



## DEMAND SIDE MANAGEMENT PROGRAM CONTRACT

This Demand Side Management Program Contract (“Contract”) is by and between **Florida Power & Light Company**, a Florida corporation (“FPL”), and \_\_\_\_\_ (“Participant”) (FPL and Participant each being referred to herein individually as a “Party” and collectively as the “Parties”), with reference to the following:

### RECITALS

WHEREAS, Participant qualifies to participate in FPL’s (check applicable Program(s)):

**Residential Low Income Weatherization Program**

(each individually or all three collectively shall hereinafter be referred to as the “Program”).

NOW THEREFORE, In consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 – PROGRAM STANDARDS, TERM AND TERMINATION

1.1 Program Standards. Participant agrees to conform to and be bound by the applicable program standards for the Program that Participant indicated it is participating, including any modifications thereto which may from time to time be amended by FPL (the “Program Standards”). The Program Standards shall be effective upon FPL posting such amendment on its web site at **www.fpl.com** or receipt by Participant pursuant to Section 8.10. A copy of the Program Standards for the Program as of the Effective Date of this Contract will be provided. Capitalized terms used in this Contract and not defined herein shall have the meanings set forth in the Program Standards. The Participant:

1.1.1 must submit to FPL, based on qualifying installations, a minimum of six (6) Watt-Saver Incentive Certificates or other incentive certificates (hereinafter the “Incentive Certificate(s)”) as may be required pursuant to the Program Standards during any twelve (12) month calendar period;

1.1.2 must perform each installation in compliance with the specifications of the manufacturer or distributor of the equipment and materials used in connection with any work and with FPL’s Program Standards; and

1.1.3 further agrees to successfully complete, and remain current in, any training or orientation which may be required by FPL, either as a prerequisite to, or as part of continuing education for, participation in the Program.

1.2 Term. This Contract shall commence upon the Effective Date and shall continue in effect for a period of one (1) year with automatic twelve (12) month annual renewals until written notice of termination by either Party is given in accordance with the provisions of this Article 1 herein.

1.3 Termination. Either party may terminate this Contract, in whole or in part, for its convenience and without cause in upon ten (10) days prior written notice; provided, however, FPL may terminate this Contract, in whole or in part, immediately if Participant fails to strictly adhere to any of the Program Standards or as provided in Article 6 below. Termination of this Contract shall not relieve Participant of its obligation to complete any work for any customer begun and not completed by Participant prior to such termination, unless FPL, in its sole and exclusive discretion, releases Participant of such obligations in writing. Any monies owed by FPL to Participant is subject to

Section 6.5. Upon termination of this Contract, the Participant: (i) shall immediately discontinue all use of the Approved Language; (ii) shall immediately cease presenting to anyone the impression it is affiliated or has any relationship with FPL; (iii) shall return to FPL within ten (10) days of termination all materials provided by FPL under its control, (iv) shall submit to FPL within ten (10) days of termination all certificates or documentation required for payment by FPL for work performed prior to termination; and (v) shall cease immediately from soliciting or obtaining any additional work under the Program after receipt of the notice of termination, whether received in writing or orally.

## **ARTICLE 2 – PARTICIPANT’S REPRESENTATIONS AND USE OF FPL TRADEMARKS**

2.1 Participant’s Representations Concerning the Program and Use of Trademarks. Participant’s descriptions of the Program shall conform in all respects to the terms and conditions of the Contract as well as to the Program Standards. Participant shall have no right to use any FPL Trademark or Logo for advertising, marketing, or identification purposes except as provided herein.

2.2 Limited License. Subject to Participant’s satisfaction of the requirements set forth in this Contract, FPL hereby grants to limited non-exclusive, non-transferable right to use the Licensee’s trademarks specifically for the limited purposes permitted set forth herein. Except for the foregoing limited license, title to, and ownership of FPL’s trademarks shall remain solely and exclusively with FPL. Nothing herein shall prevent FPL from licensing any or all of FPL’s trademarks to any other third party. To the extent Participant is permitted to use FPL’s trademark, Participant warrants and represents that it shall (i) conduct its business with respect to the work in a manner that reflects favorably at all times on the good name, goodwill and reputation of FPL; (ii) avoid deceptive, misleading or unethical practices that are or could reasonably be viewed as detrimental to FPL; (iii) make no false or misleading statements with regard to FPL; and (iv) not publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising or marketing materials incorporating FPL’s trademarks.

2.3 Approved Language. Participant shall use only the unaltered phrase: “FPL PARTICIPATING INDEPENDENT CONTRACTOR” (the “Approved Language”) to indicate its participation as an independent contractor in any Program. Participant may use its own trademark or logo to identify its own business so long as:

2.3.1 Participant does not infringe on any trademarks or copyrights that FPL may presently have or acquire in the future including but not limited to “Florida Power & Light Company”, “Florida Power & Light”, and “FPL”.

2.3.2 Participant may use or display the Approved Language provided to Participant and available upon request. Participant must receive FPL’s prior written approval if the Approved Language is used in the following manner: (1) in paid advertisements which appear in any media communicated either to the public at large or to trade or similar groups; (2) in displays used for presentations in trade shows; and (3) signage located at places of business or attached to or on Participant vehicles. Participant agrees not to use the Approved Language on any business or identification cards, letterheads, printed forms or other materials used by Participant or to permit the Approved Language to be displayed on the clothing of its employees, agents, or subcontractors or on any vehicle used by Participant or its employees, agents, or subcontractors. Participant further agrees not to use the Approved Language in any manner which would mislead or tend to mislead anyone as to the nature of its relationship to FPL or would represent or tend to represent the Participant as an employee, agent, partner, joint venture, or other representative of FPL.

## **ARTICLE 3 – WARRANTY EXCLUSION**

3.1 Participant’s Warranties or Representations to Customers. Participant acknowledges and understands that FPL is not liable for any representation or warranty made by Participant to customers concerning quality of materials/equipment, workmanship or any projected energy savings. THE PARTICIPANT ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT FPL HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OF CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE SUITABILITY OF THE MATERIALS AND

INSTALLATION FOR ANY AND ALL ACTIVITIES AND USES, (B) THE COMPLIANCE OF OR BY THE MATERIALS AND INSTALLATION OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, AND (C) THE MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR MATERIALS PROVIDED BY ANY THIRD PARTY MANUFACTURER AND IMPLIED WARRANTIES OF CUSTOM OR USAGE Participant shall also make no statements, representations or claims to customers inconsistent with this Article 3 concerning warranties or FPL's liability identified in Article 5.

#### **ARTICLE 4 – FPL AUDIT RIGHT**

4.1 **Audit.** Participant shall maintain at all times a recognized place of business and accurate business records relating to (i) adherence to insurance requirements, (ii) permit and licensing requirements and (iii) payments by customers and payments from FPL for work done under the Program(s). Participant shall provide FPL with information concerning such payments as FPL from time to time may reasonably request. It is Participant's responsibility to maintain records sufficient to document to FPL's satisfaction any requests for payments submitted by Participant under the Program for a period of two (2) years from the date the work is installed.

#### **ARTICLE 5 – INDEMNITY, INSURANCE AND LIMITATION OF LIABILITY**

5.1 **Indemnity.** Participant shall and does hereby release, indemnify, protect, and hold harmless, FPL, its parents, subsidiaries, affiliates and their respective officers, directors, agents and employees ("FPL Entities") from and against any and all claims, liabilities, and expenses, whatsoever, including but not limited to court costs and attorney's fees, arising out of the Participant's performance or non-performance under this Contract which may include, but not limited to, damage to personal or real property or in bodily injury or death, whether or not such liabilities, performance or non-performance are due to or caused in whole or in part by negligence of FPL Entities. As between FPL and Participant, Participant shall remain solely responsible for all liability, loss, cost and/or expense which may be sustained by reason of any claim for the death of or injury to any person or damage to any property arising out of or in connection with this Contract.

5.2 **Insurance Requirements.** Prior to commencing work under this Contract, Participant shall procure and maintain the following minimum insurance covering all operation required to complete the work in forms and with insurance companies acceptable to FPL: (i) all insurance requirements required by law, including, but not limited to, workers' compensation insurance for statutory obligations imposed by workers' compensation or occupational disease laws and comprehensive automobile liability insurance; and (ii) General Liability Insurance, including Broad Form Contractual Liability Coverage and Products/Completed Operations Liability Coverage, with minimum limits of Three Hundred Thousand Dollars (\$300,000) combined single limit per occurrence for bodily injury and property damage liability, which shall insure the performance of Participant's contractual obligations under this Contract. If the Participant is insured for liability with limits in excess of Three Hundred Thousand Dollars (\$300,000) for claims arising per occurrence, the Participant's contractual obligations for insurance shall extend up to but shall not exceed the higher limits of that insurance. Participant shall promptly provide evidence of the forgoing minimum insurance coverage by providing FPL with an ACORD or other certificate acceptable to FPL. Insurance specified in this Section 5.2 shall not be canceled or materially changed without ten (10) calendar days advance notice to FPL. Neither Participant's failure to provide evidence of minimum insurance coverage following FPL's request, nor FPL's decision to not make such request shall release Participant from its obligation to maintain the minimum coverage provided for in this Section 5.2.

5.3 **Limitation of Liability.** FPL shall not be liable to participant for special, indirect, consequential or punitive damages, even if FPL has been advised that such damages are possible. FPL shall also not be liable for lost profits, lost revenue, or lost institutional operating savings arising out of or in connection with this Contract. In no event shall FPL's total aggregate liability exceed the amount of the incentive payment(s) provided by FPL to the Participant for the work giving rise to such claim.

#### **ARTICLE 6 – PAYMENT TO PARTICIPANT**

Under those circumstances where the Program Standards provide for reimbursement of the incentive amount to the Participant, Participant shall receive compensation from FPL for work performed under the Program

as follows:

6.1 Participant shall, depending upon the Program under which Participant performed the work, either (i) accept a signed Incentive Certificate(s) provided by the customer, in the amounts specified in the applicable Program Standards, or (ii) have the customer execute an Incentive Certificate(s) provided by the Participant, in the amounts specified in the applicable Program Standards. Participant will not be entitled to payment on Incentive Certificate(s) unless customer has in fact received full credit for the amount of the Incentive Certificate(s) and customer is billed the entire contract price less the amount shown on the Incentive Certificate(s).

6.2 The Participant shall collect from the customer for the work done under the Program an amount equal to the contract price less the amount shown on the Incentive Certificate(s) held by the customer.

6.3 The Participant shall fill out the applicable Incentive Certificate(s) with the required information concerning the customer, the Participant and the work performed, and shall promptly submit to FPL the completed Incentive Certificate(s) for verification and payment.

6.4 FPL may verify the correctness of the work for which the Incentive Certificate has been submitted. Such verifications by FPL personnel shall be limited to the quality of the materials and mechanics of installation, as established in the Program Standards applicable to the work. Work performed under the Program not in strict compliance with the applicable Program Standards shall be deemed failed work and is unacceptable and shall be grounds for termination of this Contract.

6.5 FPL shall notify the Participant in the event FPL determines the Participant failed to comply with the applicable Program Standards for any work performed. The Participant shall, within thirty (30) days of such notification, correct the identified deficiency to FPL's satisfaction. In the event that Participant fails to correct said deficiencies within thirty (30) days, Participant shall be ineligible to receive payment for the Incentive Certificate(s) submitted in connection with such work, and this Contract may be immediately terminated by FPL pursuant to Section 1.3.

6.6 Participant remains solely liable for all work performed under this Contract, but FPL shall have the right of set-off against any monies owing Participant by FPL in amounts equal to (i) payments made by FPL for permits or licenses not obtained by Participant, (ii) the cost of others to complete work for which Participant was paid, and/or (iii) the cost of FPL having to perform more than one field inspection due to Participant's work not being in compliance with the Program Standards.

6.7 Any inconsistencies or discrepancies involving any or all of the following: the amount of the contract price; the amount of the Incentive Certificate(s); or the resulting amount which the customer owes/pays the Participant; must be resolved prior to the Participant receiving any payment on the associated Incentive Certificate(s) by FPL.

#### **ARTICLE 7 – PERMITS AND LICENSING REQUIREMENTS**

Participant warrants and represents that it has and shall maintain at all times any and all applicable permits and licenses required by any law to perform all work under the Program. Participant shall provide within five (5) business days such permits and licenses upon FPL's request. Participant agrees that it is solely responsible for compliance with any and all applicable statutes, codes, or ordinances with respect to said permits and licenses and with respect to any standards for materials or mechanics of installation. Nothing in this Contract shall impose on FPL the duty to obtain or inspect work permits. Participant shall immediately notify FPL when any license or permit is not in force for any reason. Participant's failure to maintain or satisfy applicable permit or license requirements will be cause for the termination of the Contract pursuant to Section 1.3, in FPL's sole discretion.

#### **ARTICLE 8 – GENERAL TERMS**

8.1 Independent Contractor. As a participant in the Program, Participant is an independent contractor performing installations on behalf of the customer and is not an agent, partner, joint venturer or employee of FPL. Participant shall represent itself and its employees/subcontractors to all customers and other parties as an

independent contractor and shall not in any manner, including by telemarketing or otherwise, promote, infer or identify itself or its employees/subcontractors as FPL, or as an agent, partner, joint venturer, or employee of FPL, or permit any such promotion or identification of itself or its employees/subcontractors. Participant has the sole responsibility to employ and pay such employees/subcontractors as may be required to perform the work, use appropriate equipment, follow good work practices, provide appropriate supervision and ensure compliance with Program Standards. In no event shall (i) FPL be liable for any amount owed to subcontractor in connection with its work or provision of materials for Participant or any customer or (ii) the subcontractor be considered to be an employee, partner, joint venturer or agent of, or in any way affiliated with, FPL.

8.2. Non-Exclusivity. Participant understands that others may participate in the Program.

8.3. Integration. This Contract contains all the terms and conditions agreed on by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to bind the Parties hereto. No modification of this Contract shall be binding unless made in writing and signed by both Parties.

8.4. Assignment. Neither the Contract, nor the work, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Participant without FPL's prior written approval. However, FPL may at any time and at its sole and unrestrained discretion assign the Contract, in whole or in part, to one of its subsidiaries or affiliates by written notice to Participant. No assignment or transfer of the Contract shall relieve either Party of any of its obligations hereunder until such obligations have been assumed by the assignee and agreed to by FPL, Participant and assignee. If the Contract should be permitted to be assigned by either Party, it shall be binding upon and shall inure to the benefit of the permitted assignee.

8.5. Territory. The provisions of this Contract are applicable to all geographic areas designated as FPL's service territory in which the Participant performs work under the Program. Participant is bound to comply with the terms and provisions of this Contract and the Program Standards in all geographic areas. Failure to comply in any geographic area may result in termination of the Contract system-wide.

8.6. Headings Not Controlling. Headings in this Contract are for reference purposes only and shall not be part of the Contract.

8.7. Non-waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Contract, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

8.8. Governing Law and Venue. This Contract shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Florida. Proceedings shall take place in the Circuit Court for Miami-Dade County or Palm Beach County, Florida or the United States District Court for the Southern District of Florida.

8.9. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HERON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS WHETHER ORAL OR PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS CONTRACT.

8.10. Notices. Correspondence concerning this Contract must be sent to the parties at the following addresses:

Participant:

Legal Name: \_\_\_\_\_  
(PLEASE PRINT LEGIBLY)

Address: \_\_\_\_\_  
(PLEASE PRINT LEGIBLY)

Attention: \_\_\_\_\_  
(PLEASE PRINT LEGIBLY)

**FPL:**  
PO Box 029100  
Miami, FL 33102  
Attention: FPL DSM Contract Administrator

If the mailing address for either Party changes during the term of this Contract, it shall be that Party's responsibility to notify the other party promptly of the new address, and the old address shall remain effective for the purposes of this Contract, or any renewal thereof, until notice of the address change has been received by the other Party. All notices shall be delivered in person; by courier service; by registered mail or certified mail; or by U.S. Mail, postage prepaid, in which case receipt shall be deemed effective three (3) business days after postmark.

8.11. **Survival.** The obligations of the Parties hereunder which by their nature survive the termination of the Contract and/or the completion of the work hereunder, shall survive and inure to the benefit of the Parties. Those provisions of the Contract which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination of the Contract and/or completion of the work.

8.12. **Severability.** Should any provision, portion or application thereof, of the Contract be determined by a court of competent jurisdiction to be illegal, unenforceable or in conflict with any applicable law, the Parties shall negotiate an equitable adjustment to the affected provisions of the Contract with a view toward effecting the purpose of the Contract and the validity and enforceability of the remaining provisions, portions or applications thereof, shall not be impaired.

**[REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK]**

**[SIGNATURES ON FOLLOWING PAGE]**

This Contract is effective as of the date FPL executes this Contract.

**FOR FLORIDA POWER & LIGHT COMPANY:**

BY: \_\_\_\_\_  
(AUTHORIZED FPL SIGNATURE)

NAME: \_\_\_\_\_  
(PLEASE PRINT SIGNATORY NAME LEGIBLY)

TITLE: \_\_\_\_\_  
(PLEASE PRINT SIGNATORY'S TITLE LEGIBLY)

DATE: \_\_\_\_\_

**FOR PARTICIPANT:**

\_\_\_\_\_  
(PLEASE PRINT COMPANY'S LEGAL NAME LEGIBLY)

BY: \_\_\_\_\_  
(AUTHORIZED PARTICIPANT SIGNATURE)

NAME: \_\_\_\_\_  
(PLEASE PRINT SIGNATORY NAME LEGIBLY)

TITLE: \_\_\_\_\_  
(PLEASE PRINT SIGNATORY'S TITLE LEGIBLY)

DATE: \_\_\_\_\_