



Request for Proposals

Energy Efficiency & Forward Capacity Market Technical Support Services

2016-2018 Program Years

Issued: Friday May 13, 2016

Proposals due: Friday June 10, 2016

Cape Light Compact, P.O. Box 427, Open Cape Building, Barnstable, MA 02630
www.capelightcompact.org

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I. Introduction

The Cape Light Compact (“the Compact”) is soliciting competitive bid proposals from qualified vendors for Technical Support Services for its Energy Efficiency Program, as well as its related participation in the ISO New England Forward Capacity Markets. The Compact’s Technical Support Services consultant (“the Consultant”) shall assist the Compact with a variety of issues that fall within the general category of program planning, design, development, administration and evaluation and reporting. The Consultant assists the Compact with developing the Three-Year Energy Efficiency Plan, developing program budgets, developing program goals, screening programs and measures for cost effectiveness, and assisting with regulatory and reporting requirements of the Energy Efficiency Advisory Council (“EEAC”) and the Massachusetts Department of Public Utilities (“DPU”). In addition, the Consultant shall assist the Compact in its participation in the ISO New England Forward Capacity Market (“FCM”) program. The contract(s) for these services are scheduled to begin July 1, 2016 and continue through December 31, 2018, with an option to extend in one or two year increments for up to an additional three years (through December 31, 2021).

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

II. Cape Light Compact

The Cape Light Compact, as administered through Barnstable County, is an inter-governmental regional energy services organization made up of all 21 towns of Barnstable and Dukes counties and the counties themselves. The purpose of the Compact is to represent and protect consumer interests in a restructured electric utility industry. As authorized by each town, the Compact administers the regional energy efficiency program and works with the combined buying power of the region's over 200,000 electric consumers to negotiate the best terms and conditions for electric supply and pricing, including a green power offering, and other public benefits. For more information on Cape Light Compact and its energy efficiency programs, please visit www.capelightcompact.org.

III. Background

The Compact is seeking a technical support services vendor as part of its current (2016-2018) and upcoming (2019-2021) Energy Efficiency Plans, to support the Compact's energy efficiency planning and reporting requirements, as well as its related participation in the ISO New England Forward Capacity Market. The successful vendor will be very familiar with the Massachusetts Energy Efficiency (EE) regulatory environment and reporting requirements, the essential workings of the existing Massachusetts Three Year Energy Efficiency Plans and Programs and Data, the function and participation requirements of the ISO-New England (ISO NE) Forward Capacity Market, as well as the territory and operations of the Cape Light Compact, specifically. The successful vendor will have the technical expertise, skills and experience to be able to perform a variety of computational EE analyses with data from several Compact sources for regular monthly, quarterly, and annual reporting, as well as on an ad hoc, as-needed basis. In addition, the vendor team will be capable of acting as technical representative for the Compact in certain statewide meetings and venues, as well as be willing and able to interact with Compact management and staff on an ongoing and as needed basis for both reporting and three-year planning, and internal tracking and development of the Compact's budget, income and expenses.

IV. Technical Support Services Consultant Roles and Scope(s) of Work

The selected Consultant will be expected to:

- **Have thorough working knowledge** of the Massachusetts statewide Three-Year Energy Efficiency Plans, the Massachusetts TRM (Technical Reference Manual),¹ and the ISO-NE Forward Capacity Market.
- **Create and maintain regulatory reports** for the DPU and ISO New England through data extracts from the Compact's energy efficiency database, the Energy Efficiency Collaboration Platform (EECP), and the Compact's financial software, MUNIS.
- **Be available for ad-hoc analyses and advisory requests.**
- **Deliver regular updates** to Compact management on activities/services provided, on a timeline agreed to with Compact management.

Specific Technical Support Service Area Roles are outlined below in A and B.

A. Energy Efficiency Technical Support Services

i) Assist in the Development of the Compact's Three-Year Energy Efficiency Plan

The Consultant shall assist the Compact with developing its Three-Year Energy Efficiency Plan ("Plan") including, developing program budgets, developing program goals from Compact inputs, screening programs and measures for cost effectiveness, operating the Compact's BCR

¹ The Massachusetts TRM is scheduled to become a digital library, known as the Technical Reference Library (TRL), sometime after the first of the year in 2016.

model, populating Plan tables, and coordinating with Compact managers and staff on content and analyses. The Consultant shall participate in the regulatory proceedings associated with the filed Energy Efficiency Plan at the DPU.

Consultant shall also participate in all Plan updates including Mid-Term Modifications to the DPU.

ii) Manage the Compact's EE Data Reporting Requirements

The Consultant will be responsible for providing several sets of reports for the on-going activities of the Compact's efficiency programs. These reports will be provided on a periodic basis in a timely fashion and in a format determined by the Compact. At a minimum, the following reports will be prepared:

- a. *Monthly Program Implementation Reports*, provided to the EEAC, consistent with EEAC requirements.
- b. *Quarterly Program Implementation Reports*, provided to the EEAC, consistent with EEAC requirements.
- c. *Plan Year Efficiency Reports and Three Year Term Reports*, provided to the Department of Public Utilities. The information must be provided in a database format that is consistent with Department of Public Utilities (DPU) requirements. The Consultant shall be responsible for coordinating the development of these annual reports in collaboration with Compact staff.
- d. *Annual Energy Efficiency Reconciliation Reports (EERF)*. The Consultant shall work with Compact staff to develop and submit its annual EERF to the DPU.
- e. *Miscellaneous Internal and External Reports as requested* periodically by the Compact Governing Board, Compact staff members, and regulatory agencies. All reports should be provided in electronic formats (e.g., PDF, Word, Excel, and others as appropriate), so that they can be posted on web sites and exchanged via email if desired.

iii) Representation on Statewide EE Technical Subcommittees

The Consultant will, as directed, participate in, and/or represent the Compact on, various statewide technical subcommittees and working groups, as necessary, to support operation of the Compact's BCR model, development of 08-50 tables and any other statewide reporting requirements and filing components, including but not limited to the following venues:

- Tables Group – for common planning and reporting layout;
- Common Assumptions Meetings – for common statewide assumptions in the operation of BCR model and other reporting tools and components;

- Costs Categorization Working Group – for common statewide assumptions in the allocation of costs in reporting;
- Planning and Analysis Working Group;
- Statewide Database Working Group; and
- Other Ad hoc Efforts convened statewide, as necessary, including performing statewide work for the PAs overall on the Compact’s behalf.

B. Forward Capacity Market Technical Support Services

The Consultant will coordinate the Compact’s participation in the New England Forward Capacity Market (FCM), representing the Compact’s interests, in coordination with Compact staff, in all communications and submissions to ISO NE for FCM, including but not limited to the following expert services as required for management of the Compact’s position as a participant in the FCM market:

- Development of Annual Shows of Interest (SOI) and New Capacity Qualification submissions for the following year’s auction;
- Management of Annual Auction preparation and participation;
- Submission of monthly database uploads of incremental EE installations, including data on installations greater than 10kW;
- Management and submission of Expiring Measures and confirmation of Ex Cap Qual;
- Participation in Monthly and Annual Reconfiguration Auctions, as well as assistance with Bilateral transactions, as needed;
- Submission of data for EE forecast;
- Monthly QC of EE data and DRV sheets;
- Responding to Ad-hoc ISO requests; and
- Representing the Compact’s interests at monthly Demand Response Working Group and other related ISO-NE committee meetings.

V. Cape Light Compact Responsibilities

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

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

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.

VII. Pricing

Vendors' proposals should include a pricing schedule, for each technical service role being proposed (A-B), 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:	Friday, May 13, 2016
2. Pre-bid conference call:	Thursday, May 19, 2016, 12:00 p.m. EST*
3. Written inquiries due:	Monday, May 23, 2016 by 4:00 p.m. EST
4. Inquiry responses posted:	Friday, May 27, 2016 (to Cape Light Compact website)
5. All proposals due:	Friday, June 10, 2016 by 2:00 p.m. EST
6. Vendor(s) selected:	Friday, June 17, 2016 (estimated)
7. Kick-off meeting(s):	Week of June 27, 2016 (tentative)
8. Implementation:	July 1, 2016 – December 31, 2018

*Please indicate via e-mail to Margaret Downey (mdowney@barnstablecounty.org) your interest in participating in the call by 12:00 p.m. EST on Wednesday, May 18, 2016.

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:	EE & FCM Technical Support Services Vendor
Dated:	
Bidders Name:	
Delivered to:	Cape Light Compact Open Cape Building 3195 Main Street Barnstable, MA 02630
Attention:	Margaret Downey mdowney@barnstablecounty.org Cape Light Compact Chief Procurement Officer

Bids must be received by Friday, June 10, 2016 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, May 18, 2016, 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
Barnstable Open Cape Building
3195 Main Street
Barnstable MA, 02630
Attn: Margaret Downey
mdowney@barnstablecounty.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 energy efficiency and ISO-New England forward capacity markets

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 July 31, 2016, the Compact reserves the right to negotiate with alternative Bidder(s) in order to execute contracts by August 31, 2016. All exceptions to the contract must be noted in writing and included within the body of the proposal.

XV. Proposal Confidentiality

All proposals will become the property of the Compact. As a public entity it may become necessary to supply price information to regulatory agencies for review. The Compact will request that all such information be treated confidentially by the regulatory agencies and the Compact will furnish such information when required. If any proprietary information is contained in the Proposal, it should be clearly identified and will be treated as such provided that

the Compact shall be liable for any action taken, or omitted to be taken, in good faith by it or them hereunder or be responsible for the consequences of any oversight or error in judgment thereof except for direct losses due to its or their willful misconduct or gross negligence.

XVI. Return of Proposal Materials

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

XVII. Oral Presentations

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

The oral presentation will be arranged through the Compact. Bidders will receive at least 72 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@barnstablecounty.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 May 13, 2016, 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

PROFESSIONAL/CONSULTING SERVICES AGREEMENT

This PROFESSIONAL/CONSULTING SERVICES AGREEMENT (“Agreement”) is made by and between the Cape Light Compact, an inter-governmental association and aggregator formed pursuant to Massachusetts law, together with its fiscal agent, Barnstable County (collectively, the “Compact”), and (“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 December 1, 2015

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

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

WHEREAS, the Compact is operating an Energy Efficiency Plan approved by the Massachusetts Department of Public Utilities on January 28, 2016, DPU 15-166, for plan years 2016 through 2018;

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

WHEREAS, the Compact seeks to enter into an agreement with Consultant for Technical Support Services for its Energy Efficiency Program, as well as its related participation in the ISO New England Forward Capacity Markets which are further defined in Section 2.1 in connection with the energy efficiency programs that it 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 _____, 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 _____ year(s).

1.2 **Termination.** The Compact shall have the right to terminate or suspend this Agreement for any reason 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 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 the 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.

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 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 [redacted] 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 [redacted] 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 10th day of each month, unless otherwise authorized in writing by the Compact. The Compact will remit payment within forty-five (45) calendar days of the Compact’s receipt of each monthly invoice. Payment may be contingent upon final inspection and/or acceptance of the Services. Upon request, Consultant shall provide to the Compact all backup documentation required to establish the value of the Services in place 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.

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

SECTION 4 PERFORMANCE STANDARDS

4.1 **General Performance Standard and Warranty.** Consultant assumes professional and technical responsibility for the performance of the Services in accordance with the terms of this Agreement and the highest professional standards and practices, and any additional guarantee or warranty specified in the description of 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.

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; and (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.

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

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.

(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, Member Municipalities, 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 CONSULTANT² 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 individual Member Municipalities (and all of the respective officials, officers, directors, employees, servants, agents, representatives, attorneys, independent contractors, successors and assigns of the Compact and each individual Member Municipality), and all Customers from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, and/or judgments caused by, arising out of, or related to any act or failure to act of 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

² Note to Consultant: In accordance with guidance received from the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

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.³ 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.

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.

³ 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.

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.

SECTION 10 CONFIDENTIALITY AND CUSTOMER INFORMATION

10.1 Confidentiality. Through the term of this Agreement, the Parties may share certain confidential or proprietary information with each other. The Parties agree not to use this information for any purposes other than as needed to meet their respective obligations under this Agreement and to protect such information to the same standards as each Party holds its own confidential or proprietary information. The disclosure and use of such information shall also be governed by the Non-Disclosure Agreement entered into by the Compact and the Commonwealth Electric Company d/b/a NSTAR Electric dated May 10, 2001, and acknowledged by Consultant on December 1, 2015 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:

[Redacted]

if to the Compact to:

Margaret T. Downey
Compact Administrator
Cape Light Compact
P.O. Box 427
Barnstable, MA 02630
mdowney@barnstablecounty.org (email)

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

11.2 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. To the extent any of the exhibits to this Agreement contain terms that conflict with the

terms set forth in the main body of this Agreement, the language in the exhibits shall be disregarded. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

11.3 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 or County 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.

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).

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

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

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

11.16 Counterpart Execution; Scanned Copy. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that a scanned or

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

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

CONSULTANT

CAPE LIGHT COMPACT

Signature
Print Name: _____
Title: _____

Signature
Margaret T. Downey
Compact Administrator/Chief Procurement Officer

Date

Date

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

Mary Pat Flynn
Chair

Sheila Lyons
Vice Chair

Leo G. Cakounes
Commissioner

Date: _____

LIST OF EXHIBITS

- Exhibit A* - *Scope of Services*
- Exhibit B - Compensation
- Exhibit C - Background Check Policy – N/A
- Exhibit D - Pre-approved Contractors – N/A
- Exhibit E - Confidentiality Agreement

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION

EXHIBIT C
BACKGROUND CHECK POLICY

N/A

EXHIBIT D
PRE-APPROVED CONTRACTORS

N/A

EXHIBIT E
CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

between

THE CAPE LIGHT COMPACT

and

_____ [Company]

This CONFIDENTIALITY AGREEMENT (“Agreement”) is entered into by and between the Cape Light 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, 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 (collectively, the “Members”) entered into an inter-governmental agreement to act together as the Cape Light Compact (the “Compact”);

WHEREAS, the Compact and the Company entered into a contractual relationship or are investigating the possibility of a business transaction between them;

WHEREAS, in order to properly perform its duties under the contract or to evaluate the transaction, Company has asked the Compact for access to certain information regarding the business, programs or activities of the Compact or its Members which the Compact considers to be confidential or proprietary information;

WHEREAS, the Compact, for itself and for its Members, is willing to disclose such confidential and proprietary information to Company and Company is willing to receive such information, upon the terms and conditions of this Agreement;

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 by either party in connection with the RFP and/or the execution or performance of the **[insert activity description]** that the parties may enter into (the “Energy Activity”), whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the disclosing party with the words “Confidential” or “Proprietary” or marking of similar import, or if disclosed orally, is identified as confidential at the time of disclosure and in a written notice delivered to the receiving party promptly following disclosure. Confidential Information does not include:

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

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

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

(iv) information for which disclosure is required under the Massachusetts Public Records Act, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10; or

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

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

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

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

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

6. *Return of Confidential Information.* Within fourteen days of receiving notice that it is not the winning bidder/respondent, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contain Confidential Information, and will provide to the Compact a written certification of an officer of the receiving party that it has done so. If the Company is the winning bidder/respondent, within fourteen (14) days after the Company has ceased to provide services to the Compact, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contain Confidential Information, and will provide to the Compact a written certification of an officer of the receiving party that it has done so. If requested in writing, the Compact will return any Confidential Information received from any bidder/respondent (including the winning bidder/respondent), upon expiration of the relevant document retention period under Massachusetts Law 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.

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
P.O. Box 427
3195 Main Street
Barnstable, MA 02630
(508) 375-6636 (phone)
(774) 330-3018 (facsimile)
mdowney@barnstablecounty.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: Administrator/Chief Procurement Officer

Name:
Title:

Dated: _____

Dated: _____

EXHIBIT A

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that the Confidential Information, as that term is defined in the Confidentiality Agreement between the Cape Light Compact and the [**Company**] dated _____, 201__ (the "Agreement"), is being provided to me pursuant to the terms and restrictions of the Agreement. I also certify that I have been given a copy of the Agreement, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information and any parts of notes, abstracts, memoranda, or any other form of information that contains such Confidential Information shall not be disclosed to anyone nor copied other than in accordance with the Agreement, and shall be used only for the limited purposes stated therein. I also agree to protect the confidential and proprietary nature asserted for the Confidential Information.

I further acknowledge that, in the event that my role as a _____ of [**the Company**] ceases, I shall return all copies of Confidential Information and destroy all parts of notes, memoranda, and other documents that contain such material in accordance with the Agreement, and I shall continue to be bound by the terms and conditions of the Agreement.

By: _____
Name: _____
Title: _____
Organization: _____
Representing: _____
Date: _____