

**Attachment I**

**Attached herein is the Energy Portfolio Management Agreement between Phalanx Energy Services, LLC and TrueLight, LLC to meet technical and managerial requirements to comply with all sections of Part 451.240.**



# Energy Portfolio Management Agreement

Date: January 23, 2012

# Energy Portfolio Management Agreement

Parties This Energy Portfolio Management Agreement (this "Agreement"), dated as of January 23, 2012, is entered into by and between TrueLight Energy, LLC, a Massachusetts limited liability company ("TLE"), and Phalanx Energy Services, LLC, a Delaware limited liability company ("Client"). The parties, intending to be legally bound, agree as follows:

- Recitals
- A. TLE has expertise in energy portfolio risk and asset management, energy generation development services, energy advisory and consulting services, energy brokerage services, and related services; and
- B. Client wishes to engage TLE, and TLE agrees to be engaged, to provide one or more energy-related services upon the terms and conditions set forth in this Agreement.

In consideration of the obligations set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby agreed, the parties, intending to be legally bound, hereby agree as follows:

Services **Section 1. Scope of Services.**

(a) *Procedures Related to Statements of Work.* Client shall engage TLE to provide, and TLE shall provide to Client, the services (the "Services") as specified on the a service order ("Service Order"), substantially in the form of Exhibit A attached hereto. Client shall provide on a timely basis accurate and complete data and information that TLE reasonably requires to provide the Services. Client shall assist TLE in obtaining all permits or authorizations from third parties to provide the Services. The parties agree that TLE does not make, and shall not be deemed to be making, sales of electricity or gas to Client's customers on behalf of Client by virtue of providing the Services to Client. Client agrees and acknowledges that at no time shall TLE take title to, or be deemed to be the owner of, any electricity, gas or other energy product to be sold by Client. Each Service Order shall be deemed a part of and shall be subject to the terms and conditions of this Agreement, and shall be uniquely identified for reference purposes.

(b) *Use by Client's Affiliates.* An Affiliate of Client may purchase Services hereunder by entering into a Service Order with TLE, in which event all references in this Agreement to "Client" will mean such Client Affiliate, and such Client Affiliate shall be bound by the terms and conditions of this Agreement. As used herein, "Affiliate" shall mean an entity that directly or indirectly controls, is controlled by, or is under common control with, a party hereto. "Control" shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of an entity whether by contract, ownership of shares, membership on the board of directors, agreement or otherwise.

Term  
Effective Date  
Termination

**Section 2. Term and Termination.**

(a) *Term of Agreement.* This Agreement shall remain in full force and effect for a term of three (3) years following February 1, 2012 (the "Effective Date") and shall be automatically renewed for an additional one (1)-year term on the third anniversary date of this Agreement and each one (1)-year anniversary thereafter, unless (i) no later than ninety (90) days prior to any anniversary date, one party notifies the other party of its intention not to renew the Agreement or (ii) earlier terminated as provided in Section 2(b). Notwithstanding the foregoing, this Agreement shall remain in full force and effect for so long as any Service Order remains in effect.

(b) *Termination.*

(i) TLE may terminate this Agreement upon thirty (30) days' prior written notice to Client if there have been no outstanding Service Orders for a period of sixty (60) days.

(ii) Either party may terminate this Agreement at any time if (A) the other party materially breaches any of its obligations hereunder or under a Service Order and such breach has not been cured within thirty (30) days of written notice specifying the nature of the breach; or (B) any assignment is made of the other party's business for the benefit of creditors, or if a petition in bankruptcy is filed by or against the other party, or if a receiver or similar officer is appointed to take charge of all or part of the other party's property, or if the other party is adjudicated a bankrupt.

(c) *Consequences of Termination.*

(i) Termination of this Agreement pursuant to Section 2(b) shall automatically result in termination of all Service Orders outstanding at such time.

(ii) Subject to Sections 4 and 9(d), upon the expiration or termination of this Agreement or any Service Order, at Client's request TLE shall return to Client all confidential or proprietary materials and items furnished to TLE by Client hereunder and, provided that Client has paid all amounts due and owing to TLE, all Work Product in progress at the time of termination or expiration.

(iii) Sections 2(c); 3; 4; 5; 6; 8; 9; 10; and 13, and any other provisions that by their nature reasonably should be deemed to survive, shall survive the expiration or termination of this Agreement for any reason.

Payments  
Invoices  
Pass-Through Charges  
Expenses

### Section 3. Payments and Invoices.

(a) *Payments and Invoices.* Client shall pay TLE the fees, costs and expenses set forth in this Agreement and in the relevant Service Order in consideration of TLE's performance of the Services described therein. Unless otherwise specified in the applicable Service Order, TLE shall render invoices to Client on a monthly basis, and Client shall pay such invoices within thirty (30) days of the date of the invoice. Past-due invoices shall accrue interest at a rate of one percent (1%) per month or, if less, the maximum rate of interest allowed by law, calculated from the date due. The invoices submitted to Client shall include Reimbursable Expenses, and any other fees, charges or information as specified in the applicable Service Order.

(b) *Pass-Through Charges and Taxes.* Client shall pay all charges, fees, penalties, assessments, taxes (together with interest and penalties related thereto), and any other charges assessed by any governmental authority or any third party in connection with any Services provided by TLE. To the extent that TLE advances payment of such fees or other charges, Client shall reimburse TLE at cost in the same billing cycle as such expense was incurred by TLE. Unless expressly specified, fees quoted in a Service Order shall not include taxes. TLE's invoices shall reflect, and Client shall pay, all applicable sales, services, use, excise, value added and other taxes associated with Client's receipt of the Services and Work Product hereunder.

(c) *Expenses.* Client shall reimburse TLE, at cost, for reasonable and customary out-of-pocket expenses, including without limitation travel, lodging, meals, printing and delivery charges ("Reimbursable Expenses"), incurred by TLE in the performance of Services, as set forth in the applicable Service Order. If the parties mutually agree that Reimbursable Expenses shall be subject to TLE's compliance with Client's corporate expense policy, such policy shall be attached to and made a part of such applicable Service Order.

(d) *Disputed Invoices.* If Client disputes any invoice, it shall nonetheless timely pay the undisputed portion and promptly (and in any event within thirty (30)

days following the date of the invoice) provide reasonably detailed written notice to TLE of the nature and amount of the disputed portion. The parties will use commercially reasonable efforts to resolve the dispute expeditiously pursuant to Section 13(a). In the event the dispute is not resolved within the time period set forth in Section 13(a), TLE may suspend performance of the Services, without limitation or waiver of any other right or remedy available under this Agreement or at law.

TLE's IP  
Work Product  
Acceptance

Section 4. TLE's Intellectual Property; Work Product; Acceptance.

(a) *TLE's Intellectual Property.* TLE will retain exclusive ownership of and all intellectual property rights in all (i) its know-how, concepts, techniques, methodologies, ideas, templates, software, interfaces, utilities and tools that existed prior to the performance of Services under the applicable Service Order, and all updates, modifications, improvements, enhancements and derivative works of the same created or developed during the course of performance of Services ("TLE's IP"), and (ii) ideas, concepts, techniques and know-how discovered, created or developed by TLE during the performance of Services that are of general application and that are not based on or derived from Client's business or Confidential Information. As between TLE and Client, TLE's IP shall be deemed TLE's Confidential Information for purposes of Section 9. To the extent any Work Product incorporates TLE's IP, TLE gives Client a non-exclusive, non-transferable (except to Client's Affiliates and permitted assigns), perpetual, royalty-free, worldwide right to use such TLE's IP for Client's internal business purposes solely in connection with such Work Product. Client shall not permit any third party to use TLE's IP except as expressly permitted in an applicable Service Order, and, if so permitted, such use shall be solely in connection with providing services to Client related to Client's use of such Work Product and subject to such third party's prior entry into a confidentiality agreement with Client no less restrictive than the terms of Section 9 of this Agreement. Client shall be responsible for any breach of such confidentiality agreement, in respect of TLE's IP, by such third party, as if such breach were a breach of Section 9 of this Agreement. Nothing in this Agreement or any Service Order will be construed to grant Client, its Affiliates, assigns or any third party any right to separate TLE's IP from the Work Product into which it is incorporated, or to market or commercially exploit any of TLE's IP on a stand-alone basis, or to otherwise sublicense or grant any other party any rights to use, copy or otherwise exploit, or create derivative works from, TLE's IP, except as expressly provided in this Section 4(a). Client shall not, and shall not allow any third party using TLE's IP as permitted hereunder, to disassemble, decompile, or otherwise reverse engineer any of TLE's IP.

(b) *Work Product.* Subject to the terms of Section 9, upon final payment of TLE's invoice(s) related to a particular Service Order Client shall have, solely for its internal business purposes, a perpetual, non-transferable (except to Client's Affiliates), paid-up right and license to (i) use, copy and prepare derivative works of those items described and itemized in the applicable Service Order as final work products to be delivered by TLE to Client ("Work Product"), if any; and (ii) use TLE's IP, including derivative works thereof, but only to the extent necessary for Client to exploit the Work Product. All other rights in the Work Product and related intellectual property rights, and TLE's IP, remain in and/or are assigned to TLE. The parties will cooperate with each other and execute such other documents as may be appropriate to achieve the objectives of this section.

(c) *Work Papers.* TLE shall retain and own exclusively all Work Papers created in its performance of Services hereunder, provided that Client shall retain sole and exclusive ownership of any Client Confidential Information contained or reflected therein. As used in this Agreement, "Work Papers" shall mean those internal reports, information, documentation, memoranda and working notes prepared by TLE during the course of performing Services hereunder that serve to substantiate the Services and/or any Work Product. The Work Papers shall be subject to the obligations set forth in Section 9.

Representations  
TLE's Warranties  
Client's Responsibilities  
Disclaimer

(d) *Acceptance.* If applicable, testing criteria and procedures required for acceptance of the Services or Work Product will be jointly agreed to by TLE and Client and will be specified in the applicable Service Order. If the Service Order does not state any acceptance criteria or procedures, then acceptance of Services and/or Work Product under a Service Order shall be based on, and shall be deemed to have occurred on, Client's use of the Services or Work Product in the conduct of its business or Client's failure to deliver written notice of material non-conformance of such Services or Work Product to TLE within ten (10) days of performance of the Services or delivery of the Work Product to Client.

**Section 5. Representations; Warranties; Client Responsibilities.**

(a) *Representations.* Each party hereto represents to the other that:

(i) it is duly organized and validly existing under the laws of the jurisdiction of its organization;

(ii) it has the legal right, power, and authority to execute, deliver, and perform this Agreement and each Service Order, and to perform all of the transactions contemplated hereby and thereby;

(iii) the execution and delivery of this Agreement and each Service Order, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by appropriate corporate or other action; and the person executing this Agreement and each Service Order on its behalf has been duly authorized to do so;

(iv) the execution, delivery and performance of this Agreement and each Service Order does not and will not (x) conflict with, result in a breach of, or constitute a default under any agreement or other instrument to which it is a party or to which its business or assets are subject, or (y) violate any law applicable to it, or any of its charter or organizational documents, or any order of any court or governmental agency or judgment to which it or its business or any of its assets is subject; and

(v) there is no litigation or governmental proceeding or investigation pending or, to its knowledge, threatened against it that may reasonably be expected to materially affect any transaction contemplated by this Agreement or any Service Order.

(b) *TLE's Warranties.* TLE warrants that it shall perform all of the Services in a professional manner that meets or exceeds industry standards.

(c) *Client Responsibilities.* Client acknowledges that TLE's performance hereunder is dependent on Client's performance of the responsibilities identified as being those of Client in the applicable Service Order and on timely decisions and approvals by Client. TLE shall be entitled to rely upon the accuracy and completeness of all information provided by, and upon the decisions and approvals of, Client in connection with the Services.

(d) *Disclaimer.* THIS IS THE FULL EXTENT OF WARRANTIES PROVIDED UNDER THIS AGREEMENT AND TLE MAKES NO OTHER REPRESENTATION OR WARRANTY. THESE WARRANTIES ARE IN LIEU OF ANY OTHER EXPRESS, AND ALL IMPLIED OR STATUTORY, WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TLE DOES NOT DIRECTLY OR INDIRECTLY WARRANT THE FINANCIAL SOUNDNESS, SERVICES OR PRODUCTS OF ANY THIRD PARTY VENDORS OR SERVICE PROVIDERS, EXCEPT THAT TLE IS RESPONSIBLE FOR THE SERVICES AND WORK PRODUCT PROVIDED BY ANY OF ITS SUBCONTRACTORS HEREUNDER. TLE DOES NOT WARRANT THAT THE

SERVICES SHALL BE PROVIDED ERROR-FREE OR WITHOUT INTERRUPTION, OR THAT ANY DELIVERABLE WILL FUNCTION IN ANY PARTICULAR MANNER. CLIENT'S ABILITY TO ACHIEVE THE BENEFITS WITH RESPECT TO THE MATTERS TO WHICH TLE'S SERVICES RELATE WILL BE BASED UPON NUMEROUS FACTORS AND ASSUMPTIONS THAT ARE NOT WITHIN TLE'S CONTROL, AND THUS TLE DOES NOT GUARANTEE THAT THE INTENDED BENEFITS WILL ACTUALLY BE ACHIEVED.

Indemnification

**Section 6. Indemnification.**

(a) *Injury or Property Damage.* Each party (the "Indemnifying Party") shall indemnify and hold harmless the other party and its Affiliates, and its and its Affiliates' directors, officers, managers, members, stockholders, employees, agents and representatives of each (collectively, "Indemnitees"), from and against any demands, claims and actions by third parties, and all liabilities, judgments, damages, fines, penalties, costs and expenses (including reasonable attorneys' fees) incurred in connection therewith (individually and collectively, "Liabilities"), resulting from any bodily injury to or death of any person, or damage to, or loss or destruction of, any real or tangible personal property, in each event to the extent such claims are caused by the gross negligence or willful misconduct of the Indemnifying Party or its employees or agents in connection with the performance of this Agreement. The Indemnifying Party shall have no obligation or responsibility for any Liabilities to the extent based upon or resulting from the gross negligence or willful misconduct of an Indemnitee.

(b) *Procedures.* The Indemnitees shall give the Indemnifying Party prompt written notice of any Liabilities and reasonable assistance, at the Indemnifying Party's expense, in defending the Liabilities. At its request, the Indemnifying Party shall have sole authority to defend or settle such Liabilities, provided that neither the Indemnifying Party nor any Indemnitee shall settle any Liabilities in a manner that would admit liability of or create any liability or obligations for the Indemnifying Party or any Indemnitee without such party's prior written consent.

Licenses  
Permits  
Registrations

**Section 7. Licenses, Permits, Registrations.** Each party shall (i) obtain and remain in compliance with such licenses, permits and registrations with governmental, regulatory or other authorities, and (ii) maintain the types and amounts of insurance, in each case as specified in any Service Order or as reasonably necessary or appropriate for it to comply with laws and regulations relevant to TLE's performance of the Services.

Limitation of Liability  
Mitigation

**Section 8. Limitation of Liability.**

(a) *Limitations.* NEITHER PARTY'S LIABILITY, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL (i) EXCEED THE FEES ACTUALLY PAID BY CLIENT TO TLE PURSUANT TO THE SERVICE ORDER OUT OF WHICH THE LIABILITY AROSE DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH LIABILITY AROSE, EXCEPT THAT TLE SHALL BE ABLE TO CLAIM THE AMOUNT OF UNPAID FEES IN THE EVENT OF CLIENT'S BREACH, OR (ii) INCLUDE ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR OTHER SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND LOSS OF SAVINGS OR REVENUE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS SET FORTH HEREIN SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY OF ITS ESSENTIAL PURPOSE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE TERMINATION

OR EXPIRATION OR THIS AGREEMENT.

(b) *Exceptions.* The limitations set forth in Section 8(a) shall not apply to a breach of the parties' respective confidentiality obligations set forth in Section 9.

(c) *Mitigation.* Each party agrees that it has a duty to mitigate its damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other party's performance or non-performance of this Agreement.

Confidential Information  
Electronic Communication

Section 9. Confidential Information

(a) *Obligations With Respect to Confidentiality.* During the term of this Agreement and for a period of three (3) years thereafter, each party ("Receiving Party") agrees that it shall not use for any purpose other than performance of this Agreement, or disclose to anyone, other than its officers, employees, representatives or, with the prior written consent of the disclosing party ("Disclosing Party"), its subcontractors, in each event with a need to know for purposes of this Agreement, any Confidential Information disclosed to the Receiving Party by the Disclosing Party. For purposes of this Agreement, the term "Confidential Information" shall be deemed to mean and include all such information, material and data of the Disclosing Party (i) labeled or designated in writing as confidential or proprietary, (ii) which the Receiving Party or its officers, employees, representatives and subcontractors (collectively, "Representatives") are advised in writing is proprietary or confidential or (iii) which, in view of the nature of such information and/or the circumstances of its disclosure the Receiving Party knows or reasonably should know is confidential or proprietary. Solely by way of illustration and not in limitation of the foregoing, Confidential Information shall include the following: information relating to financial data, plans, forecasts, intellectual property, methodologies, algorithms, agreements, market intelligence, technical concepts, customer information, strategic analyses, internal developments, publications, accountings or any other activities conducted or planned by either party. This Section 9 shall apply to all disclosures of Confidential Information between the parties, including those occurring before the execution of this Agreement and those pertaining to the potential performance of Services hereunder.

(b) *Exclusions.* The confidentiality obligations herein shall not apply to any such information that the Receiving Party can prove (i) is or becomes publicly known without any fault of or participation by the Receiving Party, (ii) was in Receiving Party's possession prior to the time it was received from Disclosing Party or came into Receiving Party's possession thereafter, in each case lawfully obtained from a source other than Disclosing Party and not subject to any obligation of confidentiality or restriction on use, (iii) is independently developed by the Receiving Party by persons not having exposure to Disclosing Party's Confidential Information; or (iv) is required to be disclosed by judicial, arbitral or governmental order or operation of law, in which event the Receiving Party shall use its best efforts to notify the Disclosing Party of the requirement of disclosure before making such disclosure and shall comply with any protective order or other limitation on disclosure obtained by the Disclosing Party. The Receiving Party shall be permitted to use Confidential Information of the Disclosing Party in connection with any legal proceeding arising out of or in connection with this Agreement, provided the Receiving Party uses commercially reasonable efforts to disclose and/or file such Confidential Information under seal or to obtain a mutually agreed protective order governing the use and disclosure of such Confidential Information in the legal proceeding. Disclosure of any Confidential Information pursuant to the foregoing sentence or pursuant to subsection (iv) above shall not be deemed to render it non-confidential and Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure.

(c) *Ownership of Confidential Information.* Confidential Information shall

remain the exclusive property of the Disclosing Party and no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Section 9 or any disclosure of Confidential Information to the Receiving Party, except as otherwise expressly set forth in this Agreement.

(d) *Return or Destruction of Confidential Information.* The Receiving Party agrees to return to the Disclosing Party, or to destroy, any and all Confidential Information received pursuant to this Agreement, together with all copies that may have been made, promptly upon request of the Disclosing Party or, if not requested earlier, upon completion of the Services pursuant to the applicable Service Order or termination of this Agreement. Upon return or destruction of Confidential Information or any copies thereof, the Receiving Party shall certify in writing to the Disclosing Party that such destruction has occurred. Notwithstanding the foregoing, subject to the continued applicability of and Receiving Party's continued compliance with this Section 9, (i) Client shall be permitted to retain a copy of the Work Product and TLE's IP as necessary to exercise the license rights granted by TLE to Client pursuant to Sections 4(a) and 4(b) of this Agreement, or as necessary to comply with applicable law, and (ii) TLE shall be permitted to retain a copy of Client's Confidential Information in TLE's Work Papers as necessary to substantiate the Services and/or Work Product, or as necessary to comply with applicable law.

(e) *Actions With Respect to Employees and Agents.* The Receiving Party shall take such actions with its Representatives as are commercially reasonable to effectuate the intent of this Section 9, including but not limited to advising each permitted Representative to whom Confidential Information is disclosed of his/her obligations regarding confidentiality and non-use of such information. With respect to Representatives who are not employees of Receiving Party, Receiving Party shall, prior to any disclosure of Confidential Information, require such Representatives to execute a written confidentiality agreement containing terms no less restrictive than those of this Section 9. The Receiving Party shall be fully responsible for any breach of this Section 9 by its Representatives.

(f) *Equitable Relief.* The Receiving Party acknowledges that any use or disclosure of Disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Section 9 will cause the Disclosing Party irreparable damage for which remedies other than injunctive relief will be inadequate, and agrees that the Disclosing Party may request injunctive or other equitable relief seeking to restrain such use or disclosure, without limitation or waiver of any other remedy available at law or in equity.

(g) *Electronic Communication.* Both parties acknowledge that, during the course of the Services, they may communicate electronically with each other and with other entities Client may have engaged, and each agrees to take all appropriate, commercially reasonable precautions to protect the security and confidentiality of such electronic communications. However, each party acknowledges and accepts that the other party cannot guarantee, and does not warrant, that electronic transmissions will not be intercepted and read, disclosed or used by a third party or will be delivered to each of the parties to whom they are addressed and only such parties. Each party specifically disclaims, and expressly acknowledges and agrees that the other party shall not have, responsibility or liability in connection with electronic transmissions, other than in the case of gross negligence or willful misconduct.

Non-Solicitation

Section 10. Non-Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, Client may not solicit for employment, employ or engage the services of any employee or contractor of TLE who performed services on behalf of such other party in connection with, or was otherwise involved in the performance of, this Agreement or a Service Order, without the prior written consent of TLE. This provision shall not restrict general advertisements of employment or the rights of any employee of either party, on that employee's own initiative, or in response to general advertisements, to seek

employment from the other party and under such circumstances, for the other party to hire such employee.

Independent Contractor  
Conflict of Interest  
Non-Circumvention

**Section 11. Relationship of the Parties.**

(a) ***Independent Contractor.*** The parties acknowledge and agree that TLE and Client are, and at all times during the term of this Agreement shall remain, independent contractors in relation to each other, and that neither party nor its employees or other Representatives is an agent of the other party, nor is authorized to make any representations or any commitment on the other party's behalf unless previously authorized by such party in writing. Each party's obligations to the other hereunder are exclusively contractual in nature. Neither this Agreement nor the performance of Services shall, or be deemed to, create a partnership, joint venture, agency, fiduciary or employment relationship or any other legal relationship between the parties. TLE's personnel shall not be deemed employees or agents of Client, and TLE has and hereby retains the right to exercise full control of and supervision over the performance, employment, direction, compensation and discharge of any and all of TLE's personnel performing Services hereunder.

(b) ***No Conflict of Interest.*** Client acknowledges that TLE provides energy risk and asset management, energy generation development services, energy advisory and consulting services, energy brokerage services, and related services to other clients and that Affiliates of TLE engage in commodities trading, including in the wholesale electricity markets, for their own "book" and benefit in connection with transactions that may directly compete with the Services. Client confirms that conflicts of interest may arise as a result of the foregoing. To the extent any Services to be performed hereunder may be in direct conflict with such other transactions, TLE will disclose such conflict and Client shall decide whether to require that TLE perform such Services. If, following disclosure, Client elects to proceed, Client agrees that any such conflict of interest shall not constitute a breach or default hereunder. Nothing in this Agreement shall limit TLE's rights and obligations, or the rights and obligations of any Affiliate of TLE.

(c) ***Non-Circumvention.*** During the term of this Agreement, Client shall not enter into any agreement with any third party with respect to any Services without TLE's prior written consent.

Assignment

**Section 12. Assignment.** Neither party may assign this Agreement or any Service Order executed in connection herewith or the rights or obligations hereunder without the express written consent of the other party, except that (i) a party may assign all of its rights and obligations to a third party who has acquired all or substantially all of the business or assets of such party through a sale, merger, consolidation, reorganization or similar transaction, and (ii) certain Services may be performed by subcontractors to TLE, provided that TLE shall have in place written agreements with such subcontractors sufficient to enable TLE to comply with its obligations under this Agreement and shall remain responsible for the Services and Work Product provided by such subcontractors hereunder. Any attempted assignment in violation of this Section 12 shall be void. Except as set forth above, this Agreement shall inure to the benefit of and be binding upon the parties, their successors and permitted assigns. Under no circumstances shall any Affiliate of a party hereto be liable for any breach of or obligation in connection with this Agreement, except pursuant to Section 1(d) or a valid assignment pursuant to this Section 12.

Escalation of Disputes  
Arbitration

**Section 13. Dispute Resolution.**

(a) ***Escalation of Disputes.*** Except in situations in which obtaining injunctive relief is expressly permitted under this Agreement, if any dispute arises between the parties in connection with this Agreement, the disputed matter shall be referred to the parties' respective executives responsible for administration of this Agreement for resolution. In the event these executives fail to resolve the dispute

within fifteen (15) days after the referral of the dispute to them, the parties shall escalate the dispute to the parties' respective chief executive officers or chief operating officers, or their designees, for resolution. If the parties' chief executive officers or chief operating officers or their designees are unable to resolve the dispute within fifteen (15) days of the referral of the dispute to them, or such longer period as agreed to in writing by the parties, each party shall have the right to commence any legal proceeding as permitted by law.

(b) *Arbitration.* Except in situations in which obtaining injunctive relief is expressly permitted under this Agreement, any claim, counterclaim, demand, cause of action, dispute, or controversy unresolved following the procedure specified in Section 13(a) that arises out of or relates to this Agreement, any Service Order, or the relationship established by either, or in any way relates to the subject matter of either, and involves the parties or their respective Affiliates or Representatives (collectively, "Claims"), regardless of whether some or all of such Claims allegedly are extra-contractual in nature, whether such Claims sound in contract, tort, or otherwise, at law or in equity, under state or federal law, or whether provided by statute or the common law, for damages or any other relief, shall be resolved by binding arbitration. Arbitration shall be conducted in accordance with the rules of the Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this Section 13(b), and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the parties' Claims, the arbitrators shall refer to the governing law of this Agreement. It is agreed that the arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or under the Federal Arbitration Act, or under the Commercial Arbitration Rules of the American Arbitration Association, and the parties hereby waiving their right, if any, to recover any such damages. The arbitrators may award only direct compensatory damages. Unless otherwise agreed by the parties, all arbitration proceedings shall be conducted in Boston, Massachusetts. Within twenty (20) days of the notice of initiation of the arbitration procedure, the respondent shall file a response in writing. Within thirty (30) days after the response, each party shall select one arbitrator. Within twenty (20) days thereafter, the two (2) arbitrators shall select a third arbitrator. All three arbitrators are required to be neutral and impartial and shall take an oath at the first session of the arbitration affirming same. None of the three arbitrators shall have business, professional or social relationships with any of the parties. However, upon full disclosure of such relationships, all parties may agree that the arbitrator may serve as an arbitrator. The arbitration shall proceed within sixty (60) days after the appointment of the last of the three arbitrators. The arbitrators shall render their decision by majority rule within twenty (20) days after the conclusion of the arbitration. To the fullest extent permitted by law, the arbitration and the award resulting from the arbitration shall be maintained in confidence by the parties and the arbitrators.

Force Majeure

Section 14. Force Majeure. Neither party will incur any liability to the other party resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences or forces beyond the reasonable control and without the negligence or other fault of such party. No force majeure shall be based on (i) the toss of Client's markets; or (ii) Client's inability economically to use the Services.

Notices

Section 15. Notices. Except as otherwise provided herein, all notices or other communications to be given or that may be given by either party to the other shall be deemed to have been duly given when made in writing and delivered in person, or sent by electronic means (with receipt confirmed), or upon confirmed receipt after being sent by recognized overnight courier, addressed as specified in the applicable Service Order or, if none is so specified, as specified on the signature page to this Agreement. The address to which notices or communications may be given to either party may be changed by written notice given by one party to the other pursuant to this section.

Publicity

**Section 16. Publicity.** Neither party shall issue any news release, public announcement, advertisement or publicity concerning this Agreement or the parties' relationship hereunder. Client grants TLE the right to use Client's name and logo in TLE's promotional, marketing or other collateral material (including on-line materials).

Governing Law

**Section 17. Governing Law.** This Agreement and, unless expressly stated otherwise, each Service Order shall be governed by and construed in accordance with the laws of Massachusetts without regard to its conflicts of law principles.

Waivers and Amendments  
Entire Agreement  
Compliance with Law

**Section 18. Miscellaneous.**

(a) ***Waivers and Amendments.*** No waiver of any right or remedy in this Agreement or any Service Order will be implied by failure to enforce such right or remedy and no express waiver will affect any rights or remedies other than that to which the waiver is applicable and only for that occurrence. No provision of this Agreement or any Service Order shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is in writing and signed by authorized representatives of party against whom enforcement is sought.

(b) ***No Third Party Beneficiaries.*** Except pursuant to Section 6, the provisions of this Agreement and each Service Order are for the benefit of the parties and not for any other person.

(c) ***Headings.*** The article, section and paragraph headings contained in this Agreement and any Service Order are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or such Service Order.

(d) ***Severability.*** If any provision, or any portion of any provision, contained in this Agreement or any Service Order is determined to be invalid or unenforceable under any statute or rule of law, such provision shall be enforced to the maximum extent possible to give effect thereto, and the remainder of this Agreement or such Service Order shall remain in full force and effect to the maximum extent permissible without being impaired or invalidated in any way.

(e) ***Entire Agreement.*** This Agreement, including all Service Orders, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, understandings, proposals and communications, oral or written, regarding such subject matter. Each party acknowledges and agrees that in entering into this Agreement and each Service Order hereunder it does not rely on any statement, representation, warranty or understanding other than as expressly set out in this Agreement and/or the applicable Service Order.

(f) ***Compliance with Law.*** Each party shall act in material compliance with all applicable laws, ordinances, regulations and other requirements of any and all governmental authorities, including without limitation all applicable export and data protection laws and regulations, in connection with its performance under this Agreement. Without limiting the generality of the foregoing, each party expressly agrees that it shall not, and shall cause its Representatives to agree not to, export, directly or indirectly, re-export, divert or transfer the Work Product or any direct product thereof to any destination, entity or person restricted or prohibited by the export laws, regulations and controls of the United States, and each party shall obtain all permits, licenses or other consents necessary for the performance of its duties under this Agreement.

(g) ***Counterparts.*** This Agreement and any Service Order may be executed in counterparts, each of which will be an original and all of which together will constitute one and the same instrument. The electronic delivery of an executed

counterpart of this Agreement and any Service Order shall be deemed to be valid delivery thereof.

*[remainder of page intentionally left blank]*

Signature Page to Energy  
Asset Management  
Agreement

Signatures  
Addresses

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

TRUELIGHT ENERGY, LLC

By: 

Name: Michael Constantine

Title: Chief Executive Officer

Address: 160 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Contact: Paul Oakley

Tel: (617) 209-2415

Email: poakley@truelightenergy.com

CLIENT:

PHALANX ENERGY SERVICES, LLC

By: 

Name: Frank P. Wilbourne, III

Title: Chief Executive Officer and Managing Member

Address: P.O. Box 20339  
Charleston, SC 29413

Contact: Frank P. Wilbourne, III

Tel: (843) 881-2343

Email: frank.wilbourne@phalanxenergy.com

Exhibit A to Energy Portfolio  
Management Agreement

**Service Order  
(form attached)**

# Service Order

Effective Date February 1, 2012

Client Phalanx Energy Services, LLC

Service Order Number 0001

Client Contact Name: Frank P. Wilbourne, III Tel: (843) 881-2343 Email: frank.wilbourne@phalanxenergy.com

TLE Contact: Name: Michael Constantine Tel: (617) 209-2414 Email: mconstantine@truelightenergy.com

This Service Order is attached to and made a part of the Energy Portfolio Management Agreement (the "Agreement"), dated as of January 23, 2012 by and between TrueLight Energy, LLC ("TLE"), a Massachusetts limited liability company, and Phalanx Energy Services, LLC, a Delaware limited liability company ("Client"). All terms, conditions and provisions of the Agreement are expressly incorporated herein by reference, and TLE's performance of the Services described in this Service Order are subject to such terms, conditions and provisions. All defined terms used herein shall have the meaning ascribed to such terms as set forth in the Agreement unless otherwise defined herein.

Term  
Renewal

**Section 1. Term and Renewal.** This Service Order shall have a term of three (3) years from the Effective Date, and shall renew automatically for a term of one (1) year on the third anniversary of the Effective Date and each one (1)-year anniversary thereafter (each, a "Renewal Date"), unless either party notifies the other Party in writing of its intent to terminate the Agreement at least ninety (90) calendar days prior to the next Renewal Date. In case of such written notice, this Agreement shall terminate as of the next Renewal Date.

Initial Retail Supplier Set-Up  
Back-Office Services  
Portfolio Management  
Professional Services

**Section 2. Services.** TLE shall perform the following Services for Client:

(a) **Initial Retail Supplier Set-Up.** During the first three (3) months of the term, TLE shall provide Client with the following initial retail supplier set-up services ("Initial Set-Up Services") for Client to provide retail electricity supplier services in the Initial States (as defined in Section 3 below) (Client's responsibilities noted in parentheses):

- **Overall implementation project management.** TLE will publish master project plan, schedule team meetings and issue status updates (Client will designate a project manager, provide access to key personnel, and provide overall management to ensure project work plan and deadlines are met).
- **Data collection.** TLE will identify and document functional requirements to meet the scope of the project.
- **Development of functional requirements.** TLE will provide market, business and technical analysis to support Client in the development of functional requirements for billing and ancillary services. (Client to provide the following: business rules for configurable processes, such as collection amounts and credit risk ratings; business data for configurable data choices such as revenue classes, general ledger classification and accounts; pertinent company information for billing, bill statements, etc.;

business policies for initiating and processing inbound/outbound market transactions; pricing model strategy; and validation of business rules for user security profiles.

- **Final business and technical documentation.** TLE will produce a document of the final business and technical requirements for the project (Client to approve in accordance with terms of the Agreement).
  - **Configuration of systems.** TLE will configure all server-side hardware, operating systems, databases, application software and related systems to support project (Client to acquire all hardware, software and connectivity to support project; Client will acquire, configure and maintain end user work stations and local area network to support project; and, Client will ensure that all procurement and installation of technical infrastructure is completed prior to each relevant project step).
  - **Testing of systems.** TLE will propose a testing and acceptance methodology and, once approved by Client, will test systems in accordance with this methodology (Client will develop, and TLE will advise on, a test strategy, test scenarios and use cases that encompass all business functionality within the scope of the project; Client will be responsible for, and TLE will advise in, user acceptance testing).
  - **Education and training.** TLE will develop and conduct a training program (at a mutually agreed time) and materials covering the project (Client will be responsible for delivery of end-user training and any customization of materials).
  - **Transition plan.** TLE and Client will jointly develop a transition plan for the period following implementation of the Initial Set-Up Services..
- (b) **Back-Office Services.** During the term, TLE shall provide Client with the following back-office services ("Back-Office Services"):
- **Billing system.** TLE will operate and maintain the billing system, which provides support for customer services, billing, payment processing, collections and financial reporting. System functions consist of: calculation of bills, application of remittances, maintenance of customer account information, and billing, financial and usage history. The billing system will accommodate all price structures such as fixed price, index, block and index, and actively managed portfolio products (actively managed portfolio products may require additional information and data, and may be subject to an additional fee as mutually determined by TLE and Client).
  - **Contract management, legal and compliance.** TLE shall develop required retail energy contracts, advise and manage state licensing requirements and processes, including in respect of customer care and billing.
  - **Customer enrolment.** TLE will manage utility and customer communication relating to the daily switching and add/drop process.
  - **Customer care services.** TLE will manage initial customer enrolment and bill follow-up, including determination of taxes, due dates, late fees, etc., and providing initial customer support and responding the customer questions and inquiries. (Client is responsible for remitting sales tax to the appropriate taxing authorities.)
  - **ISO and utility bill review and analysis.** TLE will review and analyze all utility and ISO settlement information for scheduling and reconciliation purposes (Client to ensure all such information is provided to TLE).
  - **Cash Information Management System (CIMS) and Cash Application System.** TLE will operate and maintain the CIMS and Cash Application

System. CIMS provides an interface between incoming cash receipts and destination applications for accounts receivable, ledger, and miscellaneous obligations. It validates bill accounts and obligations for correctness before sending to the accounts receivable application, provides access for inquiry or investigation, and allows for adjustments with proper approvals. The Cash Application System is the remittance processor for paper checks. It matches the incoming check payment with the Client receivable record and provides encoded/endorsed deposits to the banks, as well as input to CIMS to update Client and ledger records.

- **Data storage and backup services.** System databases will be backed up on a regular basis. Normal back-up entails a "hot" backup six (6) days per week, taken while the systems are up and running. A "cold" backup is taken once per week on a weekend. These backups are not used for disaster recovery purposes, but would be used in the event of a routine recovery of data or program code.
- **Remittance processing.** TLE will provide Client with remittance processing consisting of managing and executing the remittance process, processing customer payments, and updating the accounts receivable balance.
- **Reporting and .** TLE and Client will work together to determine appropriate reporting policies and procedures.

(c) **Portfolio Management Services.** During the term, TLE shall provide Client with the following portfolio management and optimization services ("Portfolio Management Services"):

- **Retail energy load forecasting.** TLE shall provide Client with daily short- and long-term regional ISO zonal specific load forecasts.
- **Wholesale pricing models and forward curves.** TLE shall provide Client with access to its wholesale pricing models and forward curves.
- **Pricing desk functionality.** TLE shall provide pricing desk for government RFPs in the Initial States based on a mutually agreed methodology, review and analysis process and response time.
- **Hands-on portfolio management.** TLE will provide daily bidding, scheduling, and settlements review for each regional sub-account of Client.
- **Optimization services.** TLE shall provide management of energy and renewable risk directly through access to OTC markets, exchanges and by daily bidding and optimization of load into the wholesale (ISO) markets, including 24/7 optimization and market coverage for a mutually agreed set of Client's customers.
- **Transparent wholesale hedging.** TLE and Client will agree to wholesale hedging and risk management policies and processes that provide transparency.
- **Market intelligence.** TLE will provide wholesale forward curve information and verification of supplier market information, including:
  - Wholesale energy in 2- or 4-part forward curve
  - Regional energy basis marks to agreed-upon load zones
  - Ancillary services
  - Capacity
  - Renewable portfolio standard markets
  - Natural gas main trading hubs
  - Natural gas regional basis (in addition to main trading hubs)
  - Variable load serving risk (long- and short-term calculations)
  - ARR forward valuation

(d) *Professional Services.* During the term, TLE shall provide professional consulting and advisory services to Client on an as-needed and as-agreed basis ("Professional Services"), such as:

- **Wholesale market technical sales support.** TLE can provide dedicated regional portfolio managers for wholesale market sales force training and customer sales calls and visits, as mutually agreed by TLE and Client.
- **Energy market intelligence support.** TLE can host a weekly update call with Client's sales force, and/or an external call with Client's customers, brokers, or others, as mutually agreed, and/or a monthly energy market newsletter, with any of the foregoing branded under Client's name if desired by Client.
- **Retail product development support.** TLE can provide product development support to Client, including product structure design, go-to-market strategies, and other related activities.
- **Retail supplier set-up in additional states.** TLE can provide retail supplier set-up services, supplemental to the Initial Set-Up Services, for states or territories other than the Initial States.
- **Pricing desk functionality for additional states.** TLE can provide pricing desk for government RFPs in states and territories other than the Initial States based on a mutually agreed methodology, review and analysis process and response time.

Assumptions

Section 3. Assumptions. This Service Order relates to Client's activities as a retail electricity supplier in the first three states selected by Client and agreed by TLE (the "Initial States"). Client can request TLE to provide supplemental set-up services with respect to other states or territories, in which case such set-up services would be covered under Section 2(d) of this Service Order. In addition to the foregoing, the Services provided by TLE under this Service Order are subject to the following understandings and assumptions:

- **Customer Profile.** Client's customers will be federal, state and municipal governmental entities for which, if permitted, unified (utility) billing will be utilized. If Client wishes to service non-governmental entities (e.g., commercial or industrial customers), or governmental entities for which unified (utility) billing is not permitted, providing services for such customers may necessitate system changes and additional fees and expenses. In such circumstances, TLE and Client will cooperate in good faith to achieve a mutually acceptable fee and service arrangement.
- **Utility set-up and EDI.** Client will be responsible for meeting applicable state and utility guidelines for processing transactions and in remaining compliant with guideline changes through the term of this Service Order. TLE will provide support and advice to Client in respect of the foregoing. States and utilities require that suppliers be tested and certified in the communication of transactions prior to transacting in production. Electronic Data Interchange (EDI) transactions and validation and related services will be provided by a vendor to be mutually agreed by TLE and Client, the cost and expenses of which shall be Client's responsibility.
- **Change in scope.** TLE and Client will work in good faith to identify any change in scope to the project described in this Service Order, and will work together to modify this Service Order accordingly.
- **Executive support.** Client will provide executive support to expedite decision making and adherence to agreed deadlines. If Client fails to meet its deadlines, project plan milestones and the period of time allocated for Initial Set-Up Services shall be extended accordingly.
- **Functional and subject matter leads.** TLE and Client each will

designate individuals who will be functional and subject matter leads for the project.

- **Business policies and decisions.** Client will be responsible for all business policies and decisions, business rules for configurable operational business processes, business functionality test scenarios and acceptance testing for the project.

Management Fees

**Section 4. Advisory and Management Fees.**

(a) **Advisory Fee for Initial Set-Up Services.** For Initial Set-Up Services in the Initial States, Client shall pay TLE a monthly advisory fee of \$25,000 per month, prorated for any partial month.

(b) **Management Fee for Back-Office Services and Portfolio Management Services.** Following the completion of the Initial Set-Up Services, for Back-Office Services and Portfolio Management Services Client shall pay TLE a monthly management fee (the "Management Fee"), prorated for any partial month, equal to the greater of:

- (i) in respect of the first 50 MWh of electricity sold to Client customers during the subject month, \$1.50 per MWh (prorated for any portion thereof); or
- (ii) in respect of electricity sold to Client customers during the subject month in excess of 50 MWh, \$1.25 per MWh (prorated for any portion thereof); and
- (iii) \$25,000; provided, however, that prior to the date on which Client has its initial sale of electricity to a customer, the Management Fee shall equal \$150 per hour of professional time billed by a member of the TLE team, with a monthly minimum fee of \$10,000.

(c) **Professional Services.** For Professional Services, Client shall pay TLE an advisory fee equal to \$250 per hour of professional time billed by a member of the TLE team; provided, however, that in respect of retail supplier set-up services in any state in addition to the Initial States pursuant to Section 2(d) of this Service Order, TLE's advisory fee for such services will be \$10,000 per state (Client acknowledges and agrees that this amount is in addition to any advisory fee or Management Fee under Sections 4(a) and (b) of this Service Order).

(d) **Reimbursable Expenses.** TLE shall invoice Client separately for Reimbursable Expenses, and Client shall pay Reimbursable Expenses shall pay such invoices within thirty (30) days of the date of the invoice. Reimbursable Expenses in excess of \$500 shall require Client's prior approval.

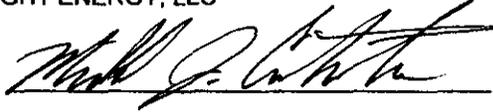
*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Service Order to be executed by their respective duly authorized representatives as of the date first above written.

Signatures to Service Order

TRUELIGHT ENERGY, LLC

By:



Name: Michael Constantine

Title: Chief Executive Officer

CLIENT:

PHALANX ENERGY SERVICES, LLC

By:



Name: Frank P. Wilbourne, III

Title: Chief Executive Officer and Managing Member