

## RESIDENTIAL WATER HEATER AGREEMENT

Customer Name		Installation Date		Date of Agreement	
Service address		Unit/Apt.	City/Town	Province	Postal Code
Email address	Water Heater Model		Serial Number	Current Calendar Year Rental Rate	

**1. Commitment.** “Our”, “us” “we” or “Enercare” means **Enercare Home and Commercial Services Limited Partnership**. Our commitment to you, our rental customer, (“you”, “your” or “customer”), is to provide you with a reliable, trouble-free water heater in accordance with this Residential Water Heater Rental Agreement (the “Agreement”). The water heater (“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 rental 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:

- if you (or a third party not authorized by us) alter, modify, adjust, damage, service, repair, move or disconnect, the Water Heater;
- 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;
- unless you are paying our hard water rental 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 water heater conditions. In such situations we cover only diagnostic work;
- where venting, piping, wiring, plumbing ducting and/or electric devices requires cleaning, repair, replacement or installation, including, but not limited to, gas leak or installation requirements;
- where re-setting is required due to EGD shut-outs as described below under “Customer Advisory”;
- if you fail to maintain the Water Heater in accordance with the requirements set out below under “Customer Obligations - Safety”;
- 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
- 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 **1-844-enercare**. Should we update this phone number, the updated number can be found on the Enercare website at [www.enercare.ca](http://www.enercare.ca).

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

- Rental Charges** – The rate on the date of this Agreement for your monthly rental charge is indicated above. You will be responsible for paying rental 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 rental rates 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 Ontario 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 rental rate increases in advance in bill inserts, by letter or by any method permitted by law.
- Payment of Charges** – You will pay your charges billed under this Agreement when due. You agree to pay HST and any other taxes payable in connection with this Agreement. Your charges may be included on your utility bill, or we may choose to bill you separately 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). Your bill is due on the date indicated on the bill.

**Late Payment Charges on your Enbridge Gas Distribution (“EGD”) Bill** (applicable only if your charges are included on your EGD bill) – A late payment charge will apply to all overdue amounts on your EGD bill,

including applicable federal and provincial taxes. The late payment charge will be calculated and applied as approved by the Ontario Energy Board (“OEB”). The current OEB-approved late payment rate is 1.5% per month or 18% per year (for an effective rate of 19.56% per year). Your EGD bill is due when you receive it, which is considered to be three days after the bill date. If you do not pay your bill in full by the late payment effective date on the first page of your EGD bill, a late payment charge equal to the late payment rate multiplied by a total of all unpaid charges will be added to your EGD bill.

**c) 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.

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

- maintain effective operation of any plumbing and pumping systems supplying water to the Water Heater;
- ensure that no combustible, hazardous or flammable materials are used or stored in the same room as, or near, the Water Heater;
- 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;
- provide us with access to the Water Heater whenever reasonably required for purposes of inspection, repair, maintenance or removal;
- inspect the area around the Water Heater on a regular basis for any sign of water leakage;
- notify us for service if you see any signs of water leakage on the bottom or sides of the Water Heater or any sign of water leakage;
- ensure that the Water Heater is located in an area with sufficient drainage in the vicinity and that the drainage is open, unobstructed and effective;
- if the Water Heater is gas-fired, ensure that the vents and openings for combustion 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.

**e) Duty to Maintain** – If the Water Heater is gas-fired, you are required, as the user of the Water Heater, under law to ensure that it is maintained in a safe operating condition (Ontario regulation 212/01 Section 15). In the event that a service or repair is required please call **1-844-enercare**.

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

- 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;
- 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;
- we may inquire about your credit history and, if necessary, use the personal information you have provided to us to do so. For greater certainty, you authorize any credit reporting agency to give us credit or other personal information about you from time to time during the term of this Agreement. You can withdraw this authorization at any time. If you do or we are not satisfied with the results of any credit check, we may end this Agreement and the provisions of “Termination - Termination by Us” will apply;
- 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;
- this Agreement is binding upon and will enure to your heirs, personal representatives, successors and permitted assigns; and
- 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 rental 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, you will remain responsible for the Water Heater rental and your obligations under this Agreement, including making all rental 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 and which you cannot waive and except any express warranties provided by the manufacturer of the Water Heater, except as provided below. Subject to you carrying-out your obligations under this Agreement (including those under "Customer Obligations") and subject to the limitations set out under "Liability", we hereby warrant that 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, 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** – Except as otherwise expressly provided in this Agreement, 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 direct, 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 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 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, including 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](http://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 information. We may record our telephone conversation 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](mailto:privacy@enercare.ca), or mail at: Privacy Officer, Enercare Inc., 7400 Birchmount Rd., Markham, ON L3R 5V4.

#### 9. Termination

**Termination by Us** – If you fail to meet any of your obligations (including payment obligations) set out in this Agreement, you agree that we may terminate this Agreement and bill you for the applicable buyout price and on the other terms set out below under "Termination – Termination by You". You agree to pay the buyout price when invoiced by us.

**Termination by You** – Your sole method of terminating this Agreement prior to the end of the useful life of the Water Heater is to purchase the Water Heater. You may purchase the Water Heater at any time for a buyout price that reflects, among other things, the unpaid cost of the Water Heater and related installation, finance and servicing costs, which buyout price can be found on our website. You can also confirm the buyout price by calling an Enercare Rental Specialist at **1-877-334-1846**. You may exercise your buyout option by notifying us in writing or by calling an Enercare Rental Specialist at **1-877-334-1846**.

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 rental 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 1-877-334-1846 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.
  - e) **Assignments** – 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, 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, encumber or otherwise dispose 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 Ontario 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 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:  
Enercare Home Services  
7400 Birchmount Road Markham,  
Ontario L3R 5V4 Attention: "Rental  
Administration"  
**1-844-enercare (1-844-363-7227)**  
Visit us at [enercare.ca](http://enercare.ca)

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