Water Heater Repair and Replacement Terms and Conditions

YOUR ENCLOSED DECLARATION PAGE IS AN INTEGRAL PART OF YOUR SERVICE AGREEMENT AND ALONG WITH THESE TERMS AND CONDITIONS CONSTITUTE YOUR ENTIRE AGREEMENT

HomeServe USA Repair Management Corp. ("HomeServe") is the entity that will administer the service under this Service Agreement. You may contact HomeServe by mail at 7134 Lee Highway, Chattanooga, TN 37421 or by calling toll-free 1-877-444-7750. TWG Home Warranty Services, Inc. ("THW", "Provider", "We", "Us" or "Our") is the entity obligated to provide service under this Service Agreement. You may contact THW by mail at 175 West Jackson Blvd., 8th Floor, Chicago, IL 60604, or by calling toll-free 1-866-918-4680.

What's Covered: We will arrange and pay for the repair or replacement due to normal wear and tear of Your electric, natural gas, or propane water heater ("Water Heater") for which You have sole responsibility, that supports Your Residence. You must call HomeServe to arrange for service in order for repairs to be covered. See "How to Call for Repairs" below.

If You have a covered repair and We are unable to repair Your Water Heater to its operational use, We will make available the remainder of Your benefit amount to be used toward the purchase and installation by Us of a Water Heater replacement, most similar in capacity and/or functionality.

Benefit Limit: The maximum benefit limit is up to $1,000 per Term. Any repair or replacement charges beyond Your benefit limit are Your responsibility.

What's Not Covered:
We will not be responsible for any of the following:

1. **Damages, losses and expenses, whether from negligence or otherwise, caused by: (a) You or any person or entity other than Us or HomeServe or (b) unusual circumstances, meaning a natural disaster, act of God (such as fires, explosions, earthquakes, drought, tidal waves and floods), war, riots, hostilities, strikes or work slowdowns or acts or threats of terrorism;**
2. **Excluded Damages (see "Our Liability" below) which include, for example, damages necessary to reasonably access the repair area. Your rights and remedies may vary depending on the state where Your Residence is located;**
3. **Any correction or upgrade of Your existing Water Heater, not directly related to the necessary repair, in order to meet any code, law, regulation or ordinance;**
4. **Jacket and interior doors, exhaust venting, expansion tanks, supply and delivery water piping other than flexible, and electrical service wiring;**
5. **Damage from restricted lines or as a result of water pressure in excess of 80 P.S.I.;**
6. **Costs associated with making space suitable for installation when the replacement unit does not fit in the existing space;**
7. **Repair or replacement of any part of Your Water Heater that is not expressly stated to be covered in "What's Covered" above.**

Eligibility: A single structure or a single Unit within a structure, owned by You, used and zoned only for residential occupancy that is not intended to be moved ("Residence") is eligible. Residences include single family homes (inclusive of manufactured housing), townhomes, and apartments. A single structure that is owned by You and used and zoned only for residential occupancy that includes multiple Units ("Multifamily Residence") is also eligible. If You own a Multifamily Residence or multiple Units, You must provide the specific Unit mailing address for each Service Agreement You purchase. Any recreational vehicle or property used for commercial purposes is not eligible. If You are aware of any pre-existing conditions, defects or deficiencies with Your Water Heater prior to the Start Date of Your first Term, then You are not eligible for this coverage. If Your entire Water Heater is shared with any third party, covered by a homeowners', condominium or like association, or is not installed according to manufacturer specifications, then You are not eligible for this coverage. In addition, if You have a commercial grade, larger than 100 gallon, tankless, solar, geothermal, oil, hanging or combination home heating/domestic hot water, then You are not eligible for this coverage.

Length of Service Agreement: Your Service Agreement begins on the Start Date listed on Your Declaration Page and will continue for twelve (12) months ("Term") provided neither You nor We cancel. See "Cancellation/Refund" below. There is an initial waiting period of thirty (30) days, within which You will not be able to request a Service Call. This means You will receive less than twelve (12) full months of coverage during the first year. For a Service Call requiring a replacement of Your Water Heater there is an initial ninety (90) day waiting period. Upon renewal (if applicable), You will not be subject to a waiting period.

How to call for repairs: You must call HomeServe and a service representative will assist in the diagnosis of Your repair and the scheduling of a visit from one of HomeServe's approved local technicians. You will not be reimbursed for work done by technicians who are not authorized by HomeServe. Technicians must have safe and clear access to, and safe working conditions at and around the work area. There is no Service Call fee.

Covered repairs: Covered repairs are guaranteed against defects in materials and workmanship for one year. Under the guarantee We will arrange at Our expense and discretion for repair or replacement. We disclaim any and all statutory or common law warranties (whether express or implied) other than Our covered repair guarantee and any implied warranties that cannot be excluded under applicable law.

Receiving Documents Electronically: You can receive Your Service Agreement and all related documents electronically. If You consented to electronic delivery, these documents will be sent to the email address listed on Your Declaration Page ("Email Address"). Documents sent to the Email Address will be deemed to have been received by You. You may stop receiving documents electronically by calling HomeServe or by updating Your preferences in Your profile on HomeServe's website. You may also call HomeServe to update Your Email Address or to receive a paper copy of Your Service Agreement.

Renewal: If You pay through Your utility bill, by credit/debit card or by direct debit this Service Agreement will automatically renew for a further term of 12 months. If You paid by check, or if You pay by credit/debit card and requested that We not automatically renew this Service Agreement, You must renew this Service Agreement prior to the end of the Term to ensure continuous coverage. We reserve the right to not offer this Service Agreement upon renewal.

Cancellation/Refund: You may cancel this Service Agreement at any time by calling HomeServe. If You cancel within thirty (30) days of the Start Date, You will receive a full refund less any claims paid by Us. If You cancel more than thirty (30) days after the Start Date, Your cancellation will be effective at the end of the then current billing month. If applicable, You will be entitled to a pro-rata refund less any claims paid by Us.

If Your local utility company or municipality provides similar coverage to You at no charge, You can contact HomeServe to cancel and You will receive a refund of the payments You have made less any claims paid by Us. You may be required to provide evidence of the similar coverage. If We find that You have such coverage or are otherwise ineligible for the coverage provided by this Service Agreement, We may cancel on no less than fifteen (15) days' written notice to You and will refund the payments You have made less any claims paid by Us.

We may cancel for any reason on sixty (60) days' written notice to You. We can also cancel, on no less than fifteen (15) days' written notice to You for: (a) non-payment of the Price; or (b) Your fraud or misrepresentation of facts that are material to this Service Agreement or benefits provided under it. If We cancel under (b) above, You will be entitled to a pro-rata refund less any claims paid by Us.

Written notices from Us under this section will tell You exactly when Your Service Agreement will be cancelled and why it has been cancelled. The notice periods referred to in this section begin when We send the notice to You.

Key Terms:

"**Declaration Page**" – The enclosed document that forms a part of this Service Agreement, listing important information regarding You, Your Residence and other vital information.
"**Price**" – The amount You agree to pay for this Service Agreement, as listed on Your Declaration Page.
"**Service Agreement**" – The documents that constitute all of Your rights and responsibilities as a Service Agreement holder; which consist of these terms and conditions and Your Declaration Page.
"**Service Call**" – A visit to Your Residence by one of HomeServe's approved local technicians, where work is performed to diagnose and complete a single repair, or where it is determined the repair is not covered.
"**Unit**" – A self-contained space that includes, at minimum, a living area, kitchen and bathroom within Your Residence.
"**You**" or "**Your**" – The purchaser of this Service Agreement who is the Service Agreement holder listed on the Declaration Page.

Privacy Policy: Any information You provide HomeServe will be accessed, collected, used, transmitted, disclosed, stored, maintained and otherwise handled to administer Your Service Agreement by HomeServe or its group of companies, including, but not limited to, disclosing Your address, telephone number, and other contact information to third parties who conduct services on HomeServe's behalf. HomeServe or its group of companies and their selected partners may also use Your data to keep You informed by mail, telephone or email of any products or services which they consider may be of interest to You. For further details on how HomeServe uses Your information, please see their Privacy Policy at www.homeserveusa.com/Customer_Data_Privacy_Policy.html. Should You have any questions or concerns about HomeServe's

Privacy Policy or how they are using Your information or to update Your privacy preferences, please contact HomeServe.

Assignment/Amendment: We reserve the right to change this Service Agreement (including the price or to charge an additional fee) and to delegate any of Our obligations at Our sole discretion provided We give You thirty (30) days' prior written notice of the changes. The changes will become effective thirty (30) days after We send You the notice. If You do not like the changes, You may cancel this Service Agreement. You may not change this Service Agreement or delegate any of Your obligations. Should certain terms or conditions in this Service Agreement be held to be invalid or unenforceable, the remainder of the terms and conditions in this Service Agreement shall remain valid.

Transfer: This Service Agreement is not transferable by You.

Responsibility for benefits owed to You: This is not an insurance policy; it is a Service Agreement. HomeServe will serve as Your point-of-contact for all questions or concerns. Our obligations under this Service Agreement are insured under a service contract reimbursement insurance policy. If We fail to pay or to deliver service on a claim within sixty (60) days after proof of loss has been filed, or in the event You cancel this Service Agreement and We fail to issue any applicable refund within sixty (60) days after cancellation, You are entitled to make a claim against the insurer, Virginia Surety Company, Inc., 175 West Jackson Blvd., 8th Floor, Chicago, IL 60604, 1-800-209-6206.

Our Liability: To the fullest extent permitted by applicable law, (1) You agree that We and HomeServe, and both of our respective parents, successors, affiliates, approved technicians and our and their officers, directors, employees, affiliates, agents, contractors or similar parties acting on behalf of either Us or HomeServe shall not be liable to You or anyone else for: (a) any actual losses or direct damages that exceed the lowest applicable per repair benefit limit set out above relating to any repairs performed by Us, HomeServe or on behalf of either Us or HomeServe or services provided hereunder giving rise to such loss or damage; or (b) any amount of any form of indirect, special, punitive, incidental or consequential losses or damages, damages based on anticipated or lost profits, wages, or revenue, or damages based on diminution in value or a multiple of earnings, including those caused by any fault, failure, delay or defect in providing any repairs performed by Us, HomeServe or on behalf of either Us or HomeServe or services provided under this Service Agreement, regardless of whether such damages were foreseeable and whether or not We or HomeServe or anyone acting on behalf of either Us or HomeServe have been advised of the possibility of such damages (the damages listed in clauses (a) and (b), collectively the "Excluded Damages"); and (2) these limitations and waivers shall apply to all claims and all liabilities and shall survive the cancellation or expiration of this Service Agreement. You may have other rights that vary from state to state.

Arbitration: YOU, THW AND HOMESERVE ALL AGREE TO RESOLVE DISPUTES ONLY BY FINAL AND BINDING ARBITRATION OR IN SMALL CLAIMS COURT as follows:

A. **EXCEPT FOR SMALL CLAIMS COURT CASES THAT QUALIFY, ANY DISPUTE THAT IN ANY WAY RELATES TO OR ARISES OUT OF THIS SERVICE AGREEMENT OR FROM ANY OTHER AGREEMENT BETWEEN US, OR SERVICES OR BENEFITS YOU RECEIVE OR CLAIM TO BE OWED FROM THW OR HOMESERVE, WILL BE RESOLVED BY FINAL AND BINDING ARBITRATION BY ONE OR MORE ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), OR ANOTHER ARBITRATION ADMINISTRATOR THAT WE MUTUALLY AGREE UPON**. Arbitration will apply not only to claims against THW or HomeServe, but also claims against the officers, directors, managers, employees, agents, affiliates, insurers, technicians, successors or assigns of THW or HomeServe. Arbitration and this paragraph shall apply to claims that arose at any time, including claims arising before this paragraph became binding on the parties. The federal arbitration act (9 U.S.C. §§ 1 et seq.) and not any state law applies to this agreement.
B. For claims of $10,000 or less, the party bringing the claim can choose to proceed by way of binding arbitration pursuant to the AAA's rules or, alternatively, can bring an individual action in small claims court.
C. **YOU GIVE UP YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION.** This means that You may not be a representative or member of any class of claimants or act as a private attorney general in court or in arbitration with respect to any claim. Notwithstanding any other provision of this Service Agreement, the arbitrator shall not have the power to determine that class arbitration is permissible. The arbitrator also shall not have the power to preside over class or collective arbitration, or to award any form of class-wide or collective remedy. Instead, the arbitrator shall have power to award money or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. No class or representative or private attorney general theories of liability or prayers for relief may be maintained in any arbitration held under this Service Agreement.
D. HomeServe will pay any filing fee, administration, service or case management fee, and arbitrator fee that the AAA charges You for arbitration of the dispute, up to a maximum of $1,500; provided, however, that the arbitrator may award costs and expenses to any party, if allowed by law. If You provide us with signed written notice that You cannot pay the filing fee, HomeServe will pay the fee directly to the AAA.
E. If for some reason the prohibition on class arbitrations set forth in Subsection C cannot be enforced, then the agreement to arbitrate will not apply.

F. **IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN THROUGH ARBITRATION, YOU, THW AND HOMESERVE AGREE THAT THERE WILL NOT BE A JURY TRIAL.** You, THW and HomeServe unconditionally waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating in any way to this Service Agreement or from any other agreement between us, or the services or benefits You receive or claim to be owed from THW or HomeServe, including as to claims asserted against any of the officers, directors, managers, employees, agents, affiliates, insurers, technicians, approved technicians, successors or assigns of THW or HomeServe.

State variations: The following shall apply if inconsistent with any other terms and conditions of this Service Agreement:

Texas only: We may only cancel for: (a) non-payment of the Price; or (b) for Your fraud or misrepresentation of facts that are material to this Service Agreement or benefits provided under it; or (c) because the Residence is no longer owned by You, or the land on which the Residence is located is no longer owned by You. We will initiate service within forty-eight (48) hours of a request for services by You. The "Assignment/Amendment" section is deleted in its entirety and replaced with the following: "We reserve the right to delegate any of Our obligations at Our sole discretion provided We give You thirty (30) days' prior written notice of the changes. You may not change this Service Agreement or delegate any of Your obligations. Should certain terms or conditions in this Service Agreement be held to be invalid or unenforceable, the remainder of the terms and conditions in this Service Agreement shall remain valid." This Service Agreement is issued pursuant to a license granted by the Texas Real Estate Commission. Complaints in connection with this Service Agreement can be directed to the Texas Real Estate Commission at P.O. Box 12188, Austin, Texas 78711, (512) 936-3049.
The purchase of a residential service contract is optional and similar coverage may be purchased through other residential service companies or insurance companies authorized to transact business in Texas.
NOTICE: YOU, THE BUYER, HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.
FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR AN ATTORNEY OF YOUR CHOICE.

_____ _____
Buyer's Signature **Date**

NOTICE: WE PAY PERSONS NOT EMPLOYED BY US FOR THE SALE, ADVERTISING, INSPECTION, OR PROCESSING OF A RESIDENTIAL SERVICE CONTRACT UNDER TEXAS OCCUPATIONS CODE §1303.304