



Heating Repair Program

Terms and Conditions Please read this Program carefully

Non-regulated utility products and services offered by Duke Energy are not regulated or sanctioned by the Florida Public Service Commission. Customers who purchase or subscribe to receive information about Duke Energy non-regulated products will not receive preferential or special treatment from their utility company and customers are not required to purchase or subscribe in order to receive safe, reliable electric service.

Your Duke Energy electric utility service is not subject to disconnection for the nonpayment of Program charges. If you make a payment on your Duke Energy electric utility bill that contains both regulated and Program charges, the payment will be applied by Duke Energy typically to the oldest regulated electric charges first, but at all times consistent with applicable state regulatory guidance.

The Heating Repair Program (the "Program") by UPA covers the repair of eligible residential forced air heating Systems (as defined below) powered by electric, natural gas, propane, or oil in a Customer's single-family residence that fail due to normal wear and tear. UPA (not Duke Energy) provides all Program Services and Materials.

1. Parties; Third-Party Beneficiary. "UPA" will mean Utility Partners of America, LLC. "Customer" will mean the individual homeowner purchasing Services and/or Materials (as defined below) from UPA. UPA and Customer are sometimes referred to individually as a "Party" and collectively as the "Parties." "Duke Energy" will mean Duke Energy Florida, LLC, whose mailing address for all notices under this Agreement shall be 550 South Tryon Street, Charlotte, NC 28202. Functioning solely as the Program billing administrator under this Agreement, Duke Energy is not a party to this Agreement but (the Parties agree) shall be deemed a third-party beneficiary under this Agreement.

2. Application. These Terms and Conditions (these "Terms") define the relationship of Customer and UPA and will apply to all purchases by Customer of repair services ("Services") and any equipment or materials required for Services (collectively, "Materials"). Duke Energy's role under these Terms is that of billing administrator only. Customer acknowledges and agrees that these Terms are incorporated in, and are a part of, each quotation, purchase order, service order, invoice, release, requisition, work order, shipping instruction, specification and any other document, whether expressed verbally, in written form or electronic commerce, relating to the Services and Materials to be provided by UPA under the Program (such documents are collectively referred to as the "Agreement"). UPA reserves the right to modify the Program and these Terms, from time to time, and will provide thirty (30) days' written notice of material changes.

3. Eligibility; Performance; Coverage.

- a. The Program is designed and intended for the repair of Systems, not the replacement of Systems that UPA, in its sole discretion, deems beyond repair. In the event a new replacement covered part is discontinued or unavailable the Customer will receive a credit for the normal cost of the defective part. Should the Customer elect to obtain a new unit, UPA will extend a 15% credit for the installation fee, provided Customer utilizes a UPA-provided contractor.
- b. An eligible System is defined as a single forced air heating unit that is powered by electric, natural gas, propane, or oil in owner-occupied single-family residences and was functioning

properly with no pre-existing damage as of the enrollment date (“System(s)”).

- c. By enrolling in the Program, the Customer represents that, to the best of his/her knowledge, the System to be covered was functioning properly with no pre-existing damage as of the date of enrollment.
- d. Unless expressly excluded within these Terms, the Program covers all residential System brands and ages so long as the repair parts are available and not discontinued.
- e. All covered Systems under the Program must have been originally installed to manufacturer’s specifications and met current code requirements at the time of installation.
- f. UPA reserves the right to inspect any System for up to sixty (60) days after receipt of the Customer’s enrollment and to reject the enrollment if the System to be covered is not functioning properly or has a pre-existing condition, as determined by UPA in its sole discretion.
- g. The Customer must identify the covered System(s) when multiple Systems are present. If the Customer does not designate the covered System(s), the default System shall be deemed to be the largest System serving the main or first floor of the premises.
- h. UPA reserves the right (in UPA’s sole discretion) to make final coverage eligibility decisions.
- i. Coverage under the Program shall be limited to Two Thousand Dollars (\$2,000) per calendar year.

4. Exclusions. The following are expressly excluded from the Program: mobile/manufactured homes, renters, PTAC units, wall units, self-contained units, mini-split systems, ductless systems, commercial systems or systems that exceed one hundred fifty thousand (150,000) BTU input, boilers and water heater-based systems, steam systems, radiant floor or ceiling heat, routine maintenance such as duct cleaning, filter replacement, condensate drain clearing and seasonal turn-ons and turn-offs, add-on components (including humidifiers), electronic or electrostatic air filters, electronic zoning systems, ultraviolet light systems, condensate lift pumps, auxiliary components (including duct work, grilles, and registers), equipment casing or enclosures, flues, and chimneys. In addition, this Program specifically excludes (and UPA shall not make) any repairs to, perform any Services for or address any problems associated with any Customer power source (whether electrical, natural gas, propane, oil or other) associated with any System(s), damage to the unit or other property, including without limitation damage caused by the Customer, any third party, natural disaster, acts of God, or any damage to the unit or other Customer property that should generally be or is already covered by the Customer’s homeowners or applicable insurance. THE REPAIR OR REPLACEMENT HEAT EXCHANGES WILL BE LIMITED TO THE MANUFACTURER’S PARTS WARRANTY PERIOD, PROVIDED, HOWEVER, UPA WILL REPAIR DEFECTIVE MATERIALS PROVIDED UNDER THE PROGRAM IN A REASONABLE TIME, WHICH SHALL BE DETERMINED IN THE SOLE DISCRETION OF UPA.

5. Service Upon Relocation. Florida, North Carolina and South Carolina Residents Only: In the event that the Customer moves from Customer’s current residence and Customer relocates to a new residence within the same Duke Energy utility service territory, Customer’s Program coverage will automatically be transferred to the new residence. If Customer no longer wishes to have coverage, or if Customer is no longer eligible for coverage, Customer shall contact UPA at 1-888-314-7655. If Customer cancels due to relocation, Customer will receive a full refund of payment. Once UPA receives a request to cancel the Program, the Program will non-renew at the end of Customer’s current term and coverage will end on the last day of the current term. Any refunds will be sent to Customer within thirty (30)

business days from the cancellation.

6. Term; Termination. Program protection starts 30 days after enrollment in the Program. Customer's Duke Energy utility bill or other billing mechanism will constitute the written renewal notice each month, and it is Customer's sole responsibility to make payment in full by the current charges past due after date. If Customer's payment is received by the bill's current charges past due date, this Program will be automatically renewed for an additional month. The Customer may cancel participation in the Program at any time. UPA, for its convenience, shall have the right to terminate the Program and/or any Services or Materials on ninety (90) days' written notice to the customer. If Customer cancels within thirty (30) days of Program purchase date, Customer will receive a full refund of payment. If Customer cancels this Program more than thirty (30) days after Customer purchase date, once UPA receives a request to cancel the Program, Program will non-renew at the end of Customer's current term and coverage will end on the last day of current term. Any refunds will be sent to Customer within thirty (30) business days from the cancellation.

7. Pricing. In consideration of the provision of the Services and/or Materials by UPA and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth by UPA and Duke Energy. Prices for Services and Materials are subject to change by UPA or Duke Energy upon thirty (30) days' written notice. The monthly Program price is for a single System. Additional Systems may be placed on the Program for an additional per-System fee equal to the monthly Program price.

8. Payment. If Customer's payment is not received within 90 days of due date, this Agreement will automatically terminate. If Customer's payment is received enrollment automatically renews for an additional month. Any Customer payment for parts and labor not covered under the Program must be made directly to the contractor.

9. Disclaimer of Warranties. To the extent assignable, UPA assigns to Customer any warranties that are made by manufacturers and suppliers of Materials. OTHERWISE, MATERIALS FURNISHED ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. UPA AND DUKE ENERGY FURTHER DISCLAIM ALL WARRANTIES WITH RESPECT TO THE SERVICES PROVIDED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

10. Limitation of Liability.

- a. CUSTOMER'S SOLE REMEDY SHALL BE LIMITED TO THE REPAIR OF ANY DEFECTIVE MATERIALS PROVIDED UNDER THE PROGRAM. UPA WILL REPAIR DEFECTIVE MATERIALS PROVIDED UNDER THE PROGRAM IN A REASONABLE TIME, WHICH SHALL BE DETERMINED IN THE SOLE DISCRETION OF UPA.
- b. IN NO EVENT SHALL UPA OR DUKE ENERGY BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND

NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. UPA SHALL NOT BE RESPONSIBLE FOR ANY PARTS PROVIDED BY OR LABOR PERFORMED BY THE CUSTOMER OR ANY THIRD PARTY.

- c. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL UPA'S AND DUKE ENERGY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO UPA FROM CUSTOMER UNDER THE PROGRAM.

11. Customer's Obligations. Customer shall:

- a. cooperate with UPA in all matters relating to the Services and Materials and provide safe access to and working conditions at Customer's premises; and
- b. respond promptly to any UPA request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for UPA to perform the Services or install any Materials.

12. Waiver. No waiver by UPA and/or Duke Energy of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by UPA and Duke Energy. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13. Force Majeure. Neither UPA nor Duke Energy shall be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of UPA and/or Duke Energy including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.

14. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of UPA. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

15. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

16. Governing Law. All matters arising out of or relating to this Program and Agreement are governed by and construed in accordance with the internal laws of the state where the Services were rendered, without



giving effect to any choice or conflict of law provision or rule (whether of the state where Services were rendered or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the state where Services were rendered.

17. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Agreement including, but not limited to, the following provisions: Governing Law, Submission to Jurisdiction, and Survival.

19. Headings; Entire Agreement; Amendment and Modification. The headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement. This Agreement embodies the entire agreement between the Parties concerning the Program Services and Materials and shall supersede any other agreement or understanding in respect to the subject matter hereof. The Parties shall not be bound by or be liable for any statement, writing, representation, promise, inducement or understanding not set forth herein. No changes, modifications, or amendments to any of the terms and conditions hereof shall be valid or binding unless amended or modified in a writing which specifically states that it amends this Agreement and is signed by each Party.

20. Binding Arbitration. This Agreement requires (and Customer agrees to) binding arbitration if there is an unresolved dispute between Customer and UPA concerning this Agreement (including the cost of, lack of or actual repair or replacement of Services or Materials arising from any incident). Under this Binding Arbitration provision, Customer knowingly and voluntarily waives and gives up Customer's right to resolve any dispute arising from this Agreement by a judge and/or a jury. Customer also agrees not to participate as a class representative or class member in any class action litigation, any class arbitration or any consolidation of individual arbitrations. In arbitration, a group of three arbitrators (each of whom is an independent, neutral third party) will give a decision after hearing Customer and UPA's positions. The decision of a majority of the arbitrators will determine the outcome of the arbitration and the decision of the arbitrators shall be final and binding and cannot be reviewed or changed by, or appealed to, a court of law. To start arbitration, either Customer or UPA must make a written demand to the other Party for arbitration. This demand must be made within one (1) year of the date the dispute arose. Customer and UPA will each separately select an arbitrator. The two arbitrators will select a third arbitrator called an "umpire." Each Party will each pay the expense of the arbitrator selected by that Party. The expense of the umpire will be shared equally by Customer and UPA. Unless otherwise agreed to by Customer and UPA, the arbitration will take place in the county and state in which Customer resides. The arbitration shall be governed by the Federal Arbitration Act (9 U.S.C.A. § 1 et. Seq.) and not by any state law concerning arbitration. The rules of the American Arbitration Association (www.adr.org) will apply to any arbitration under this Agreement. The laws of the state where the Customer resides (without giving effect to its conflict of law principles) shall govern all matters arising out of or relating to this Agreement and all transactions contemplated by this Agreement, including, without limitation, the validity, interpretation, construction, performance and enforcement of this Agreement.



State Amendments:

Florida Residents Only: The rate charged for this Agreement is not subject to regulation by the Florida Office of Insurance Regulation. Certain items and events are not covered by this Agreement. Please refer to Section 4 – Exclusions. Section 20 – Binding Arbitration is removed. ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL LIE EXCLUSIVELY IN THE APPROPRIATE STATE OR FEDERAL COURTS IN AND FOR THE STATE OF FLORIDA. **This Program does not provide free listing period coverage.** If the covered property is sold during the coverage period, Customer has the right to assign this Agreement within fifteen (15) days from the date the home is sold. The assignment fee is \$40.