



**Request for Proposal: Cape Light Compact Demand Response
Demonstration Offering**

Issued: December 23, 2016

Proposals due: January 16, 2017

I. Introduction

The Cape Light Compact (Compact) seeks a vendor to provide software and related support for customers who are both currently enrolled in the Compact's Demand Response (DR) Demonstration Offering, and customers that the Compact intends to enroll in 2017 and beyond. The goal of the Demand Response Demonstration Offering is to explore the use of load control devices, including WiFi-enabled thermostats, to curb electric demand during curtailment events and to encourage load-shifting through technology and behavioral change.

II. About Cape Light Compact

The Cape Light Compact is an inter-governmental regional energy services organization made up of all 21 towns of Barnstable and Dukes counties. The purpose of the Compact is to represent and protect consumer interests in a restructured 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 for lower cost electricity, 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. Description of Cape Light Compact Demand Response Demonstration Offering

On January 28, 2016, the Massachusetts Department of Public Utilities (DPU) approved the Compact's three-year Energy Efficiency Plan (Plan) (DPU 15-166), which includes a Demand Response Demonstration Offering (DRDO). The Compact's DRDO strategy is to use Wi-Fi-enabled thermostats and other connected home devices to manage air conditioning demand during peak summer load hours. The full text of the DRDO can be found in Appendix L of the Plan, on the Massachusetts Energy Efficiency Advisory Council's website at <http://ma-eeac.org/wordpress/wp-content/uploads/Exhibit-1-Gas-and-Electric-PAs-Plan-2016-2018-with-App-except-App-U.pdf>.

The Compact began implementing its DRDO in the summer of 2016, deploying Wi-Fi thermostats and near-real-time energy monitoring equipment for approximately 40 customers through its selected vendor.

The Compact plans to continue implementation of the DRDO; however, implementation method will change effective January 1, 2017. The Compact's home energy services vendor will install the Honeywell Lyric Round™ Second Generation Wi-Fi thermostats in participants' homes, and the Compact will no longer be installing real-time energy monitoring equipment for new participants. After participants have the Wi-Fi thermostat

installed, the vendor selected through this RFP will integrate the installed thermostat in to the demand response platform developed as part of the scope of work.

IV. Scope of Work

The Vendor selected through this RFP process will provide software and related support services to Cape Light Compact to serve both currently-enrolled DRDO participants (approximately 40) and participants enrolled in 2017, and potentially beyond 2017 if the contract is extended.

The Vendor selected will:

- Provide a software product, both web-based and mobile, that integrates with current participants' currently-installed Wi-Fi thermostats (see Attachment C for hardware list) and Honeywell Lyric Round™ (Second Generation) thermostats to allow the participant to control their thermostat settings from the software.
- Provide a web-based demand response platform software product that allows:
 - The Compact to set up and trigger demand response events that will adjust all participants' thermostat set points during the event (but will allow the participant to override settings).
 - The Compact to view current and historical thermostat setting data
 - Alerts to be sent to participants via email and text message prior to the beginning of demand response events.
- Work with Cape Light Compact to confirm the scope, schedule and any website or data interchange requirements;
- Work with an independent evaluation, monitoring & verification (EM&V) staff and/or consulting team as selected by the Cape Light Compact;
- Provide an innovative and engaging product, or suite of products, that will be easy for customers to use and accomplish the objectives of the DRDO
- Provide technical specifications for all web and mobile applications
- Have lead responsibility, with assistance from and in coordination with Cape Light Compact, to confirm customer participation (including acceptance of terms & conditions, any website login/password security administration) and manage all ongoing service/support responsibilities;
- Integrate with, as applicable, the existing Cape Light Compact brand identity and website;
- Assist the Cape Light Compact in responding to any information requests relative to the program if received by regulatory bodies including the Department of Public Utilities;

The Cape Light Compact will:

- Work with the Vendor selected to provide information required to advance the project requirements;

- Will manage any communications with EM&V vendors and customer participant and non-participant groups that may parallel communications with program participants;
- Will have the capability to monitor program participants, including web activity, such as the frequency and pattern of participants use of the system that may including login activity as well as thermostat setting history;

V. Proposal Requirements

Proposals should include a conceptual overview that demonstrates a clear proposal to meet the stated objectives. Compatibility with current participants' currently-installed Wi-Fi thermostats is imperative.

- Explain the approach to this project including the type of software and support systems;
- List any software, licensing, support fees and identify as one-time or ongoing maintenance charges;
- List three projects where relevant work has been completed or is in progress including responsibilities within the project and any coordination with supporting vendors on each project.
- Provide the proposed team structure for this project with primary responsibilities and a brief background summary for each key staff member assigned to this project;
- Briefly describe your firm's organizational capacity to provide the support services required by this project;
- Provide a company profile including length of time in business and core competencies;
- Briefly describe the percentage of staff that would work on this project 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%.
- Schematic diagram showing conceptual system overview and identification of data exchange points, and;
- Please list and describe any deviations from the Specifications and Scope as outlined in this Request for Proposals, including the proposal of any additional services believed to be complimentary to furthering the DRDO.
- Any exceptions to the Form of Installation Services Agreement provided in Appendix B.

In addition, please describe ability (if any) to integrate the services requested in this RFP with Behavioral Initiative services (as defined in the RFP titled "Request for Proposal: Cape Light Compact Residential Behavior Feedback Initiative", issued December 23, 2016. **If preferred, respondent may submit a combined response to both the Demand Response Demonstration Offering RFP and the Behavior Initiative RFP.**

The Cape Light Compact is looking for an initial term for the calendar year 2017 with an option to renew for five, one-year terms.

VI. 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 of the proposal in such form as set forth below.

Proposals shall be:

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

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

VII. Project Budget

Vendors' proposed budgets should include a pricing schedule with all labor, overhead, travel, other direct costs, and costs associated with the project. Include all general and administrative costs in hourly labor rates and direct expenses. These terms apply to sub-contractor costs as well. Equipment and software costs should be identified separately as well as any costs that may be associated with a site visit and equipment installation.

If vendor elects to submit a combined proposal for both the Behavior Initiative and Demand Response Demonstration Offering in accordance with Section V, vendor must provide separate budgets for each within the proposal.

VIII. Schedule

RFP issued:	December 23, 2016
Bidder Questions Due:	January 4, 2017 (by 4:00 p.m. EST)
Responses Circulated By:	January 9, 2017 (by 5:00 p.m. EST)
All proposals due:	January 16, 2017 (by 4:00 p.m. EST)
Vendor selected:	January 20, 2016 (estimated)
Implementation:	No later than February 15, 2017

IX. Additional Requirements for Vendor Bids

Vendor's proposal must include sections addressing technical issues (methods) and project costs as well as qualification information appropriate for this project.

In addition to the budget requirements in Section VI, the narrative should identify tasks and major milestones for the project and a time line for completion of each task. The Compact anticipates that the same hourly rates would apply for out-of-scope work relating to the project 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.

X. Rights to Modify this RFP

The Compact reserves the right to modify any aspect of this RFP at its sole discretion.

XI. Selection Criteria

The final selection of a vendor shall be based on the following sets of criteria:

Minimum Evaluation Criteria:

- Responsiveness to the issues identified in the RFP, esp. compatibility with currently installed monitoring hardware
- Proposed approach to manage the project
- Team qualifications and experience

Additional Evaluation Criteria:

- **Ability of the respondent to integrate Demand Response Demonstration Offering services, as defined in this RFP, with Behavior Initiative services, as defined in the RFP titled “Request for Proposals: Cape Light Compact Residential Behavior Feedback Initiative”, issued December 23, 2016.**

XII. 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.

XIII. 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.

XIV. Bidder 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. Submission shall be sent to the individual listed below no later than 4:00

p.m. ET on the date all proposals are due:

Cape Light Compact RFP for Demand Response Demonstration Offering
 Attn: Margaret T. Downey
 3195 Main Street, OpenCape Building
 Barnstable, MA 02630
 Email: mdowney@capelightcompact.org

The selected Vendor 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 will also need to meet all the Terms and Conditions of the Compact. Please refer to APPENDIX A and APPENDIX B of this RFP.

XV. Bidder's Submission Statement

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

The undersigned Bidder hereby offers to perform the Services as described in the Request for Proposal (RFP) issued December 23, 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):

XVI. Certificate of Non-Collusion

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

CERTIFICATE

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 which fails to execute this document will be considered nonresponsive.

APPENDIX A:
Form of 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 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 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@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: 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: _____

APPENDIX B:

Form of INSTALLATION SERVICES AGREEMENT

This INSTALLATION SERVICES AGREEMENT (“Agreement”) is made by and between the Cape Light Compact, an inter-governmental association and aggregator formed pursuant to Massachusetts law (the “Compact”), and [insert] (“Installer”). The Compact and Installer may be referred to herein collectively as the “Parties,” or either singularly as a “Party.” This Agreement is effective as of [insert].

WHEREAS, pursuant to G.L. c. 40, §4A, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County ((individually, a “Member Municipality” and collectively, 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, 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 Installer for certain services which are defined in Section 2.1 in connection with the energy efficiency programs that it will operate under the Energy Efficiency Plan; and

WHEREAS, Installer has the expertise required to provide the Compact with the Installation Services required pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, Installer 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 Installer is in default under another installation services or consulting agreement between Installer and the Compact, or for convenience. Installer 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 Installer, 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 , its Fiscal Agent (as defined herein), a Member Municipality or a Customer (as defined herein) incurs related to engagement of a substitute Installer.

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 Installer. The Compact shall provide written notice of such termination or suspension to Installer. In the event of such termination or suspension, Installer shall be paid for all authorized, satisfactory (in the reasonable discretion of the Compact) Installation 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 **Installation Services.** Installer 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 "Installation Services"). All such Installation Services and

deliverables shall be designed to achieve the anticipated outcomes specified in the description of Installation 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 Installation Services to be performed hereunder. Such changes must be evidenced in written amendments to this Agreement. Any Installation Services performed or proposed by Installer shall not be reimbursed unless they are approved in writing by the Compact prior to their rendering.

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

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

2.5 Conflicts of Interest. Installer 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 Installation Services. Installer agrees to diligently serve and endeavor to further the best interests of the Compact, as known or made known to Installer. Installer 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. Installer further covenants that it shall comply with all relevant provisions of G.L. c. 268A.

2.6 Points of Contact. Installer 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 Installation 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 Installer for all issues arising under this Agreement.

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

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

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

2.8 Storage and Clean-up. Installer shall, at the end of each work day, leave the work area in a clean and safe condition, and shall comply promptly with any instructions from the Compact relating thereto. As the Installation Services covered by this Agreement are completed, Installer shall remove from the work sites, to the Compact's satisfaction, all of Installer's rubbish, debris, materials, tools and equipment, and if Installer fails to do so promptly, the Compact may remove the same to any place of storage, or any dumping ground, at Installer's risk and expense and without incurring any responsibility to Installer for loss, damage or theft. All storage and

removal costs thus incurred by the Compact shall be deducted from any payment or balance due to Installer, and any excess shall be immediately due from Installer to the Compact.

SECTION 3 COMPENSATION AND RELATED MATTERS

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

3.2 **Invoicing and Payment.** Installer 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 Installation Services. Upon request, Installer shall provide to the Compact all backup documentation required to establish the value of the Installation Services in place as represented by Installer's monthly invoices. The Compact may elect to use a fiscal agent ("Fiscal Agent") to provide administrative services in connection with the payments made by the Compact under this Agreement. Installer acknowledges and agrees that the Compact's Fiscal Agent will have no financial obligation to the Installer or responsibility under this Agreement.

3.3 **Effect of Payment.** The Compact shall not be deemed to have accepted any improper Installation Services, materials or performance by virtue of any payment made to Installer. 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 Installation Services. Installer shall not be entitled to any payment for any partial performance except for progress payments made in accordance with this Agreement. Installer understands that the Compact is contracting for nothing less than full, complete and timely performance of the Installation Services, and with the express agreement that the Compact shall be obliged only upon final completion of the Installation 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 Installation Services not remedied; (ii) claims filed or reasonable evidence indicating probable filing of claims by other parties against Installer or the Compact in connection with the Installation Services; (iii) Installer's failure to make payments properly to subcontractors for materials, labor or equipment; (iv) unsatisfactory performance of the Installation Services; (v) Installer's failure to pay any amounts due to the Compact; or (vi) Installer'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 Installation Services or that the Installation 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 Installer of the grounds for any withholding. When Installer 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.** Installer 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 Installation Services performed under this Agreement (collectively, the "Credits") without the written consent of the Compact in its sole discretion. To the extent any Credits are allocated to the Compact, a Compact project or Customer by operation of law or regulation, Installer shall, upon request and without charge, cooperate fully with the Compact to disclaim any rights to such Credits and to assign or allocate all such Credits, and the value thereof to the party designated by the Compact.

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

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

Premium(s) for requested bond(s) may be added to the Agreement price through a written request seeking approval from the Compact without additional markup by Installer

(except as specifically approved, in writing, by the Compact in advance of the Installation Services). Installer must present to the Compact a copy of the invoice for the bonds signed by the agent with power of attorney for the bonding company. The Compact reserves the right to refuse any exception to the bond requirements if it determines that the exception is not in the best interest of the Compact. Installer's surety companies are to be licensed as "admitted" carriers in Massachusetts with minimum acceptable A.M. Best ratings of "A" and size Class VIII, or as otherwise acceptable to the Compact, in its discretion. The Compact reserves the right of final approval of Installer's surety companies.

SECTION 4 PERFORMANCE STANDARDS

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

4.2 Representations, Warranties and Continuing Covenants. In performing its obligations hereunder during the term of this Agreement, Installer 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 Installation Services; (iii) spend such time in performing the Installation 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 Installation 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 Installation 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 Installation Services. Installer is required to correct in a prompt and timely fashion any Installation Services rejected by the Compact. Installer shall correct at its own cost and bear the expense of additional services performed to correct non-conforming Installation Services. If Installer 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 Installation Services or any separable part thereof, and complete the same or have the same completed at Installer's expense. In taking over, the Compact shall have the right, for the purpose of completing the Installation Services, to take possession of all equipment, supplies and materials belonging to Installer and purchased or leased for the performance of the Installation Services. For such purpose, this Agreement shall be construed as an assignment by Installer to the Compact of said equipment, supplies and materials.

4.4 Periodic Reporting. Upon the request of the Compact, the Installer shall promptly submit a report detailing the status of the Installation 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. Installer agrees that any work of authorship created or developed by Installer during performance or delivery of services to the Compact, either individually or jointly with others, in the course of the rendering the Installation 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, Installer hereby irrevocably assigns, transfers, and conveys to the Compact all of Installer'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, Installer agrees to execute any documents or take any action reasonably requested by the Compact to perfect the Compact's ownership of any such property. Installer further agrees that, to the best of its knowledge, all work created or developed by Installer will be original and non-infringing.

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

performance or delivery of the Installation Services without the prior written consent of the Compact.

SECTION 6 INSURANCE

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

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

Installer 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. Installer 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.

Installer shall not begin rendering Installation 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 Installer and Installer 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 Installation Services, Installer 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. Installer shall be solely responsible for tracking and reporting to the Compact the expiration of the policies shown on the insurance certificate(s) provided.

Installer shall be solely responsible for any damage to or loss to its equipment or materials regardless of its insurance coverage.

SECTION 7 **INDEMNIFICATION BY INSTALLER¹ AND DAMAGES FOR BREACH**

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

¹ Note to Installer: In accordance with guidance received from the Massachusetts Office of Attorney General, the Compact cannot indemnify private parties.

7.4 **No Cap on Installer's Liability**². Installer's liability under this Agreement shall not be limited to the value of the Installation Services rendered under this Agreement; further, Installer's liability shall not be limited by the availability of its insurance coverage.

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

SECTION 8 CHOICE OF LAW AND DISPUTE RESOLUTION

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws.

Any dispute that arises regarding this Agreement that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the parties cannot agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each Party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm. Exclusive venue for any judicial proceeding involving a dispute arising from this Agreement shall be Barnstable County Superior Court, Massachusetts. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to, attorneys' fees arising from the civil action. "Prevailing Party" means the Party who most substantially prevails in its claims or defenses in the civil action. Installer shall diligently carry on the Installation 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 Installation 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 Installer from any obligation or liability under this Agreement except as specifically set forth in the instrument of approval. Installer 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

² Note to Installer: The Compact does not accept liability caps as a matter of public policy, and the constitutional prohibition on providing private parties with indemnification rights may also apply to such caps.

or assignment instrument. Installer acknowledges and agrees that the Compact may contract with a Fiscal Agent that may be the employer of record for its employees and, at the Compact's option, on behalf of the Compact, enforce the Compact's rights under this Agreement. The Parties agree that upon written notification to the Installer by the Compact that the Compact has contracted with a Fiscal Agent, the Parties will use good faith efforts to amend this Agreement in a timely fashion to recognize the Fiscal Agent as a party to this Agreement with rights to enforce the Agreement. In the event that during the Term of this Agreement the Compact undertakes to reorganize its inter-governmental agreement structure to operate in whole or in part by and through the Fiscal Agent, the Compact may assign its rights under this Agreement in whole or in part to the Fiscal Agent or may elect to assign this Agreement to the Fiscal Agent without the consent of the Installer, provided the Compact provides written notice of such assignment to the Installer.

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 Installer on [insert] and any subsequent non-disclosure agreements in which the Compact is a party and that involves the Installation Services or obligations under this Agreement.

10.2 Customer Information. To the extent Installer (or its subcontractors or any other party acting by or on behalf of Installer) is provided or has access to Customer information, the following provisions apply: Installer warrants and represents that the Installer and its subcontractors and all other persons or entities having access to the Customer information by or through the Installer 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 Installation 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. Installer 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 Installer shall provide the Compact with detailed information and documentation

regarding such safeguards, and with certifications regarding the same by an authorized officer of the Installer, and the Compact shall have the right to monitor and audit the compliance of the Installer 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 Installer shall retain no copy or other record thereof. Installer 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. Installer shall, at its sole cost, cooperate fully with the Compact and, as necessary, any law enforcement, regulatory authority, insurance carrier, auditors, attorneys and other parties in the investigation and evaluation of such incident, and shall implement at its sole cost any remedial measures recommended by any such parties as approved by the Compact. Customer information shall remain confidential in all circumstances.

SECTION 11 MISCELLANEOUS

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

if to Installer to:

[insert]

if to the Compact to:

Margaret T. Downey
 Compact Administrator
 Cape Light Compact
 3195 Main Street
 Open Cape Building
 Barnstable, MA 02630
 mdowney@capelightcompact.org (email)

Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid.

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

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

11.3 Independent Contractor; No Joint Venture. Installer will perform all Installation Services under this Agreement as an independent contractor. Installer 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 Installer 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. Installer 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. Installer agrees that the Compact may audit Installer's books, records, and other compilations of data associated with the performance of this Agreement to ascertain that the payments requested by Installer represent the value of the

Installation 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. Installer shall not solicit work from a Customer for two (2) years following termination of this Agreement for any reason, unless Installer 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 Installer 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. Installer may directly perform services for a Customer if such Customer has solicited Installer. Installer shall not engage in targeted solicitations using Customer information obtained as a result of its performance of the Installation Services or otherwise related to this Agreement. The prohibitions in this section shall not apply to general marketing campaigns of Installer.

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

11.11 Non-Discrimination in Employment and Affirmative Action. Installer 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. Installer 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, Installer 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. 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.

INSTALLER

CAPE LIGHT COMPACT

Signature
Print Name: _____
Title: _____

Signature
Margaret T. Downey
Compact Administrator/Chief Procurement Officer

Date

Date

LIST OF EXHIBITS

- Exhibit A - Installation Services
- Exhibit B - Compensation
- Exhibit C - Background Check Policy
- Exhibit D - Pre-approved Contractors

EXHIBIT A
INSTALLATION SERVICES

EXHIBIT B
COMPENSATION

EXHIBIT C**BACKGROUND CHECK POLICY***REQUIREMENTS FOR INSTALLER EMPLOYEE
AND SUBCONTRACTOR BACKGROUND CHECKS*

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

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

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

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

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

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

forward this information to the Compact and the Compact shall determine whether to remove the Installer Employee from the work site.

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

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

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

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

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

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

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

EXHIBIT D
PRE-APPROVED CONTRACTORS

APPENDIX C:

List of Equipment

Respondents must be able to integrate the below hardware in to their proposed demand response platform. General specifications can be found at the provided websites for each device. Respondent is responsible for obtaining any further specifications it deems necessary.

1. The Energy Detective (TED) Pro Home:

<http://www.theenergydetective.com/tedprohome.html>

This device is used to collect and view whole-home energy usage for each participant. Both the participant and Compact have access to usage data collected by the TED through the current demand response platform.

Note: Participants with solar photovoltaic systems on their homes have the extra MTU/CT set installed so that they can view solar production in addition to home energy usage.

2. Centralite Pearl Thermostat:

<https://www.centralite.com/products/pearl-thermostat>

Note: Current participants use a ZigBee wireless gateway to wirelessly control their Centralite thermostat through the current demand response platform. These ZigBee gateways use ZigBee Green and ZigBee Home Automation 1.2 protocols.

3. Honeywell Lyric Round Second Generation Thermostat

<http://yourhome.honeywell.com/en/products/thermostat/lyric-thermostat>

The Compact plans to deploy these thermostats for DR Demonstration Offering participants that enroll in 2017. The selected vendor must be able to integrate control of this thermostat model in to the demand response platform.