

CAPE LIGHT COMPACT JPE Request for Proposals

For

All-Requirements Retail Electric Power Supply for Municipal and Government Accounts

1. Introduction

Originally formed in 1997 by the twenty-one Cape Cod and Martha's Vineyard towns and Barnstable and Dukes Counties, the Cape Light Compact JPE (the "Compact") reorganized as a joint powers entity in 2017 through a joint powers agreement of the twenty-one Cape Cod and Martha's Vineyard towns and Dukes County in the Commonwealth of Massachusetts (the "Member Municipalities") with the objectives, among other things, of securing competitive power supply, encouraging renewable energy development, administering energy efficiency programs, and providing for consumer advocacy. For further information on the Compact and its programs, go to <http://www.capelightcompact.org>.

In issuing this Request for Proposals ("RFP"), the Compact is acting as agent for the Member Municipalities and for other government electric account holders located within the Member Municipalities (collectively, the "Participants"). There are approximately 1500 electric accounts for the Participants located on Cape Cod and Martha's Vineyard, which represents approximately 75,000 MWh of annual retail sales. The Compact seeks proposals to serve this electric load with all-requirements retail electric power supply. As part of the proposals submitted, the Compact also seeks options for supporting renewable energy beyond state-mandated requirements by meeting an additional percentage of the load served with RPS Class I Renewable Generation Attributes, as such term is defined in 225 C.M.R. §14.02 ("MA Class 1 RECs)." All-requirements retail power supply for all Participant accounts will commence with the July 2021 meter read dates. Bidders are invited to propose contract delivery periods of a minimum of one (1) year to a maximum of three (3) years, with one or more options for additional MA Class 1 REC content. As described below, price offers must be fixed annually for each contract year; seasonal, time-of-day, variable, or indexed pricing will not be permitted. Bidders may propose an adder to the fixed price for each 1% of Participants' retail sales met with additional MA Class 1 RECs.

The selected bidder must execute a Municipal Competitive Electric Supply Agreement ("MCESA"), as supplied or amended, for the provision of all-requirements retail power supply, the form of which is available for bidder review as set forth below.

2. General Provisions

2.1. RFP Dates

- RFP issued Thursday, November 5, 2020

- Inquiries concerning RFP submitted by 5:00 p.m. EST on Friday, November 20, 2020 (by email only)
- Responses to inquiries circulated on a rolling basis, but no later than Tuesday, November 24, 2020
- Proposed modifications to the MCESA submitted by 5:30 p.m. EST on Wednesday, November 25, 2020
- Proposals due by 10 a.m. EST on Thursday, December 17, 2020

2.2. Contact Information

Inquiries concerning this RFP must be submitted **by e-mail only** to:

Margaret Downey, Compact Administrator and Chief Procurement Officer
Email: mdowney@capelightcompact.org

With a copy to:

Austin Brandt, Senior Power Supply Planner
Email: austin.brandt@capelightcompact.org

Inquiries must be received by 5:00 p.m. EST on Friday, November 20, 2020.

Telephone or other such inquiries will not be answered. Written responses will be e-mailed on a rolling basis (but no later than Tuesday, November 24) to all bidders on record as having executed and submitted the Confidentiality Agreement (see Section 2.3). Other than to discuss proposed modifications to the MCESA, bidders should not contact the Compact's or Participants' officers, directors, employees, counsel or technical consultants regarding this RFP prior to the Compact's acceptance of a bid under this RFP.

2.3. Confidentiality Agreement

Bidders must execute and submit the Confidentiality Agreement attached to this RFP as Appendix A prior to receiving load data, regardless of the product(s) ultimately offered by bidder. Bidders will not be eligible to submit proposals until a Confidentiality Agreement has been executed and received at the address provided in Section 2.2.

2.4. Proposal Submission Date

Proposals, including supporting documents, must be received electronically by 10:00 a.m. EST on Thursday, December 17, 2020. Electronic proposals must be submitted via e-mail to mdowney@capelightcompact.org. The subject line of the email must be clearly marked "ALL-REQUIREMENTS RETAIL ELECTRIC POWER SUPPLY FOR MUNICIPAL AND GOVERNMENT ACCOUNTS."

No responsibility shall be attached to any person or persons for the premature openings of proposals not properly marked.

While not required for a valid bid, the Compact also requests as a courtesy that two (2) original proposals (excluding Bid Forms and Binding Bid Agreements) must be delivered in hard copy for the Compact's records. It is recommended that bidders deliver hard copies as soon as practicable after Thursday, December 17, 2020. The hard copy proposals should be sealed and clearly marked "ALL-REQUIREMENTS RETAIL ELECTRIC POWER SUPPLY FOR MUNICIPAL AND GOVERNMENT ACCOUNTS." No responsibility shall be attached to any person or persons for the premature openings of proposals not properly marked.

Proposals and must be submitted to:

Cape Light Compact RFP for All-Requirements Retail Electric Power Supply
for Municipal and Government Accounts

Attn: Margaret T. Downey

261 Whites Path, Suite 4

S. Yarmouth, MA 02664

mdowney@capelightcompact.org

~~Two (2) original Proposals must be delivered in hard copy and one must be submitted by e-mail. Any supporting documents must be attached in both hard copy and by e-mail. Bid Forms and Binding Bid Agreements shall only be delivered by e-mail.~~

Any proposal submitted and not complete at that time in the format specified in this RFP will not be considered.

2.5. Modification/Withdrawal of Proposals

Proposals are final once submitted. Unilateral modifications or withdrawals of proposals are not permitted once they have been submitted.

2.6. Terms of Submission

All proposals will be considered an offer to provide supplies and services to the Participants. Proposals shall be executed by a person who has the authority to legally bind the bidder.

3. Services Requested

3.1. All-Requirements Retail Electric Power Supply

The Compact is requesting proposals for delivery of all-requirements retail electric power supply. All-requirements retail electric power supply generally includes, but may not be limited to, electrical energy; capacity; ancillary services; renewable energy resources as mandated by: (i) G.L. c. 25A, §§11F, 11F 1/2 and any regulations, orders or policies adopted pursuant thereto; and (ii) the Clean Energy Standard requirements set forth in 310 C.M.R. §7.75 and any orders or policies adopted pursuant thereto; and transmission and distribution losses. The specific definition of all-requirements retail electric power

supply and associated responsibilities are stated in the MCESA, which will be provided to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3).

A supplier of all-requirements retail electric power supply will be responsible for all load and supply scheduling, scheduling of network and other transmission service, and all other transactions and communications with ISO New England and the New England Power Pool necessary for the delivery of firm power supply to Participants. In addition, a supplier of all-requirements retail electric power supply will be obligated to provide all services, directly or through contract, in order for the local distribution company to be able to bill customers; handle customer complaints and service calls; arrange all EDI and other functions and otherwise provide competitive supply to end-use customers.

A supplier of all-requirements retail electric power supply will have an obligation to serve all load for Participants that agree to purchase power pursuant to the executed MCESA. Many Participants have installed or will install renewable energy projects within their municipalities. Some of these renewable energy facilities are behind the meter, i.e. energy consumption has been reduced, and some are virtual net metered pursuant to Massachusetts law (G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00), i.e. actual energy consumption has not been reduced. Bidders should carefully review usage information since usage can vary widely over time due to the installation of these renewable energy facilities. Electric account information for the Participants will be provided to bidders upon receipt of the signed Confidentiality Agreement (see Section 2.3).

3.2. Term Options

Delivery of all-requirements retail electric power must commence on the July 2021 meter read dates for each electric account. Bidders may propose contract terms of a minimum of one (1) year and a maximum of three (3) years.

3.3. Renewable Energy Support Options

Several Participants have expressed interest in purchasing an all-requirements power supply product that includes a greater percentage of renewable energy content. The Compact invites bidders to include in their proposal an option to support renewable energy above state-mandated Renewable Portfolio Standard (RPS) and Clean Energy Standard (CES) requirements through the procurement and retirement of additional MA Class 1 RECs. Bidders that choose to include this option in their proposal should provide a price per megawatt-hour of retail sales for each 1% of Participant load met with Class 1 RECs above the RPS & CES requirements (“Renewable Adder”). Bidders may propose different Renewable Adders for each year of the proposed contract term. However, the Renewable Adder offered in any one year may not vary during the year. The Renewable Adder will be considered an adder to the price(s) the bidder provides for the state-minimum renewable content all-requirements power supply product (“Base Price”) over each proposed term length. Those Bidders choosing to propose a renewable option should

submit a Renewable Adder price for each proposed contract term length. By way of example only, if the Base Price is \$100/MWh for each year of a two-year term and the Renewable Adder price is \$1/MWh for each year, the price for a Participant that chooses to buy 5% more Class 1 RECs would be \$105/MWh in each year of the two-year term.

Please note that the inclusion and/or proposed pricing of a Renewable Adder will not be the primary basis for the selection of the winning proposal. Once the winning proposal is selected (see Section 7), each Participant will have the option to choose their own percentage of additional renewable content (if any) at the offered Renewable Adder price if the winning bidder has provided the option for additional renewable content.

Participants that choose to purchase additional renewable content will be required to maintain the same additional percentage over the entire term of the contract. For the avoidance of doubt, note the inclusion of additional renewable energy content is at the discretion of Participants; some Participants may choose not to incorporate any additional renewable energy content.

4. Proposal Format

4.1. Qualifications

Proposals must include the following information:

- a. Contact(s). Name, business address, phone number, fax number, and e-mail address for the principal officer responsible for submission of the proposal and for the principal officer responsible for administration of the contract.
- b. Business Information. Legal trade name; date of incorporation or organization; state of incorporation or organization; list of officers and directors; list of affiliates, if any; a copy of previous two years of Annual Reports to Stockholders, or other audited annual report; copies of final year-end FERC Form 1 filings for 2018 and 2019, if applicable; current bond rating(s) by Moody's Investor Services, or other rating agencies, if applicable; latest audited financial statement(s) with confirmation of no material or adverse changes since the date of statement(s).
- c. Business Qualifications. Registration from the Massachusetts Department of Public Utilities as a competitive supplier in Massachusetts; New England Power Pool membership; certification of other regulatory approvals necessary to provide all-requirements retail electric power supply; Certificate of Good Standing from the Massachusetts Department of Revenue, or similar certification that all state taxes have been paid in state of incorporation or organization, if applicable; evidence of qualification to do business in Massachusetts, if applicable.
- d. Business Status. Statement as to whether bidder or any affiliate has commenced, or been forced into, any insolvency proceeding within the last five (5) years; statement as to whether bidder or any affiliate has been a party to litigation in connection with the provision of retail electric supply or related to a retail electric

supply agreement within the past five (5) years; statement as to whether bidder or any affiliate has been subject to any investigation by a state or federal agency within the last five (5) years; statements as to the number, if any, of consumer complaints filed with a state, federal, or local agency, against the bidder or affiliate within the last five (5) years.

- e. Credit Requirements. Evidence that bidder or its affiliate or parent if such entity is providing financial surety to the Participants under the CESA has a current, investment grade bond rating by Moody's Investor Services or other similar rating agencies.

4.2. Price Proposals

Bidders shall submit their price proposals by completing a Bid Form, which will be provided via e-mail to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3). Price proposals must be expressed in dollars per megawatt-hour of retail sales.

Bidders may submit price proposals for contract terms that range from a minimum of one (1) year to a maximum of three (3) years. Bidders may offer prices that differ in each year of the proposed contract term. However, the price offered in any one year may not vary during the year. Bidders are invited to submit price proposals for one or more contract terms.

Bidders' price proposals must conform to the provisions of the MCESA, as supplied, or amended through contract negotiation. In order to submit a price proposal, Bidders must accept the Compact's language in Sections 2 (Accounts) and 3 (Material Deviation in Use) of Exhibit A to the MCESA. The Compact will not accept a bidder's contract as a complete substitution of its MCESA. As a general matter, bidders proposing prices with no or limited amendments to the form of MCESA will be preferred to prices conditioned upon more extensive amendments to the form of MCESA.

Prices quoted for any contract year of the MCESA term must be fixed for the duration of the contract year; seasonal, time-of-day, variable, or indexed pricing will not be permitted. All price proposals must include all costs related to supplying the required services, except as otherwise set forth herein. Since prices are fixed for the duration of the contract year, the Participants will not pay any separate or additional costs which are considered as pass-through for reliability or other costs associated with delivery of all-requirements retail electric power supply in the SEMA load zone, except as otherwise set forth herein. Price proposals for any contract year of the MCESA term will apply uniformly to all Participants, regardless of rate class.

The Compact and Participants will also pay no costs, fees or other expenses incurred by the bidder in preparing its response to this RFP. These costs, expenses or other amounts may not be included in a price proposal and may not be recouped under the MCESA.

Bidders should not place any additional written conditions on their price proposals beyond what is required on the forms provided. The Compact anticipates that the accepted bidder will enjoy participation by a substantial majority of the Participants, if not all. Price proposals will be considered binding on a bidder only if all Participants accept the proposal. If one or more Participants decline to accept a price proposal that the remaining Participants wish to accept, a bidder may, at its option, honor the proposal for the interested Participants.

4.3. Proposal Expiration

Price proposals will be deemed valid until 4:00 p.m. EST on Thursday, December 17, 2020. Bidders must indicate how long beyond the minimum period proposals will be held open at the price(s) offered. Given the time frame for evaluation, the Compact reserves the right to request that bidders re-price their proposals. At its sole discretion, the Compact may opt to negotiate with multiple bidders, as shall be considered in the best interest of the Participants.

Accompanying each proposal, each bidder must include a signed Binding Bid Agreement. The Binding Bid Agreement will be provided to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3). The signatory to the Binding Bid Agreement must certify that he/she has the authority to act on behalf of, and to bind the bidder to perform the terms and conditions of the MCESA at the prices and for the load amounts specified in its proposal(s).

5. Supply Agreement

A form of the MCESA, to be executed as a result of this RFP, will be provided via e-mail to bidders upon receipt of a **signed** Confidentiality Agreement (see Section 2.3). The MCESA contains the parties' rights and obligations for providing and receiving all-requirements retail electric power supply.

Proposed amendments to the MCESA are to be provided by bidders by close of business on Wednesday, November 25, 2020. It is the Compact's intent to have a conference call with bidders proposing amendments to the MCESA before price proposals are submitted. Bidders should have their team/decision-makers available during this time frame. Bidders are strongly encouraged to propose only non-substantive changes to the MCESA.

6. RFP INFORMATION

The RFP will be posted to the Compact's website at www.capelightcompact.org/rfp/. The Compact will provide the following additional information to bidders that have submitted a signed Confidentiality Agreement (see Section 2.3):

1. Form of MCESA

2. Bid Form for All-Requirements Retail Electric Power Supply
3. Binding Bid Agreement
4. Authorization Form authorizing EVERSOURCE to release account usage data
5. Electric account numbers for all the Participants
6. Annual usage data for each Participant account
7. Estimated aggregate hourly load data for the Participants' accounts

The Compact makes no representations whatsoever as to the accuracy or completeness of the load data for the Participants' electric accounts which will be provided by EVERSOURCE. **Bidders are expressly cautioned that they must independently test and/or verify such data to the extent they believe appropriate.** The Compact assumes no duties or responsibilities to check, update or otherwise assess the data provided.

7. Evaluation of Proposals

The Compact may choose more than one proposal from responsive and responsible bidders for further consideration and evaluation. Proposals that are incomplete, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected as non-responsive by the Compact. **Conditional proposals will not be accepted.**

The Compact will negotiate the form of amendments to the MCESA, if any, with each of the selected bidders. The Compact, in its sole discretion, will select the winning bid in consideration of the Base Price, the terms of the modified MCESA, if any, and other factors described in this RFP. The Compact may accept any portion of a bid, waive any irregularities and/or formalities, investigate the ability of the bidder to honor a bid, select a bidder who does not submit the lowest bid and accept any bid as shall be considered in the best interest of the Participants.

8. Notification of Award

Any contract resulting from this RFP shall be deemed as having been awarded when formal written notice of acceptance of the bidder's proposal has been duly served on the successful bidder.

9. Execution of the MCESA

All Participants that choose to accept a price bid will either participate in the Compact's virtual bid evaluation on the bid due date and execute an MCESA or will execute a binding written agreement in advance of the bid due date authorizing the Compact to accept a bid and execute the MCESA on behalf of such Participant on the bid due date.

NOTE TO BIDDERS: USE SEPARATE CONFIDENTIALITY AGREEMENT DOCUMENT

RFP Appendix A

Confidentiality Agreement for All-Requirements Retail Electric Power Supply for Municipal and Government Accounts

between

THE CAPE LIGHT COMPACT JPE

and

[Redacted] **[Company]**¹

for

This Confidentiality Agreement (“Agreement”) is entered into by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ (“Compact”) and **[Redacted]**, 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, § 4A½, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and Dukes County (collectively, the “Members”) entered into a joint powers agreement to organize and act collectively as the Compact;

WHEREAS, the Compact, issued a request for proposals (the “RFP”) for all-requirements competitive retail electric power supply for the municipal accounts of the Members of the Compact and for certain other government rate electric accounts located within the members of the Compact (collectively, the “RFP Participants”);

WHEREAS, the Compact, acting as agent for the Participants in issuing the RFP, 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.

¹ Bidders: Please type in your company name and other company information where appropriate.

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 Municipal Competitive Electric Supply Agreement that the parties may enter into (the “Purpose”), 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 non-disclosing party promptly following disclosure. Confidential Information also includes customer account load data which is being made available to the Company from the Compact’s current supplier and/or NSTAR Electric Company d/b/a Eversource Energy in connection with the RFP (the “Confidential Load Data”). Confidential Information does not include:

(i) information already in the possession of the non-disclosing 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 non-disclosing party;

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

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

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

2. *Use of Confidential Information.* The parties shall use the Confidential Information exclusively in connection with the Purpose. 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. Each party shall disclose the Confidential Information only to those of its employees, members, consultants, authorized representatives, and attorneys that have a “need to know” such information to carry out their functions in connection with the Purpose, all of which entities shall agree to maintain the confidentiality of Confidential Information.

3. *Disclosure to Third Parties.* The non-disclosing party agrees that it will not disclose any Confidential Information to any third party (other than as allowed in accordance with Section 2, herein) without the prior written consent of the disclosing party. After having obtained the written consent of the disclosing party, the non-disclosing party agree(s) 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 non-disclosing party may disclose Confidential Information only to consultants and contractors and other agents of the non-disclosing 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 Purpose, the receiving party may make notes, copies or abstracts of the Confidential Information, provided that all such notes, copies and abstracts themselves are marked as confidential and provided that the receiving party maintains a written record of the distribution of all such copies and abstracts.

6. *Return of Confidential Information.* Within fourteen (14) days of receiving notice that it is not the winning bidder, 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, 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 the Company 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 the Participants and that the Compact is disclosing such information in its role as agent for the Participants. 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 non-disclosing 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, 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, and in all other cases, two (2) years after termination of the solicitation process. The obligations of confidentiality contained herein shall survive and continue following the expiration or termination of this Agreement, unless otherwise agreed to in writing by both parties hereto.

10. *Required Disclosures.* Anything in this Agreement to the contrary notwithstanding, the non-disclosing 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 non-disclosing 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 the Participants are subject to public records laws, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10 and the Massachusetts Open Meeting Law, M.G.L. c. 30A §§18-25.

11. *Representations and Warranties.*

- (a) The Compact hereby represents and warrants to the Company as follows:
 - (i) the Compact shall use the Confidential Information only in connection with the Purpose;
 - (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.
- (b) The Company hereby represents and warrants to the Compact as follows:

- (i) the Company shall use the Confidential Information only in connection with the Purpose;
- (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; Liquidated Damages for Certain Breaches.* 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 non-disclosing 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. In addition, in the event of disclosure of Confidential Load Data in violation of this Agreement, the Company shall pay the Compact fifty thousand dollars (\$50,000.00) as liquidated damages. The sum is agreed upon as liquidated damages and not as a penalty. The parties hereto have computed, estimated, and agreed upon the sum as an attempt to make a reasonable forecast of probable actual loss of the Compact's competitive advantage because of the difficulty of estimating with exactness the damages which will result.

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 and Chief Procurement Officer
Cape Light Compact JPE
261 Whites Path, Suite 4
S. Yarmouth, MA 02664
(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 non-disclosing 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:

Margaret T. Downey
Administrator/Chief Procurement Officer
Dated: _____

Name: _____
Title: _____
Dated: _____

**NOTE TO BIDDERS: USE EXHIBIT A OF SEPARATE CONFIDENTIALITY
AGREEMENT DOCUMENT**

EXHIBIT A
NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that the Confidential Information, as that term is defined in the Confidentiality Agreement for All-Requirements Retail Electric Power Supply for Municipal and Government Accounts between the Cape Light Compact JPE and the [Company] dated _____, 2020 (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: _____