



# TERMS AND CONDITIONS

## 1. Definitions – In this Agreement:

*Premises* means the address where the Equipment is installed by Enercare

*You and your* means the Lessee, as shown on the front page of this Agreement; and

*We, our, us* and *Enercare* means Enercare Home and Commercial Services Limited Partnership

## 2. Term of Rental

(i) You agree to rent the Equipment from Enercare Home and Commercial Services Limited Partnership (“Enercare”) in accordance with the terms of this Agreement from the time of installation until the end of the Initial Term, subject only to those terms of this Agreement which expressly provide for earlier termination. After the Initial Term, this Agreement will automatically be extended from month to month (“Extension Term”) and may be terminated by either party at any time by notice to the other. (The Initial Term and any Extension Term will be referred to together as the “Term”).

(ii) Notwithstanding paragraph 2(i), this Agreement will terminate immediately if we inform you that the Equipment has reached the end of its Useful Life. The “Useful Life” of the equipment ends when Enercare, or its authorized service representative determines in our reasonable discretion that it is no longer commercially reasonable to repair the Equipment, having regard to its age, the cost of the repair or other relevant factors.

(iii) After termination of this Agreement (including but not limited to any termination by Enercare at the end of the Useful Life of the Equipment), Enercare will not be required to supply, and you will not be required to rent any replacement equipment, unless we mutually agree in writing at the time.

(iv) You may also terminate this Agreement by exercising your option to purchase the Equipment in accordance with paragraph 6 below.

## 3. Enercare’s Commitment

(i) Installation – Enercare or its authorized representatives will install the Equipment at our own expense, with only the following exceptions. You will be responsible for (A) the cost of any permits or inspections required by your municipality; and (B) any unusual costs which are agreed to in writing prior to the installation of the Equipment.

(ii) Repair Service – Enercare will repair and service the Equipment as required. Except in the circumstances specifically identified in paragraph 4, there will be no service charges or parts replacement charges.

(iii) Purchase Option – You will have an ongoing option to purchase the Equipment at any time during the Term, on the terms set out below in paragraph 6.

## 4. Lessee’s Commitment

(i) Monthly Rental Charges

• You agree to pay the monthly rental charge for the Equipment each month by the due date set out in the invoice sent to you by Enercare or our billing agent. This may be a separate Enercare invoice, or an invoice shared with your energy utility or other third parties.

• The current monthly rental charge is the amount set out on the first page of this Agreement. You agree that we may change the monthly rental rate from time to time by giving you written notice in advance, either by letter or with your monthly bill, provided that the amount of your rate increase will not exceed a percentage equal to one percent (1%) plus the cumulative rate of inflation in Ontario since our last rate increase.

• You agree to pay HST and any other provincial or federal sales or similar taxes payable in connection with the goods and services provided under this Agreement.

• You agree to pay interest on late payments of any amounts payable under this Agreement at interest rates we may set, acting reasonably.

(ii) Equipment Care and Operation. You agree to use the Equipment safely and responsibly, and in particular that you will ensure that:

- **no combustible, flammable or hazardous materials are used or stored in the vicinity of the water heater;**
- **the Premises are not modified in any way that results in the Equipment being confined in an area where it is difficult to service or remove or where there is inadequate ventilation;**
- **all chimneys, vents and other openings are kept clear and clean;**
- **Enercare is notified immediately if the Equipment breaks down or is not performing properly;**
- **our representatives are allowed access to the Premises at all reasonable times to inspect, repair or remove the Equipment; and**
- **the Equipment is never used for business building space heating purposes.**

(iii) All Service by Enercare. You will not permit anyone other than Enercare and its authorized representatives to service, repair, modify, move, or disconnect the Equipment.

(iv) Water Damage – You acknowledge that all water heater tanks eventually fail and that it is your responsibility to ensure that the water heater is located in an area with sufficient, open and unrestricted drainage and that valuable property is not stored in a way that could expose it to damage in the event of a leak. Enercare will therefore not be responsible, and you agree to release and indemnify us, for any direct or indirect loss or damage caused by water leakage. You will ensure that the Equipment is inspected regularly for signs of leakage and that any leaks are reported promptly to us.

(v) Modifications, Removal and Add-on Equipment – You agree that you will obtain our written consent before you modify, disconnect or move the Equipment and before you connect any ancillary or add-on equipment, such as air handlers, storage tanks, air duct systems or hydronic baseboards to the Equipment.

(vi) Specific Service/Repair Obligations of Lessee. You agree that you will pay for any cleaning or repairs to the Equipment required as a result of blocked air openings or vents, improper air circulation or water hardness, corrosiveness, sediment, unclean water or other water quality problems.

(vii) Ancillary Piping and Venting

You will own any related piping, venting, wiring or ducting we install, except where these items are listed in the definition of Equipment on the first page of this Agreement. We are not required to maintain these items during the Term, or remove them upon termination of this Agreement

(viii) Lessee’s Responsibility for Damages – You agree that you will be responsible for and will indemnify Enercare and its representatives in respect of the following losses, claims, costs and damages:

- damage to or loss of the Equipment which is caused by fire, flood, accident or any other insurable risk or by any cause other than ordinary wear and tear or an act or omission of Enercare or its representatives;
- damage to the Equipment or other property caused by water conditions (including but not limited to the costs of flushing or de-liming if necessary);

- damage to the equipment or any other property damage or personal injury to the extent caused by you or any third party, including but not limited to any improper use of or tampering with the Equipment or any servicing, modification or disconnection of the Equipment not expressly authorized by Enercare, or to the extent caused by any equipment modifications or additions you make, whether or not we have consented to them;

- any other losses, claims, costs or damages resulting from any breach of or failure to perform any of your obligations under this Agreement.

(ix) Limitation of Enercare’s Liability – You acknowledge that we will be responsible for losses, claims, costs and damages relating to the Equipment or this Agreement only to the extent caused by the willful or negligent act or omission of Enercare or its authorized representatives. You accept all other risks relating to the rental and use of the Equipment. You also agree that in no circumstances will Enercare be responsible for any consequential, indirect or economic losses, including but not limited to any lost business or business closure caused by any malfunction or breakdown of the Equipment.

## 5. Ownership of Equipment

• During the Term, the Equipment remains the property of Enercare or its assignee and although it may be affixed to the Premises, is not intended to become a fixture. You agree that you have no interest whatsoever to the Equipment other than as expressly provided in this Agreement.

• You agree to assist in protecting our ownership interest by signing and providing any further documents we may reasonably require and you acknowledge that we may register notices of security interest under the *Personal Property Security Act* (Ontario) or equivalent legislation as we deem appropriate.

• You agree to ensure that any identification plates or stickers affixed to the Equipment to identify us as the owner are not removed or defaced.

## 6. Lessee’s Buy-out Option

(i) You may purchase the Equipment at any time by notifying that you wish to do so and paying the Buy-out Price. During the Initial Term, the “Buy-out Price” means the amount calculated at the time you exercise your purchase option by multiplying (i) the number of months then remaining in the Initial Term, by (ii) your then-current monthly rental rate under this Agreement. After the Initial Term, the “Buy-out Price” means the amount calculated by multiplying the then-current monthly rental charge by three (3).

(ii) When you exercise your buy-out option, this Agreement terminates and you accept the Equipment in “as is” condition, subject to the balance of any transferable manufacturer’s warranty and you assume responsibility for the Equipment and its service and repair. You agree to pay the Buy-out Price, plus all applicable taxes, promptly when invoiced by Enercare and you acquire ownership rights in the Equipment only when this amount has been paid in full.

## 7. Transfer and Assignment

(i) Enercare may assign this Agreement, or any or all of its rights and obligations under this Agreement to one or more third parties.

(ii) The Lessee may assign this Agreement to a third party provided you obtain the prior written consent of Enercare. We will not unreasonably withhold our consent to such an assignment provided that the assignee signs an assumption agreement satisfactory to us.

## 8. Termination

(i) On termination of this Agreement:

- Except where the Lessee has exercised its buy-out option, Enercare may, at its option, disconnect, remove and retain any or all of the Equipment, and the Lessee will assume ownership and responsibility for any equipment we elect to leave at the Premises;

- If we choose to remove the Equipment, we are not required to connect or reconnect any remaining or replacement equipment or appliances unless we mutually agree at the time.

(ii) Termination of this Agreement will not operate as a release of any of the obligations of the parties that have arisen or result from events occurring prior to termination, including in particular, but not limited to, any outstanding payment obligations of the Lessee, and any indemnification obligations provided for under this Agreement.

## 9. Default

(i) Each of the following will be events of default (a “Default”) on the part of the Lessee:

- If any bankruptcy, insolvency or receivership proceedings are commenced with respect to the Lessee; and

- If the Lessee breaches any provision of, or fails to perform any of its obligations under this Agreement, including but not limited to any failure to pay any amount when due.

(ii) At any time while there is a Default, we may, on 30 days written notice require that you immediately purchase the Equipment at the Buy-out Price and on the other terms set out in paragraph 6. 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 Equipment for our own account; and/or

- Pursue any other remedies we may have at law.

If we choose to remove the Equipment as the result of a Default, you agree to pay a \$500.00 removal charge. You also acknowledge that we have no obligation to remove or re-sell the Equipment and you are not entitled to any proceeds of sale.

## 10. Security Deposit

We acknowledge receipt of the security deposit amount (if any) shown on the first page of this Agreement. This amount will be forfeited if we terminate the Agreement as a result of a default. Otherwise, the security deposit will be returned to the Lessee upon termination, subject to offset any amounts you owed at the time.

## 11. Notices

Where this Agreement contemplates written notice by Enercare to the Lessee, we may mail, deliver or fax the notice to the Lessee’s address and fax number set out on the first page of this Agreement. You may change your notice address by written notice to us.

## 12. Entire Agreement/Representations

(i) This Agreement contains our entire agreement relating to the Equipment. You acknowledge that Enercare has made no representations or warranties, except as contained in the written terms of this Agreement.

(ii) You represent and warrant that all information provided about the Lessee, its business and the Premises is accurate, including but not limited to the information reflected on the first page of this Agreement.