

## GULF POWER COMMERCIAL SURGE PROTECTION PROGRAM TERMS AND CONDITIONS

**1. SCOPE OF SERVICES.** These Terms and Conditions ("Terms") shall govern your purchase of the commercial surge protection installation services ("Services") and your use, for the duration of these Terms, of the commercial surge protection equipment ("Equipment") provided in connection with the Commercial Surge Protection program offered and provided by Florida Power & Light Company doing business as Gulf Power ("Gulf Power"). The Services and your use of the Equipment are collectively referred to as the "Products" that are to be used at your designated business location ("Site"). The prices for the Products are based upon information you provided and apparent conditions at the Site without an extensive investigation by Gulf Power. THERE IS A POSSIBILITY OF THE EXISTENCE OF UNKNOWN CONDITIONS AT OR ON YOUR SITE THAT MAY ADVERSELY AFFECT GULF POWER'S ABILITY TO PROVIDE THE PRODUCTS AT YOUR SITE. YOU ACKNOWLEDGE THAT GULF POWER DOES NOT ASSUME THE RISK OF AND SHALL NOT BE RESPONSIBLE FOR ANY SUCH UNKNOWN CONDITIONS.

**2. ACCESS/ASSISTANCE.** You shall provide Gulf Power (and its contractors) with access (i) to all necessary areas, and provide necessary requested information related to utility service and equipment operation at the Site, and (ii) for Equipment installation, Equipment maintenance, and Equipment removal pursuant to Section 12. You are aware that Gulf Power is relying upon the accuracy and completeness of such information in order to properly perform the Services. Gulf Power 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 Gulf Power and its contractors harmless and pay all repair or replacement costs associated with such damage.

**3. WARRANTY EXCLUSION.** GULF POWER WARRANTS THAT THE SERVICES WILL BE PERFORMED IN A PROFESSIONAL MANNER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE EQUIPMENT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND BY GULF POWER. GULF POWER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, AND DOES NOT WARRANT THAT THE EQUIPMENT WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. 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, LIFE SUPPORT OR OTHER NON-GULF POWER EQUIPMENT BE COVERED UNDER THIS WARRANTY.

**4. EXISTING CONDITIONS.** Gulf Power is only being retained to perform Services relating to the installation of 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 Gulf Power to perform the Services hereunder. Neither Gulf Power 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. LIMITATION OF LIABILITY FOR ALL CLAIMS.** You acknowledge and understand that Gulf Power is not liable for any defects in the Equipment. Gulf Power obligations under these Terms shall be limited to re-performing any Services not in conformance with the Services warranty. Claims relating to Services shall be made to Gulf Power immediately following the discovery of such non-conformance. NOTWITHSTANDING THE FOREGOING, THE TOTAL AGGREGATE LIABILITY OF GULF POWER, ITS PARENT, THEIR AFFILIATES, SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND ASSIGNS ("GULF POWER ENTITIES") TO YOU OR ANY THIRD PARTY, FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED IN ANY WAY TO THE GULF POWER PROGRAM (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE) ARE LIMITED TO THE AMOUNT YOU HAVE ACTUALLY PAID FOR THE PRODUCTS. IN NO EVENT SHALL GULF POWER ENTITIES BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGES EXCEEDING THE AMOUNT YOU HAVE PAID FOR THE PRODUCTS NOR SHALL GULF POWER ENTITIES 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, LOST BUSINESS, 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 OR RENTAL EQUIPMENT, SERVICE OR SOFTWARE, DOWNTIME, THE CLAIMS OF THIRD PARTIES, AND INJURY OR DAMAGE TO NON-GULF POWER PROPERTY) EVEN IF GULF POWER 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. DISCLAIMER AND RELEASE.** GULF POWER PRODUCTS ARE OFFERED AND PROVIDED BY GULF POWER, A SUBSIDIARY OF NEXTERA ENERGY, INC. ("NEXTERA"). BY ENROLLING IN THE GULF POWER PROGRAM: (I) YOU ACKNOWLEDGE THAT

NEXTERA, ITS AFFILIATES AND/OR SUBSIDIARIES (OTHER THAN GULF POWER), DO NOT HAVE ANY OBLIGATION OR RESPONSIBILITY FOR THE PRODUCTS, 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 PRODUCTS; AND (II) YOU AGREE TO RELEASE NEXTERA, AND ALL OF ITS AFFILIATES AND/OR SUBSIDIARIES (OTHER THAN GULF POWER) FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, OR LIABILITIES IN CONNECTION WITH THE PRODUCTS OR PROGRAM.

**7. FORCE MAJEURE.** Gulf Power 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 Gulf Power. 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, or electrical storm, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions, floods, strikes, lockouts, supply shortages or other labor disputes or difficulties.

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

**9. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL.** These Terms and the Gulf Power Commercial Surge Protection program, shall be governed by the laws of the State of Florida. Any suit relating to these Terms, Products, and/or the program 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. BY SIGNING UP FOR THIS PROGRAM, YOU AGREE TO WAIVE ANY RIGHT TO HAVE A TRIAL BY JURY IN RESPECT TO ANY LITIGATION WITH GULF POWER BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED OR RELATED WITH, THESE TERMS, THE PROGRAM, THE PRODUCTS AND/OR THE PERFORMANCE OF SERVICES PROVIDED BY GULF POWER OR ITS CONTRACTORS.

**10. CUSTOMER SUPPORT NUMBER.** In order to obtain customer service hereunder, Gulf Power must be contacted at 833-919-0945

no more than seven (7) business days of discovery of the damaged or nonperforming Service.

**11. 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.

**12. OWNERSHIP.** Gulf Power retains all ownership of the Equipment and reserves the right to remove the Equipment without notice at any time on or after termination of the Services pursuant to Section 14 (Termination).

**13. ASSIGNMENT.** Gulf Power 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 shall not assign, delegate or otherwise dispose of your obligations hereunder without Gulf Power' written consent.

**14. TERMINATION.** Upon notice to you in any reasonable form, Gulf Power may terminate these Terms and its provision of the Equipment and/or Services in the event (a) Gulf Power determines, in its sole discretion, that the Equipment 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 Gulf Power from fulfilling its obligations hereunder, or materially and adversely affects Gulf Power' ability to provide the Products under these Terms, (c) you breach any term or condition contained herein, including without limitation, your obligation to make payment for the Products provided hereunder by the due date of your FPL electric utility bill, or (d) Gulf Power, for its convenience and in its sole discretion, makes a commercial decision to (i) generally discontinue the Products, or (ii) to discontinue your specific use of the Equipment and/or Services hereunder. You may cancel your order for the Products at anytime upon thirty (30) days written notice to Gulf Power. You will receive a full refund if you provide Gulf Power a written request for refund within seven (7) days of your initial receipt of the Services, or of your receipt of any applicable gift or prize to subscribe to such Services, which ever is later. Gulf Power will process such refund request within 30 days of its receipt of the refund request.

**15. AUTHORITY.** You represent to Gulf Power that you have the authority to enter into and bind you to these Terms and that you shall bear all costs attributable thereto, and you shall, at your own expense, defend, indemnify and hold Gulf Power harmless from and against all liability, loss or damage (including attorneys' fees) assessed against, suffered or incurred by Gulf Power as a result of an allegation or claim that you did not have such authority.

**16. ENTIRE TERMS.** These Terms 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. Gulf Power may amend these Terms from time to time, but such modifications to the Terms shall be effective upon Gulf Power delivery of notice to you.