

COMMERCIAL SURGESHIELDSM PROGRAM TERMS AND CONDITIONS

1. **SCOPE OF SERVICES.** These Terms and Conditions ("Terms") shall govern your purchase of the service and products provided in connection with FPL Energy Services, Inc. ("FPLES") SurgeShieldSM program (collectively, the "Services") at your designated business ("Site"). The prices for the Services are based upon information you provided and apparent conditions at the Site without an extensive investigation by FPLES. THERE IS A POSSIBILITY OF THE EXISTENCE OF UNKNOWN CONDITIONS AT OR ON YOUR SITE THAT MAY ADVERSELY AFFECT FPLES' ABILITY TO PERFORM THE SERVICE OR COMMENCEMENT OF THE SERVICES OR INSTALL THE PRODUCT AT THE SITE. YOU ACKNOWLEDGE THAT FPLES DOES NOT ASSUME THE RISK OF AND SHALL NOT BE RESPONSIBLE FOR ANY SUCH UNKNOWN CONDITIONS.

2. **ACCESS/ASSISTANCE.** You shall provide FPLES (and its contractors) with access to all necessary areas, and provide necessary requested information related to utility service and equipment operation at the Site. You are aware that FPLES is relying upon the accuracy and completeness of such information in order to properly perform the Services. FPLES shall have the right to suspend the Services or adjust the installation schedule accordingly in the event that there is inadequate access to the Site, or if any required information is not promptly provided, or in the event that the safety of any person or property might be jeopardized by continuing with the Service. In the event of damage to the electric utility meter at the Site that is caused by you, your agents or your contractors, you agree to indemnify, defend and hold FPLES and its contractors harmless and pay all repair or replacement costs associated with such damage.

3. **WARRANTY EXCLUSION. THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. FPLES EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, AND DOES NOT WARRANT THAT THE SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. THE FOREGOING WARRANTY IS EXCLUSIVE TO YOU AND NON-TRANSFERABLE OR ASSIGNABLE, AND THE REMEDY SET FORTH IN THIS SECTION 3 IS EXCLUSIVE AND IS SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 5. NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. ADDITIONALLY, IN NO EVENT WILL MEDICAL OR LIFE SUPPORT EQUIPMENT BE COVERED UNDER THIS WARRANTY.**

4. **EXISTING CONDITIONS.** FPLES is only being retained to perform Services relating to the installation of the Service and shall not be responsible for (a) identifying any hazardous conditions, (b) correcting any non-compliance of your facilities or your Site with applicable laws, codes, rules, and regulations. You shall be responsible for receiving any and all consents necessary or required in order for FPLES to perform the Services hereunder. Neither FPLES nor its contractors are responsible for any damage which may arise from existing conditions, including but not limited to improper wiring and installation of pre-existing equipment at the Site. You represent to FPLES that you have the authority to have the authority to enter into and bind your business to these Terms and/or install and/or the Service from the Site, and you shall bear all costs attributable thereto, and you shall, at your own expense, defend, indemnify and hold FPLES harmless from and against all liability, loss or damage (including attorneys' fees) assessed against or suffered by FPLES as a result of an allegation or claim you did not have such authority.

5. **LIMITATION OF LIABILITY FOR ALL CLAIMS.** FPLES obligations under these Terms shall be limited to repairing or replacing, at FPLES' sole option, any defective SurgeShield device not operating in accordance with the manufacturer's published specifications. Claims shall be made immediately following the discovery of such product non-conformance. FPLES shall not be responsible to provide any Service to any third party or for any other costs, fees, or expenses associated with any warranty claim, whether direct or indirect. FPLES shall not be responsible for, and FPLES obligations stated in this Section 5 shall not apply to, any: (a) errors in Services caused by faulty information you provided or any third party directed by you; (b) your relocation, movement, improper operation or misuse of the Services or any third party that is not authorized by FPLES; (c) your failure to maintain proper site or environmental conditions, as required by the manufacturer; (d) any unauthorized attempt to repair, maintain or modify the any product provided hereunder by anyone other than FPLES or its authorized agents or subcontractors; (e) normal wear and tear; (f) accident, fire or negligent misuse of any product provided hereunder; (g) incidental, consequential or indirect damages caused by defects in materials workmanship, or any delay in repair or replacement of a defective part; (h) bodily injuries to persons; (i) any structural or electrical system damage to the Site; or (j) force majeure events (including lightning strikes). **NOTWITHSTANDING THE FOREGOING, FPLES' TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO THESE TERMS AND THE SERVICES PERFORMED (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE) TO YOU OR TO ANY THIRD PARTY SHALL IN THE AGGREGATE BE LIMITED TO DIRECT DAMAGES EQUAL TO (BUT NOT**

EXCEEDING) THE FEES FOR THE SERVICES YOU HAVE PAID AND FPLES HAS RECEIVED HEREUNDER. IN NO EVENT SHALL FPLES OR ITS CONTRACTORS BE LIABLE TO YOU OR ANY OTHER PERSON FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR REVENUE, LOSS OF USE OF THE SERVICE OR ANY CONNECTION EQUIPMENT THERETO OR ANY ASSOCIATED EQUIPMENT OR SOFTWARE, LOSS OR DAMAGE, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, SERVICE OR SOFTWARE, DOWNTIME, THE CLAIMS OF THIRD PARTIES, INCLUDING YOU CUSTOMERS, AND INJURY OR DAMAGE TO PROPERTY) EVEN IF FPLES OR ITS CONTRACTORS WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL APPLY TO THE FULLEST EXTENT ALLOWED BY LAW IRRESPECTIVE OF WHETHER LIABILITY IS CLAIMED, OR FOUND TO BE BASED IN CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE, WARRANTY OR STRICT LIABILITY).

6. **FORCE MAJEURE.** FPLES shall not be responsible to you in an event or circumstance that is not reasonably foreseeable, or that are beyond the reasonable control of and is not caused by FPLES. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), hurricanes, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions, floods, strikes, lockouts, supply shortages or other labor disputes or difficulties.

7. **DOCUMENTATION.** FPLES may provide you with manuals, data, or information (collectively, "Documentation") applicable to the equipment in FPLES' possession. Any documents provided hereunder are for informational purposes only, and FPLES makes no warranty or representation with regard to the accuracy or completeness of any such documents or information provided by FPLES, and FPLES EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY WITH REGARD TO SUCH DOCUMENTATION.

8. **GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL.** These Terms shall be governed by the laws of the State of Florida. Any suit relating to these Terms or the Service hereunder shall be instituted in any state or federal court in Palm Beach County, Florida, and the parties submit to the sole and exclusive personal jurisdiction of such court. **THE PARTIES HEREUNDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT MAY EXIST TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED WITH, THESE TERMS OR THE PERFORMANCE OF SERVICES BY FPLES HEREUNDER.**

9. **CUSTOMER SUPPORT NUMBER.** In order to obtain customer service hereunder, FPLES must be contacted **1-800-590-1235** no more than seven (7) business days of discovery of the damaged or nonperforming Service.

10. **SEVERABILITY.** If any provision of these Terms or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of these Terms, 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 these Terms shall be valid and enforceable to the fullest extent permitted by law.

11. **OWNERSHIP.** The manufacturer of the any products provided hereunder retain ownership and all right, title and interest to the intellectual property contained in the components and aspects of the Service and Documentation.

12. **ASSIGNMENT.** FPLES may, in its sole and unrestricted discretion assign, delegate, transfer, subcontract or otherwise dispose of its obligations hereunder to an affiliate or subsidiary, without notice to the Customer. You shall not assign, delegate or otherwise dispose of your obligations hereunder without FPLES' written consent.

13. **TERMINATION.** FPLES may terminate these Terms immediately upon notice to Customer in the event (a) FPLES determines that the Service cannot be installed at the Site for whatever reason, whether resulting from technical, safety or otherwise, (b) if any regulatory agency promulgates any rule or order which in effect or application substantially impedes FPLES from fulfilling its obligations hereunder, or materially and adversely affects FPLES' ability to provide the Service offering under these Terms, (c) you breach any term or condition contain herein, including without limitation, your payment obligations for the Service and Services provided hereunder, (d) FPLES makes a commercial decision to discontinue the Service offering hereunder. You may cancel your order for the Services at anytime upon thirty (30) days notice to FPLES.

14. **ENTIRE TERMS.** These Terms and the terms and conditions set forth on the reverse side of this paper are the entire understanding between the parties and supersede any terms in any purchase orders or other documents from you, and supersedes all prior agreements, representations and communications regarding this subject matter. The headings in these Terms are provided for convenience of reference only and shall not affect the construction of the text of these Terms. FPLES may amend these Terms from time to time, but such modifications to the Terms shall be effective upon FPLES delivery of notice to you.