

COMMERCIAL ELECTRIC VEHICLE CHARGING SERVICES AGREEMENT

This Commercial Electric Vehicle Charging Services Agreement ("Agreement") is made and entered into this _____ day of _____, 20____ by and between _____, a _____, having its principal office at _____ (hereafter, the "Customer") and Florida Power & Light Company, a Florida corporation, having offices at 700 Universe Boulevard, Juno Beach, Florida 33408 (hereafter "Company") (each a "Party" and collectively the "Parties"). The Service (as defined in the paragraph below) provided under this Agreement is subject to the Rules and Orders of the Florida Public Service Commission ("FPSC") and to Company's Electric Tariff, including, but not limited to, the Commercial Electric Vehicle Charging Services Rider, Rate Schedule [CEVCS-1], as approved or subsequently revised by the FPSC and the General Rules and Regulations for Electric Service as they are now written, or as they may be hereafter revised, amended or supplemented (collectively, hereafter referred to as the "Electric Tariff"). In case of conflict between any provision of this Agreement and the Electric Tariff, this Agreement shall control. Capitalized terms not defined herein shall have the meaning set forth in the Electric Tariff.

WHEREAS, the Customer hereby applies to Company for receipt of service, as more specifically described in a Statement of Work ("SOW") for the purpose of providing commercial electric vehicle charging infrastructure (hereafter the "Service"), at the Customer facility located at _____ (hereafter the "Facility").

NOW THEREFORE, in consideration of their mutual promises and undertakings, the Parties agree to the following terms and conditions in this Agreement:

1. **Effective Date.** This Agreement shall become effective upon the acceptance hereof by Company ("Effective Date"), evidenced by the signature of Company's authorized representative appearing below, which, together with the Electric Tariff and the SOW, shall constitute the entire agreement between the Customer and Company with respect to provision of the Service.
2. **Term of Agreement.** The term of this Agreement (the "Term") will commence on the Effective Date and will continue for ten (10) years following the date on which Company delivers notice to Customer that the Equipment is ready for commercial operation (the "Commercial Operation Date").
3. **Scope of Services.** Company will design, procure, install, own, operate and provide maintenance to electric vehicle charging equipment ("Equipment") to furnish the Service as more specifically described in the SOW. Customer acknowledges and agrees that (i) the Equipment will be removable and will not be a fixture or otherwise part of the Facility, (ii) Company will own the Equipment, and (iii) Customer has no ownership interest in the Equipment. The Company reserves the right to remotely control charging session schedules and/or curtail the energy delivered by the Equipment at any time. For the avoidance of doubt, it is the Parties' intent that this Agreement (i) is for the Company's provision of Services to Customer using Company's Equipment, and (ii) is not for the license, rental or lease of the Equipment by Company to Customer. Customer acknowledges and agrees that Company and/or its contractors (i) will gather data and information from the Equipment and (ii) have the rights to use such data, including the right to own any derivative works created using such data.
4. **Equipment Maintenance; Alterations.** During the Term, Company shall provide maintenance to the applicable Equipment in accordance with generally accepted industry practices. Customer shall promptly notify Company when Customer has knowledge of any operational issues or damage related to the Equipment. Company shall inspect and repair Equipment that is not properly operating within the timelines agreed upon in the SOW. Company will invoice Customer for repairs that are the Customer's financial responsibility under Section 11(c), due and payable by Customer within thirty (30) days of the date of such invoice. The Customer shall not move, modify, remove, adjust, alter or change in any material way the Equipment, or any part thereof, during the term of the Agreement, except in the event of an occurrence reasonably deemed by the Customer or Company to constitute a bona fide emergency. All replacements of, and alterations or additions to, the Equipment shall become part of the Equipment. In the event of a breach of this Section 4 by Customer, Company may, at its option and sole discretion, restore Equipment to its original condition at Customer's sole cost and expense.
5. **Relocation.** Relocation of Equipment: Upon reasonable prior written notice from Customer, Company agrees to relocate Equipment at Customer's sole expense to a location mutually agreed upon by the Parties within the same Customer site. If Customer so desires to relocate the Equipment, Customer shall provide written notice to Company. A Company representative will provide Customer with a written estimate of costs to relocate the Equipment within 90 days of receipt of the written notice from Customer to relocate Equipment. Customer agrees that such estimate is provided for informational purposes only and that Customer is responsible for all actual costs incurred for the shut-down, relocation, and reinstallation of Equipment. Customer shall pay Company such amount of actual costs for the relocation of Equipment within 90 days of the services performed by Company.
6. **Customer Payments.**
 - (a) **Fees.** The Customer's monthly Service payment shall be in the amount set forth in the SOW ("Monthly Service Payment"). Applicable taxes will also be included in or added to the Monthly Service Payment. Customer's obligation to pay the Monthly Service Payment, plus applicable taxes due, shall begin on the Commercial Operation Date and shall be due and payable by Customer pursuant to the General Rules and Regulations for Electric Service.

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- (b) **Late Payment.** Charges for Services due and rendered which are unpaid as of the past due date are subject to a Late Payment Charge of the greater of \$5.00 or 1.5% applied to any past due unpaid balance of all accounts, except the accounts of federal, state, and local governmental entities, agencies, and instrumentalities. A Late Payment Charge shall be applied to the accounts of federal, state, and local governmental entities, agencies, and instrumentalities at a rate no greater than allowed, and in a manner permitted, by applicable law.
7. **Customer Credit Requirements.** At the discretion of the Company and subject to the confidentiality obligations set forth in this Agreement, Company may request and Customer shall provide Company with the most recent financial statements of each of the Customer and/or its parent company and with such other documents, instruments, agreements and other writings to determine the creditworthiness of Customer. The Company may also use debt ratings provided by the major credit rating agencies or consult other credit rating services to determine Customer creditworthiness. In the reasonable discretion of Company to assure Customer payment of Monthly Service Payments, Company may request and Customer will be required to provide cash security, a surety bond or a bank letter of credit, in an amount as set forth in the SOW, prior to Company's procurement or installation of Equipment. Each Customer that provides a surety bond or a bank letter of credit must enter into the agreement(s) set forth in Sheet No. 9.440 of the Company's Electric Tariff for the surety bond and Sheet Nos. 9.430 and 9.435 of the Company's Electric Tariff for the bank letter of credit. Failure to provide the requested security in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Upon the end of the Term and after Company has received final payment for all bills, including any applicable Termination Fee pursuant to Section 12(a), for Service incurred under this Agreement, any cash security held by the Company under this Agreement will be refunded, and the obligors on any surety bond or letter of credit will be released from their obligations to the Company.
8. **Grant of Access.** Customer hereby grants Company access to the Facility sufficient to allow Company, in Company's sole discretion, to (i) laydown, stage and install the Equipment, tools, materials, other equipment and rigging and to park construction crew vehicles in connection with the installation or removal of the Equipment, (ii) inspect and provide maintenance to the Equipment; or (iii) provide any other service contemplated or necessary to perform under this Agreement, including required distribution services, equipment and needs. In the event that Company, in its sole discretion, determines that an easement is necessary for the purpose of connecting the Equipment to the electrical grid, then Customer shall grant Company an easement in a mutually agreeable location in, on, over, under, through and across a portion of the Facility to be identified by the Parties on the Company's customary form. Furthermore, if any event creates an imminent risk of damage or injury to the Equipment, any person or person's property, Customer grants Company immediate unlimited access to the Facility to take such action as Company deems appropriate to prevent such damage or injury (collectively "Access"). Upon execution of this Agreement and the Parties agreement to the Equipment location, Company shall obtain a legal description of the necessary Access locations. The Customer must also obtain and provide mortgage subordinations, as necessary to protect the Company's right of Access. Failure to provide any Company-requested documents in the manner set forth above within ninety (90) days of the date of this Agreement shall be a material breach of this Agreement unless such 90-day period is extended in writing by Company. Customer agrees that it will not interfere with Company's right of access to the Facility as reasonably necessary for (i) Company's laydown and installation of the Equipment, (ii) Company's maintenance and/or removal of Equipment, and (iii) Company's performance of the Service.
9. **Company Testing of Equipment.** The Company shall have the exclusive right to manually and/or remotely test the Equipment to verify that it will operate within required parameters.
10. **Customer Responsibilities.** The Customer shall not modify its electrical system at the Facility in a manner that adversely impacts the Equipment or its use. Company shall be entitled to rely on the accuracy and completeness of any information provided by the Customer related to the Facility. The Customer shall be obligated, at its sole expense, to keep the Facility free and clear of anything that may (i) impair the maintenance or removal of Equipment, (ii) impair the Company's testing of the Equipment pursuant to Section 8, or (iii) cause damage to the Equipment.

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11. **Permits and Regulatory Requirements.** Company shall be responsible for obtaining and for compliance with any license or permit required to be in Company's name to enable it to provide the Service. The Customer shall be responsible for obtaining and for compliance with any license, permits, and/or approvals from proper authorities required to be in Customer's name in order for the Customer to receive the Service. Each Party agrees to cooperate with the other Party and to assist the other Party in obtaining any required permits.
12. **Title and Risk of Loss.**
- (a) **Title.** The Customer agrees that Equipment installed at the Facility is and will remain the sole property of Company unless and until the end of the original Term (or upon any earlier termination if the Company elects to not remove the Equipment). Company reserves the right to modify or upgrade Equipment as Company deems necessary, in its sole discretion, for the continued supply of the Service but will not degrade the capability. Any modifications, upgrades, alterations, additions to the Equipment or replacement of the Equipment shall become part of the Equipment and shall be subject to the ownership provisions of this Section 11(a). The Parties agree that the Equipment is personal property of Company and not a fixture to the Facility and shall retain the legal status of personal property as defined under the applicable provisions of the Uniform Commercial Code. With respect to the Equipment, and to preserve the Company's title to, and rights in the Equipment, Company may file one or more UCC financing statements or fixture filings or take similar action, as applicable, in such jurisdictions, as Company deems appropriate. Furthermore, the Parties agree that Company has the right to record notice of its ownership rights in the Equipment in the public records of the county of the Facility or the state of Florida.
 - (b) **Liens.** Customer shall keep the Equipment free from any liens by third parties. Customer shall provide timely notice of Company's title and ownership of the Equipment to all persons that may come to have an interest in or lien upon the Facility.
 - (c) **Risk of Loss to Equipment (Customer Responsibility).** **CUSTOMER SHALL BEAR ALL RISK OF LOSS OR DAMAGE OF ANY KIND WITH RESPECT TO ALL OR ANY PART OF THE EQUIPMENT LOCATED AT THE FACILITY TO THE EXTENT SUCH LOSS OR DAMAGE IS CAUSED BY THE ACTIONS, NEGLIGENCE, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CUSTOMER, ITS EMPLOYEES, CONTRACTORS, AGENTS, INVITEES AND/OR GUESTS, AND IN THE EVENT THAT THE EQUIPMENT IS DAMAGED BY A FORCE MAJEURE EVENT OR BY THIRD PARTY CRIMINAL ACTS OR TORTIOUS CONDUCT, THE CUSTOMER SHALL BE LIABLE TO THE EXTENT SUCH DAMAGES ARE RECOVERABLE UNDER THE CUSTOMER'S INSURANCE AS REQUIRED TO BE PROVIDED BY SECTION 17(b) OR UNDER ANY OTHER AVAILABLE INSURANCE OF CUSTOMER (COLLECTIVELY, A "CUSTOMER CASUALTY").** Any proceeds provided by such insurance for loss or damage to the Equipment shall be promptly paid to Company.
 - (d) **Risk of Loss to Equipment (Company Responsibility).** In the event the Equipment is damaged and is not a Customer Casualty, the Company will repair or replace the Equipment at Company's cost, or, in the event that Equipment is so severely damaged that substantial replacement is necessary, the Company may in its sole discretion either (i) terminate this Agreement for its convenience upon written notice to Customer, provided that Company will have the right, but not the obligation, to remove the Equipment at its cost within a reasonable period of time, and Customer will be obligated to pay any outstanding Monthly Service Payments and applicable taxes for Service provided to Customer up to and through the date the Equipment was damaged, or (ii) replace the Equipment and adjust the Monthly Service Payments to reflect the new in-place cost of the Equipment less the in-place cost of the replaced Equipment. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.
13. **Expiration or Termination of Agreement.**
- (a) **Early Termination for Convenience by Customer.** Subject to the obligation of Customer to pay Company the Termination Fee (as defined below), the Customer has the right to terminate this Agreement for its convenience upon written notice to Company at least sixty (60) days prior to the effective date of termination. The "Termination Fee" will be an amount equal to (i) any outstanding Monthly Service Payments and applicable taxes for Service provided to Customer prior to the effective date of termination, plus (ii) any unrecovered maintenance costs expended by Company prior to the effective date of termination, plus (iii) the unrecovered capital costs of the Equipment less any salvage value of Equipment

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removed by Company, plus (iv) any removal cost of any Equipment, minus (v) any payment security amounts recovered by the Company under Section 6 (Customer Credit Requirements). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Company will invoice Customer the Termination Fee, due and payable by Customer within thirty (30) days of the date of such invoice. Company's invoice may include an estimated salvage value of Equipment removed by Company.

- (b) **Early Termination by Company for Convenience or by Company Due to Change in Law.** The Company has the right to terminate this Agreement for its convenience upon written notice to Customer at least sixty (60) days prior to the effective date of termination, or, in whole or in part, upon written notice to Customer as a result of FPSC actions or change in applicable laws, rules, regulations, ordinances or applicable permits of any federal, state or local authority, or of any agency thereof, that have the effect of terminating, limiting or otherwise prohibiting Company's ability to provide the Service. Upon a termination for convenience by Company pursuant to this Section 12(b), Customer must choose to either: (i) Purchase the Equipment upon payment of a transfer price mutually agreeable to Company and Customer, negotiated in good faith; or (ii) Request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. If Customer and Company cannot reach agreement as to the transfer price of the Equipment within ninety (90) days of Company's notice of termination for convenience, Customer shall be deemed to have elected the request for Company to remove the Equipment.
- (c) **Early Termination of Agreement for Cause.** In addition to any other termination rights expressly set forth in this Agreement, Company and Customer, as applicable, may terminate this Agreement for cause upon any of the following events of default (each an "Event of Default"): (i) Customer fails to timely pay the Monthly Service Payment and fails to cure such deficiency within thirty (30) days of written notice from the Company; (ii) Company materially breaches its obligations under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Customer; (iii) Customer fails to perform or observe any other covenant, term or condition under the Agreement and such failure is not cured within thirty (30) days after written notice thereof by Company; (iv) subject to Section 19, Customer sells, transfers or otherwise disposes of the Facility; (v) Customer or any guarantor of Customer's obligations or liabilities hereunder ("Guarantor") sells, transfers or otherwise dispose of all or substantially all of its assets; (vi) Customer or Guarantor enters into any voluntary or involuntary bankruptcy or other insolvency or receivership proceeding, or makes an assignment for the benefit of creditors; (vii) any representation or warranty made by Customer or Guarantor or otherwise furnished to Company in connection with the Agreement shall prove at any time to have been untrue or misleading in any material respect; or (viii) Customer removes or allows a third party to remove, any portion of the Equipment from the Facility.
- i. Upon a termination for cause by Company, the Company shall have the right to access and remove the Equipment and Customer shall be responsible for paying the Termination Fee as more fully described in Section 12(a). For the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election. Additionally, the Customer shall be liable to Company for any attorney's fees or other costs incurred in collection of the Termination Fee. In the event that Company and a purchaser of the Facility (who has not assumed the Agreement pursuant to Section 19) agree upon a purchase price of the Equipment, such purchase price shall be credited against the Termination Fee owed by Customer.
- ii. Upon a termination for cause by Customer, Customer must choose to either (i) purchase the Equipment upon payment of a transfer price mutually agreeable to Company and Customer, negotiated in good faith, or (ii) request that Company remove the Equipment, at Company's sole cost, within a reasonable time period, and pay no Termination Fee; provided that, for the avoidance of doubt, Company has the right, but not the obligation, to access and remove any and all Equipment, at its sole discretion. Title to Equipment that Company elects not to remove shall transfer to Customer upon written notice by Company to Customer of such an election.
- (d) **Expiration of Agreement.** At the end of the Term and subject to Customer making payments of all outstanding amounts due, title to the Equipment shall transfer to Customer at no additional charge. Thereafter, Customer shall be responsible (i) for payment of all electric usage by the Equipment pursuant to the Company's Electric Tariff and Company shall be permitted to make any needed adjustments to the Equipment; and (ii) Customer shall be responsible for all maintenance and other costs related to ownership of the Equipment.

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14. Warranty and Representations.

- (a) Company's Disclaimer of Express and/or Implied Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO THE COMPANY'S OBLIGATIONS, SERVICES AND/OR THE EQUIPMENT. CUSTOMER ACKNOWLEDGES THAT THERE IS NO WARRANTY IMPLIED BY LAW, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND THE IMPLIED WARRANTY OF CUSTOM OR USAGE. CUSTOMER FURTHER ACKNOWLEDGES IN NO EVENT DOES COMPANY WARRANT AND/OR GUARANTY TO THE CUSTOMER THAT THE ELECTRICAL SERVICES TO THE FACILITY WILL BE UNINTERRUPTED OR THAT THE INSTALLATION OF THE EQUIPMENT AND PROVISION OF SERVICES PROVIDED HEREUNDER WILL AVERT OR PREVENT THE INTERRUPTION OF ELECTRIC SERVICES.
- (b) Customer Representations and Warranties. The Customer represents and warrants that (i) the Facility at which Company's Equipment is to be located is suitable for the location of such Equipment; (ii) the placing of such Equipment at such Facility will comply with all laws, rules, regulations, ordinances, zoning requirements or any other federal, state and local governmental requirements applicable to Customer; (iii) all information provided by the Customer related to the Facility is accurate and complete; (iv) Customer holds title to the real property on which the Facility is located or has the right of possession of the real property on which the Facility is located for the Term; and (v) Customer has the right to grant Company access and/or easement rights related to the real property on which the Facility is located, or has the right to require the owner of the real property on which the Facility is located to grant Company such access and/or easement rights.

15. LIMITATIONS OF LIABILITY.

- (a) IT IS UNDERSTOOD AND ACKNOWLEDGED BY CUSTOMER THAT COMPANY IS NOT AN INSURER OF LOSSES OR DAMAGES THAT MIGHT ARISE OR RESULT FROM THE EQUIPMENT NOT OPERATING AS EXPECTED. BY SIGNING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER FOR COMPLETE OR PARTIAL INTERRUPTION OF SERVICE, OR FLUCTUATION IN VOLTAGE, RESULTING FROM CAUSES BEYOND ITS CONTROL OR THROUGH THE ORDINARY NEGLIGENCE OF ITS EMPLOYEES, SERVANTS OR AGENTS.
- (b) SUBJECT TO SECTION 14(c), NEITHER COMPANY NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT OR INCIDENTAL LOSSES OR PUNITIVE DAMAGES UNDER THE AGREEMENT, INCLUDING LOSS OF USE, COST OF CAPITAL, LOSS OF GOODWILL, LOST REVENUES OR LOSS OF PROFIT, AND COMPANY AND CUSTOMER EACH HEREBY RELEASES THE OTHER FROM ANY SUCH LIABILITY.
- (c) THE LIMITATIONS OF LIABILITY UNDER SECTION 14(a) AND SECTION 14(b) ABOVE SHALL NOT BE CONSTRUED TO LIMIT ANY INDEMNITY OR DEFENSE OBLIGATION OF CUSTOMER UNDER SECTION 17(c).

Customer's initials below indicate that Customer has read, understood and voluntarily accepted the terms and provisions set forth in Section 14.

Agreed and accepted by Customer: _____ (Initials)

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16. **Force Majeure.** An event of Force Majeure shall have the meaning as set forth in Technical Terms and Abbreviations of the Company Tariff.. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure event, such Party shall provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. The Party so affected by a Force Majeure event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Provided that the requirements of this Section 16 are satisfied by the affected Party, to the extent that performance of any obligation(s) is prevented or delayed by a Force Majeure event, the obligation(s) of the affected Party that is obstructed or delayed shall be extended by the time period equal to the duration of the Force Majeure event. Notwithstanding the foregoing, the occurrence of a Force Majeure event shall not relieve Customer of payment obligations under this Agreement.
17. **Confidentiality.** "Confidential Information" shall mean all nonpublic information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by a disclosing Party or otherwise ("Disclosing Party"), which is disclosed to a receiving Party ("Receiving Party"). Confidential Information shall not be used for any purpose other than for purposes of this Agreement. The Receiving Party shall use the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standard. Except to the extent required by applicable law, Customer shall not make any public statements that reference the name of Company or its affiliates without the prior written consent of Company.

18. Insurance and Indemnity.**(a) Insurance to Be Maintained by the Company.**

- i. At any time that the Company is performing Services under this Agreement at the Customer Facility, the Company shall, maintain, at its sole cost and expense, with insurer(s) rated "A-, VII" or higher by A.M. Best's Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers' compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers' Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee.
- ii. Notwithstanding any other requirement set forth in this Section 17(a), Company may meet the above required insurance coverage and limits with any combination of primary, excess, or self-insurance.

(b) Insurance to Be Maintained by the Customer.

- i. The Customer, during and throughout the Term of this Agreement, shall, maintain, at its sole cost and expense, with insurer(s) rated "A-, VII" or higher by A.M. Best's Key Rating Guide, (i) commercial general liability policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence for bodily injury or death and/or property damage, (ii) automobile liability policy with minimum limits of One Million (\$1,000,000.00) Dollars combined single limit for all owned, non-owned, leased and hired automobiles, (iii) umbrella liability policy with minimum limits of Two Million (\$2,000,000.00) Dollars per occurrence, and (iv) workers' compensation insurance coverage as mandated by the applicable laws of the State of Florida and Employers' Liability cover with limits of One Million (\$1,000,000.00) Dollars per accident, by disease and per policy and per employee. With respect to insurance required in (i), (ii), and (iii) above, Customer shall name Company as an additional insured and provide a waiver of subrogation in favor of Company.

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(Continued from Sheet No. 9.838)

- i. In the event Customer is subject to Section 768.28 Florida Statutes, Customer acknowledges, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that Customer is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of Two Hundred Thousand (\$200,000.00) Dollars per person and Three Hundred Thousand (\$300,000.00) Dollars per occurrence, or such monetary waiver limits that may change and be set forth by the legislature. Customer shall also maintain workers' compensation insurance in accordance with Chapter 440, Florida Statutes. Coverage shall also include Employers' Liability coverage with limits of One Million (\$1,000,000.00) Dollars per accident.
- (c) Indemnity. The Customer shall indemnify, hold harmless and defend Company from and against any and all liability, proceedings, suits, cost or expense for loss, damage or injury to persons or property ("Losses") to the extent arising out of, connected with, relating to or in any manner directly or indirectly connected with this Agreement; provided, that nothing herein shall require Customer to indemnify Company for Losses caused by Company's own negligence, gross negligence or willful misconduct. The provisions of this paragraph shall survive termination or expiration of this Agreement.
19. Non-Waiver. The failure of either Party to insist upon the performance of any term or condition of this Agreement or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of its right to demand future performance of such term or condition, or to exercise such right in the future.
20. Assignment. Neither this Agreement, nor the Service, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Customer without Company's prior written approval. Customer will provide written notice to Company of a prospective sale of the real property upon which the Equipment is installed, at least thirty (30) days prior to the sale of such property in the event of the sale of the real property upon which the Equipment is installed, subject to the obligations of this Agreement including Section 6 (Customer Credit Requirements), such sale shall be considered an early termination of this Agreement by Customer unless the Company agrees in writing to an assignment of this Agreement to the purchaser of the real property
21. Dispute Resolution, Governing Law, Venue and Waiver of Jury Trial. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Each Party agrees not to commence or file any formal proceedings against the other Party related to any dispute under this Agreement for at least forty-five (45) days after notifying the other Party in writing of the dispute. A court of competent jurisdiction in the Circuit Court for Palm Beach County, Florida or the United States District Court for the Southern District of Florida only, as may be applicable under controlling law, shall decide any unresolved claim or other matter in question between the Parties to this Agreement arising out of or related in any way to this Agreement, with such court having sole and exclusive jurisdiction over any such matters. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS THAT MIGHT EXIST TO HAVE A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON, RELATING TO, ARISING OUT OF, UNDER OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.
22. Modification. No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both Parties and specifically states it is an amendment to this Agreement.
23. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
24. Survival. The obligations of the Parties hereunder which by their nature survive the termination or expiration of the Agreement and/or the completion of the Service hereunder, shall survive and inure to the benefit of the Parties. Those provisions of this Agreement which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination or expiration of this Agreement and/or completion of the Service.

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- 25. Notices.** All notices, demands, offers or other written communications required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and, shall be either hand-delivered, sent via certified mail, return receipt requested and postage prepaid, or sent via overnight courier to such Party's address as set forth in the first paragraph of this Agreement. Each Party shall have the right to change the place to which notices shall be sent or delivered by similar notice sent or delivered in like manner to the other Party.
- 26. Further Assurances.** Company and Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.
- 27. Governmental Entities.** For those Customers which are a governmental entity of the State of Florida or political subdivision thereof ("Governmental Entity"), to the extent the Governmental Entity is legally barred by Florida state or federal law from executing or agreeing to any provision of this Agreement, then such provision of this Agreement will be deemed modified to the extent necessary to make such provisions consistent with Florida state or federal law. The remainder of this Agreement shall not be affected thereby and will survive and be enforceable.
- 28. Entire Agreement.** The Agreement constitutes the entire understanding between Company and the Customer relating to the subject matter hereof, superseding any prior or contemporaneous agreements, representations, warranties, promises or understandings between the Parties, whether oral, written or implied, regarding the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereby caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date.

Customer**Florida Power & Light Company**

By: _____
(Signature of Authorized Representative)

By: _____
(Signature of Authorized Representative)

(Print or Type Name)

(Print or Type Name)

Title: _____

Title: _____

Date: _____

Date: _____