

## **Florida Home Builders Association Home Energy and Water Efficiency Inspection and Certification Program Service Terms**

These Service Terms shall govern the Florida Home Builders Association Home (“FHBA”) Energy and Water Efficiency Certification Services performed by the UL Contracting Party (“we”, “our”, or “us” as the context requires), and set out the responsibilities and obligations of the Client (“you”, or “your” as the context requires). These Service Terms and the terms of the Global Services Agreement (“GSA”) are incorporated by reference into and are an integral part of each Service Agreement entered into by the Parties for FHBA program Services. The capitalized terms in these Service Terms which are not defined herein shall have the same meaning as in the GSA.

- 1. Scope of Service.** Under the FHBA program, FHBA, through its administrator Triconic LLC, will accredit inspectors to inspect and audit Client’s building against the requirements of the home energy efficiency Codes and Regulations adopted by the State of Florida and/or the St. John’s River Water Management District Florida Water Star Program standards (“FHBA Program Requirements”). As part of its administration responsibilities, Triconic will maintain a web based portal which will allow Client, the accredited inspectors and other parties to share program related information (“FHBA Portal”). Upon confirmation and receipt of the relevant FHBA compliance inspection reports and other submittal documents from accredited inspectors via the FHBA Portal, we will review a sample of the documents and make a determination based on the applicable FHBA Certification Requirements (available at <https://triconic.com/certificates>) whether to issue a Certificate of Conformance (“CoC”) for the inspected home (“Certified Home”).
- 2. Assignment of Certification Date.** UL Contracting Party will notify Client in writing via the FHBA Portal of the date of written notice from UL Contracting Party to Client that the applicable building(s) complies with the Certification Standards (“Certification Date”).
- 3. Authorization to Use UL Mark.** Subject to the terms and conditions of the Service Agreement, effective upon Client’s receipt of notice of the Certification Date for a Certified Home, Client is granted the limited, non-exclusive, non-transferable, non-sublicensable authorization to use the UL Mark solely on the Certificate of Conformance for Certified Home(s) which may be posted to the Certified Home only and for no other purpose.
- 4. Ownership and Use of the UL Mark.**
  - 4.1. Ownership of UL Mark.** Client (i) acknowledges that, as between Client and UL Contracting, UL Contracting Party owns all rights, title and interests in the UL Mark, (ii) agrees that it will do nothing inconsistent with that ownership and that nothing in this Service Agreement gives Client any right, title or interest in the UL Mark other than the limited authorization to use the UL Mark in

accordance with this Service Agreement, (iii) acknowledges that all use of the UL Mark by Client shall inure to the benefit of UL Contracting Party or its licensors, and (iv) agrees (a) to assist UL Contracting Party in recording this Service Agreement with appropriate government authorities at UL Contracting Party's request, (b) not to challenge UL Contracting Party's or any other UL Company's title to the UL Mark, or attack the validity of the UL Mark, the Certification Program, the Certification Standards, or this Service Agreement while this Service Agreement is in effect and thereafter, and (c) not to seek registration anywhere in the world of the UL Mark or domain names incorporating any of the UL Mark or oppose any application of UL Contracting Party or any other UL Company to register the UL Mark anywhere in the world.

- 4.2. Modifications to the UL Mark. Client acknowledges and agrees that UL Contracting Party has the right to replace the UL Mark with another UL Certification Mark for this Program from time to time during the Term. UL Contracting Party will provide Client an example of the new UL Mark, and Client must, within thirty (30) days of receipt, begin using such UL Mark on the Certified Home and related materials and phase out its use of the replaced UL Marks (in preexisting materials) over a reasonable period of time, but no longer than twenty four (12) months, at its sole cost and expense.
- 4.3. Standards for Use of UL Mark. Client agrees: (i) to use the UL Mark only in the form and manner and with appropriate legends as prescribed by UL Contracting Party, including in accordance with UL Contracting Party's UL Mark Guidelines; (ii) to cooperate with UL Contracting Party in facilitating its control of all uses of the UL Mark; (iii) to permit UL Contracting Party to inspect at Client's facilities uses of the UL Mark; and (iv) supply UL Contracting Party with physical and/or photographic specimens showing Client's use of the UL Mark prior to first use. Within ten (10) days of any reasonable UL Contracting Party request, Client must submit sample advertising and/or materials for UL Contracting Party's review. If UL Contracting Party or any other UL Company determines at its sole discretion that Client is not using the UL Mark properly or in accordance with the UL Mark Guidelines, or making potentially misleading statements as determined by the then current US Federal Trade Commission Green Guides, other regulations or UL Contracting Party instructions, UL Contracting Party will so notify Client and Client must correct its usage of the UL Mark or other marketing materials as requested, and provide to UL Contracting Party revised samples that are acceptable to UL Contracting Party as determined in its sole discretion. If Client fails to do so or UL Contracting Party determines that Client's actions cannot be remedied, UL Contracting Party may terminate the authorization to use the UL Mark immediately in accordance with Section 8 of the GSA, at our sole discretion.

**5. Disclaimer; Compliance with Laws and Regulations; and Indemnity.** THE UL COMPANIES EXPRESSLY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES IN CONNECTION WITH THE UL SERVICE AND THAT ANY TRADEMARKS, SERVICE MARKS, CERTIFICATION MARKS, LABELS, TEXT, GUIDANCE OR OTHER MATERIALS OR SERVICES PROVIDED TO CLIENT OR THE USE THEREOF WILL COMPLY WITH THE GREEN GUIDES, 15 USC SEC 45, OR OTHER APPLICABLE LAWS AND REGULATIONS, AND IN NO EVENT SHALL THE UL COMPANIES HAVE ANY LIABILITY IN CONNECTION THEREWITH. UL CONTRACTING PARTY DOES NOT PROVIDE LEGAL ADVICE, AND NO UL CONTRACTING PARTY-PROVIDED SERVICE OR DELIVERABLE SHALL BE CONSTRUED OR INTERPRETED AS LEGAL ADVICE. IT IS CLIENT'S SOLE RESPONSIBILITY TO COMPLY WITH THE US FTC ACT, THE GREEN GUIDES AND ALL OTHER APPLICABLE LAWS AND REGULATIONS REGARDING ENVIRONMENTAL MARKETING CLAIMS AND PRACTICES, AND CLIENT SHOULD CONSULT LEGAL COUNSEL FOR ADVICE ON THIS TOPIC. CLIENT AGREES TO INDEMNIFY AND HOLD HARMLESS THE UL COMPANIES AND THEIR TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AFFILIATES, AGENTS AND SUBCONTRACTORS FROM ALL LOSSES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF, OR RELATED TO, CLAIMS ASSERTED BY THIRD PARTIES THAT RELATE TO UNFAIR OR DECEPTIVE MARKETING CLAIMS, INCLUDING IN VIOLATION OF 15 USC SEC 45, THE GREEN GUIDES OR OTHER APPLICABLE LAWS OR REGULATIONS.

**6. Certified Home Quality Standards and Maintenance**

6.1. Quality Obligations of Client. Client acknowledges and agrees that its use of the UL Mark constitutes Client's declaration and representation that a Certified Home bearing the UL Mark is covered by the FHBA Program and conforms with all applicable requirements of the UL Contracting Party, including the FHBA Certification Requirements. Client further covenants that: (i) all buildings advertised as Certified Homes will comply with the FHBA Certification Requirements upon which the Certified Home(s) were approved in the at the time of the inspection. Client acknowledges and agrees that (i) Client is responsible for the management and operation of its buildings and (ii) UL Contracting Party will rely on such systems to ensure consistent quality of any buildings that become Certified Homes. Client agrees to notify UL Contracting Party of any complaints that Client receives that relate to a Certified Home's compliance with the FHBA Certification Requirements and, together with the notification of the complaint, indicate what responsive action has been or will be taken with respect to the complaint.

6.2. Improper Use. If at any time UL Contracting Party determines that Client has used the UL Mark on, or in connection with, buildings that are not Certified Homes or otherwise not in compliance with these Service Terms or GSA, UL Contracting Party may notify Client in writing of the mislabeling or misuse of

the UL Mark. Client must correct the labeling or usage of the UL Certification Marks as requested by UL Contracting Party immediately and notify UL Contracting Party of the corrective actions it has taken within thirty (30) days of Client's receipt of notice. Client further agrees that any unauthorized use or other misuse of the UL Mark or other UL names, trademarks, certification marks or service marks will subject Client both to liability for breach of contract and to the remedies for such breach set forth in the GSA and in these Service Terms.

6.3. Right to Communicate Certification Status. UL Contracting Party shall have the right, but not the obligation, at all times, whether this Service Agreement is in effect, to communicate to the public accurately Client's current and past certification status and any impending action that UL Contracting Party might take with respect to such certification status, including but not limited to publication on the UL website. UL Contracting Party shall have no liability to Client whatsoever for any harm caused Client by UL Contracting Party's communication thereof.

6.4. Corrective Action. Client agrees to take corrective actions, as instructed by UL Contracting Party and in UL Contracting Party's sole discretion, including but not limited to re-labeling and public notification of mislabeled building(s) or promotional materials to remedy any misuse of the UL Marks or failure of Certified Home(s) to comply with the FHBA Certification Requirements. All corrective actions shall be at Client's sole expense.

## **7. Termination**

7.1. In addition to Section 16 of the GSA, the following are other Termination Events specific to the FHBA Program:

7.1.1. Termination of authorization with respect to specific Certified Homes.

UL Contracting Party may terminate the authorization to use the UL Marks with respect to Certified Homes without further right to cure if Client:

7.1.1.1. Fails to pay any fees due in connection with the Certified Homes ;

7.1.1.2. Becomes de-certified pursuant to UL Contracting Party's then-current procedures.

7.1.1.3. Fails to correct improper usage of the UL Mark as set forth in Section 7.2; or

7.1.1.4. Fails to take corrective action as required by UL Contracting Party pursuant to Section 6.4.

## **8. EFFECT OF TERMINATION OR EXPIRATION**

8.1. Termination or Expiration of authorization with respect to Certified Homes. Upon termination or expiration of the authorization with respect to Certified Homes, formerly Certified Homes that are de-certified shall be deemed "Non-Compliant Homes(s)" and shall be deemed "De-Certified Homes." Client agrees:

- 8.1.1. To cease marking Non-Compliant Homes with the UL Mark immediately and to remove the UL Mark from any Non-Compliant Homes previously marked, and to cause its agents and marketers to do the same;
  - 8.1.2. To amend all marketing and promotional materials so as to reflect accurately the certification status of the Non-Compliant Homes and De-certified Homes, and to cause its agents and marketers to do the same; and
  - 8.1.3. That UL Contracting Party may take any and all actions necessary so as to communicate to the public the certification status of Client's buildings.
- 8.2. Termination or Expiration of this Service Agreement. Upon termination or expiration of this Service Agreement, Client agrees, in addition to that set forth in Section 8.1 above:
- 8.2.1. To destroy all printed materials, including marketing and promotional materials and advertising bearing the UL Mark, and use commercially reasonably its best efforts to cause its agents and distributors to do the same, no later than three (3) months of such expiration or termination, and provide written notice of such destruction to UL Contracting Party; and
  - 8.2.2. To cooperate with UL Contracting Party or its appointed agent to apply to the appropriate authorities to cancel any recording of this Service Agreement from all government records; and
  - 8.2.3. That, as between Client and UL Contracting Party, all rights in the UL Mark and the goodwill associated therewith shall remain the property of UL Contracting Party.