

TERMS AND CONDITIONS

1. Commitment. Our commitment to you is to provide you with a reliable, trouble-free Water Heater in accordance with this Agreement. The Water Heater you rent from us, as set out above, is backed by Enercare to the extent provided in this Agreement.

2. Term. The term of this Agreement commences on the date you agreed to this Agreement (as indicated above). The term of the Water Heater lease ends if this Agreement is terminated by you or us in accordance with its terms (which, for greater certainty, includes you exercising your buyout option in accordance with the terms of this Agreement) or when the useful life of the Water Heater has ended. The useful life of the Water Heater ends when Enercare or its authorized service provider determines, having regard to the relevant factors, including without limitation, the age of the Water Heater and the cost of any repairs to be made to the Water Heater, that it is no longer commercially reasonable to repair the Water Heater. For greater certainty, you do not have any right to subsequently request a different water heater than the one you rent from us under this Agreement.

3. Our Obligation to You. Our obligation to you is to service and repair the Water Heater with no service charges or parts replacement charges except in the following circumstances:

- a) if you (or a third party not authorized by us) alter, modify, adjust, damage, service, repair, move or disconnect the Water Heater;
- b) if service or repairs to the Water Heater are necessary because the Water Heater was used for an unintended or unauthorized purpose, including non-residential purposes;
- c) unless you are paying our hard water lease rate, if the Water Heater requires de-liming, flushing or other repair due to water conditions or the quality of the environment in which the Water Heater is situated. For greater certainty, Enercare determines hard water conditions. In such situations, we cover only diagnostic work;
- d) where venting, piping, wiring, plumbing, ducting and/or electric services requires cleaning, repair, replacement or installation, including to meet applicable laws or installation requirements;
- e) where re-setting is required due to FVIR "lock-out" as described below under "Customer Advisory";
- f) if you fail to maintain the Water Heater in accordance with the requirements set out below under "Customer Obligations - Safety";
- g) for service charges or parts replacement related to the use of load control devices, peak savings, load timers and all other energy saving devices; or
- h) if you fail to notify us as described below under "Customer Obligations - Duty to Maintain".

Should you require assistance, our 24-hour per day, 7 days per week emergency phone number is 1-855-810-2296. Should we update this phone number, the updated number can be found on the Enercare website at www.enercare.ca.

4. Customer Obligations. In return for fulfilling our obligations to you, you agree that:

- a) **Lease Charges** – The rate on the date of this Agreement for your monthly lease charge is indicated above. You will be responsible for paying lease charges from the date the Water Heater is installed (as indicated above) or, if you purchased the Premises after the Water Heater was installed, from the closing date of the purchase. **WE MAY INCREASE OUR MONTHLY FEES ON JANUARY 1 OF EACH CALENDAR YEAR BY A PERCENTAGE UP TO THE PERCENTAGE INCREASE TO CPI PLUS 2%. FOR THE PURPOSES OF THIS AGREEMENT, "CPI" MEANS THE ALL-ITEMS CONSUMER PRICE INDEX (NOT SEASONALLY ADJUSTED) FOR CANADA OR THE EQUIVALENT THEREOF, OR ANY COMPARABLE SUCCESSOR INDEX THEREOF, PUBLISHED BY STATISTICS CANADA IN OCTOBER IN RESPECT OF THE IMMEDIATELY PRECEDING SEPTEMBER TO SEPTEMBER PERIOD, OR BY ANY OTHER EQUIVALENT OR DULY AUTHORIZED DEPARTMENT OF THE GOVERNMENT OF CANADA (FOR CLARITY, THE CONSUMER PRICE INDEX IN CANADA IS EXPRESSED IN TERMS OF 2002 = 100). WE WILL NOTIFY YOU OF ANY SUCH INCREASES IN ADVANCE BY BILL INSERTS, BY LETTER OR BY ANY OTHER METHOD PERMITTED BY LAW.**
- b) **Payment of Charges** – You will pay your charges billed under this Agreement when due. You agree to pay GST and any other taxes payable in connection with this Agreement. We may bill you for your charges directly or through our service provider. Acceptable methods of payment, which currently include pre-authorized payment, payment by cheque, by telephone or in person, or online banking, will be set out on the bill you receive. Should any payment be returned for non-sufficient funds ("NSF"), you agree to pay a NSF charge of \$25. A late payment charge will apply to all overdue amounts on your bill, including applicable federal and provincial taxes. The rate for late payment charges is 1.5% per month or 18% per year (for an effective rate of 19.56% per year) or such lower rate as required by applicable laws. Your bill is due on the date indicated on

the bill.

c) **Bill Delivery** – If you are billed directly by us or our service provider, unless otherwise specified by you, we will email your monthly bill to the email address provided by you. In the event that no email address is provided by you or you notify us that you wish to receive your bill by mail, we will mail your bill to the installation address or the mailing address, in the event a mailing address is provided by you.

d) **Access** – You will provide us with timely access to the Water Heater whenever required by us to perform our obligations or exercise our rights under this Agreement.

e) **Safety** – You will use the Water Heater safely and responsibly. In particular, you will:

- i) maintain effective operation of any plumbing and pumping systems supplying water to the Water Heater;
- ii) ensure that no combustible, hazardous or flammable materials are used or stored in the same room as, or near, the Water Heater;
- iii) ensure that the Water Heater is not confined in a location where it is difficult to service or remove or where there is inadequate ventilation;
- iv) provide us with access to the Water Heater whenever reasonably required for purposes of inspection, repair, maintenance or removal;
- v) inspect the area around the Water Heater on a regular basis for any sign of water leakage;
- vi) contact us for service if you see any sign of carbon or rust on the bottom or sides of the Water Heater or any signs of water leakage;
- vii) ensure that the Water Heater is located in an area with sufficient drainage in the vicinity, and that the drainage is open, unrestricted and effective;
- viii) if the Water Heater is gas-fired, ensure that the vents and openings for combustion air are kept clear and clean and otherwise well-maintained and there is adequate ventilation; and
- ix) not permit anyone who has not been authorized by us to service, repair, modify, alter, adjust, move or disconnect the Water Heater.

f) **Ownership, Credit and Security Interest.** You agree that:

- i) if more than one customer is named on the account, each of you is individually liable, and all of you are collectively liable, for all obligations imposed on you by this Agreement;
- ii) during the term of this Agreement, the Water Heater remains our property, does not become a fixture, and you will not tamper with any tag(s) or sticker(s) identifying the Water Heater as rented equipment or that it is owned by us;
- iii) you will promptly inform us of any change in your: (i) mailing address at least 30 days in advance of such change; and/or (ii) if previously provided, bank account or credit card information promptly after such change is made;
- iv) this Agreement is binding upon and will enure to your heirs, personal representatives, successors and permitted assigns; and
- v) we may register, at your expense, our interest in the Water Heater against you and/or against title to the Premises. To the extent permitted by law, you agree to waive any right to receive a copy of such registration and appoint us as your lawful attorney for the purpose of doing any such registrations. You agree that the Water Heater will remain personal property even though it may become affixed to the Premises. You agree to keep the Water Heater free of all liens, security interests, mortgages and other claims.

5. Sale of your Home – If you sell or otherwise transfer the Premises, you are required to inform the transferee, at or before the effective date of the sale or transfer, of the existence of this Agreement and the leased Water Heater installed in the Premises. We will permit the transferee to assume your rights and obligations under this Agreement, effective from the date of sale or transfer; provided that:

- a) you or your representative notify the transferee in the sale or transfer agreement that the Water Heater is rented and is subject to this Agreement;
- b) you or your representative advise us in advance of the transferee's name and the intended date of sale or transfer;
- c) you or your representative advise us in advance of the address and telephone number where you can be contacted after the date of sale or transfer;
- d) the transferee agrees in writing or by conduct to assume your obligations under this Agreement; and
- e) you have paid us all amounts owing under this Agreement.

Unless and until these conditions are satisfied, or unless Enercare otherwise waives any or all of these conditions, which we are under no obligation to do, or you terminate this Agreement in accordance with Section 9, you will remain

responsible for the Water Heater lease and your obligations under this Agreement, including making all lease payments. You hereby authorize us to respond to information requests relating to your account made by or on behalf of the transferee.

6. Customer Advisory. The Water Heater may be equipped with flammable vapour ignition resistant (“FVIR”) technology. Enercare encourages you to read the Water Heater Use & Care Manual provided to you upon or after installation of the Water Heater. Certain activities such as, without limitation, painting or using solvents could cause the FVIR technology to “lockout” the Water Heater causing it to no longer function until reset by a qualified service technician. Resetting the Water Heater caused by FVIR “lockout” is not covered by Enercare under this Agreement and, if applicable, you will be charged for both parts and labour at our then current rates.

7. Warranties and Liability.

a) Warranties – We make no representations, warranties or conditions as to the performance of the Water Heater except for those which are given by statute, any express warranties provided by the manufacturer of the Water Heater or as provided below. We hereby warrant that, subject to the terms and conditions of this Agreement, the Water Heater will work and provide hot water, and will not leak or rupture, for the term of this Agreement, reasonable wear and tear excepted. We are not the manufacturer of the Water Heater and we are not making any warranty or guarantee in respect of it or the supplier or the manufacturer of the Water Heater, including whether the Water Heater is suitable for you, except as provided above. Any warranties or guarantees provided under applicable legislation are hereby excluded to the extent permitted by law.

b) Liability – We will not be liable for any loss, damage or injury of any type (including as a result of water leakage or any electrical or natural gas related events) arising out of or related to this Agreement or caused or contributed to in any way by the supply, installation, use and/or operation of the Water Heater. We shall not be responsible for any indirect, incidental, special or consequential damages, even if reasonably foreseeable. If we are unable to perform any of our obligations under this Agreement because of circumstances or events beyond our control, we shall, subject to reasonable efforts on our part to remedy the situation, be excused from the performance of such obligations for the duration of such circumstances or events and we shall not be liable to you for such failure to perform.

c) Indemnity – You will indemnify us from all claims, losses and costs that we may suffer or pay or may be required to pay, including reasonable legal expenses, in connection with this Agreement, including its termination or enforcement, or the supply, use and/or operation of the Water Heater including any claims against us for any injury or death to individuals or damage to property resulting from your negligence or misuse of the Water Heater. This obligation survives the termination of this Agreement for any reason.

d) Insurance – During the term of this Agreement, you are responsible for any loss or damage to the Water Heater from any cause, whether or not insured, until all of your obligations under this Agreement have been fulfilled.

8. Personal Information About You. We collect personal information about you in order to establish and manage our, and our authorized service provider’s, business relationship with you. We won’t knowingly share this information with third parties without your permission, other than to service providers, parties that provide us with credit information, parties to whom we transfer, assign, encumber or otherwise dispose of this Agreement or the Water Heater or otherwise in accordance with our Privacy Policy, which is available at enercare.ca/privacy-policy or can be obtained from our Privacy Officer. In light of this, you hereby: (i) consent to the collection, use, disclosure and maintenance of personal information and to receiving commercial electronic messages and promotional offers (such as tips to help you run your home or place of business more efficiently and reliably, special money-saving offers available to our customers and news about products and services that may be of interest to you) in accordance with the terms of our Privacy Policy (you may opt out at any time by contacting our Privacy Officer using the information below); (ii) authorize us to use and disclose your personal information to: verify your identity when you request information about your account by telephone or email; bill, collect payment, manage your account and/or supply services to you under this Agreement; review information about your bill payments; provide to our authorized technicians and other companies that provide service under this Agreement; comply with law enforcement and/or a legal requirement; process past due accounts of yours which have been passed to a debt collection agency; and undertake a credit reference check and we agree that the results thereof, any other personal information provided by or about you shall be handled by us in accordance with applicable laws and the Privacy Policy; and (iii) if your Water Heater is billed by your gas utility, you authorize your gas utility to provide us with any information about your Water Heater, including charges and payment. We may record our telephone conversations with you and disclose the recordings to achieve the purposes set out in this section.

You may contact our Privacy Officer to discuss any questions or concerns related to the Privacy Policy, how your information is being handled, or to request that your personal information be revised or removed from our promotional list by telephone at: 416-649-1862, e-mail at: privacy@enercare.ca, or mail at: Privacy Officer, Enercare Inc., 7400 Birchmount Road, Markham, ON, L3R 5V4.

9. Termination

Termination by Us – Each of the following will be events of default (a “Default”) by you:

- If any bankruptcy, insolvency or receivership proceedings are commenced with respect to you; and/or
- If you breach any provision of, or fail to perform any of your obligations under, this Agreement, including but not limited to any failure to pay any amount when due.

At any time while there is a Default, we may, on 30 days written notice require that you immediately purchase the Water Heater at the buy-out price and on the other terms set out below under “Termination – Termination by You”. If we choose not to exercise this option, or if you fail to pay the buy-out price, then we may also exercise one or more of the following rights without further advance notice:

- Terminate this Agreement;
- Enter the Premises and disconnect, remove and use or dispose of the Water Heater for our own account; and/or
- Pursue any other remedies we may have at law.

If we choose to terminate this Agreement and/or remove the Water Heater as a result of a Default, you agree to pay a removal charge in accordance with our then current fee schedules for removals or disconnections. You also acknowledge that we have no obligation to remove or re-sell the Water Heater and you are not entitled to any proceeds of sale.

Upon termination of this Agreement and/or removal of the Water Heater, all amounts owing hereunder are due and payable.

Termination by You –

- **You may not terminate this Agreement except as provided below.**
- **You may terminate this Agreement by purchasing the Water Heater at any time for a price calculated in accordance with the Buy-out Schedule below.** You may exercise your buy-out option by notifying us in writing or by calling 1-855-810-2296. If you tell us you want to buy the Water Heater, we will calculate and tell you the purchase price. The purchase price is based on, among other things, the unpaid cost of the Water Heater and related installation, finance, service and maintenance costs.

| Buy-out Schedule | | | |
|---------------------------|--|-----------------------------|--|
| Age of Water Heater | Buy-out Price ¹ (% of Cash Value of Water Heater) | Age of Water Heater | Buy-out Price ¹ (% of Cash Value of Water Heater) |
| 0 to less than 1 yr. old | 100% | 8 to less than 9 yrs. old | 74% |
| 1 to less than 2 yrs. old | 98% | 9 to less than 10 yrs. old | 68% |
| 2 to less than 3 yrs. old | 96% | 10 to less than 11 yrs. old | 61% |
| 3 to less than 4 yrs. old | 92% | 11 to less than 12 yrs. old | 53% |
| 4 to less than 5 yrs. old | 89% | 12 to less than 13 yrs. old | 43% |
| 5 to less than 6 yrs. old | 86% | 13 to less than 14 yrs. old | 31% |
| 6 to less than 7 yrs. old | 83% | 14 to less than 15 yrs. old | 15% |
| 7 to less than 8 yrs. old | 79% | 15+ yrs. old | 5% |

¹ The buy-out price for the Water Heater is based on the percentage of the cash value of Water Heater set forth on page 1 of this Agreement. All applicable taxes will be added to the stated buy-out price.

When you exercise your buyout option, you accept the Water Heater in an “as-is” condition, subject to the balance of any transferable manufacturer’s warranty, and you assume full responsibility for the Water Heater and its repair and maintenance. You also agree to pay the buyout price when invoiced by us. Once payment has been received for the buyout price, and no other amounts are outstanding pursuant to this Agreement, this Agreement will end for the Water Heater and, as set out more particularly below in the section called “End of this Agreement”, you will have no further obligation to pay rent and we will have no further obligation to you.

10. End of this Agreement. At the end of this Agreement (for whatever reason):

- a) Rent –** you are not obligated to rent and we are not obligated to supply replacement equipment (including a water heater), unless we mutually agree at the time and enter into a new water heater lease agreement.
- b) Replacement –** Enercare is not responsible for replacing the Water Heater or re-connecting any ancillary or other equipment including without limitation venting, piping, plumbing, wiring, ducting, and/or electrical services.
- c) Removal and Disposal –** if the Water Heater has reached the end of its useful life and we are not installing a replacement Water Heater, you shall at such time own the Water Heater, and if you wish for us to disconnect and/or dispose of the Water Heater, you must contact us by calling 1-855-810-2296 to make such arrangements. We will charge you in accordance with our then current fee schedules for removals or disposals.
- d) No Further Obligations –** you will have no further obligation to pay rent (other than rent owing prior to the end of this Agreement) and, subject to any statutorily mandated requirements, we will have no further obligations of any kind or manner to you.

11. Assignment. We may transfer, assign, encumber or otherwise dispose of all or any part of our interest in this Agreement and/or the Water Heater to another party at any time without notice to you and without your permission. To the extent permitted by law, you will not assert against any transferee any claims, defences, set-offs, deductions or counter-claims which you may now or

in the future be entitled to assert against us. Except as otherwise provided in this Agreement, you may not transfer, assign or encumber all or part of your interest in this Agreement or the Water Heater without our prior written consent (see the section called "Sale of your Home").

12. Invalidity of Provision. If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, such provision shall be severed and the remainder of this Agreement shall continue to remain in full force and effect subject to such modifications as may be necessary to carry out the provisions and intent of this Agreement.

13. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and federal laws of Canada applicable therein.

14. Entire Agreement and Amendments. You understand that this Agreement is the entire agreement between you and us and supercedes all prior agreements, understandings or discussions, whether oral or written, and there are no warranties, representations or other agreements except as specifically set out in this Agreement. This Agreement may be amended from time to time by us by notice in bill inserts, by letter, by email or by any method permitted by law in which case you will have the option to not accept such amendment and retain this Agreement unchanged.

15. How to Contact Us. You may contact us as follows:

7400 Birchmount Road

Markham, Ontario L3R 5V4

Attention: Customer Operations

1-855-810-2296

Email: Operations-AB@enercare.ca

Enercare.ca.

Buyer's Right to Cancel. You may cancel this contract from the day you enter into the contract until 10 days after you receive a copy of the contract. You do not need a reason to cancel.

- If you do not receive the goods or services within 30 days of the date stated in the contract, you may cancel this contract within one year of the contract date. You lose that right if you accept delivery after the 30 days. There are other grounds for extended cancellation. For more information, you may contact your provincial/territorial consumer affairs office.
- If you cancel this contract, the seller has 15 days to refund your money and any trade-in, or the cash value of the trade-in. You must then return the goods.
- To cancel, you must give notice of cancellation at the address in this contract. You must give notice of cancellation by a method that will allow you to prove that you gave notice, including registered mail, fax or by personal delivery.