

Ruth Nettles

From: Jessica_Cano@fpl.com
Sent: Wednesday, June 18, 2008 5:46 PM
To: Filings@psc.state.fl.us
Cc: Katherine Fleming; Jean Hartman; Mark Futrell; Judy Harlow; Tim Devlin; Michael Cooke
Subject: Electronic Filing for Docket No. 070626-EI / FPL's Revised Exhibit B to Request for Confidential Classification
Attachments: Revised Exhibit B.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Jessica A. Cano, Esq.
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5226
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REDACTED

b. Docket No. 070626-EI

In re: Review of Florida Power & Light Company's Sunshine Energy Program

c. Documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of 33 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Revised Exhibit B. This document should replace what was provided as Exhibit B to FPL's Request for Confidential Classification filed in this docket on June 18, 2008.

(See attached file: Revised Exhibit B.pdf)

Jessica Cano
Attorney
Law Department

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5226
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FPSC-COMMISSION CLERK

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June 18, 2008

VIA HAND DELIVERY

Ms. Ann Cole
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard, Room 110
Tallahassee, FL 32399-0850

REDACTED

Re: Docket No. 070626-EI; In re: Review of Florida Power & Light Company's
Sunshine Energy Program

Dear Ms. Cole:

Please find enclosed for filing on behalf of Florida Power & Light Company ("FPL") a copy of the Amended and Restated Trademark License and Services Agreement between FPL and Green Mountain Energy Company, with certain portions redacted at the request of Green Mountain Energy Company. This document should replace what was previously filed today with FPL's Request for Confidential Classification as Exhibit B. The former Exhibit B inadvertently omitted the pages on which no confidential information is included.

Please contact me if you or your Staff has any questions regarding this filing.

Sincerely,

s/ Jessica A. Cano

Jessica A. Cano

Enclosures

DOCUMENT NUMBER-DATE
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AMENDED AND RESTATED
TRADEMARK LICENSE AND SERVICES AGREEMENT

THIS AMENDED AND RESTATED TRADEMARK LICENSE AND SERVICES AGREEMENT (including all exhibits referenced and incorporated herein, collectively, the "Agreement"), is made and entered into as of the 5th day of June, 2008, ("Execution Date"), by and between Green Mountain Energy Company, a Delaware corporation with its principal office located at 300 West 6th Street, 9th Floor, Austin, Texas 78701 ("Green Mountain"), and Florida Power & Light Company, a Florida corporation with its principal office located at 700 Universe Boulevard, Juno Beach, Florida 33408 ("FPL"). Green Mountain and FPL shall each be referred to as a "Party" and collectively as the "Parties".

FPL and Green Mountain entered into that certain Trademark License and Services Agreement effective as of July 30, 2003 (the "Original Contract") along with that certain Side Letter Agreement with respect to the Original Contract dated as of June 13, 2006, between FPL and Green Mountain ("Side Letter Agreement No. 1") and that certain Side Letter Agreement with respect to the Original Contract by and between FPL and Green Mountain dated as of January 9, 2004 ("Side Letter Agreement No. 2") (collectively, the Original Contract, Side Letter Agreement No. 1 and Side Letter Agreement No. 2, all as amended, shall be referred to as the "Original Contract Documents"). The Parties now desire to amend and restate the Original Contract Documents in their entirety to provide for certain modifications to the scope of the Parties' relationship and respective responsibilities and obligations and pursuant to which Green Mountain shall provide to FPL certain Marketing, Customer Care and advertising services for FPL's Sunshine EnergySM program, all as more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby agree to amend and restate the Original Contract Documents in their entirety as follows:

1.0 Defined Terms. As used in this Agreement, with initial or complete capitalization, whether in singular or plural, the following terms have the following defined meaning:

1.1 "Advertising Material(s)" means any and all materials prepared by Green Mountain for dissemination to Customers for the purpose of Marketing, promoting, soliciting and encouraging participation under the Program, including without limitation direct mail solicitations, brochures, newsletters, inserts, snap packs, bangtails, pull-tabs, advertising packages, advertising messages, letter applications, outbound or inbound telemarketing scripts, point of sale materials, website advertisements, electronic solicitations, radio scripts, television scripts, newspaper advertisement, magazine advertisements and related training materials

1.2 "Affiliate" shall mean an entity directly or indirectly controlled by, controlling or under common control with a Party. For the purposes of this definition, the term "control" means, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

1.3 "Applicable Laws" shall mean all laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, certificates, orders, interpretations, licenses, leases and permits of any Governmental or Regulatory Authority, and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi-judicial tribunal of competent jurisdiction and all requirements of law as it relates to the Program and Services provided hereunder.

1.4 "Assignment Agreement" shall mean that certain Assignment and Consent Agreement, by and between [REDACTED] FPL and Green Mountain, pursuant to which the [REDACTED] Agreement will be assigned by Green Mountain to FPL during the period from the Program Effective Date through July 31, 2013 pursuant to the terms of such agreement.

1.5 "Billing" means the process of collecting and receiving amounts due from Participants.

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- 1.6 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business.
- 1.7 "Cause" shall have the meaning set forth in Section 10.2.
- 1.8 "Confidential Information" shall mean any and all which is disclosed by a Party to the other Party: (i) documentation, drawings, specifications, software, technical or engineering data, business information, and other forms, that may be communicated orally, in writing, by electronic or magnetic media, by visual observation, and by other means; (ii) information concerning the Program and each Party's requirements and facilities, and information concerning the requirements of Customers; (iii) financial, accounting or marketing reports, business plans, analyses, forecasts, predictions, or projections related to the Program or the business of either Party generally; (iv) the terms of this Agreement and the substance of either Party's discussions and correspondence with the other Party concerning the Program; (v) all information provided by either Party to the other, in whatever form and by whatever means, that relates to or is in connection with the Program, without regard to whether it bears any legend or notice indicating its confidential or proprietary nature, unless and until the receiving Party has been advised in writing by the disclosing Party that such information is not confidential or proprietary; (vi) all Personal Information; and (vii) all Confidential Information that would constitute a "trade secret" as that term is defined and used in Chapter 688, Florida Statutes.
- 1.9 "Customer" or "Customers" shall mean residential or a commercial/business customer(s) who receives electric service pursuant to a FPL service tariff in the State of Florida.
- 1.10 "Customer Care" shall mean inbound telephone call centers maintained and operated by Green Mountain and FPL, which shall: (i) be staffed by an adequate number of trained customer care representatives who respond to factual inquiries, sales inquiries, informational requests and complaints from potential prior and current Participants; and (ii) at all times maintain procedures for the handling, documenting and recording of all such inquiries, requests and complaints and for disaster recovery, all in accordance with practices, methods or sets generally accepted electric power industry; (iii) in each of (i) and (ii) be in accordance with all applicable FPSC orders and regulations.
- 1.11 "Developed Marks" shall mean any and all Marks used or developed specifically for the Program or the services or product provided under the Green Pricing Rider (which includes, without limitation, Sun Funds, Sunshine EnergySM)
- 1.12 "Direct Marketing Costs" shall mean any and all actual costs incurred by Green Mountain, without markup by Green Mountain, in connection with the Services or the performance of the Services, including but not limited to vendor and third party expenses and costs: (i) for Customer research; for the design, production and printing of Marketing materials, sales collateral and Customer communication materials for the Program; (ii) for Advertising Materials for the Program; (iii) for sales channel costs for the Program; and (iv) for acquiring Customers and Customer retention activities for the Program; including in each case any taxes imposed by vendors or third parties on such costs, but excluding Green Mountain's general overhead.
- 1.13 "Dispute" shall have the meaning as set forth in Section 13.1 below
- 1.14 "Dispute Notice" shall have the meaning as set forth in Section 13.2 below
- 1.15 "Disputing Party" shall have the meaning as set forth in Section 13.2 below.
- 1.16 "Energy" shall mean physical electric energy, expressed in megawatt hours ("MWh") or kilowatt hours ("KWh") of the character that passes through transformers and transmission wires where it

eventually becomes alternating current, sixty (60) hertz electric energy delivered at nominal voltage.

- 1.17 "Force Majeure" shall mean any physical or governmental causes, which prevents such Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date this Agreement was entered into, which is not within the reasonable control of, or the result of the negligence of, the claiming Party and which by the exercise of due diligence such claiming Party could not have prevented or is unable to overcome or avoid. Such causes shall include interruptions of firm transmission service relied on to make delivery, strikes, labor difficulties, shutdowns in anticipation of strikes, acts of terrorism, accidents, equipment breakdown, riots, fire, flood, hurricanes, wars, delays or interruptions in transportation, materially disruptive actions or failure to act of any government or government agency (whether or not having legal force and effect including, without limitation, any court order or any environmental compliance order or notice) or any other disabling cause or contingency not reasonably within the control of the Party claiming such event, whether of the nature or subject matter herein enumerated. Nothing contained herein, however, shall be construed to require a Party to prevent or settle a strike against its will. Economic hardship shall not constitute Force Majeure.
- 1.18 "FPL Cycle Month" shall mean FPL's Billing cycle of a period of a month or less.
- 1.19 "FPL Licensed Intellectual Property" shall mean any and all Intellectual Property owned by FPL (including its Affiliates or third party licensors) and disclosed to, shared with or otherwise provided to Green Mountain by FPL in connection with this Agreement and the performance of the obligations set forth herein.
- 1.20 "FPL Licensed Marks" shall mean those FPL owned or licensed Marks used by FPL to identify itself and the name of the Program, which includes, without limitation, the trademark Sunshine EnergySM and any other Developed Marks.
- 1.21 "FRCC" shall mean the Florida Reliability Coordinating Council (or the successor organization thereto).
- 1.22 "FPSC" shall mean the Florida Public Service Commission or any successor entity thereto.
- 1.23 "GM Licensed Intellectual Property" shall mean any and all Intellectual Property owned by Green Mountain and disclosed to, shared with or otherwise provided to FPL by Green Mountain in connection with this Agreement and the performance of the obligations set forth herein.
- 1.24 "GM Licensed Marks" shall mean the Green Mountain owned or licensed Marks used in connection with its performance of the Marketing of the Program.
- 1.25 "Governmental or Regulatory Authority" shall mean any court, tribunal, arbitrator, FPSC, or other instrumentality of the United States or any state, county, city or other political subdivision.
- 1.26 "Green Pricing Rider" shall mean FPL's Green Power Pricing ECCR Rider, which is the FPL tariff rider for the Program, as approved by the FPSC and which is subject to change as a result of a rule or order issued by the FPSC.
- 1.27 "Initial Term" shall have the meaning as set forth in Section 2.1 below.
- 1.28 "Intellectual Property" shall mean all U.S. and foreign patents, trade secrets, Licensed Marks, copyrights, marketing tactics, moral rights, designs, product designs, research, brand development, message positioning and other industrial or intangible property rights of a similar nature; all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing; all applications for any grant or registration, and all corrections and amendments thereto. The term "moral rights", as used in this definition, means the rights of authors and

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- creators recognized in non-U.S. jurisdictions, including without limitation any right to retract a work from the public, claim authorship, object to any distortion, mutilation or other modification of a work or any and all similar rights existing under judicial or statutory law of any country or jurisdiction in the world, or under any treaty regardless of whether or not such right is called or generally referred to as a moral right. The term "marketing tactics", as used in this definition, includes without limitation, any financial or marketing models, marketing and sales tools, marketing training methods, marketing scripts, marketing methodologies, sales methodologies and Message Maps, and forms of consulting, employment, services and other contracts, in each case provided in connection with the Marketing of the Program
- 10 1.29 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the
11 prime lending rate as may from time to time be published in The Wall Street Journal under
12 "Money Rates" on such day (or if not published on such day on the most recent preceding day on
13 which published), plus two percent (2%) and (b) the maximum rate permitted by Applicable Law.
- 14 1.30 "Jointly Owned Intellectual Property" means all Intellectual Property developed, conceived,
15 written, created or first reduced to practice by both of the Parties jointly for FPL's use for the
16 Program in connection with the performance of this Agreement but excluding any Developed
17 Marks and FPL Licensed Intellectual Property and GM Licensed Intellectual Property, as
18 applicable.
- 19 1.31 "Liabilities" shall have the meaning as set forth in Section 18.1 below.
- 20 1.32 "Licensed Intellectual Property" shall mean FPL Licensed Intellectual Property and/or GM
21 Licensed Intellectual Property, as the context so requires
- 22 1.33 "Licensed Marks" shall mean FPL Licensed Marks and/or GM Licensed Marks, as the context so
23 requires
- 24 1.34 "Market", "Marketed" or "Marketing" shall mean all use of Advertising Materials, mass media
25 activities, Customer communications activities and outreach activities associated with increasing
26 and maintaining participation in the Program by potential and current Customers.
- 27 1.35 "Marketing Plan" shall mean the plan, developed by Green Mountain and approved by FPL in
28 writing prior to the Program Effective Date and on an annual basis thereafter for the Term, and as
29 may be amended from time to time by mutual agreement of the Parties in writing, which shall
30 include, but not be limited to, monthly and annual sales and cost per sale targets; churn targets;
31 sales channels operations; Customer retention activities; and the budget of Direct Marketing Costs.
- 32 1.36 "Marks" shall mean designated names, symbols, trademarks, service marks, logotypes, trade
33 names and insignias owned respectively by the Parties, their parent, Affiliates or subsidiaries used
34 in connection with the Program or Services
- 35 1.37 "Message Maps" shall mean a document that contains Marketing communication messages and
36 claims that have been approved by both Parties for use in any and all Marketing materials for the
37 Program
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- 1.39 "Monthly Program Participation Fee" shall have the meaning set forth in Section 6.1.
- 1.40 "Monthly Rate" shall mean the Green Pricing Program Rider's monthly rate for Customer participation in the Program, which is subject to change as a result of a rule or order issued by the FPSC. As of the Execution Date, the current Green Pricing Rider Monthly Rate for Customer participation in the Program is \$9.75, which is subject to change as a result of a rule or order issued by the FPSC.

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- 1.41 "Monthly Services Fee" shall have the meaning as set forth in Section 6.1 below.
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- 1.43 "Participant" shall mean those Customers residing in the Service Territory that have both (i) enrolled to participate in or transferred into the Program (including without limitation any Customers which are and have been transferred into the Program at any time from the Sunshine EnergySM program under the Original Contract), and (ii) remitted any payment amount which contributed to the Monthly Program Participation Fee, as calculated in accordance with Section 6.1.
- 1.44 "Performance Metrics" shall mean the annual program performance growth goals for each applicable calendar year during the Initial Term as set forth on Exhibit B.
- 1.45 "Personal Information" shall mean any one or more data elements of a Customer, including but not limited to: (i) social security number; (ii) driver's license number or government issued ID number; (iii) credit card information; (iv) banking information; (v) PINS and passwords; (vi) personal health information; (vii) passport/alien registration information; (viii) date of birth; (ix) salary information; and (x) FPL account number.
- 1.46 "Program" shall mean the program under this Agreement as more specifically described and set forth in Exhibit A, which program shall be under the Sunshine EnergySM name or such other name which FPL chooses for the Program. FPL shall give Green Mountain 60 days advance notice of any change in the name for the Program.
- 1.47 "Program Effective Date" shall mean the later of (i) October 1, 2008 or (ii) the first FPL business day of the month that is thirty (30) days following the date FPL has obtained all necessary Governmental or Regulatory Authority approvals to begin Marketing the Program to Customers.
- 1.48 "Program Participation Fee" shall mean the aggregate amount of the tariff price a Participant is required to remit to FPL via FPL's Billing to participate in the Program during any FPL Cycle Month pursuant to the terms of the Green Pricing Rider.
- 1.49 "Renewal Term" shall have the meaning as set forth in Section 2.1 below.
- 1.50 "Representative" shall have the meaning as defined in Section 15.1 below.
- 1.51 "Service Territory" shall mean the geographic areas within the State of Florida in which FPL is authorized to provide electric services to the public.
- 1.52 "Services" shall mean the development, execution, performance and completion by Green Mountain of Marketing, Customer Care and Advertising Material services as described and set forth in this Agreement, and any other related activities and services necessary for Green Mountain to perform its obligations under this Agreement, all in accordance with the terms of this Agreement.
- 1.53 "Settlement Period" shall have the meaning as set forth in Section 13.2 below.

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"Solar Energy Resource" shall mean the solar energy generation facility located at Rotbenbach Park, 8350 Bee Ridge Road, Sarasota, Florida 34241.



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"Subcontractor" shall mean any person, firm, partnership, association, joint venture, company, corporation or other entity, regardless of tier, having an agreement, formal or informal, with Green Mountain to provide any of the Services required under this Agreement or with FPL to provide services in connection with FPL's fulfillment of its obligations under this Agreement. The term Subcontractor shall include vendors and suppliers of Green Mountain and FPL, as the context so requires.

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"Term" has the meaning set forth in Section 2.1.

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Term of Agreement

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2.1

Subject to Section 2.2, this Agreement shall commence and become effective on the Program Effective Date and shall remain in full force and effect until July 30, 2013 (the "Initial Term"), subject to the earlier termination provisions contained herein, unless otherwise extended or renewed (a "Renewal Term") as mutually agreed upon in writing duly executed by the Parties. The "Term" shall mean the Initial Term and any subsequent or successive Renewal Term(s). For the avoidance of doubt, FPL's and Green Mountain's responsibilities and obligations under the Original Contract Documents shall remain in full force and effect until (but excluding) the Program Effective Date.

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2.2

Notwithstanding any provision of this Agreement to the contrary, the effectiveness of this Agreement shall be conditioned upon the execution and delivery of the Assignment Agreement by each of [REDACTED] FPL and Green Mountain. If [REDACTED] has failed to execute the Assignment Agreement on or prior to [REDACTED] (or other date mutually agreed to in writing), then this Agreement shall automatically terminate and become void ab initio; provided, however, the Parties agree and acknowledge that in the event this Agreement is terminated based on [REDACTED] failure to execute the Assignment Agreement, the Original Contract shall continue to be in full force and effect and the Parties will work toward amending the Original Contract in a manner mutually agreed upon by the Parties.

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Marketing Obligations. During the Term and in strict accordance with the requirements of this Agreement:

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Green Mountain shall have the exclusive right during the Term of the Agreement to Market the Program to Customers in the Service Territory and FPL will not grant the right to Market the Program to any third party; provided, however, the foregoing exclusivity shall not be interpreted or otherwise deemed to prohibit FPL or its Affiliates to Market the Program during the Term to Customers in the Service Territory, subject to Green Mountain's approval rights as set forth in Section 3.3.

- 3.2 Green Mountain shall conduct Participant retention activities in a manner consistent with applicable FPSC rules and regulations, such retention activities at all times subject to FPL's prior written approval
- 3.3 On or before the Program Effective Date and on an annual basis thereafter for the Term, Green Mountain shall develop: (i) a Marketing Plan; and (ii) a Message Map for the Program, such Marketing Plan and Message Map subject to FPL's prior written approval, and such approval not to be unreasonably withheld or delayed. The Marketing Plan may not be amended without each Party's written consent. Any Marketing materials prepared by Green Mountain or FPL (or its Affiliates) in accordance with the Message Map shall be considered to be approved by the other Party for distribution. Notwithstanding the foregoing, each Party will have the right to approve in advance, for the purpose of verifying its accuracy and the proper use of such Party's Licensed Marks, any general Marketing communications (excluding press releases, which are covered under Section 12.0 below) that the other Party intends to deliver or send to potential and/or current Participants which is not in accordance with the Message Map. Notwithstanding the foregoing, to the extent FPL or any of its Affiliates Markets the Program during the Term, in addition to Green Mountain's rights in the preceding sentence, Green Mountain will have the right to approve in advance, which such consent shall not be unreasonably delayed or withheld, for the purpose of verifying its consistency with the Marketing Plan and the Message Map, any general Marketing communications (excluding press releases, which are covered under Section 12.0 below) that FPL or any of its Affiliates intends to deliver or send to potential and/or current Participants which is not in accordance with the Message Map; provided, however, if FPL or its Affiliates performance of Marketing is in accordance with the Marketing Plan, no consent by Green Mountain is required. The Parties shall conclude and approve all requests for copy review within ten (10) business days of submission.
- 3.4 Green Mountain will Market the Program in compliance with Applicable Laws, including, without limitation, any Government or Regulatory Authority regulations requiring advertising materials to disclose certain product content information. To the extent FPL or any of its Affiliates Markets the Program during the Term, FPL shall Market the Program, and cause its Affiliates to Market the Program, in compliance with Applicable Laws, including, without limitation, any Government or Regulatory Authority regulations requiring advertising materials to disclose certain product content information. FPL shall, in a timely manner, share with Green Mountain information about Florida laws and regulations and FPSC rules and orders that govern the marketing and sale of the Program. To the extent that any Applicable Laws conflict with any terms or conditions of this Agreement, such Applicable Laws control.
- 3.5 The timing of the Marketing obligations set forth in this Section 3 shall be subject to, and adjusted in accordance with, the anticipated timing of receipt of the required applicable Government or Regulatory Authority approvals for the Program and the Program Effective Date.
- 4.0 Additional Obligations of Green Mountain In addition to obligations of Green Mountain set forth elsewhere in this Agreement, Green Mountain shall be responsible for:
- 4.1 Providing sales, Participant retention, public relations, and Customer account management Services;
- 4.2 Designing and producing all Marketing materials, including collateral materials, web pages, and Customer communications materials such as a quarterly electronic newsletter;
- 4.3 Developing and executing sales channels, including, without limitation, Advertising Materials for such sales channels;
- 4.4 Providing Customer Care to sell products offered under the Program and enrollment Services to Customers purchasing such products pursuant to the Program;

- 4.5 Providing website and mail operations for Customer enrollments;
 - 4.6 Consulting with FPL on website design and writing web copy;
 - 4.7 Developing and implementing Participant retention strategies with the goal of minimizing the churn in accordance with the Marketing Plan for the Program, which may include newsletters and other forms of Customer communication, public relations activities, and events;
 - 4.8 Providing all sales order processing, with the exception of bangtails and Customer enrollments into the Program entered at FPL Customer Care centers;
 - 4.9 Exchanging with FPL daily and weekly enrollment files reasonably satisfactory to FPL;
 - 4.10 Designing and testing the product offered under the Program;
 - 4.11 Performing Market research, as appropriate, to successfully Market the product offered under the Program and support Participant retention activities;
 - 4.12 Developing and executing a Marketing Plan for launching the Program, including events, public relations activities, publicity and communications materials;
 - 4.13 Developing, implementing and managing a Customer awareness campaign for the Program through non-profit renewable energy advocacy organizations;
 - 4.14 Designing an innovative product strategy and related Marketing messages through which Customers can measure the environmental impact of their participation in the Program. Product design concepts may include, without limitation:
 - 4.14.1 A capacity-based Program in which Participants remit the Program Participation Fee each month to support "X" watts of new renewable generating capacity to be constructed as a result of the Program;
 - 4.14.2 A "shares" program in which Participants purchase a portion (e.g. a watt or a panel) of a specific renewable resource under the Program, and Participants measure the carbon dioxide (CO2) avoided and the energy conserved over the length of their participation in the Program; or
 - 4.14.3 A model in which the monthly Participants payment assists planned renewable resource projects for a publicly-owned site (such as a school, public institution or government facility).
- 5.0 Obligations of FPL. In addition to the obligations of FPL set forth elsewhere in this Agreement, FPL during the Term shall be responsible for the following:
- 5.1 On a monthly basis, providing to Green Mountain Customer enrollment data for the prior FPL Cycle Month period based on the number of Participants in the Program during such FPL Cycle Month. Such number of Participants shall be calculated in accordance with Section 6.1.;
 - 5.2 FPL shall provide Green Mountain information technology support for such processes as accurate sales enrollment tracking, and for entering into the Customer database Participants' email addresses transmitted with sales and enrollment files;
 - 5.3 Once a week during the Term, FPL will provide to Green Mountain Participant enrollment data in an electronic file format agreed to by the Parties for the prior week period, including: (i) total Participant enrollments; (ii) enrollments by sales channel; and (iii) total Customers dropped from or no longer participating in the Program, and the reason for such drops;

- 1 5.4 FPL shall provide enrollment services (via toll-free telephone, its website and paper processes), Customer Care and Billing with regard to the Program consistent with the quality standards FPL employs for its other electricity products and services. At a minimum, FPL will ensure that new Customers are enrolled in the Program within the same time period as FPL enrolls new customers in other FPL products and services;
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- 6 5.5 FPL shall ensure that any monthly Program premium is stated on the Customer's monthly bill in accordance with any Government or Regulatory Authority requirements;
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- 8 5.6 FPL shall, at its expense, be responsible for appropriate Customer Care and escalation procedures through its Customer Care call center. FPL shall, at its expense, be responsible for handling with the Government or Regulatory Authority and/or Customers all Customer complaints related to the Program. Green Mountain will assist FPL with any Customer complaint of which a Party is aware and will escalate all complaints to the appropriate FPL representative within twenty-four (24) hours of becoming aware of a complaint;
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- 14 5.7 FPL shall secure regulatory approval of the Program; provided, however, if FPL is unable, after using commercially reasonable efforts, to secure such regulatory approval, FPL shall be permitted to terminate this Agreement in accordance with Section 10.1.2 below;
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- 17 5.8 FPL shall assist Green Mountain in the development of Marketing and sales channels as necessary for the enrollment of Customers in the Program, including FPL's start service phone center or connect channel, an online movers center, and FPL Customer emails;
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- 20 5.9 FPL shall Market the Program to Customers within the Service Territory consistent with the Marketing Plan and the Message Map and in accordance with the terms of this Agreement;
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22 60 Program Compensation: Reimbursed Direct Marketing Costs and Taxes.

- 23 6.1 Monthly Services Fee; Monthly Program Participation Fee.
- 24 6.1.1 For each FPL Cycle Month (or portion thereof) during the Term, FPL shall pay Green Mountain the Monthly Services Fee in accordance with the terms hereof. The "Monthly Service Fee" shall mean [REDACTED]
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- 28 6.1.2 The "Monthly Program Participation Fee" shall mean, with respect to any FPL Billing Cycle (or portion thereof) after the Program Effective Date, [REDACTED]
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[REDACTED] For the purposes of the foregoing, if FPL collects from a Customer less than the total amount billed to a Customer (for both electric services provided by FPL and for participation in the Program under the Green Pricing Rider during the Term or participation in the Original Program), then the amount paid by such Customer shall be allocated on a pro rata basis, such that the Monthly Program Participation Fee shall include the pro rata portion of such payment. For example, if a Customer pays and FPL collects 80% of the amount billed, then 80% of the Monthly Rate shall be included in the Monthly Program Participation Fee. If a Customer later pays such unpaid amounts billed for services during the Term, then such amounts paid by the Customer shall be allocated first to amounts owed for any prior FPL Billing Cycle(s) (starting with the oldest such FPL Billing Cycle), and the applicable Monthly Program Participation Fee shall include the additional pro rata portion of such allocated payment for each such FPL Billing Cycle, until such prior FPL Billing Cycle(s) have been paid in full by such allocation. After allocation to prior FPL Billing Cycle(s) pursuant to the

preceding sentence, any remaining amounts shall be allocated to the current FPL Billing Cycle, and the applicable Monthly Program Participation Fee shall include the pro rata portion of such payment allocated to the current FPL Billing. For avoidance of doubt, examples of the calculation of the Monthly Services Fee and the Monthly Program Participation Fee are set forth in more detail in Exhibit C, which is attached hereto and incorporated by this reference

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6.2 For providing the Services, for each FPL Cycle Month during the Term (or any portion thereof which falls during the Term), within fifteen (15) days after the end of each FPL Cycle Month, FPL shall pay Green Mountain via automated clearing house ("ACH") or wire transfer to the account designed by Green Mountain in writing an amount equal to the Monthly Services Fee calculated in accordance with Section 6.1. FPL shall give Green Mountain advance written notice on a yearly basis of the start and end dates of such FPL Billing cycle months. FPL's obligations to pay Green Mountain pursuant to this Section 6.0 with respect to any FPL Cycle Month (or portion thereof) during the Term will survive the expiration or termination of this Agreement.

6.3 FPL agrees to [REDACTED] are applicable to, any and all portions of the period from the Program Effective Date through July 30, 2013 (regardless of whether [REDACTED] in accordance with the terms of the Assignment Agreement. FPL's obligations pursuant to this Section 6.3, with respect to the period from the Program Effective Date through July 30, 2013, will survive the expiration or termination of this Agreement.

6.4 [REDACTED]

6.6 Green Mountain shall submit duplicate invoices for Direct Marketing Costs to FPL's company representative, or designated back-up person, identified by FPL in writing. Such invoices shall be due and payable, and FPL shall pay Green Mountain such invoiced amount for Direct Marketing Costs, within forty-five (45) calendar days after FPL's receipt of a correct invoice in accordance with Section 6.7. All payments due under this Agreement shall be remitted to Green Mountain by check, ACH or wire transfer at the address or to the account specified in Green Mountain's invoice, in United States currency. FPL shall be entitled at all times to set-off any amount due and payable from Green Mountain, or its Affiliates, to FPL under this Agreement against any amount due and payable by FPL to Green Mountain under this Agreement. Green Mountain shall submit invoices to FPL for costs as soon as practical, but in no event later than sixty (60) calendar days following the later of (i) the end of the month during which the invoiced costs were incurred or (ii) the end of the month in which Green Mountain received an invoice for costs chargeable to FPL. Failure to invoice costs in a timely manner as described in this Section 6.0 may, at FPL's sole discretion, result in the disallowance of reimbursement for such costs.

6.7 For the purposes of Section 6.6, a correct invoice shall mean the following:

- 6.7.1 Each invoice shall include: (i) the title identifying the project; (ii) FPL's purchase order number for the project; (iii) type and hours of Services performed by Subcontractors, and the Subcontractor's rate per hour, cost per quantity, or other fee structure; and (iv) total amount of current invoice;
- 6.7.2 Green Mountain shall submit invoices for costs as soon as practical, but in no event later than sixty (60) calendar days following the later of (i) the end of the month during which the invoiced costs were incurred or (ii) the end of the month in which Green Mountain received a correct invoice for costs chargeable to FPL. Failure to invoice costs in a timely manner as described in this Section 6.7 may, at FPL's sole discretion, result in the disallowance of such costs; and
- 6.7.3 Invoices shall be dated to reflect the actual transmittal date. Invoices that are not correct or properly documented as set forth in Section 6.7.1 shall be returned to Green Mountain. Corrected invoices shall be retransmitted.
- 6.8 FPL shall submit invoices for any costs incurred by FPL in connection with this Agreement, which were approved in advance of being incurred or contracted for by Green Mountain pursuant to a written instrument duly executed by Green Mountain, in duplicate to Green Mountain's company representative, or designated back-up person, identified by Green Mountain in writing. Provided that such Marketing costs were approved in advance by Green Mountain pursuant to a written instrument duly executed by Green Mountain, such invoice shall be due and payable, and Green Mountain shall pay FPL such invoiced amount for approved costs, within forty-five (45) calendar days after Green Mountain's receipt of an invoice. All payments due under this Agreement shall be remitted to FPL by check, ACH or wire transfer at the address or to the account specified in FPL's invoice, in United States currency.
- 6.9 Subject to Section 6.10, any amounts due and owing by one Party to the other Party under this Agreement, but not paid by the due date, will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Except as provided in Section 10.2.2 and Section 6.10, payment by a Party of such interest accrued at the Interest Rate under this Section 6.9 shall be such Party's sole obligation and the other Party's exclusive remedy for late payment of such unpaid accrued interest due under this Agreement.
- 6.10 A Party may, in good faith, Dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is Disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the Dispute or adjustment. Payment of the Disputed amount shall not be required until the Dispute is resolved. Upon resolution of the Dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid.

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Warranties and Representations.

- 7.1 Each of Green Mountain and FPL make the following representations and warranties, each of which is true and correct as of the Execution Date, as of the Program Effective Date and during the Term:
- 7.1.1 Such Party is a corporation duly organized and in active status under the Applicable Laws of the State of its incorporation (Delaware in the case of Green Mountain and Florida in the case of FPL);

- 7.1.2 Such Party has all corporate power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein;
- 7.1.3 Such Party's execution, delivery and performance of this Agreement have been duly authorized by, and are in accordance with, their articles of incorporation and by-laws; this Agreement has been duly executed and delivered for it by the signatory so authorized; and this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with the terms hereof; and
- 7.1.4 Such Party's execution, delivery and performance of this Agreement: (i) will not result in a breach or violation of, or constitute a default under, any authorization, or any contract, lease or other agreement or instrument to which it is a party, or by which it or its properties may be bound or affected; and (ii) does not require any authorization, or the consent, authorization or notification of any other person, lender, partner, member or entity, or any other action by or with respect to any other person (except for authorizations and consents or authorizations of other persons already obtained, notifications already delivered, or other actions already taken).
- 7.2 Green Mountain warrants and represents that the Services provided, as required under this Agreement, shall be performed in accordance with standards of care, skill and diligence consistent with: (i) recognized and sound industry practices, procedures and techniques; (ii) all Applicable Laws; (iii) the specifications, documents and procedures under this Agreement; and (iv) the degree of knowledge, skill and judgment customarily exercised by companies with respect to services of a similar nature. In the event Green Mountain or any of its Subcontractors fail to comply with the foregoing warranties, Green Mountain shall utilize its commercially reasonable efforts to ensure that Green Mountain or such Subcontractor cures such non-conformance.
- 7.3 Green Mountain warrants and represents that it will assign members of its staff or its Subcontractors who, in Green Mountain's judgment, have adequate education, training or experience to perform the tasks assigned to them in connection with the Services hereunder
- 7.4 THE PARTIES ACKNOWLEDGE THAT THE PROVISIONS IN THIS AGREEMENT (INCLUDING ANY EXHIBITS) ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED AND WHETHER OF MERCHANTABILITY, FITNESS OR OTHERWISE.

8.0 Intellectual Property Rights.

- 8.1 Except as it pertains to each Party's Licensed Intellectual Property, Green Mountain and FPL shall jointly own, with each Party having an undivided interest, all Jointly Owned Intellectual Property. A Party's ownership of, and all right, title and interest in, such Party's Licensed Marks and such Party's Licensed Intellectual Property shall not be affected by, nor transferred or conveyed to the other Party, if such Licensed Marks or Licensed Intellectual Property are included, in whole or in part, in the creation or development of the Jointly Owned Intellectual Property
- 8.2 FPL shall retain and maintain all exclusive right, title and interest in connection with FPL Licensed Intellectual Property and in any Developed Marks. At the request of FPL, Green Mountain shall, without further consideration, execute all papers and documents and perform all other acts reasonably necessary or reasonably appropriate to evidence or further document FPL's ownership of any developed Marks. Green Mountain shall retain and maintain all exclusive right, title and interest in connection with GM Licensed Intellectual Property. FPL shall retain ownership of any conclusions or recommendations therein, which are specific to FPL and not of general utility.
- 8.3 To the extent that any of GM Licensed Intellectual Property is embedded in the Marketing materials or scripts developed, conceived, written, created or first reduced to practice for the

Program and provided to FPL as part of Green Mountain's provision of the Services under this Agreement, Green Mountain hereby grants to FPL a non-exclusive, irrevocable, perpetual, and royalty-free license to use such GM Licensed Intellectual Property to the extent necessary to permit FPL to utilize such Marketing materials or scripts in connection with the Program.

- 8.4 Subject to the terms and conditions set forth herein, Green Mountain and FPL hereby grant to the other Party a limited royalty-free, and a non-exclusive right and license to use the other Parties' Licensed Marks within the Service Territory in connection with the Marketing, the development of Advertising Materials, sale of the Program within the Service Territory and in connection with the performance of the Services. Subject to the terms and conditions set forth herein, FPL hereby grants to Green Mountain a royalty-free, non-exclusive right and license to use the FPL Licensed Intellectual Property within the Service Territory during the Term only in connection with Green Mountain's performance of the Services within the Service Territory and necessary for a Party to fulfill its obligations under this Agreement. All rights not specifically granted to each Party herein are reserved by the other Party.
- 8.5 Each Party agrees to use the other Party's Licensed Marks only in accordance with good trademark and business practices. Each Party agrees that it will: (i) conduct its business with respect to the Licensed Marks in a manner that reflects favorably at all times on the good name, goodwill and reputation of the other Party; (ii) avoid deceptive, misleading or unethical practices that are detrimental to the other Party; and (iii) make no false or misleading statements with regard to the other Party or the Program.
- 8.6 Each Party agrees that it shall not use the Licensed Marks of the other Party other than as permitted by this Agreement and that it shall conform to the requirements of the other Party (including, but not limited to, compliance with the other Party's trademark usage guidelines of which it has notice, as may be amended from time to time) in relation to the use of the Licensed Marks and on Marketing materials for the Program. Each Party shall include on all printed or other tangible materials used to Market the Program or in Advertising Materials such copyright, trademark or service mark notices as are designated in the trademark usage guidelines of the other Party. Neither Party shall use alternate notices with the other Party's Licensed Marks without the prior written consent of the other Party.
- 8.7 Each Party is expressly permitted to use its own marks with the other Party's Licensed Marks in accordance with the terms of this Agreement.
- 8.8 Notwithstanding anything contained herein to the contrary, each Party shall have the right to freely license its Licensed Marks to third parties, or make any other use of its Licensed Marks not inconsistent with the terms hereof.
- 9.0 Customer Care Training; Quality Assurance
- 9.1 Green Mountain will conduct training sessions for FPL's Customer Care call center process coordinators relating to the sale and Marketing of the Program and provide for FPL review of supporting scripts and educational materials relating to the Program. FPL will reasonably cooperate with Green Mountain so that all training is substantially completed by the Program Effective Date.
- 9.2 Upon prior notice and subject to FPL's security requirements, Green Mountain may from time-to-time monitor on-site FPL's Customer Care call center operations relating to the Program. Green Mountain will report the results of such monitoring to FPL, and consult with FPL from time-to-time to guarantee consistency and quality of information provided to Customers.
- 9.3 Green Mountain and FPL shall mutually agree upon the preferred method of all data transfers for any reports required under this Agreement be delivered to the other Party and data transferred pursuant to this Agreement. No later than the Program Effective Date, FPL's website

(www.fpl.com) will highlight the offering of the Program and list all available options for enrollment.

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10.0. Termination; Default; and Limitation of Liability.

10.1 Termination This Agreement may be terminated during the Term as follows:

10.1.1 By either Party for Cause in accordance with Section 10.2 below;

10.1.2 In the event that FPL is denied, by any Governmental or Regulatory Authority, the authority to conduct the Program or if such approval to conduct the Program is materially altered or impacted following the Program Effective Date because of (i) a rule or order of a Governmental or Regulatory Authority having jurisdiction over the Program, or (ii) a legislative proceeding or enactment, in each case, FPL may terminate this Agreement by giving sixty (60) calendar days written notice to Green Mountain of its intent to terminate pursuant to this Section 10.1.2, unless required to terminate earlier by said Applicable Laws or Governmental or Regulatory requirement. Should FPL terminate this Agreement under this Section 10.1.2, FPL shall pay Green Mountain as follows (without further penalty for such termination, but without affecting any other claims which Green Mountain may have arising other than as a result of such termination):

10.1.2.1 FPL shall pay Green Mountain, in accordance with the payment due dates set forth in Section 6.0, any and all (i) unpaid Monthly Services Fees owed to Green Mountain for all FPL Cycle Months (or portions thereof) during the Term, in accordance with Section 6.0, and (ii) Direct Marketing Costs incurred or contracted for by Green Mountain prior to such termination (regardless of whether such Direct Marketing Costs are for Services for the period before or after such termination, provided such Direct Marketing Costs were approved in the Marketing Plan or by FPL in writing); and

10.1.2.2 Green Mountain shall use all reasonable diligent efforts to mitigate the costs associated with termination of this Agreement with respect to terminated Services under this Section 10.1.2. At its option, FPL may conduct an audit of Green Mountain's records at FPL's sole expense to the extent reasonably necessary to verify that termination charges pursuant to Section 10.1.2 comply with the terms of this Agreement, during normal business hours at the usual location of such records upon no less than ten (10) Business Days advance written notice to Green Mountain. For avoidance of doubt, the exclusivity covenants contained in Section 3.1 of this Agreement shall not apply to FPL as of the effective date of termination under this Section 10.1.2.

10.1.2.3 Green Mountain shall pay FPL, in accordance with the payment due dates set forth in Section 6.0, any and all costs incurred by FPL prior to such termination provided Green Mountain is obligated to pay such costs pursuant to Section 6.8 and such costs were approved in advance by Green Mountain pursuant to a written instrument duly executed by Green Mountain.

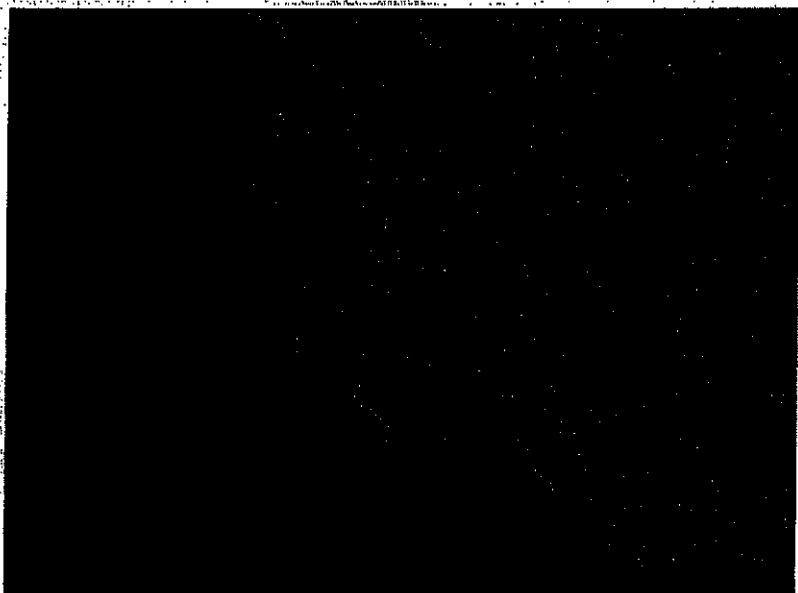
10.1.3 In addition to FPL's rights to terminate this Agreement pursuant to Sections 10.1.1 and 10.1.2, following the Execution Date, FPL may, at its sole discretion, without penalty for such termination and without prejudice to any other right or remedy, terminate this Agreement at any time after January 1, 2009 for its convenience upon at least ninety (90) days prior written notice. Such termination shall be effective as of the date specified in such 90-day written notice.



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10.1.4



10.2 Termination for Cause. A Party shall be entitled to (i) terminate this Agreement for Cause without penalty, termination cost or obligation, and (ii) pursue any remedies available to it generally under

Applicable Laws, in equity or under this Agreement, upon the occurrence of any of the following events (any such event, a "Cause"):

- 10.2.1 The failure of the other Party to make any payment due hereunder (other than payment of interest due pursuant to Section 6.9) and such failure continues for thirty (30) days after written notice demanding such payment is received;
- 10.2.2 The failure of the other Party to make any payment of interest due pursuant to Section 6.9 and such failure continues for six (6) months after written notice demanding such payment is received;
- 10.2.3 In the event the other Party shall cease doing business as a going concern, shall generally not pay its debts as they become due or admit in writing its inability to pay its debts as they become due, shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future Applicable Laws;
- 10.2.4 In the event that within thirty (30) days after the commencement of any proceeding against either Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other statute or Applicable Laws, such proceeding shall not have been dismissed, or if, within thirty (30) days after the appointment without the consent or acquiescence of said Party of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;
- 10.2.5 Any of the Party's representations and warranties contained in the Agreement herof other than Sections 7.2 and 7.3, were false in any material respect or misleading in any material respect when made, unless the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after the defaulting Party has received notice thereof from the non-defaulting Party;
- 10.2.6 Any material failure by Green Mountain to comply with its warranty and representations contained in Sections 7.2 and 7.3 hereof, and such failure is not cured within a reasonable period of time, but in no event more than thirty (30) days after written notice from FPL specifying the nature of such failure to comply with its warranty and representations contained in Sections 7.2 and 7.3 hereof;
- 10.2.7 Immediately for any unauthorized disclosure by Green Mountain or its Subcontractors to any third party of any Personal Information in violation of the terms of Section 15.0;
- 10.2.8 Immediately by FPL, if [REDACTED]

10.2.9 [REDACTED]

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10.2.10 The other Party permanently or persistently fails to perform its obligations under the terms of this Agreement in any material respect, and such persistent failure continues for a period of thirty (30) days following written notice to such other Party of such persistent failure;



10.2.11

or

10.2.12 Any other material default in performance or observance of any undertaking, covenant or other material obligation contained in this Agreement unless, within thirty (30) days after written notice from the non-defaulting Party specifying the nature of such material default, the defaulting Party cures such default or, if such cure cannot reasonably be completed within thirty (30) days and if the defaulting Party within such thirty (30) day period commences, and thereafter proceeds with all due diligence, to cure such default, said period shall be extended for such further period as shall be necessary for the defaulting Party to cure such default with all due diligence, provided that the extended cure period shall not exceed sixty (60) days from the date of the original notice.

10.3 Limitation of Liability If a Party breaches this Agreement, the non-breaching Party shall use reasonable efforts to mitigate any and all damages arising from the breach. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BUT SUBJECT TO THE NEXT SENTENCE, A PARTY'S LIABILITY TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL EXCLUDE ANY OTHER LIABILITY, INCLUDING, WITHOUT LIMITATION, LIABILITY FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR OTHERWISE. FOR THE AVOIDANCE OF DOUBT, ALL DAMAGES (REGARDLESS OF WHETHER THEY WOULD OTHERWISE BE DEEMED INDIRECT, INCIDENTAL OR CONSEQUENTIAL TYPE DAMAGES) PAYABLE TO THIRD PARTIES BY EACH PARTY WITH RESPECT TO MATTERS FOR WHICH THE OTHER PARTY IS ENTITLED TO INDEMNIFICATION UNDER THIS AGREEMENT SHALL BE DEEMED DIRECT DAMAGES, RECOVERABLE BY THE INDEMNIFIED PARTY, REGARDLESS OF THE CHARACTERIZATION OF THOSE DAMAGES AS PAYABLE TO THIRD PARTIES.

11.0 Post-Termination and Expiration Obligations

11.1 Upon termination of this Agreement, FPL and Green Mountain shall promptly engage in a final accounting of the Program and shall pay, as appropriate, all amounts due under this Agreement, and shall return all property of Green Mountain or FPL, as appropriate, to the respective owner. Except as otherwise provided for in Section 10, immediately upon termination Green Mountain shall cease marketing the Program to Customers

11.2 Termination or expiration of this Agreement: (i) shall not relieve either Party of its obligations with respect to the confidentiality of the other Party's information as set forth in Section 15.0; (ii) shall not relieve either Party of any obligation hereunder which expressly or by implication survives expiration or termination hereof; and (iii) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either FPL or Green Mountain of any obligations or liabilities hereunder for loss or damage to the other Party

arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Green Mountain of its obligations as to portions of the Services or other work hereunder already performed or of obligations assumed by Green Mountain prior to the date of termination.

- 11.3 Whenever this Agreement has been terminated for cause in accordance with Section 10.2 by FPL, payment for completed Services delivered to and accepted by FPL shall be made in accordance with this Agreement and any obligation of Green Mountain with respect to such Services shall remain in effect. FPL may either re-procure the terminated Services or take over the terminated Services and proceed to provide such materials, supplies, equipment and labor of both FPL and FPL Subcontractors, as may be reasonably necessary to complete said Services. Green Mountain shall be liable for any increase of FPL's direct costs, including re-procurement costs, incurred by FPL as a result of FPL's termination of this Agreement for cause.
- 11.4 In the event of termination by FPL under Sections 10.1.2 and 10.1.3, FPL's obligations under the Solar Tag Agreement, as assigned to FPL pursuant to the Assignment Agreement and as may be assigned to FPL pursuant to the Original FPL Assignment Contract, shall remain in effect in accordance with the terms of such agreement(s).
- 11.5 In the event of termination by FPL for cause under Section 10.2 or for its convenience under Section 10.1.3: (i) FPL shall have no liability to Green Mountain for costs incurred by Green Mountain as a result of such termination nor for any costs incurred by Green Mountain following its receipt of a written termination notice; and, (ii) Green Mountain shall, as of the date of such termination, take assignment of and assume all of FPL's obligations under the Assignment Agreement; provided, until such assignment is effective, Green Mountain shall defend, indemnify and hold harmless FPL from and against any and all claims, loss, damage, expenses and costs incurred by FPL pursuant to the Assignment Agreement and incurred after the termination.

12.0 Publicity.

The Parties may, from time-to-time, issue press releases regarding the Program and the business association of the Parties. Each Party will cooperate reasonably with the other Party in the preparation of any such press release by promptly providing non-Confidential Information for the press release regarding that Party, the Customers and/or the Program, all as reasonably requested by such other Party. Notwithstanding the foregoing, all such press releases and other media activity regarding the Program, the Customers and the business association of the Parties will be subject to FPL's written approval prior to release. FPL shall not unreasonably withhold its review, approval, and/or disapproval of such communications or activities.

13.0 Dispute Resolution.

- 13.1 Dispute Resolution Process: Negotiations. In the event of any claim, dispute or controversy arising under, out of or relating to this Agreement or any breach or purported breach thereof (the "Dispute") which the Parties hereto have been unable to settle or agree upon in the normal course of business, the Parties shall attempt in good faith to resolve the Dispute promptly by negotiation between representatives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either Party (in this context, the "Disputing Party") may give the other Party written notice of the existence of any such Dispute ("Dispute Notice"). The Dispute Notice shall include: (i) a brief statement of the relevant Party's position and a brief summary of the issues in dispute; and (ii) the name and title of the representative who will represent the Party in the negotiations and of any other person who will accompany such representative. Within thirty (30) days after delivery of the Dispute Notice, the representatives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute ("Settlement Period"). However, this Settlement Period shall terminate no later than ninety (90) days after delivery of the Disputing Party's notice unless such period is extended by mutual written agreement of the Parties. All statements and/or negotiations pursuant to this Section 13.2

are confidential and shall be treated as inadmissible compromise and settlement negotiations for purposes of all applicable state and/or federal rules of evidence

- 13.2 Rights of Termination. The requirements of this Section 13.0 shall not be deemed a waiver of any right of termination relating to the Agreement.
- 13.3 Jurisdiction and Governing Law. EACH OF THE PARTIES HEREBY AGREES THAT ANY DISPUTES UNDER THIS AGREEMENT RESULTING IN LITIGATION BETWEEN THE PARTIES, SHALL BE INSTITUTED IN THE STATE OR FEDERAL COURTS OF THE STATE OF FLORIDA. PROCEEDINGS SHALL TAKE PLACE IN THE CIRCUIT COURT FOR DADE COUNTY OR PALM BEACH COUNTY, STATE OF FLORIDA AND IN NO OTHER FORUM AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO AND ACCEPTS GENERALLY AND UNCONDITIONALLY SUCH JURISDICTION AND IRREVOCABLY WAIVES ANY OBJECTIONS, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE COURTS. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY ACTION OR PROCEEDING BY DELIVERY OF COPIES OF SUCH PROCESS BY COMMERCIAL COURIER TO IT AT ITS ADDRESS SPECIFIED IN SECTION 21 HEREOF OR IN ANY OTHER MANNER PERMITTED BY LAW THE PARTIES FURTHER AGREE THAT THE RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES AS SPECIFIED UNDER THIS AGREEMENT SHALL BE INTERPRETED AND GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF FLORIDA WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PROVISIONS THEREOF.
- 13.4 Waiver of Jury Trial. THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT MAY EXIST TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED WITH, THE AGREEMENT.

14.0 Independent Contractor.

The duties performed by the Parties in this Agreement shall be executed as an independent contractor and not as the agent or employee. The Parties mutually agree that each respective employee is not the employee of the other Party for any purpose whatsoever. Neither Party shall employ and or have exclusive control of either Party's employees or agents designated or assigned to performing the duties set forth in this Agreement. Each Party shall be solely responsible for compliance with all Applicable Laws relating to employment of labor, hours of labor, working conditions, payment of wages and the payment of taxes, such as employment, social security and other payroll taxes, including withholding, and timely remitting applicable contributions from such persons when required by Applicable Laws

15.0 Confidentiality and Nondisclosure.

- 15.1 Each of the Parties agrees and agrees to cause their respective Affiliates, employees, vendors and subcontractors of the Parties and their respective Affiliates, and the Parties' and their Affiliates' accountants, advisors and other authorized representatives (collectively, "Representatives") to which Confidential Information is disclosed in accordance with Section 15.2 to agree during the Term of this Agreement and after the expiration or termination thereof, to maintain the confidentiality of all Confidential Information received from the disclosing Party and its Representatives and not to use any of such information for any purpose except to evaluate the transactions contemplated by this Agreement and fulfill its obligations hereunder.
- 15.2 The Confidential Information shall be supplied only to Representatives on a "need to know" basis, it being understood that such Representatives shall be informed of the highly confidential nature

of the Confidential Information and the transactions contemplated hereby and that, by receiving such information, they are agreeing to be bound by the terms of this Section 15.0.

- 15.3 Notwithstanding anything to the contrary herein, neither Party shall have any obligation with respect to any Confidential Information of other Party, or any portion thereof, which the receiving Party can establish by competent proof (including, but not limited to, ideas, concepts, 'know-how' techniques, and methodologies); (i) is or becomes generally known to companies engaged in the same or similar businesses as the Parties hereto on a non-confidential basis, through no wrongful act of the receiving Party; (ii) is lawfully obtained by the receiving Party from a third party which has no obligation to maintain the information as confidential and which provides it to the receiving Party without any obligation to maintain the information as proprietary or confidential; (iii) was known prior to its disclosure to the receiving Party without any obligation to keep it confidential as evidenced by tangible records kept by the receiving Party in the ordinary course of its business; (iv) is independently developed by the receiving Party without reference to the disclosing Party's Confidential Information; or (v) is the subject of written agreement whereby the disclosing Party consents to the use or disclosure of such Confidential Information (vi) was at the time of disclosure in the public domain, (vii) after disclosure, is published or otherwise becomes part of the public domain through no fault of the receiving Party.
- 15.4 In the event that receiving Party is requested or required by legal or regulatory authority to disclose any Confidential Information, the receiving Party shall promptly notify the disclosing Party of such request or requirement prior to disclosure, if permitted by Applicable Laws, so that disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Agreement. In the event that a protective order or other remedy is not obtained, or the disclosing Party waives compliance with the provisions hereof, the receiving Party agrees to furnish only that portion of the Confidential Information that its counsel reasonably determines is legally required to be disclosed under the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.
- 15.5 Nothing contained in this Agreement shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party.
- 15.6 Each Party represents the disclosure of Confidential Information to the other Party is in accordance with Applicable Laws and the Party's own stated privacy policies. Each Party agrees not to use Confidential Information of the other Party for any purpose other than the fulfillment of such Party's obligations to the other Party under this Agreement. All Confidential Information relating to a Party shall be held in confidence by the other Party to the same extent and in at least the same manner such Party protects its own confidential or proprietary information. Neither Party shall disclose, publish, release, transfer or otherwise make available Confidential Information of the other Party in any form to, or for the use or benefit of, any person or entity without the other Party's written consent, except as explicitly permitted by this Agreement. Each Party shall, however, be permitted to disclose relevant aspects of the Party's Confidential Information to its Representatives to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement and such disclosure is not prohibited by Applicable Laws; provided, however, that such Party shall take all reasonable measure to ensure that Confidential Information of the other Party is not disclosed or duplicated in contravention of the provisions of this Agreement by such Representatives. Each Party further agrees promptly to advise the other Party in writing of any misappropriation, or unauthorized disclosure or use by any person of Confidential Information which may come to its attention and to take all steps reasonably requested by the other Party to limit, stop or otherwise remedy such misappropriation, or unauthorized disclosure or use. If Applicable Laws now or hereafter in effect imposes a higher standard of confidentiality to the Confidential Information, such standard shall prevail over the provisions of this Section 15.0. Notwithstanding any provision herein, nothing in this Agreement shall prohibit Green Mountain from disclosing to its Representatives Confidential Information to the extent required to fulfill Green Mountain's obligations hereunder. Each Party

shall be responsible and liable for any unauthorized use or disclosure of the other Party's Confidential Information by such disclosing Party's Representatives.

- 15.7 Neither Party will make any more copies of the other Party's written or graphic materials containing Confidential Information than is necessary for its use under the terms of this Agreement, and each such copy shall be marked with the same proprietary notices as appear on the originals.
- 15.8 If any of FPL's Personal Information that is held by Green Mountain or its Subcontractors is breached by Green Mountain or its Subcontractors, Green Mountain shall utilize its best commercially reasonable efforts to: (i) provide FPL written notice of such breach no later than five (5) calendar days from the date it obtains actual or constructive knowledge of the breach; and (ii) mitigate any and all adverse affects of the Personal Information breach. The written notice to FPL required in the previous sentence shall include the names of all individuals whose Personal Information was breached, as well as the type of Personal Information that was breached. For purposes of the unauthorized use of Personal Information in this provision, "breach" means any acquisition or use of Personal Information that is disclosed, misused, misappropriated or unlawfully applied or otherwise in violation of this Section 15.0 that compromises the security, privacy, or integrity of the Personal Information.
- 15.9 Each Party will ensure that any third party, to whom it transfers Confidential Information, other than pursuant to Section 15.4, enters into an agreement to protect the confidentiality and security of Confidential Information in the same manner as required by this Agreement and in compliance with all Applicable Laws
- 15.10 For as long as a Party continues to possess or control the Confidential Information furnished by the other Party, and for so long as the Confidential Information remains unpublished, confidential and legally protectable as the Confidential Information of the disclosing Party, except as otherwise specified herein, the receiving Party shall make no use of such Confidential Information whatsoever, notwithstanding the expiration of this Agreement. The Parties acknowledge their understanding that the expiration of this Agreement shall not be deemed to give either Party a right or license to use or disclose the Confidential Information of the other Party. At any time during or after the Term of this Agreement, any materials or documents, including copies thereof, which contain Confidential Information of a Party shall be promptly returned to such Party upon the request of such Party except that copies may be retained, if required, for legal or financial compliance purposes. Upon termination or expiration of this Agreement, all materials or documents, including copies thereof, which contain Confidential Information of a Party shall be promptly returned to such Party or destroyed except that copies may be retained, if required, for legal or financial compliance purposes
- 15.11 It is agreed that the unauthorized disclosure or use of any Confidential Information may cause immediate or irreparable injury to the Party providing the Confidential Information, and that such Party may not be adequately compensated for such injury in monetary damages. Each Party therefore acknowledges and agrees that, in such event, the other Party shall be entitled to seek any temporary or permanent injunctive relief necessary to prevent such unauthorized disclosure or use, or threat of disclosure or use of such Party's Confidential Information
- 15.12 Notwithstanding any provision of this Agreement, the Parties agree that information, other than Personal Information, shall not be considered Confidential Information five (5) years after the expiration or termination of this Agreement. Green Mountain's obligation of nondisclosure related to Personal Information shall continue indefinitely unless one of the exceptions set forth in Section 15.3 apply.

16.0 Audit Rights and Record Retention

- 16.1 The Parties shall keep an accurate record of all transactions that occur under this Agreement. The Parties may examine the other's books and records to the extent reasonably necessary in order to determine whether either Party is in compliance with the terms of this Agreement. Any such examination will be conducted during normal business hours at the usual location of such records upon no less than ten (10) days advance written notice. The Parties will cooperate with each other and allow inspection of its relevant books and records in accordance with this Section 16.0 to the extent reasonably necessary in order to determine whether either Party is in compliance with the terms of this Agreement, subject to any confidentiality restrictions applicable to such books and records.
- 16.2 Examinations conducted hereunder by a Party shall be at the sole expense of the Party requesting the examination.
- 16.3 Until the later of (i) three (3) years after expiration or termination of this Agreement; (ii) all pending matters relating to this Agreement (e.g., Disputes) are closed; or (iii) the information is no longer required to meet FPL's records retention policy as disclosed by FPL to Green Mountain and as such policy may be adjusted from time to time; each Party shall maintain and provide access upon request to its records for to the extent reasonably necessary in order to determine whether either Party is in compliance with the terms of this Agreement and in accordance with this Section 16.0.

17.0 Insurance Requirements.

Green Mountain will procure and maintain during the Term of this Agreement the following minimum insurance covering all operations required to complete the work hereunder: (i) All insurance requirements required by Applicable Laws, which shall include without limitation, workers' compensation insurance for statutory requirement imposed by workers' compensation laws and comprehensive automobile liability insurance; and (ii) General Liability Insurance, including Broad Form Contractual Liability Coverage and Products/Completed Operations Liability Coverage, with minimum limits of One Million Dollars (\$1,000,000) combined single limit per occurrence for Bodily Injury and Property Damage Liability, which shall ensure the performance of the contractual obligations assumed by Green Mountain under this Agreement. In the event that any policy furnished by Green Mountain provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of this Agreement, or such other date, as to protect the interest of FPL. Green Mountain shall promptly provide evidence of the minimum coverage by providing an ACORD or other certificate of insurance. Green Mountain shall notify FPL within 30 calendar days of any cancellations or material changes to the insurance as specified herein. Neither Green Mountain's failure to provide evidence of minimum coverage of insurance following FPL' request, nor FPL' decision to not make such request, shall release Green Mountain from its obligation to maintain the minimum coverage provided for under this Agreement.

18.0 Indemnification

- 18.1 Each Party (the "Indemnifying Party") shall indemnify the other Party, its parent, subsidiaries and any Affiliates, and their respective present, former or future officers, directors, stockholders, members, representatives, attorneys, accountants, financial advisors, consultants, agents and employees (collectively, an "Indemnified Party"), from and against all claims, costs, liabilities and expenses (including reasonable attorneys' fees) (collectively "Liabilities") in connection with:
- 18.1.1 Claims by third parties (including, without limitation, the Indemnifying Party's employees, Subcontractors, or Subcontractor employees) resulting from any bodily injuries (including death) or property damage that occurs to or of any person during the performance of or in connection with this Agreement, by such Party, its employees, Subcontractors, or Subcontractor employees, to the extent caused by the negligence of such Party, its employees, Subcontractors, or Subcontractor employees;

- 18.1.2 Claims by third parties resulting from the gross negligence or willful misconduct of the Indemnifying Party;
- 18.1.3 Claims by third parties assessed against or suffered by the Indemnified Party as a result of noncompliance with all Applicable Laws by the Indemnifying Party; and
- 18.1.4 Claims, suits or proceeding brought by third parties arising from any infringements, misappropriation or unauthorized use of any of patents, copyrighted or uncopyrighted works, secret processes, trade secrets, patented or unpatented inventions, articles or appliances, or claims thereof pertaining to the Services offered by the Indemnifying Party under the Program or the Indemnifying Party's Marketing of the Program, or any parts or combinations thereof. If, in any such suit or proceeding, the foregoing, any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Party shall immediately exert its commercially reasonable efforts to secure for the Indemnified Party a license, at no expense to the Indemnified Party, authorizing its continued use. If the Indemnifying Party is unable to secure such license within a reasonable time, the Indemnifying Party shall, at its own expense, and without impairing either (i) performance requirements hereunder, any part, combination, or process thereof, or (ii) other normal operations of the Indemnified Party, use its commercially reasonable efforts to either replace the affected or infringing article or item, part, combination or process thereof with non-infringing components or parts, or modify same so that they become non-infringing

Notwithstanding the foregoing, the Indemnifying Party's obligations to indemnify the Indemnified Party shall not apply to any such Liabilities (as described under Sections 18.1.1 through 18.1.4), to the extent caused by the Indemnified Party's (i) breach of any representation or warranty contained in this Agreement or (ii) negligence or willful misconduct.

- 18.2 The Indemnified Party shall notify the Indemnifying Party promptly of any claim under this Section 18.0. The Indemnifying Party shall afford the Indemnified Party the opportunity to defend or participate in the defense of such claim at such Indemnified Party's expense. The Indemnifying Party shall make no settlement of an indemnified claim specifically naming or directly affecting the Indemnified Party without the indemnified Party's prior written approval, which approval shall not be unreasonably withheld or delayed. The obligations set forth in this Section 18.0 shall survive following termination of this Agreement with respect to any claim until the statute of limitations applicable to such claim has run

19.0 Covenant Not to Hire Employees

Each Party mutually agrees not to hire or enter into a contractual relationship with each other's existing employees during the Term of this Agreement. Each Party mutually agrees not to engage in any direct or indirect conduct that results in employment of the other's existing employees, during the Term of this Agreement. In the event an employee of one Party enters into an employment or contractual relationship with the other Party during the Term of this Agreement, the hiring Party agrees to pay the other Party the salary of that employee would have received for six (6) months and the recruitment cost to replace that employee. However, notwithstanding the foregoing, this Section 19.0 is not applicable to either Party where the other Party's existing employee (i) initiates discussions regarding such employment without any direct or indirect solicitation by a Party, (ii) responds to any public advertisement placed by a Party, (iii) has been introduced to Party by a third party recruiter who was not directed by a Party specifically to target the Party's or its subsidiary's or Affiliate's employees, (iv) prior to the date hereof has contacted a Party or been contacted by a Party concerning an employment opportunity, (v) has been terminated by a Party, or (vi) has not been employed by a Party during the preceding six (6) months.

20.0 Survival and Severability

20.1 The obligations of the parties hereunder which by their nature survive the expiration or termination of the Agreement and/or the completion of the Services hereunder, shall survive and inure to the benefit of the Parties, including but not limited to, such provisions under Sections, 6.0, 7.0, 8.0, 10.0, 11.0, 13.0, 15.0, 16.0, 17.0, 18.0, 22.0, 23.0, 33.0 and 34.0. Those provisions of the Agreement which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive expiration or termination of the Agreement and completion of the Services

20.2 If any provision in this Agreement is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable, in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, Sections or subsections of this Agreement shall not affect the remaining portions of this Agreement.

21.0 Notices.

All notices, request, demands, waivers and all other communications made in connection with this Agreement shall be in writing and shall be (a) mailed by certified mail, return receipt requested, postage prepaid, or (b) transmitted by hand delivery or reputable overnight delivery service, addressed as follows (or to such other address as a Party may designate by written notice to the other Party in accordance with this Section 21.0) and shall be deemed to have been delivered as of the date so delivered:

If to FPL, to: Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174
Attention: C. Dennis Brandt, Director of Products and Services

With a copy to: Florida Power & Light Company
Law Department (Law/JB)
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: R. Wade Litchfield, Vice President & Associate General Counsel

If to Green Mountain, to: Green Mountain Energy Company
300 W 6th Street, Suite 900
Austin, Texas 78701
Attention: Chief Legal Officer

With a copy to: Green Mountain Energy Company
300 W 6th Street, Suite 900
Austin, Texas 78701
Attention: Paul Markovich, Senior Vice President

22.0 Assignment.

22.1 This Agreement and a Party's rights and obligations hereunder are not assignable or transferable by either Party without the prior written consent of the other, which consent shall not be unreasonably withheld, except that either Party may assign this Agreement to any Affiliate or pursuant to any merger, sale, consolidation or other internal reorganization, provided that: (i) the assignee is of at least equal creditworthiness to the assigning Party as of the Execution Date of this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions of this Agreement, and (iii) the assigning Party delivers such enforceability assurance as the non-transferring Party may reasonably request.

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22.2 No assignment or transfer of this Agreement shall relieve either Party of any of its obligations hereunder until such obligations have been assumed by the assignee and agreed to by FPL, Green Mountain and assignee.

22.3 If the Agreement should be permitted to be assigned by either Party, it shall be binding upon and shall inure to the benefit of the permitted assignee

23.0

The Parties agree and acknowledge that FPL, not the Green Mountain, shall own all right, title and interest in and have the exclusive right to claim ownership in any [redacted] during the period from the Program Effective Date through July 31, 2013, as such rights are set forth in the [redacted] and in the Assignment Agreement, between FPL, Green Mountain and [redacted]. The Parties further agree and acknowledge that any [redacted] during the period from the Execution Date of this Agreement until the Program Effective Date will continue to be governed by the terms and conditions of the Original Contract Documents.

24.0 Entire Agreement

The Parties hereby each acknowledge that no representations, agreements, or promises were made to such Party by the other Party or by any of its employees other than those representations, agreements, or promises specifically contained herein. This Agreement, together with any schedules, amendments or Exhibits hereto, constitutes the entire agreement and understanding of the Parties with respect to the matters and transactions contemplated hereby. This Agreement supersedes any prior agreement and understanding with respect to these matters and transactions. As of the Program Effective Date, this Agreement supersedes and replaces in its entirety the Original Contract Documents.

25.0 Non-Waiver

No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. No waiver of any of the provisions of this Agreement or the failure to exercise any right herein shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver be deemed to waive any different or subsequent breach.

26.0 Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto as well as their respective successors, assigns and legal representatives

27.0 No Third Party Beneficiaries

The Parties acknowledge and intend that this Agreement was entered into solely for the respective benefit of each of them and their respective successors and assigns, and nothing in this Agreement is intended to, or shall, create any third-party beneficiaries, whether intended or incidental, and neither Party shall make any representation to the contrary.

28.0 Force Majeure

In the event either Party is rendered unable, by reason of Force Majeure, to carry out wholly or in part its obligations under the provisions hereunder, it is agreed that if such Party gives notice and full particulars of such event of Force Majeure to the other Party as soon as practicable after the occurrence of the cause relied on, then the obligations of the Party affected by such event of Force Majeure, other than the obligation to make payments then due or becoming due hereunder, shall be excused from the inception and

throughout the period of continuance of any such inability so caused, but for no longer period, and such event of Force Majeure shall, as far as practicable, be remedied with all reasonable dispatch. If an event of Force Majeure continues for more than ninety (90) days, either Party may terminate this Agreement by giving the other Party written notice of its intent to cancel.

29.0 Captions and Headings.

The captions or headings in this Agreement are for convenience only and shall not be considered a part of, or to affect the construction or interpretation of, any provision of this Agreement.

30.0 Amendments.

This Agreement may be amended or modified only by a written instrument executed by an authorized representative of each of the Parties.

31.0 Counterparts.

This Agreement may be executed in one or more counterparts, including counterparts transmitted by facsimile, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

32.0 Expenses

Unless specifically provided for elsewhere in this Agreement, each Party will bear all costs and expenses incurred by it in connection with the transactions herein, including legal fees, accounting fees and taxes that are imposed upon that Party based upon its activities hereunder.

33.0 Taxes

Green Mountain is responsible for and shall pay all taxes due under this Agreement applicable to Green Mountain's performance of the Services hereunder, if any, including all present Florida sales and use taxes and all present or future import duty, federal, state, county, municipal or other excise or similar taxes levied with respect to Green Mountain's performance of its Services; except that FPL shall be responsible for reimbursing Green Mountain for all taxes on vendor costs which are Direct Marketing Costs. Green Mountain expressly agrees that FPL shall incur no liability or expense under this Agreement due to change in tax or duty requirements applicable to Green Mountain's performance of the Services hereunder. Any increase in taxes or duties applicable to Green Mountain's performance of the Services hereunder, excluding Florida sales and use tax, shall be at the expense of Green Mountain and not FPL. In no event shall either Party be required to pay any tax levied on or determined by the other Party's income, taxes expressly designed to be paid solely by the other Party or licenses and permits required for the other Party or to conduct business. FPL shall not be obligated to pay, and shall be immediately reimbursed by Green Mountain if FPL does pay, any taxes, including penalties or interest charges levied or assessed directly as a result of any failure of Green Mountain to comply with this Agreement, Applicable Laws or governmental regulations, and Green Mountain shall indemnify and hold FPL Entities harmless from the payment of any and all such taxes, penalties and interest on such taxes or penalties. This Section 33.0 shall not reduce or in any way affect FPL's obligations pursuant to Section 6.3.

34.0 Drafting.

Each Party acknowledges that its legal counsel participated in the preparation of this Agreement. The Parties therefore stipulate that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement so as to favor any Party against the other.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties duly authorized representatives have executed this Agreement on the dates set forth below.

FOR: Florida Power & Light Company

By: _____

Name: Marlene M. Santos

Title: Vice President, Customer Service

Date: _____

FOR: Green Mountain Energy Company

By: Paul D. Thomas

Name: Paul D. Thomas

Title: Chief Executive Officer and President

Date: 6/5/08

EXHIBIT A

DESCRIPTION OF THE PROGRAM

FPL, in collaboration with Green Mountain, will file a modification to the Program with the FPSC, under which interested residential and commercial/industrial customers may voluntarily pay a premium to support the development of renewable energy assets in Florida.

~~To develop the renewable energy assets for the Program, FPL will enter into contracts with suppliers or customers for the construction of renewable energy generation resources. FPL may choose to construct the renewable energy assets on FPL owned property or assist the construction of assets at customer's facilities~~

The goal of the Program is to encourage the development of renewable assets in Florida. For purposes of the Program, eligible renewable facilities shall include facilities utilizing solar photovoltaic, or solar thermal, biomass fuel, land-fill gas, wind, ocean currents, tides, and other hydrological applications, and other environmentally suitable renewable energy sources as identified by FPL.

The monthly premium paid by Participants will be designed to contribute to the cost of the development of the renewable sites, as well as Program Marketing and administration costs.

Construction of the new renewable assets is planned to begin as the Program revenues, excluding Marketing and administration costs, reach \$250,000. For each \$250,000 of Program revenues collected by FPL from Customers, FPL endeavors at a minimum, to develop and install (or cause to be installed) 25 kW (or the equivalent) of solar or other renewable generation as described in this Exhibit A above within a year after reaching each incremental level.

FPL may also offer, via the proposed Program, to provide supplemental rebates to Customers to complement future State rebates to promote the construction of solar photovoltaic or solar thermal for residential and commercial/industrial applications. This offering would be made as funds become available and will be offered in limited increments.

DOCUMENT NUMBER-DATE

05224 JUN 19 88

FPSC-COMMISSION CLERK

EXHIBIT B

**GREEN MOUNTAIN
PROGRAM COMPENSATION & PERFORMANCE METRICS**

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Compensation	2008	2009	2010	2011	2012	2013
Monthly Fee per Participant paid by FPL to Green Mountain						
Performance Metrics Goals	2008	2009	2010	2011	2012	2013
Annual program performance growth goals ⁽¹⁾	N/A	7%	10%	10%	12%	4%
Maximum average annual cost per sale ⁽²⁾						

- (1) The annual program performance growth is determined by dividing the subject year's number of Participants in the Program for the December FPL Cycle Month by the number of Participants in the Program for prior year's December FPL Cycle Month. For 2013, the number of Participants in the Program for the July FPL Cycle Month paid Participants is divided by the December 2012 paid participants. The number of Participants for each FPL Cycle Month shall, in each case, be calculated in accordance with Section 6.1 and the other terms of the Agreement.
- (2) While the Direct Marketing Costs are paid by FPL, Green Mountain's goal for the average cost per sale on an annual basis is to not exceed this amount. The average annual cost per sale is a target and does not limit in any way FPL's obligation to reimburse Green Mountain for all Direct Marketing Costs.

EXHIBIT C

MONTHLY SERVICE FEE EXAMPLES

	C	D	E	F	G	H
Electric Amount Due to FPL ⁽¹⁾						
Sunshine Energy ⁽²⁾ Monthly Rate Due to FPL						
Monthly Service Fee						
Electric Amount Paid ⁽³⁾						
Monthly Program Participation Fee paid						
Monthly Service Fee paid to Green Mountain						

C D E F G H

Facts for all Scenarios

FPL Cycle Month 1	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$100.00	\$9.75				
FPL Cycle Month 2	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$150.00	\$9.75				
Scenario #1 Participant pays both months in full							
FPL Cycle Month 1	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$100.00	\$9.75		\$100.00	\$9.75	
FPL Cycle Month 2	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$150.00	\$9.75		\$150.00	\$9.75	
Scenario #2 Participant pays 1/2 of first month in month 1 & full balance in month 2							
FPL Cycle Month 1	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$100.00	\$9.75		\$50.00	\$4.88	
FPL Cycle Month 2	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$200.00 ⁽¹⁾	\$9.75		\$200.00	\$14.62	
For Scenario #2, the following breakdown shows how the payment is applied in Month 2							
	Unpaid, carry-over balance from FPL Cycle Month 1:	\$50.00			\$50.00	\$4.87	
	FPL Cycle Month 2 amounts newly billed:	\$150.00	\$9.75		\$150.00	\$9.75	
		\$200.00	\$9.75		\$200.00	\$14.62	
Scenario #3 Participant pays 1/2 of first month in month 1 & 1/3 of balance in month 2							
FPL Cycle Month 1	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$100.00	\$9.75		\$50.00	\$4.88	
FPL Cycle Month 2	Total Electric Amount including Sunshine Energy Premium of \$9.75	\$200.00 ⁽¹⁾	\$9.75		\$100.00 ⁽²⁾	\$8.12 ⁽³⁾	
For Scenario #3, the following breakdown shows how the payment is applied in Month 2							
	Unpaid, carry-over balance from FPL Cycle Month 1:	\$50.00			\$50.00	\$4.87	
	FPL Cycle Month 2 amounts newly billed:	\$150.00	\$9.75		\$50.00	\$3.25	
		\$200.00	\$9.75		\$100.00	\$8.12	

(1) The Electric Amount Due represents the total amount due to FPL for electric services, the Sunshine EnergySM Program Monthly Rate and all FPL Service Charges. This amount includes both current charges and past due charges for FPL electric services, the Sunshine EnergySM Program Monthly Rate and FPL Service Charges. The term "FPL Service Charges" means late payment charges, reconnect charges (for disconnected delinquents), returned check charges, penalties for field agent collections and similar charges. FPL posts payments to oldest debts first with electric amount receiving first priority based on debit date. After amounts owed for the oldest debit date are paid in full (for FPL electric services, the Sunshine

1 EnergySM Program Monthly Rate and FPL Service Charges), FPL then posts payments to the next oldest debit date and so on. For customers on
2 budget billing or other electric bill payment programs, the total Electric Amount Billed shall be the amount which the Customer is required to pay
3 under the budget billing or electric bill payment program on the applicable bill for the applicable FPL Billing Cycle. For example, if a Customer pays
4 the full amount billed under the electric bill payment program for an FPL Billing Cycle, then 100% of the Monthly Rate shall be included in the
5 Monthly Program Participation Fee.

6 (2) The Electric Amount Paid represents the total amount paid by Customer to FPL for electric services, the Sunshine EnergySM Monthly Rate and all
7 FPL Service Charges,

8 (3) The Monthly Service Fee paid to Green Mountain is [REDACTED] calculated in accordance with Section 6.1 of the Agreement and this Exhibit C.

(4) This Electric Amount Billed includes \$50.00 in unpaid amounts from FPL Cycle Month 1 and \$150.00 in new charges for FPL Cycle Month 2.


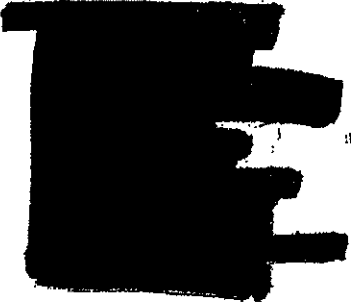
(5) Of the \$100.00 paid, \$50.00 is allocated to the FPL Cycle Month 1, then the remaining \$50.00 to FPL Cycle Month 2.

(6) The Monthly Program Fee for FPL Cycle Month 2 is \$8.12, which equals \$4.87 (for the \$50.00 allocated to the unpaid, carry-over balance from FPL Cycle Month 1) plus \$3.25 (for the \$50.00 allocated to the \$150.00 in new charges billed for FPL Cycle Month 2).

(7) When Electric Amounts Billed are written-off for lack of payment, the Sunshine EnergySM Monthly Rate billed outstanding balance is set to \$0.00 for the written-off accounts.

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COMPARISON OF KEY PROVISIONS IN GREEN MOUNTAIN AGREEMENTS

Provision	Current Contract	New Contract
Services Provided by Green Mountain:	<ul style="list-style-type: none">• Purchase RECs (Section 15.3)• Cause to be constructed 150 kW of solar capacity for every 10,000 customers (Section 18.1)• Marketing and advertising services (Section 13)	<ul style="list-style-type: none">• No purchase of RECs• No involvement in the construction of renewable facilities (FPL solely responsible for siting and developing renewable facilities)• Marketing, advertising, and customer retention services <u>only</u> (Sections 3.1 and 4)
Remittance to Green Mountain:	<ul style="list-style-type: none">• FPL remits \$9.10 per 1,000 kW for green tags, marketing services, and development of solar resources (Section 12.1)	
Termination:	<ul style="list-style-type: none">• FPL can terminate for convenience if a) FPL pays a termination fee or b) FPL ceases to offer a green pricing program to residential customers for two years (Sections 20.4 – 20.5)	<ul style="list-style-type: none">• FPL can terminate for convenience after January 1, 2009; FPL would only owe the monthly service fees and direct marketing costs through the termination effective date and could continue the program and use of the Sunshine Energy name without a termination fee (Section 10.1.3)