effective date. In addition, if the Compact terminates this Agreement for cause, the Compact shall be entitled to deduct and/or be reimbursed any costs of cure and transition costs (including reasonable attorneys' fees) that it, a Member⁶ or a Customer (as defined herein) incurs related to engagement of a substitute EE Vendor.

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

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

SECTION 2 SCOPE OF SERVICES AND RELATED MATTERS

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

2.2 Changes. The Compact may, from time to time, require changes in the scope of the EE Vendor Services to be performed hereunder. Such changes must be evidenced in written

⁶ 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.

amendments to this Agreement. Any EE Vendor Services performed or proposed by EE Vendor shall not be reimbursed unless they are approved in writing by the Compact prior to their rendering.

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

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

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

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

2.7 Safety.

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

To the fullest extent allowed by law, EE Vendor shall assume responsibility for the general and overall safety of the work site, including the safety of any employee, client, guest, representative, contractor or subcontractor of EE Vendor, the Compact, and Customers. Systems that have been disabled or otherwise affected in the course of performance of the EE Vendor Services will be left in a safe condition. Out of service systems will be tagged by EE Vendor in a manner accepted by OSHA, state and local authorities, and the Compact. EE Vendor shall at all times exercise reasonable precautions for the safety of its employees, subcontractors and the

general public and will be responsible for the performance and maintenance of any appropriate safety procedures pursuant to which it, its subcontractors and its employees shall act. Further, EE Vendor shall operate in complete compliance with OSHA regulations, as well as any and all applicable local, state or federal safety laws, regulations, or requirements.

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

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

2.8 Storage and Clean-up.

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

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

SECTION 3 COMPENSATION AND RELATED MATTERS

3.1 Rates of Compensation; Prevailing Wage. EE Vendor shall be compensated by

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

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

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

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

the grounds for any withholding. When EE Vendor provides performance assurance satisfactory to the Compact that will protect the Compact for the amount withheld, payment will be made. When deemed reasonable by the Compact, the Compact may use such withheld funds to undertake remedial measures.

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

3.6 Bonds.

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

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

Performance Bond	<input type="checkbox"/>	required	<input type="checkbox"/>	not required
Payment Bond	<input type="checkbox"/>	required	<input type="checkbox"/>	not required

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

SECTION 4 PERFORMANCE STANDARDS

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

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

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

performance of the EE Vendor Services. For such purpose, this Agreement shall be construed as an assignment by EE Vendor to the Compact of said equipment, supplies and materials.

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

SECTION 5 INTELLECTUAL PROPERTY MATTERS

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

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

SECTION 6 INSURANCE

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

- (a) Until completion of the EE Vendor Services:
 - i. Workers’ Compensation and Employers’ Liability Insurance covering *each and every worker employed in, about or upon the EE Vendor Services*, as provided for in each and every statute applicable to the Workers’ Compensation and Employers’ Liability Insurance.
 - ii. Commercial General Liability Insurance, written on an occurrence form

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

iii. Automobile Liability Insurance covering all owned, non-owned and/or hired motor vehicles to be used in connection with the EE Vendor Services with a minimum combined single limit of \$1,000,000 bodily injury and property damage, including Form MCS-90 and Broadened Pollution Coverage via ISO form CA9948 or its equivalent.

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

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

(b) After the EE Vendor Services are complete:

i. Products and Completed Operations for limits of \$1,000,000/occurrence; \$1,000,000 aggregate as provided by the Commercial General Liability Insurance form for three years.

ii. Professional Liability Insurance if the EE Vendor Services involves rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. with a limit of at least \$1,000,000 for three years.

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

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

EE Vendor shall not begin rendering EE Vendor Services without first submitting to the Compact the insurance certificate(s) that indicate the coverages required by this Agreement. The

insurance certificate(s) shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to EE Vendor and EE Vendor shall in turn provide at least (thirty) 30 days advance notice of cancellation to the Compact. If the policy expires prior to completion of the EE Vendor Services, EE Vendor must submit replacement insurance certificate(s) prior to the policy expiration date. Failure to submit new certificates shall result in withholding payments and/or may lead to the termination of this Agreement. EE Vendor shall be solely responsible for tracking and reporting to the Compact the expiration of the policies shown on the insurance certificate(s) provided.

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

SECTION 7 INDEMNIFICATION BY EE VENDOR⁷ AND DAMAGES FOR BREACH

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

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

7.3 **Limitations.** NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, EE Vendor acknowledges that the preceding

⁷ Note to EE Vendor: In accordance with guidance received from the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

sentence shall not limit the Compact's rights to seek indemnification from EE Vendor for consequential, punitive, or incidental damages or other such losses claimed by third-parties.

7.4 No Cap on EE Vendor's Liability⁸. EE Vendor's liability under this Agreement shall not be limited to the value of the EE Vendor Services rendered under this Agreement; further, EE Vendor's liability shall not be limited by the availability of its insurance coverage.

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

SECTION 8 CHOICE OF LAW AND DISPUTE RESOLUTION

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

SECTION 9 ASSIGNMENT AND SUBCONTRACTING

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

Any subcontractor who has been subcontracted, assigned or delegated thirty percent (30%) or more of the EE Vendor Services must abide by all of the terms and conditions of this Agreement, including, but not limited to, insurance requirements. The Compact reserves the right to impose these requirements on subcontractors performing less than thirty percent (30%) of the EE Vendor Services.

⁸ Note to EE Vendor: The Compact does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply to such caps.

SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION

10.1 **Confidentiality.** Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information. The disclosure and use of such information shall also be governed by the Non-Disclosure Agreement entered into by the Compact and the Commonwealth Electric Company d/b/a NSTAR Electric dated May 10, 2001, and acknowledged and accepted by Consultant in writing on [insert] and any subsequent non-disclosure agreements in which the Compact is a party and that involves the Services or obligations under this Agreement.

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

sole cost any remedial measures recommended by any such parties as approved by the Compact. Customer information shall remain confidential in all circumstances.

SECTION 11 MISCELLANEOUS

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

if to EE Vendor to:

[insert]

if to the Compact to:

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

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

11.2 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. To the extent any of the exhibits to this Agreement contain terms that conflict with the terms set forth in the main body of this Agreement, the language in the exhibits shall be disregarded. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

11.3 **Independent Contractor; No Joint Venture.** EE Vendor will perform all EE Vendor Services under this Agreement as an independent contractor. EE Vendor understands and agrees that none of its employees are Compact employees by virtue of entering into this Agreement.

Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Compact and EE Vendor hereunder are individual and neither collective nor joint in nature.

11.4 Joint Workproduct; Independent Counsel. This Agreement shall be considered the workproduct of both Parties hereto. Each Party acknowledges that it has been represented by independent counsel or has had the opportunity to seek counsel in connection with this Agreement and all matters pertinent to it, and each Party waives the benefit of the rules of construction providing that an agreement should be construed against its drafter.

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

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

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

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

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

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

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

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

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

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

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

11.16 **Counterpart Execution; Scanned Copy.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or

proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

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

EE VENDOR

CAPE LIGHT COMPACT JPE

Signature
Print Name: _____
Title: _____

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

Date

Date

LIST OF EXHIBITS

- Exhibit A* - *EE Vendor Services*
- Exhibit B - Compensation
- Exhibit C - Background Check Policy
- Exhibit D - Pre-approved Subcontractors

EXHIBIT A
EE VENDOR SERVICES

**EXHIBIT B
COMPENSATION**

EXHIBIT C
BACKGROUND CHECK POLICY

*REQUIREMENTS FOR EE VENDOR EMPLOYEE
AND SUBCONTRACTOR BACKGROUND CHECKS*

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

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

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

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

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

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

reporting to the Compact, EE Vendor shall forward this information to the Compact and the Compact shall determine whether to remove the EE Vendor Employee from the work site.

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

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

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

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

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

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

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

EXHIBIT D
PRE-APPROVED SUBCONTRACTORS

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 G.L. c. 40, §4A ½ and the organizational successor to the Cape Light Compact (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 G. L. c. 40, §4A ½, 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 trade secrets or confidential, competitively sensitive or other proprietary information provided **[NOTE - This language mirrors the statutory language contained in the “trade secrets” exemption to the public records definition]** 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 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 Act, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10; 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 Act.

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. The receiving party may disclose Confidential Information only to consultants and contractors and other agents of the receiving party 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 the Confidential Information is the sole property of the disclosing party. Nothing in this Agreement will be construed as granting as 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 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 of 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 contain Confidential Information, and will provide to the Compact a written certification of 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. **[NOTE- The current municipal retention obligation for Contracts and Bids for Contracts is SEVEN years after fulfillment of the Contract. This provision cannot be mutual due to the requirements of the Public Records Law. The Compact may have to compel return of Confidential Information by the Company because the Compact may be providing Confidential Information that it has received from another party (such as NStar).]** 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 and consultants and affiliates of each party. The Company understands and agrees that certain Confidential Information disclosed by the Compact may be owned by its Members and that the Compact is disclosing such information in its role as agent for the Members. The Company understands and agrees that such information shall be entitled be treated as Confidential Information under this Agreement.

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) the event that the Company is not the successful bidder/respondent, two 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.* Anything in this Agreement to the contrary notwithstanding, the receiving party may disclose Confidential Information to the extent that it is required to do so by law, a court, or other governmental or regulatory authorities; provided, however, that the receiving party shall give the disclosing party written notice of such a required disclosure prior to

making such disclosure so that the disclosing party may seek a protective order or other relief with respect to such Confidential Information, and shall limit the disclosure to the minimum required to comply with the law, court order, or governmental or regulatory authority. The Company acknowledges that the Compact and its Members are subject to public records laws, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10.

11. *Representations and Warranties.* The Compact hereby represents and warrants to the Company as follows: (i) the Compact shall use the Confidential Information only in connection with the Energy Activity; (ii) this Agreement constitutes the legal, valid and binding obligation of the Compact enforceable in accordance with its terms; and (iii) the Compact has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder. The Company hereby represents and warrants to the Compact as follows: (i) the Company shall use the Confidential Information only in connection with the Energy Activity; (ii) this Agreement constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms; and (iii) the Company 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.* The validity, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law rules. The parties agree that 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:

Margaret T. Downey, Administrator
Cape Light Compact JPE
261 White's Path
South Yarmouth, MA 02664
(508) 375-6636 (phone)
mdowney@capelightcompact.org (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 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 T. Downey
Title: Cape Light Compact JPE Administrator

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 and the [Company] dated _____, 201 (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: _____