

COMMERCIAL SURGESHIELD® WITH WARRANTY PROGRAM TERMS AND CONDITIONS

- 1. THE SURGESHIELD PROGRAM.** These Commercial SurgeShield With Warranty Program Terms and Conditions (“Terms”) govern your enrollment in the Commercial SurgeShield With Warranty 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 manufacturer of the Equipment (“Manufacturer”) provides a limited manufacturer’s warranty, attached hereto as Exhibit A, for damages caused by a failure of the Equipment to properly perform (“Manufacturer’s Warranty”). ALTHOUGH FPLES IS THE ADMINISTRATOR OF THE MANUFACTURER’S WARRANTY, REIMBURSEMENT FOR DAMAGES TO APPLIANCES CAUSED BY A FAILURE OF THE EQUIPMENT TO PROPERLY PERFORM IS SOLELY THE RESPONSIBILITY OF AND IS SOLELY WARRANTED BY THE MANUFACTURER PURSUANT TO THE LIMITED MANUFACTURER’S WARRANTY AS SET FORTH IN EXHIBIT A. The installation of the Equipment (“Installation”) together with Maintenance and the Manufacturer’s Warranty are collectively referred to as the “Program”. NEITHER THIS PROGRAM NOR THE MANUFACTURER’S WARRANTY IS A CONTRACT OF INSURANCE AND THE MANUFACTURER’S WARRANTY IS ONLY APPLICABLE TO THE EXTENT OF DAMAGES CAUSED BY THE FAILURE OF THE EQUIPMENT TO PROPERLY PERFORM. 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 agreed 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. Warranty claims against the Manufacturer’s Warranty must be submitted pursuant to Exhibit A.
- 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. For the avoidance of doubt, this Section does not affect the scope of the Manufacturer’s Warranty that is governed solely by Exhibit A.
- 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.

Exhibit A

**SURGESHIELD COMMERCIAL TWENTY YEAR EXTENDED
SURGE SUPPRESSOR 'LIMITED' WARRANTY**
[This is not an insurance program.]

A. WHAT DOES THIS WARRANTY COVER?

Subject to the exclusions of Section D and the requirements of Section C, Manufacturer (as defined in Section G below) hereby provides an extended limited warranty to Commercial SurgeShield customers of FPL Energy Services, Inc. ("FPLES") with respect to the meter-based surge protective device ("SPD") that Manufacturer manufactures for FPLES that covers physical damage to covered appliances as set forth below, caused by a Power Surge that travels through the SPD. The term Power Surge is fully defined within IEEE Standard C62.41 and is summarized as "a subcycle overvoltage with a duration of less than a half-cycle of the normal voltage waveform¹. A Power Surge, or non-continuous spike or disturbance in the electric circuit, may be caused by natural or man-made events including but not limited to lightning strikes, power returning after an outage or scheduled maintenance, or wildlife interfering with power lines.

Covered appliances (located within the premise or within four (4) feet of the premise) includes only central air conditioners, clothes washers and dryers, refrigerators, freezers, dishwashers, garbage disposals, ovens, stoves, stove hoods, microwaves, hot water heaters, and the following motorized portions of well or electric pool equipment: well pump, pool heater, pool pump and spa pump. Motorized portions of electric pool or well equipment excludes timers, heaters, accessories, fixtures and controls. Covered appliances do not include anything not specifically listed above, including those items and damages expressly excluded in Section D.

B. HOW LONG DOES THE COVERAGE LAST?

This extended limited warranty is valid Twenty (20) years starting from the date that the SPD is manufactured by Manufacturer ("Warranty Period"). If you have questions as to the date of manufacture, please contact Manufacturer or FPLES for further information. See Section G below for determining the applicable Manufacturer of the SPD and the Manufacturer contact information at the end of this document.

C. WHAT WILL MANUFACTURER DO?

If it is determined, at the Manufacturer's sole discretion, that a Power Surge passed through the SPD and caused physical damage to covered appliances as defined above, MANUFACTURER, AT ITS SOLE DISCRETION, WILL EITHER REIMBURSE CUSTOMER THE FAIR MARKET VALUE OF THE DAMAGED EQUIPMENT IMMEDIATELY PRECEDING THE FAILURE, REIMBURSE CUSTOMER FOR REASONABLY INCURRED REPAIRS, OR PAY CUSTOMER THE COST OF REASONABLE ESTIMATED REPAIRS, provided however that (i) customer must have followed proper claim procedures as described in Section E, "How To Get Service?", (ii) the SPD must show an indication of activation and the fuse wire(s) have disconnected, and (iii) the SPD must have failed to perform its function according to the Manufacturer's published SPD specifications. Manufacturer's liability will not exceed \$5,000.00, with a maximum recovery of \$250 for any electronic circuitry contained within, to any one (1) specific covered appliance, per occurrence, with a maximum of \$100,000.00 in the aggregate over the life of this warranty. Upon evaluation, you will be notified of the status of your claim.

D. WHAT DOES THIS WARRANTY NOT COVER?

This extended limited warranty does not cover any SPD where Manufacturer's nameplate or FPLES' SurgeShield nameplate has been deliberately tampered with or removed. This warranty shall not apply to any damage caused by repair of the SPD not performed by an authorized Manufacturer's service center. For the avoidance of doubt, this warranty excludes (a) bodily injury to persons, (b) damages resulting from operation of the SPD under conditions exceeding Manufacturer's published SPD specifications, such as surges beyond its capability, continuous steady over-voltages, voltage sags (commonly known as brownouts), under-voltages and open neutrals, as a result of power delivery system damage or flaws, (c) damages to wiring, electrical outlets, breaker panels, and meter sockets, (d) detached buildings, stand-alone buildings or buildings attached via breezeway or other such structures, (e) generators and damages caused by a SurgeShield customer's on-site backup generator, (f) elevators and elevator equipment, (g) electric cars or supplemental equipment associated with electric cars, (h) solar equipment, (i) any damages other than physical damage to covered appliances, (j) stand-alone "electronic equipment" using microchip or transistor technology, such as but not limited to, computers, stereos, televisions, DVD players, and security systems, or (k) medical or life support equipment. Under no circumstances, will Manufacturer guarantee performance for a direct lightning strike not carried down the utility power lines or passing through the transformer and then the SPD. MANUFACTURER SHALL ONLY BE LIABLE TO PAY THOSE DAMAGES INCURRED WHICH ARE COVERED UNDER THIS WARRANTY AND FOR WHICH A CUSTOMER HAS NOT RECOVERED OR DOES NOT INTEND TO RECOVER FROM A THIRD PARTY OR INSURANCE CARRIER. In no event shall a customer be entitled to a "double recovery". Any and all possible subrogation claims which may be made by an owner's insurance company are hereby waived. Owner expressly acknowledges this provision and intends for its insurance company to be bound by this subrogation prohibition. MANUFACTURER DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE EXPRESS WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES PROVIDED.

E. HOW TO GET SERVICE?

Damaged Covered Appliance Claims Procedure: A claim form, available at FPLHome.com or by calling FPLES at 1-800-590-1235, must be submitted by customer to FPLES within thirty (30) calendar days of discovery of the damaged equipment. Failure to timely submit a claim will result in the claim being permanently denied. Incomplete claims will be permanently denied if the missing information is not submitted to FPLES within thirty (30) calendar days of FPLES's notification of incomplete information. Manufacturer or an authorized representative of Manufacturer reserves the right to inspect the damaged parts of the covered appliances, as well as the installation location. Damaged parts must remain available for inspection until the claim is finalized. Manufacturer shall be the sole judge of failure of the SPD.

F. HOW CAN I APPEAL A CLAIMS DECISION?

If a customer is not satisfied with a claims decision made by FPLES as administrator of the Manufacturer's warranty, the customer may request reconsideration by contacting FPLES at 1-800-590-1235.

G. WHO ARE MANUFACTURER AND FPLES?

SurgeShield is offered and provided by FPLES, a subsidiary of Florida Power & Light Company (FPL). SurgeShield is not offered, administered, warranted, guaranteed or backed by FPL. FPLES can be reached at 6001 Village Blvd., West Palm Beach, FL 33407 or by phone at 1-800-590-1235.

The manufacturer and/or supplier of the SPD is either Kenick, Inc., or Vector Products, Inc. DBA Tesco, located at the addresses set forth below. The applicable manufacturer and/or supplier ("Manufacturer") can be easily identified by the color of the label on the device attached to the meter. A green label indicates that Kenick, Inc. is the Manufacturer. A yellow label indicates that Vector Products Inc DBA Tesco is the Manufacturer. The applicable Manufacturer is responsible for this warranty which is administered by FPLES.

H. HOW DOES STATE LAW APPLY?

These are the sole warranties made by Manufacturer with respect to the Product. No other express or implied warranties are given. Also, other than provided for above, direct, indirect, consequential and incidental damages are not recoverable under this warranty.

¹ Reference www.nemasurge.org/history for additional information on surges.