

COMMERCIAL SURGESHIELD® PROGRAM TERMS AND CONDITIONS

1. THE SURGESHIELD PROGRAM. These Commercial SurgeShield Program Terms and Conditions ("Terms") govern your enrollment in the Commercial SurgeShield program offered and administered by FPL Energy Services, Inc. ("FPLES"). Under the SurgeShield program, FPLES installs a surge protection device ("Equipment") at your designated commercial location ("Site") on your electric meter to provide you with surge protection. Upon notice to FPLES pursuant to [Section 5](#), FPLES will replace its Equipment that is no longer operational and providing surge protection ("Maintenance"). The installation of the Equipment ("Installation") together with Maintenance are collectively referred to as the "Program". THIS PROGRAM IS NOT A CONTRACT OF INSURANCE. FPLES reserves the right to update and prospectively change these Terms of this Program from time to time by posting updated Terms at www.FPLES.com; provided however that FPLES will not make any changes to the Terms that are material and adverse to you without prior written notice to you. You agree to the obligation to periodically review such location for authorized updates to these Terms. Continued participation in the Program after any such posted changes shall constitute your acknowledgment of and consent to such changes.

2. SITE ACCESS AND EXISTING CONDITIONS. You agree to provide FPLES and its contractors access to the Site for Equipment Installation and Maintenance, and for Equipment removal pursuant to [Section 6](#). FPLES has the right to suspend the Installation or Maintenance in the event that (a) there is inadequate access to the electric meter at the Site, or (b) the safety of any person or property may be jeopardized by continuing with the Installation or Maintenance. FPLES will not be responsible for (a) identifying any hazardous conditions and/or illegal or improper construction, or (b) correcting any hazardous condition and/or non-compliant construction (i.e. construction contrary to applicable laws, codes, rules, and regulations).

3. MONTHLY PROGRAM FEE AND TERM. Commencing upon Installation, you agree to be billed for the aged upon monthly Program fee on your monthly electric utility bills and to make payments by the due dates of your monthly electric utility bills. Non-payment of Program fees will not result in disconnect of your electrical service. If the agreed upon monthly Program fee was reduced due to your concurrent enrollment in another FPLES program, you agree to pay the then current unbundled monthly Program fee in the month following your termination of enrollment in the other FPLES program. In the event that you move your business to another location within the electric service territory of Florida Power & Light Company ("FPL"), you agree to be automatically enrolled in the Program at the new commercial location, and for billing of the monthly Program fee to switch over to the electric utility bill for new commercial location, on the later of (i) the date that the Equipment is installed at the new commercial location, or (ii) the date that you terminate electric service at your current commercial location. Your enrollment in the Program will be effective until termination pursuant to [Section 7](#).

4. WARRANTY. FPLES warrants that Installation and Maintenance will be performed in accordance with industry standards and that FPLES will promptly reperform Installation or Maintenance that fails to meet these standards upon notice to FPLES pursuant to [Section 5](#). FPLES EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, AND DOES NOT WARRANT THAT THE EQUIPMENT WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT SURGE PROTECTION WILL BE UNINTERRUPTED. FPLES IS ONLY BEING RETAINED TO PERFORM INSTALLATION AND MAINTENANCE RELATING TO THE EQUIPMENT AND SHALL NOT BE RESPONSIBLE FOR (A) IDENTIFYING ANY HAZARDOUS CONDITIONS AND/OR ILLEGAL OR IMPROPER CONSTRUCTION, OR (B) CORRECTING ANY HAZARDOUS CONDITION AND/OR NON-COMPLIANT CONSTRUCTION (I.E. CONSTRUCTION CONTRARY TO 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 INSTALLATION AND MAINTENANCE 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.

5. CUSTOMER SUPPORT. You must contact FPLES at 1-800-590-1235 to report damaged or nonperforming Equipment.

6. OWNERSHIP. FPLES retains all ownership of the Equipment and reserves the right to remove the Equipment without notice at any time on or after termination of your enrollment in the Program pursuant to [Section 7](#).

7. TERMINATION.

A. Termination By FPLES. Upon notice to you in any reasonable form, FPLES may terminate your enrollment in the Program in the event (a) FPLES determines, in its sole discretion, that the Equipment cannot be installed at the Site for any reason, including technical or safety issues, (b) if any regulatory agency promulgates any rule or order which adversely affects FPLES' ability to provide the Program under these Terms, (c) you

breach any term or condition contained herein, including without limitation, your obligation to make agreed upon monthly payments for the Program provided hereunder by the due dates of your monthly electric utility bills, or (d) FPLES, for its convenience and in its sole discretion, makes a commercial decision to (i) generally discontinue the Program, or (ii) to discontinue your specific enrollment in the Program hereunder.

B. Termination By You. You may cancel your enrollment in the Program at anytime upon thirty (30) days written notice to FPLES. If you provide FPLES a written request for refund within seven (7) days of the Installation, you will receive a full refund of any previously paid monthly Program fee. FPLES will process such refund request within 30 days of its receipt of the refund request.

8. AUTHORITY. You represent and warrant to FPLES that (a) you are the owner of the Site or has the legal right and authority to permit FPLES to install the Equipment and provide the Maintenance at the Site, (b) you are the customer name listed on the electric utility bill applicable to the Site, and (c) you have the authority to enter into and bind you to these Terms.

9. LIMITATION OF LIABILITY. IN NO EVENT WILL FPLES BE LIABLE TO YOU OR ANY OTHER PERSON FOR DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COST OF SUBSTITUTE OR RENTAL EQUIPMENT, DOWNTIME, PERSONAL INJURY OR DAMAGE TO PROPERTY) EVEN IF FPLES OR ITS CONTRACTORS WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing will 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).

10. DISCLAIMER AND RELEASE. The Program is offered and provided by FPLES, an unregulated subsidiary of FPL. BY ENROLLING IN THE PROGRAM: (I) YOU ACKNOWLEDGE THAT FPL, ITS AFFILIATES AND/OR SUBSIDIARIES (OTHER THAN FPLES), DO NOT HAVE ANY OBLIGATION OR RESPONSIBILITY FOR THE PROGRAM, AND ARE NOT RESPONSIBLE FOR ANY CLAIMS OR DISPUTES RELATING THERETO, NOR DO THEY PROVIDE ANY TYPE OF GUARANTEE, WARRANTY, PROMISE OR COVENANT, EITHER EXPRESS OR IMPLIED, AS TO THE PROGRAM; AND (II) YOU AGREE TO RELEASE FPL, AND ALL OF ITS AFFILIATES AND/OR SUBSIDIARIES (OTHER THAN FPLES) FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, OR LIABILITIES IN CONNECTION WITH THE PROGRAM.

11. FORCE MAJEURE. FPLES will 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, tropical storms, tornadoes, severe wind, electrical storm, other acts of God, war, riot, insurrection, blockades, embargoes, sabotage, epidemics, explosions, floods, strikes, lockouts, supply shortages or other labor disputes or difficulties.

12. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. These Terms and your enrollment in the Program will be governed by the laws of the State of Florida. Any suit relating to these Terms and/or the Program will be instituted in any state or federal court in Palm Beach County, Florida, and you submit to the sole and exclusive personal jurisdiction of such court. BY ENROLLING IN THE PROGRAM, YOU AGREE TO WAIVE ANY RIGHT TO HAVE A TRIAL BY JURY IN RESPECT TO ANY LITIGATION WITH FPLES BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED OR RELATED WITH, THESE TERMS, THE PROGRAM, AND/OR THE PERFORMANCE OF EQUIPMENT.

13. SEVERABILITY. If any provision of these Terms or the application thereof to any person or circumstance is, to any extent, 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 will not be affected thereby, and each provision of these Terms will be valid and enforceable to the fullest extent permitted by law.

14. 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, or other third party without notice to you. However, you will not assign, delegate or otherwise dispose of your rights or obligations hereunder without FPLES's written consent.

15. ENTIRE TERMS. These Terms are the entire understanding between you and FPLES and supersede all prior agreements, representations and communications regarding this subject matter.