



**Request for Proposals**  
**Potential Study Vendor**  
**2022-2024 Program Years**

**Issued: Thursday March 12, 2020**

**Proposals due: Wednesday April 8, 2020**

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[www.capelightcompact.org](http://www.capelightcompact.org)

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*March 12, 2020*  
**Potential Study Consultant**  
**2022-2024 Program Years**

**I. Introduction**

The Cape Light Compact JPE (the “Compact”) is soliciting competitive bid proposals from qualified consultants to conduct a study to assess the technical, economic, and achievable potential from electricity (kWh), demand (kW) and delivered fuels (MMBtu)<sup>1</sup> savings from promoting energy efficiency strategies and services and high efficiency equipment installation within the Compact’s service territory for the residential and non-residential customer segments for the years 2022-2024. Throughout this RFP, the term “efficiency” should be interpreted to include technologies, strategies, and services that also result in demand reduction, either active or passive.

The contract for these services is scheduled to begin April 24, 2020 and continue through December 31, 2021, with an option to extend in one or two year increments for up to an additional three years (through December 31, 2024).

**II. Cape Light Compact**

The Compact is an intergovernmental regional energy services organization comprised of and serving its twenty-one towns of Cape Cod and Martha’s Vineyard. The Compact is a public joint powers entity and municipal aggregator pursuant to Massachusetts General Laws Chapter 40, §4A ½ and G.L. c. 164, §134. As authorized by each town and in accordance applicable law, the Compact administers the regional energy efficiency programs for its member towns on Cape Cod and Martha’s Vineyard (i.e., is the Mass Save Program Administrator for member towns). More information on the Compact is available at <https://www.capelightcompact.org/>.

**III. Background**

In DPU Order 15-160 through 15-169, dated January 28, 2016, the Massachusetts Department of Public Utilities instructed the Massachusetts Program Administrators (PAs) to conduct service territory specific energy efficiency potential studies every three years.<sup>2</sup> The specific language is as follows:

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<sup>1</sup> Note that savings potential for delivered fuels will apply to the residential and non-residential sectors. Delivered fuels include, but are not limited to, heating oil and propane. Note fuel switching between electricity and gas should not be considered as part of the study.

<sup>2</sup> The Compact completed its first potential study in 2015 under DPU Order 12-107, and then updated its potential study under this Order in 2018. Copies of the Compact’s potential studies are posted to the Compact’s website at: <https://www.capelightcompact.org/reports/Other Reports/Energy Efficiency> .

“The results of potential studies can help the Program Administrators understand the remaining technical, economic, and achievable energy efficiency opportunities within their service territories, which play a key role in helping Program Administrators set savings goals.<sup>3</sup> Further, potential studies provide Program Administrators with insights specific to their customer base, allowing for further tailoring of program offerings and customer engagement.<sup>4</sup> In addition, the results from each Program Administrator’s potential study may provide important insights for other Program Administrators.<sup>5</sup> While potential studies are one component of the planning process, they do play an important role in program design and provide an important objective measure of savings potential.<sup>6</sup> Accordingly, the Department directs each Program Administrator to conduct a service territory-specific energy efficiency potential study every three years. We expect that the potential studies will provide valuable input to the energy efficiency planning process and savings goals development. The potential studies should be completed before the Program Administrators submit their draft statewide plan to the Council.”<sup>7</sup>

In DPU Order 18-110 through 18-119, filed January 29, 2019, the DPU provided the following additional guidance indicated below:

*“The Department appreciates the efforts of each Program Administrator to complete its potential study in compliance with Department directives. We agree, however, that the current approach to conducting potential studies can be refined. Each Program Administrator has a unique service territory with different customer characteristics and economic landscapes that require individualized potential studies in order to evaluate the remaining energy efficiency potential in the face of unique challenges (Statewide Plan, Exh. 1, at 147-148; Tr. 1, at 88-90). Although we will not require third-party oversight as recommended by CLF, the individualized potential studies should demonstrate consistency among the Program Administrators in terms of timing, formatting, and definitions to enhance their value to the Department and stakeholders.*

*For all future potential studies, the Program Administrators shall (1) coordinate studies to present findings using common definitions for the various levels of achievable potential, such that the study results are comparable, and (2) with input from the Council, establish a common study deadline to submit final potential study results. Finally, as part of its next three-year plan filing, each Program Administrator shall include detailed testimony and exhibits addressing how the findings of its potential study were used to inform the development of its savings goal during the energy efficiency planning process.” (Order at 38)*

This work may be granted to one or more firms, or teams of firms, with such expertise to provide assistance as needed.

#### **IV. Consultant Roles and Scope of Work**

The selected Consultant must show expertise in:

- Estimating technical, economic, and achievable potential;

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<sup>3</sup> Statewide Plan, Exh. 1, at 220-221; Exh. DPU-NG-Gas 2-3

<sup>4</sup> Statewide Plan, Exh. 1, at 263-267, App. M; Exhs. DPU-Berkshire 2-7; DPU-FGE-Gas 1-1; DPU-LU 1-2; Tr. 1, at 76

<sup>5</sup> Statewide Plan, Exh. 1, at 221; Exh. DPU-Comm 7-19

<sup>6</sup> Statewide Plan, Exh. 1, at 220-221; Exh. DPU-NG-Gas 2-3

<sup>7</sup> Order at 24-25

- Energy modelling and data analysis including cost benefit analysis using utility or regional avoided cost data;
- Conducting surveys of residential and commercial and industrial customers, and interpreting survey data;
- Technical understanding of the current market of residential and non-residential efficiency measures and services that provide savings in MA;
- Ability to calculate energy and demand savings and cost of efficiency and demand reduction measures using Cape Light Compact, regional, and national data in that order of preference;
- A proposed method for calculating refined measure adoption rates considering changing market conditions and customer barriers;
- The ability to present savings targets through different scenario/sensitivity analyses.

### **Study Objectives**

The Compact's primary objective is to obtain realistic and defensible estimates of technical, economic, and achievable energy efficiency potential and resultant budgets for years 2022-2024 for the forthcoming 3-year planning cycle.<sup>8</sup> The estimates should inform the planning process to help level-set overall energy efficiency savings goals and to determine target markets and end uses that offer significant opportunities for penetration of existing energy efficiency measures and services, as well as emerging technologies that are expected to be commercially available, that could provide additional cost-effective savings for the portfolio.

The study should consider potential for MMBtu reduction via strategic electrification of heating equipment. In particular, the study should consider the potential for MMBtu reduction for assisting customers with delivered fuels (propane and oil) to partially or completely convert to heat pumps, including both residential, commercial and industrial customers. In addition, the study should consider the possibility of new construction electing all electric energy.

Bidders should determine the sub-sector stratification for estimating potential, but the potential estimates should be stratified, at a minimum, based on:

- For residential customers: single family non-low income, multi-family non-low income, and low income
- For non-residential customers: business type (e.g., office, industrial, retail) and business size (e.g., small business)
- For both residential and non-residential: existing vs. new construction (including major renovation)
- Fuel type: electricity (kWh), electric demand (kW), and oil (MMBtu) and propane (MMBtu)

Demand savings should be based on assumptions regarding demand savings for the selected energy efficiency measures both as a total demand reduction and peak demand reductions specific for non-holiday weekdays from 3 – 7 PM in June, July, August and September. The study should also quantify the potential for active demand response programs to reduce peak demand at the regional peak hour (ICAP tag) and top 10-60 regional peak hours in June, July, August and September, as well as top 10-15 winter

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<sup>8</sup> A draft 2022-2024 energy efficiency plan will be due at the end of April 2021.

peak hours in January, February and March. [*Definition of peak hours is DRAFT for discussion.*] The active demand response programs should include curtailment, batteries, thermal storage, wi-fi thermostats, and throttling electric vehicle (EV) charging, and should include residential and commercial and industrial applications to the extent applicable.

Because the goals are ultimately set based on net savings, estimates of incremental energy efficiency potential should explicitly account for naturally occurring adoption (free riders), with the report also presenting assumptions regarding naturally occurring adoption.

### **Scope of Work**

In order to develop credible estimates of technical, economic and achievable savings potential, the following steps must, at a minimum, be included in the scope.

### ***Measure Assumptions***

- Produce an up-to-date list of current commercially available and soon to be (within three years) commercially available technologies and services which may play a part in future efficiency services. The bidder will be responsible for reviewing the Compact's recent program activity to make sure major measures are included in the model either specifically or in some aggregated form. The list will not need to include all measures but must include those that contribute most of the current savings in aggregate. This task should include a separate well documented investigation of new technologies that could play a role in 2022-2024 savings and include those in the modeling. Proposed measures should take into account codes and standards updates for these years.
  - For each measure, assumptions about measure annual energy and demand savings, expected useful life, applicability, incremental or total cost (as appropriate), and cost-effectiveness should be provided as part of the study.
  - Where considered applicable (for selected measures), the potential study should also consider savings assumptions for early replacement vs. replace-on-burnout. Early replacement measures should incorporate a dual baseline approach which takes into account the savings for the remaining useful life (RUL) of the in-place measure as well the savings for the new measure. Early replacement should also take into account the appropriate societal costs associated with early retirement (e.g., deferred replacement costs).
- To the extent possible, include inputs from the MA Technical Reference Manual (TRM) regarding measure characterizations (energy and demand savings and lifetimes) as well as market insights from past program performance and Massachusetts specific evaluation, measurement, and verification

(EM&V) studies.<sup>9</sup> Coordination with other PAs and Energy Efficiency Advisory Council (EEAC) Consultants will also be required as part of the measure development.

- The measure assumptions should also identify which measures are candidates for passive and/or active demand.
- Codes and standards support should be considered as part of the potential study. Because the specific measure characteristics may be more difficult to define than “widget” based savings (e.g., savings, lifetime, and cost) the selected bidder will work closely with the Compact, in coordination with the other PAs, to define the input assumptions.

### ***Building and Customer Characteristics***

- Leverage current saturations and penetrations, as well as fuel shares (e.g., percent of gas vs. oil heating), of the energy efficiency equipment and practices identified above in each sector (residential, non-residential) by:
  - Reviewing data from nearby regions and using the bidder’s experience and best judgment.
  - Using existing Compact data from recent and forthcoming C&I and residential evaluation studies. Applicable studies include, but may not be limited to, the following:
    - The MA PAs completed a C&I Existing Building Market Characterization Study consisting of approximately 800 on site visits, 45 of which were in the Compact’s territory.<sup>10</sup> The study gathered on-site data on major energy using equipment to provide the PAs a clear understanding of the existing building market in Massachusetts. Some data were analyzed for trends in efficiency levels of more recent purchases. An update to this study is currently being conducted with lighting results expected in April 2020 and results for other measures expected in August 2020.<sup>11</sup>
    - The MA PAs conducted a Residential Baseline study to collect saturation and usage behavior data for all major appliances, mechanical equipment, and electronics in Massachusetts homes. The study consisted of both online survey and on-site visits throughout the state. The most recent version of this study was completed in 2019, and the most recent update to the study will be available in September 2020.<sup>12</sup>

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<sup>9</sup> All the MA evaluation studies, including the completed studies cited in this RFP, can be found online at <http://ma-eeac.org/studies/>.

<sup>10</sup> <http://ma-eeac.org/wordpress/wp-content/uploads/MA-CI-Market-Characterization-Study.pdf>

<sup>11</sup> The data collection is split between two studies: MA19C09-B-BSLNSAT Massachusetts C&I Customer Onsite Baseline Saturation Study and MA19C14-E-LGHTMKT– 2019 Lighting Inventory and Market Model Updates. Data collection instruments for these studies are available as part of this RFP.

<sup>12</sup> <http://ma-eeac.org/wordpress/wp-content/uploads/RES-1-Residential-Baseline-Study-Comprehensive-Report-2019-04-30.pdf>

- The MA PAs have conducted residential lighting saturation studies every year since 2016, with an updated study expected by April 2020.<sup>13</sup>
  - Other evaluation studies that may be helpful include a C&I mid-sized customer needs assessment, annual C&I customer profile studies, residential and non-residential code compliance studies, a study looking at PA differences on C&I program outcomes, and residential incremental cost studies. These studies can help provide insight into customer “uptake” of energy efficiency measures, barriers to participation, and remaining energy efficiency opportunities.
- There is significant uncertainty regarding the future of efficient lighting, and the bidders should clearly note the approach for estimating residential and C&I lighting potential. Bidders should provide savings potential for lighting by product and pathway, e.g., by fixture type, delivery channel (upstream vs. downstream), building type, and retail channel (e.g., discount, dollar, drug, grocery, hardware, home improvement, mass merchandise, and membership stores). Note that the MA PAs, as part of the residential and C&I lighting evaluations, are currently producing forecasts of naturally-occurring adoption of energy efficient lighting. The most up-to-date forecasts will be available by April 2020 and should be leveraged as much as possible to help define the future of efficient lighting in absence of PA support.<sup>14</sup>
- Leverage existing program data and evaluation studies that will provide additional insight into energy efficiency potential. The Compact has collected detailed customer data through onsite assessments (e.g., the Residential Coordinated Delivery/Home Energy Services program). The bidder should consider the representativeness of these types of data to the population (e.g., by comparing to the saturation studies above). Where possible, these data should also be leveraged to determine typical customer adoption rates of recommended energy efficiency measures as part of the estimates of achievable potential (discussed in more detail below).

### ***Technical and Economic Potential Modeling***

- Develop a model, the results of which should be either in MS Excel or easily exportable to MS Excel, to assess the technical and economic potential for electricity (MWh and MW), and delivered fuel (oil and propane) savings over the three years required. The model shall use a residential and non-residential load forecast without energy efficiency induced by 2022-2024 programs to be supplied by the Compact. The sales forecast will be broken out as commercial and industrial market and the residential market, and will account for sales adjustments related to energy efficiency, solar, and electric vehicles.
- The model should include a benefit cost screening tool/step that determines which measures would progress from the technically feasible stage to the economically feasible stage. The benefit cost

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<sup>13</sup> The most recent study can be found at [http://ma-eeac.org/wordpress/wp-content/uploads/RLPNC\\_1810\\_LtgMarketAssessment\\_FINAL\\_2019.03.29.pdf](http://ma-eeac.org/wordpress/wp-content/uploads/RLPNC_1810_LtgMarketAssessment_FINAL_2019.03.29.pdf)

<sup>14</sup> An example of the residential model can be found at [http://ma-eeac.org/wordpress/wp-content/uploads/RLPNC\\_176\\_MAMMEMO\\_24APR2018.pdf](http://ma-eeac.org/wordpress/wp-content/uploads/RLPNC_176_MAMMEMO_24APR2018.pdf) while the C&I forecasts are included in [http://ma-eeac.org/wordpress/wp-content/uploads/P75-LED-Market-Model\\_Revised-Memo-051418\\_CLEAN.pdf](http://ma-eeac.org/wordpress/wp-content/uploads/P75-LED-Market-Model_Revised-Memo-051418_CLEAN.pdf). Note both of the forecasts will be updated in April 2020.

model should be close in methodology to the current Massachusetts Benefit Cost screening tool. It should contain all the inputs needed for benefit cost analysis, including (but not limited to) estimates of program participation, incremental costs, incentive levels, administrative costs, gross and net energy savings, avoided costs, and non-energy impacts. It should use the most recent avoided cost projections developed for New England PAs. Note that the model and subsequent analyses will need to be updated when new avoided costs are available (around March 2021; this is included as a separate task below).

- Using the model, estimate the technical and economic savings potential for energy efficiency resources. The technical potential does not consider technology cost effectiveness and would be all non-overlapping technically feasible measures installed (basically all markets that can be retrofit to the most efficient equipment between 2022-2024). The economic potential represents the portion of the technical potential that is cost effective using the MA Total Resource Cost (TRC) test over the three years of the model and feasible with normal turnover and splits between retrofit and replace on burnout/new equipment/new construction.

### ***Achievable Potential***

- As noted above, the goals in MA are set based on net savings, so the study should estimate achievable potential that is net of naturally occurring adoption (free-ridership). The bidder should rely on the most recently completed net-to-gross (NTG) studies in MA, NTG assumptions for the 2019-2021 plan, adoption rates from current programs, and other market studies and intelligence available to document assumptions regarding market trends for energy efficiency measures.
- The bidder should describe their approach for estimating achievable potential and include a description and cost to assess market adoption curves through surveys and/or interviews with customers and/or trade partners for selected (e.g., representative) measures. The achievable potential can be a function of variables the bidder sees fit to drive higher participation, be that incentive as measured as a percent of cost or dollar per energy unit saved, payback, marketing resources, new program designs, etc. The consultant should possess or develop a market acceptance model based on key drivers and describe those proposed key drivers in the proposal. These incentive and acquisition costs will also be used to determine program spending. For purposes of this proposal the bidder should assume telephone surveys with 400 residential customers and 200 commercial customers. In addition, the bidder can also propose alternative sample sizes and approaches for informing achievable potential, and their associated costs.
- The achievable potential model should be calibrated against the most recently completed year of energy efficiency program activity, likely 2018 year-end numbers, to within an acceptable percentage to be agreed upon (on the order of 5 to 25 percent). The variables that should be considered during the calibration process are energy savings, demand savings (for electric) and cost. This means the model should be run for that year and the savings and cost output of the model overall, and after being calibrated, should predict a level of energy and demand savings and cost within the acceptable limit for residential and non-residential savings. There could be greater flexibility in how to calibrate/adjust the model to match the predicted results, but the final calibration steps should be reviewed by the bidder with the Compact. This calibration assures the model is

grounded in actual program performance. Note this calibration is not intended to represent the maximum achievable potential, but the achievable potential based on historic program spending levels. If the bidder feels that the calibration to past performance constrains their model as to not produce credible potential results, alternative calibration approaches may be recommended by the contractor.

- Through the enhanced program design scenarios discussed below, the achievable potential should incorporate different program delivery approaches and strategies, including upstream incentives (e.g., upstream lighting and HVAC), early replacement, and code/standards support. The impact of market effects – utilizing results of completed NTG studies – should also be considered. The inclusion of market effects should, if possible, also reflect that spending vs. savings may not be linear and may instead have certain “tipping points” and program designs that can lead to market transformation.
- The achievable potential should summarize and clearly communicate the remaining opportunities for savings. For example, the savings should be summarized by customer segment, sub-segment, and measure type. The results should be informative for not only goal setting, but for identifying the best “pockets” of efficiency opportunity for programs to target. Ultimately, the study should be useful not in only providing estimates of potential, but in helping communicate to program staff what types of measures should be targeted and for what types of customers.
- The estimated “achievable” potential should be estimated based on three different program funding levels as well as an option for enhanced program design. The final spending and program design scenarios will be developed as part of the work plan development.
  - The three funding scenarios will be determined prior to finalization of the project work plan after project initiation, but will include one scenario with a “business as usual” approach (calibrated, as described above, to current program activity), and then two scenarios reflecting more aggressive program spending: “business as usual enhanced spending” and maximum achievable potential (whereby 100% of the measure costs are covered through the programs).
  - These projections should be based on a realistic assessment of economic conditions, market acceptance and the time required for program and infrastructure development and a realistic projection of annual participation rates given the assumed incentives, marketing efforts and other factors such as the rate of equipment turnover. Assumptions regarding incentives vs. other acquisition costs (e.g., marketing and delivery) should be provided for each of the achievable potential scenarios.
  - The bidder should identify potential savings associated with enhanced program design scenarios, including alternative program delivery strategies (e.g., moving incentives from downstream to upstream and/or expanded municipal partnerships) or intervention strategies (e.g., codes/standards support and/or work force development). The bidder should identify whether these enhanced program design scenarios could be implemented

as part of the business as usual enhanced spending, and/or maximum achievable potential scenarios, and whether potential savings would be additive to these scenarios.

The potential estimates should also be compared with recent information from other jurisdictions – this could include potential study results and/or other relevant information/documentation. This is not meant to be an intensive literature review and comparison, but a higher-level review of segment and sector level potential estimates.

### ***Specific Tasks***

The consultant should perform the following tasks. In addition to the tasks included in the scope below, all members of the bidding team must be available to provide on-going regulatory support on a time and materials basis once the final report has been submitted to the Massachusetts Department of Public Utilities. (Note that costs for regulatory support should not be included in the submitted project cost.)

#### *Task 1: Conduct Project Initiation Meeting*

The Consultant shall conduct a project initiation meeting. The purpose of the meeting is to:

- Review and refine the technical requirements, research objectives and methods, discuss pros and cons of alternative methodologies (order of measure installation, dual baseline, etc.) or data sources, discuss data requirements, and clarify current data availability and quality;
- Discuss what required data may be supplied by the Compact;
- Review and reconfirm the schedule for the project, including key milestone dates;
- Review and adjust (as necessary) the project approach outlined in the RFP and proposal; and
- Develop project management and communication protocols to ensure that the information needs of both the Compact and the Consultant are satisfied.

#### *Task 2: Develop Research Plan*

The Consultant shall prepare a draft of the final Research Plan to carry out all items discussed in the scope above. The Research Plan shall provide a detailed description of all activities required to complete the project and the schedule for completing each activity. At a minimum, the Consultant shall include in the Research Plan complete information regarding:

- Step by step plans to complete the project including key milestones and deliverable dates;
- Sources of data for efficiency measures and building code information as well as default information for penetrations and end-use breakdowns;
- A more detailed description of the model used to calculate savings potential including algorithms used to calculate savings and costs using all proposed data sources;
- A detailed data request of all information (including data sources internal and external to the Compact) needed to complete the study;
- Proposed method for taking in account dual baselines for retrofit/early replacement measures;

- Brief summary of the impact of codes and standards (including EISA, IECC, Stretch Code, etc.) on measure selection;
- Detailed sampling plan for surveys (or alternative approach to estimating achievable potential);
- Proposed program spending levels for the “business as usual” and “business as usual enhanced” spending scenarios;
- (If optional task is approved) enhanced program design scenario assumptions;
- An outline describing what will be included in the final report and what data deliverables will look like. The Consultant will coordinate with vendors for other Massachusetts PAs to ensure consistency in terms of measure characterizations, timing, formatting, and definitions of PA potential studies.

Task 3: Conduct Research Identified in the Research Plan

- The Consultant shall prepare an updated list of all the efficiency technologies to be included in the assessment of technical potential. Each measure should have an estimate of typical savings (gross and net), incremental costs, and measure lifetime, as well as the measure units (e.g., per customer or per square foot), and reference to associated documentation. Note that time should be allowed for coordination with other PAs and EEAC Consultants on the measure list. In addition, the Consultant should prepare a list of measures that were considered and then excluded, and why.
  - Documentation of references should be explicit. Where studies or reports are referenced, study title, author, date, page number and table numbers should be included. Consultants should be expected to defend these savings and cost assumptions through detailed technical review.
  - The measure list including savings and cost will be reviewed and approved by the Compact staff with expertise in that end-use or sector before going forward with the next stages of the research.
  - As a defined subtask, the bidder must investigate new technologies not currently offered that could play a role in 2022-2024 savings and include those in the modeling.
- Develop market acceptance/adoption curves for energy efficiency technologies. These can be based on customer surveys conducted as part of this study, prior program participation, or a combination of these and other data sources. The proposal should discuss proposed key drivers to such a model.
- Deliver a stand-alone summary memorandum describing the results of this task.

Task 4: Develop and Run the Model

- Develop the savings forecasting and screening aspect of the potential model. For this task, the bidder should expect to make a detailed presentation of the model, including important formulas and a reasonable question and answer period on the algorithms and documentation behind the

model before the final model runs are done. The bidder should be prepared to explain in detail how the model handles competition between measures that cover the same baseline customer, equipment or building.

- The model should be transparent enough so that Compact staff can examine and verify the formulas, used in the model to do specific calculations and must be easily updated by the selected *consultant* (not Compact staff) for key variables such as avoided cost, discount rate, measure specific costs and savings, saturations/penetrations, incentive strategies (\$/energy unit or % of cost). A “locked” version of the model may need to be shared under a confidentiality agreement with Council consultants as well as to MA DPU staff under a protected seal.
- Calibrate the model against the most recently completed year of energy efficiency program activity, likely 2018 year-end numbers, to within an acceptable percentage to be agreed upon (e.g., 5 to 25 percent).
- Run the model producing a minimum estimate of technical potential, economic potential and the three spending scenarios of achievable potential
- (If optional task is selected) Run the model producing an estimate of achievable potential based on up to two enhanced program design scenarios.
- Model results should be updated when results of the current regional Avoided Energy Supply Cost (AESC) study are available (expected around March 2021)

#### Task 5: Reporting

- The Consultant should prepare an initial draft report for the Compact that follows the outline and schedule developed under Task 2. The Compact will review the draft report and submit comments to the Consultant. The draft report is likely to result in some questions and requests for further explanations. This will likely lead to requests to rerun the model with some revised or new information. This task should include resources to address such requests, re-running of the model, and explanation of the updated results.
- The Consultant should prepare two revised draft reports, the first of which will address comments received from the Compact, and the second of which will address comments received from the EEAC Consultants. The Consultant will discuss with the Compact how comments from the EEAC Consultants can be addressed within the report and will develop a response for each comment from the EEAC Consultants.
- The Consultant should prepare a final report that considers all comments received and reflects the final AESC study results.

Task 6: Regulatory Support Both During Project and After Completion of the Final Report.

- The cost for up to two presentations of draft findings to the CLC Governing Board and the EEAC should be included in the proposed budget.
- The bidding team must also be available to provide on-going regulatory support on a time and materials basis once the final report has been submitted to the Massachusetts Department of Public Utilities and MA Energy Efficiency Advisory Council.

***Schedule***

The Consultant shall complete the tasks above according to the following schedule:

- Task 1: Conduct Project Initiation Meeting, within two weeks of signing the contract with the Compact
- Task 2: Develop Research Plan, within three weeks of the Project Initiation Meeting
- Tasks 3 – 4: According to the schedule included in the Research Plan. Note that time should be allowed for coordination with other PAs and EEAC Consultants on the measure list.
- Task 5:
  - On or before, December 1, 2020, initial draft report to the Compact
  - On or before, December 31, 2020: Revised draft report. The Compact will make this available to the EEAC Consultants.<sup>15</sup>
  - On or before, February 1, 2021: Final draft of the report. The Compact will make this available to the EEAC Consultants.
  - On or before, April 1, 2021: Final report.
- Task 6: As needed (this could include a presentation to the EEAC Consultants).

**V. Cape Light Compact Responsibilities**

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

- Providing a principal Cape Light Compact point of contact for coordination and approvals; and
- Providing access to all Compact energy efficiency and financial data necessary to complete the required analysis and reports.

**VI. Proposal Requirements**

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

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<sup>15</sup> Additional model runs based on EEAC Consultant comments may be required.

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;
- 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 percentage of staff that would work on these services relative to your entire staff (using full time equivalents). For example, if you would use one FTE staff on this project and you have a staff of ten, the percentage would be 10%.
- Incorporate a schematic diagram showing organizational overview including identification of key staff and any supporting vendors or sub-contractors, if applicable.
- Provide a red-line MS-Word version of any requested amendments to the Compact's Energy Efficiency Professional/Consulting Services Agreement (Agreement). Note: The Compact cannot accept any amendments to Section 7, Indemnification, of the Agreement.

## VII. Pricing

Vendors' proposals should include a pricing schedule, for each technical service role being proposed, with all labor, overhead, travel, other direct costs associated with these Technical Support 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:	Thursday, March 12, 2020
2. Pre-bid conference call:	Thursday, March 19, 2020, 12:00 p.m. EST*
3. Written inquiries due:	Monday, March 23, 2020 by 4:00 p.m. EST
4. Inquiry responses posted:	Friday, March 27, 2020 (to Cape Light Compact website)
5. All proposals due:	Wednesday April 8, 2020 by 2:00 p.m. EST
6. Vendor(s) selected:	Thursday, April 16, 2020 (estimated)
7. Kick-off meeting(s):	April 23 and/or April 24, 2020
8. Implementation:	April 2, 2020 – December 31, 2021

\*Please indicate via e-mail to Margaret Downey ([mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org)) your interest in participating in the call by 12:00 p.m. EST on Wednesday, March 18, 2020.

## 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 XVIII, "Bidder's Submission Statement and Certificate of Non-Collusion."

Acceptance of any proposals remains in the sole discretion of the Cape Light Compact. Proposals which in the judgment of the Compact 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 and Delivery Labeling

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:	Potential Study Consultant
Dated:	
Bidders Name:	
Delivered to:	Cape Light Compact 261 Whites Path, #4 South Yarmouth, MA 02664
Attention:	Margaret Downey <a href="mailto:mdowney@capelightcompact.org">mdowney@capelightcompact.org</a> Cape Light Compact Chief Procurement Officer

**Bids must be received by Wednesday, April 8, 2020 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 VII, 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. Interpretation of the RFP

The Compact is seeking one qualified firm 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 Wednesday, March 18, 2020, 12:00 p.m. EST, 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, #4  
South Yarmouth, MA 02664  
Attn: Margaret Downey  
[mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org)  
Cape Light Compact Chief Procurement Officer

### **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 shall be based on the following set of Minimum Evaluation Criteria:

1. Responsiveness to the issues identified in the RFP
2. Proposed approach to manage the work
3. Team qualifications and experience
4. Submission of all required documentation and certifications detailed in Proposal Contents.
5. A minimum of five (5) years related experience in the energy efficiency field, and in developing energy efficiency potential studies

Contract negotiations will commence immediately 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) by May 1, 2020, the Compact reserves the right to negotiate with alternative Bidder(s) in order to execute contracts by June 1, 2020. 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 tentative date for an oral presentation is Friday, April 10, 2020 at the Compact's office, 261 Whites Path, South Yarmouth, MA; 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 should hold April 10 for a potential presentation. Bidders will receive at least 24 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](mailto: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 A.

**XVIII. Bidder's Submission Statement and Certificate of Non-Collusion**

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 March 12, 2020, 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 bud 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):

**CERTIFICATE OF NON-COLLUSION**

Pursuant to Massachusetts General Law (MGL) Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

I certify under the penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certificate, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other legal organization, entity or group of individuals.

Organization:

Address:

Signature of Individual Signing Proposal, or Corporate Officer:

Telephone Number:

Social Security Number or Federal Identification Number:

Date:

*Any person or organization failing to execute this document will be considered nonresponsive.*

**APPENDIX A**  
**SAMPLE CONTRACT & CONFIDENTIALITY AGREEMENT**

## ENERGY EFFICIENCY PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This PROFESSIONAL/CONSULTING 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] (“Consultant”). The Compact and Consultant may be referred to herein collectively as the “Parties,” or either singularly as a “Party.” This Agreement is effective as of [insert].

WHEREAS, pursuant to G.L. c. 40, §4A, in 1997, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County entered into an inter-governmental agreement, as amended from time to time, to act together as the Compact;

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

WHEREAS, the purposes of the Compact include protecting and advancing the interests of residential, commercial and industrial customers in a competitive electric supply market, and 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 Consultant 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, Consultant has the expertise required to provide the Compact with the services required pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, Consultant 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 Consultant is in default under another consulting or installation services agreement between Consultant and the Compact, or for convenience. Consultant 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 Consultant, such notice shall be given at least ninety (90) calendar days before such effective date. In addition, if the Compact terminates this Agreement for cause, the Compact shall be entitled to deduct and/or be reimbursed any costs of cure and transition costs (including reasonable attorneys' fees) that it, a Member<sup>16</sup> or a Customer (as defined herein) incurs related to engagement of a substitute Consultant.

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 Consultant. The Compact shall provide written notice of such termination or suspension to Consultant. In the event of such termination or suspension, Consultant shall be paid for all authorized, satisfactory (in the reasonable discretion of the Compact) 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 **Services.** Consultant 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 "Services"). All such Services and deliverables shall be designed to achieve the anticipated outcomes specified in the description of Services and shall be provided in accordance with the terms and conditions of this Agreement.

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

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<sup>16</sup> For the purposes of this Agreement, the term "Member" means the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, Yarmouth, Dukes County, and any other governmental unit that becomes a member of the Compact during the term of this Agreement.

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

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

Upon request by the Compact, Consultant shall comply with the Compact's written requirements for employee background checks, as set forth in Exhibit C, and as may be amended from time to time by the Compact.

[ ] required [ ] not required

2.5 **Conflicts of Interest.** Consultant covenants that it presently has no interest, and shall not acquire any interest, directly or indirectly that would conflict in any manner or degree with the performance of the Services. Consultant agrees to diligently serve and endeavor to further the best interests of the Compact, as known or made known to Consultant. Consultant 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. Consultant further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

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

### SECTION 3 COMPENSATION AND RELATED MATTERS

3.1 **Rates of Compensation.** Consultant shall be compensated by the Compact for the 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.

3.2 **Invoicing and Payment.** Consultant shall submit monthly invoices to the Compact by the 10<sup>th</sup> day of each month, unless otherwise authorized in writing by the Compact. The Compact 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 Services. Upon request, Consultant shall provide to the Compact all backup documentation

required to establish the value of the Services performed to date as represented by Consultant's monthly invoices.

**3.3 Effect of Payment.** The Compact shall not be deemed to have accepted any improper Services, materials or performance by virtue of any payment made to Consultant. Payments shall be deemed advances and are subject to adjustment for errors, overpayments, or the Compact's good faith determination that the remaining balance of payments may be insufficient to ensure completion of the Services.

**3.4 Withholding.** The Compact may withhold a payment of all or a part of any invoice to the extent as may be necessary to protect itself from loss caused by: (i) defective Services not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims by other parties against Consultant or the Compact in connection with the Services; (iii) Consultant's failure to make payments properly to subcontractors for materials, labor or equipment; (iv) unsatisfactory performance of the Services; (v) Consultant's failure to pay any amounts due to the Compact; or (vi) Consultant's failure to perform any of its obligations under this Agreement. In addition, if the Compact has a reasonable indication that the unpaid balance will be insufficient to cover the cost to complete the Services or that the Services will not be completed within the project milestone schedule (if any), the Compact may withhold payment of all or a part of any invoice to the extent as may be necessary to protect itself from such anticipated losses. The Compact shall notify Consultant of the grounds for any withholding. When Consultant 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.** Consultant may not claim any governmental or other energy efficiency credits, tax credits, forward capacity payments, carbon offsets, rebates or incentives of any kind as a result of or in connection with the Services performed under this Agreement (collectively, the "Credits") without the written consent of the Compact in its sole discretion. To the extent any Credits are allocated to the Compact, a Compact project or to a Compact customer/program participant ("Customer"), by operation of law or regulation, Consultant shall, upon request and without charge, cooperate fully with the Compact to disclaim any rights to such Credits and to assign or allocate all such Credits, and the value thereof to the party designated by the Compact.

## **SECTION 4 PERFORMANCE STANDARDS**

**4.1 General Performance Standard and Warranty.** Consultant assumes professional and technical responsibility for the performance of the Services in accordance with the terms of this Agreement and Good Industry Practice, and any additional guarantee or warranty specified in the description of Services set forth in Exhibit A. If, during the performance of the Services or within one (1) year following completion thereof, the Services fail to meet such standards, Consultant shall promptly and timely (no more than five business days) furnish all remedial services and materials necessary to correct such deficiencies at Consultant's sole cost and expense. Consultant shall also be responsible for reimbursement of the Compact's losses related to such defective Services during the warranty period. For purposes of this Section 4.1, the term "Good Industry Practice" means the practices, methods and acts (including, but not limited to,

the practices, methods and acts engaged in or approved by a significant portion of the energy efficiency industry in the performance of consulting services) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, 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, Consultant 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 Services; (iii) spend such time in performing the 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 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 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 Services.** Consultant is required to correct in a prompt and timely fashion any Services rejected by the Compact. Consultant shall correct at its own cost and bear the expense of additional services performed to correct non-conforming Services. If Consultant 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 Services or any separable part thereof, and complete the same or have the same completed at Consultant's expense. In taking over, the Compact shall have the right, for the purpose of completing the Services, to take possession of all equipment, supplies and materials belonging to Consultant and purchased or leased for the performance of the Services. For such purpose, this Agreement shall be construed as an assignment by Consultant to the Compact of said equipment, supplies and materials.

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

## **SECTION 5 INTELLECTUAL PROPERTY MATTERS**

**5.1 Intellectual Property Rights; Work for Hire.** Consultant agrees that any work of authorship created or developed by Consultant during performance or delivery of services to the Compact, either individually or jointly with others, in the course of the rendering the Services to the Compact shall be deemed a "work for hire," and the exclusive property of the Compact. To the extent not deemed a "work for hire" by operation of law, with respect to any invention, trade

secret, or work of authorship created or developed in the course of the rendition of services to the Compact, Consultant hereby irrevocably assigns, transfers, and conveys to the Compact all of Consultant'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, Consultant agrees to execute any documents or take any action reasonably requested by the Compact to perfect the Compact's ownership of any such property. Consultant further agrees that, to the best of its knowledge, all work created or developed by Consultant will be original and non-infringing.

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

## SECTION 6 INSURANCE

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

- (a) Until completion of the Services:
  - i. Workers' Compensation and Employers' Liability Insurance covering *each and every worker employed in, about or upon the 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 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 Consultant's errors and omissions

relating to the Services if the Services involve rendering of professional advice or consultation, including designs, surveys, drawings, approval of maps, etc. Such insurance shall be provided at a limit of at least \$1,000,000. 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.

vi. Network Security and Privacy Liability (a/k/a Cyber Liability) Insurance including coverage for liability arising from loss or disclosure of business data; system or privacy breach; denial or loss of service; introduction, implantation or spread of malicious software code; and unauthorized access to or use of computer systems or business data with minimum coverage limits of \$1,000,000 each occurrence/claim. If coverages are provided on a claims-made basis, any applicable coverage retroactive date shall always be the effective date of this Agreement.

(b) After the 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 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. Consultant'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 Consultant’s insurance companies.

Consultant agrees to waive any rights of subrogation against the Compact, the Compact’s Customers, Members, and their respective employees, subcontractors, engineers, workers and agents. Consultant 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.

Consultant shall not begin rendering 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 Consultant and Consultant 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 Services, Consultant 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. Consultant shall be solely

responsible for tracking and reporting to the Compact the expiration of the policies shown on the insurance certificate(s) provided.

## **SECTION 7            INDEMNIFICATION BY CONSULTANT<sup>17</sup> AND DAMAGES FOR BREACH**

**7.1 Indemnification.** To the fullest extent allowed by law, Consultant (and its officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless the Compact, the Members (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact and each Member), and 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 Consultant (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 Consultant (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. Consultant's indemnification obligation includes claims related to the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. Consultant's indemnification obligation is not limited in any way by the amount or type of damages or compensation payable by the Compact. Consultant 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, Consultant acknowledges that the preceding sentence shall not limit the Compact's rights to seek indemnification from Consultant for consequential, punitive, or incidental damages or other such losses claimed by third parties.

**7.4 No Cap on Consultant's Liability.**<sup>18</sup> Consultant's liability under this Agreement shall not be limited to the value of the Services rendered under this Agreement; further, Consultant's liability shall not be limited by the availability of its insurance coverage.

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<sup>17</sup> Note to Consultant: In accordance with guidance issued by the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

<sup>18</sup> Note to Consultants: 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.

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

**7.6 Acknowledgment of JPE Status.** Consultant understands that the Compact is a governmental entity, specifically a joint powers entity, and that its members are the governmental units set forth in footnote 1 of this Agreement. Consultant understands and agrees that the Members assume no liability whatsoever for any of the debts and liabilities of the Compact, including, but not limited to, any obligations under this Agreement. Consultant further agrees and covenants that it will not sue or otherwise make any claim against any of the Members for any obligations, debts or liabilities of the Compact that may exist or accrue as a result of its obligations under this Agreement, or any acts or omissions related to the performance of such obligations.

**7.7 Governmental Immunities.** Consultant understands that the Compact is a governmental entity, and certain legal privileges and defenses are available to it at law. Nothing in this Agreement shall be construed to waive any of these privileges or defenses.

## **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. Consultant shall diligently carry on the Services and maintain the project milestone schedule during any dispute resolution proceedings, unless otherwise agreed to by the Compact in writing.

## **SECTION 9 ASSIGNMENT AND SUBCONTRACTING**

Except as expressly permitted in Exhibit D, none of the Services shall be subcontracted or assigned, in whole or in part, without the prior written approval of the Compact, in its sole discretion. No subcontract or assignment shall relieve or discharge Consultant from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval. Consultant 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 Services must abide by all of the terms and conditions of this Agreement, including, but not limited to, insurance requirements. The Compact reserves the right to impose these requirements on subcontractors performing less than thirty percent (30%) of the Services.

## **SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION**

**10.1 Confidentiality.** Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information. The disclosure and use of such information shall also be governed by the 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 Consultant (or its subcontractors or any other party acting by or on behalf of Consultant) is provided or has access to Customer information, the following provisions apply: Consultant warrants and represents that the Consultant and its subcontractors and all other persons or entities having access to the Customer information by or through the Consultant have the appropriate safeguards in place to prevent the disclosure or use of any Customer information received from the Compact or its Customers, and further agrees to use such information solely for the purpose of performing Services for the Compact under this Agreement. Such safeguards shall include, without limitation, security policies, tools and processes restricting access to such Customer information to persons on a need-to-know basis, adequately training and notifying its employees and contractors of the restrictions associated with such information, identifying and correcting any impermissible use or disclosure, and immediately reporting any such use or disclosure. Consultant 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 Consultant shall provide the Compact with detailed information and documentation regarding such safeguards, and with certifications regarding the same by an authorized officer of the Consultant, and the Compact shall have the right to monitor and audit the compliance of the Consultant 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 Consultant shall retain no copy or other record thereof. Consultant 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. Consultant shall, at its sole cost, cooperate fully with the Compact and, as

necessary, any law enforcement, regulatory authority, insurance carrier, auditors, attorneys and other parties in the investigation and evaluation of such incident, and shall implement at its sole cost any remedial measures recommended by any such parties as approved by the Compact. The Customer information shall remain confidential in all circumstances.

## SECTION 11 MISCELLANEOUS

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

if to Consultant to:

[insert]

if to the Compact to:

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

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

11.2 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. To the extent any of the exhibits to this Agreement contain terms that conflict with the terms set forth in the main body of this Agreement or impose additional obligations on the Compact, the language in the exhibits shall be disregarded and shall be of no force and effect. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

**11.3 Independent Contractor; No Joint Venture.** Consultant will perform all Services under this Agreement as an independent contractor. Consultant 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 Consultant hereunder are individual and neither collective nor joint in nature.

**11.4 Joint Workproduct; Independent Counsel.** This Agreement shall be considered the workproduct of both Parties hereto. Each Party acknowledges that it has been represented by independent counsel or has had the opportunity to seek counsel in connection with this Agreement and all matters pertinent to it, and each Party waives the benefit of the rules of construction providing that an agreement should be construed against its drafter. Notwithstanding the foregoing, Consultant agrees that if Exhibit A (Services) is primarily drafted by Consultant, any ambiguous terms contained therein shall be construed against Consultant.

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

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

**11.11 Non-Discrimination in Employment and Affirmative Action.** Consultant 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. Consultant 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, Consultant 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 Member is an intended third-party beneficiary of this Agreement, entitled to the full rights of this Agreement.

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

**11.15 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.

CONSULTANT

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 - Services
- Exhibit B - Compensation
- Exhibit C - Pre-approved Subcontractors
- Exhibit D - Confidentiality Agreement

**EXHIBIT A  
SERVICES**

**EXHIBIT B**  
**COMPENSATION**

**EXHIBIT C**  
**PRE-APPROVED SUBCONTRACTORS**

**EXHIBIT D**  
**CONFIDENTIALITY AGREEMENT**

## CONFIDENTIALITY AGREEMENT

between

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 the Massachusetts Open Meeting Law, G. L. c. 30A §§18-25; or
- (v) information that is not designated or identified by the disclosing party as “Confidential” or “Proprietary” at the time of its initial submission. Such information shall be presumptively subject to disclosure under the Public Records 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 to 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, as well as the Massachusetts Open Meeting Law, G. L. c. 30A, §§18-25.

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 \_\_\_\_\_, 20 (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: \_\_\_\_\_