

AWHR 24-Month Terms & Conditions



America's Water Heater Rentals, LLC 24-Month Appliance Lease/Warranty and Service Plan Agreement

Terms and Conditions

1) Appliance Lease. This Appliance Lease/Warranty and Service Plan Agreement ("Agreement") is between Customer and America's Water Heater Rentals, LLC ("Company"), and Company hereby agrees to provide the appliances and related equipment specified above (the "Appliance") subject to the terms and conditions set forth herein.

2) Term and Termination. This Agreement will have an initial term of 24 months ("Initial Term"), and will continue thereafter for additional successive one month terms (each a "Renewal Term"), unless terminated during any such Renewal Term by either party as of the end of any monthly billing period with at least 30 days' prior written notice. The Initial Term and each Renewal Term constitute the "Term" of this Agreement. Upon termination of this Agreement, Company may enter upon the premises on which the Appliance is located (the "Premises") for the purposes of repossessing and removing the Appliance, and Company will charge Customer a \$150 dollar removal fee if this Agreement is terminated during the Initial Term. Customer shall maintain Appliance in the same condition it was in at the time of installation, ordinary wear and tear excluded. Customer agrees that it will make no claim against Company or Company's contractors for any costs for installing any appliances to replace any removed Appliance and acknowledges neither Company nor Company's contractors have any obligation to install any such appliances.

3) Payment. Customer shall pay Company the fees described above ("Fees") together with any applicable taxes, fees, filing costs or other governmental and association charges applicable to the installation and/or use of the Appliance and/or this Agreement (including, without limitation, all sales and use taxes, permit and inspection fees and homeowners association charges) per month in advance as payment for the lease of the Appliance. Payments are in addition to the fees and other charges specified above which are due and payable by Customer upon the execution of this Agreement by Customer. All Fees are subject to change by Company after the Initial Term upon 30 days notice to Customer, subject to Customer's right to terminate this Agreement after the Initial Term.

4) Payment Terms. Each payment is due and payable by Customer on such date as may be specified by Company in any bill or invoice sent to Customer for such payment. Customer shall pay a \$0.50 late charge for payments received after the specified due date on any bill or invoice, and interest will accrue on any overdue amounts at a rate

of 1.5% per month or part of any month, or such lesser amount as required by law. Customer shall pay to Company \$25 for each check returned for insufficient funds or any other reason, or such lesser amount as required by law. If this Agreement is terminated for any reason, Customer shall remain obligated to make all payments arising hereunder prior to such termination, even if billed or demanded after such termination, except for payments of the amount of any increase in a fee if Customer timely terminates this Agreement following any notice of a Fee increase.

5) Company's Warranty Obligations. During the Term of this Agreement, Company will repair and replace any part of the Appliance which becomes non-operational or unserviceable, except that Company's obligations under this Agreement do not include: (i) repairs or replacements required as a result of Customer's failure to comply with any of its obligations hereunder; (ii) repairs or replacements made necessary as a result of service performed on the Appliance by persons other than Company's authorized representatives; (iii) repairs or replacements of Appliance damaged by acts of God or other causes beyond the control of Company. All service calls under this Agreement will be made at the service address shown on the first page of this Agreement. EXCEPT AS SPECIFICALLY PROVIDED IN THIS PARAGRAPH, COMPANY IS PROVIDING THE APPLIANCE TO CUSTOMER "AS-IS" AND MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR USE OR FOR A PARTICULAR PURPOSE.

6) Customer's Obligations. Customer shall provide a suitable location for the Appliance that will ensure safe installation of the Appliance and protection of the Appliance from the elements. Customer shall furnish necessary electrical receptacles conveniently located for the Appliance. Customer shall exercise reasonable care in the use and custody of the Appliance and use the Appliance only for its intended purpose in accordance with the manufacturer's instructions and specifications, which Customer acknowledges have been provided to Customer. Customer shall be solely responsible for complying with all applicable local codes and regulations regarding the use and maintenance of the Appliance. It is Customer's responsibility to ensure that the water supply to the Appliance meets the National Secondary Drinking Water Regulations, as set forth in 40 CFR, Chapter 1, Part 143 or the water supply is within the purity limits outlined within the Appliance Owner's Manual. Failure of or damage to the Appliance due to water quality issues is not covered under the warranty. If the Appliance includes a dryer, Customer shall keep the lint filter or screen clean between each load of laundry. Customer shall promptly notify Company of any malfunction or other problems with any Appliance. If any repairs or other servicing of the Appliance is required as a result of Customer's failure to comply with any of its obligations under this Agreement, Customer agrees to pay Company for such repairs and servicing at Company's normal service rates, plus cost of materials.

7) Load Management Water Heater. If a load management water heater is installed, Company may limit the primary electric operation of the Appliance in accordance with any predetermined period of off-peak energy consumption and Company may install such mechanical and/or electric

signaling or control device as may be necessary to effectuate such limitations of usage.

8) Ownership of Appliance, No Liens. Company retains title to the Appliance, which is and shall be the property of Company at all times. Customer has no option to purchase the Appliance at any time. Customer shall have no right to cause or permit any lien or encumbrance to be placed on any Appliance and shall keep the Appliance free from all liens and other encumbrances arising by, through or under Customer.

9) Company's Right of Access. Customer hereby grants to Company and its agents the right of ingress and egress over and onto the premises located at the service address shown on the first page of this Agreement and any such other premises where the Appliance may be located from time to time in connection with this Agreement for the purpose of installing, servicing, maintaining (including without limitation all maintenance necessary to comply with the manufacturer's warranty) and/or removing the Appliance. Failure to provide access shall constitute a default of this Agreement.

10) Security Interest. You acknowledge that Company has a security interest in and to the Appliance and you hereby authorize the Company to file a financing statement with the Secretary of State of your state, or other appropriate agency, as notice of the Company's security interest in and to the Appliance.

11) Liability and Indemnity. Customer hereby acknowledges and agrees that (i) the Appliance is potentially hazardous and (ii) Customer is aware of the risks associated with the Appliance and the use thereof. Customer agrees to assume all risks associated with the Appliance and the use thereof and Customer hereby releases Company, Company's affiliates and contractors, and each of their respective directors, officers, shareholders, partners, members, managers, employees, agents, attorneys, administrators, heirs, executors, personal representatives, successors and assigns (each a "Company Party" and collectively the "Company Parties"), from, and Customer agrees to indemnify and hold each Company Party harmless from and against any and all claims, damages, liabilities, losses, costs and expenses, including without limitation, property damage, personal injury and death and reasonable attorneys' fees and court costs, arising from or in connection with the Appliance except to the extent of a Company Party's negligence. Without limiting the generality of the foregoing, Customer will be responsible for any loss, theft, or disappearance of the Appliance, in which event Customer shall be in default of this Agreement and subject to the remedies set forth in Section 13. The total cumulative liability of the Company Parties to Customer, whether arising out of contract, tort, negligence, strict liability or any cause or form of action whatsoever, shall be limited to Customer's direct compensatory damages. COMPANY ASSUMES NO LIABILITY FOR, AND CUSTOMER EXPRESSLY WAIVES

ANY CLAIMS FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED AS A RESULT OF DEFECTS IN THE APPLIANCE, INCLUDING, BUT NOT LIMITED TO MATERIALS, DESIGN OR MANUFACTURE, CUSTOMER'S FAILURE TO ENSURE THE APPLIANCE COMPLIES WITH APPLICABLE CODES AND REGULATIONS, THE INSTALLATION OF THE APPLIANCE OR CUSTOMER'S USE OR INABILITY TO USE THE APPLIANCE. NO COMPANY PARTY SHALL BE LIABLE, FOR ANY DAMAGES TO PERSON OR PROPERTY CAUSED BY WATER RELEASED BY THE PRESSURE RELIEF VALVE OF THE APPLIANCE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

12) Location of Appliance. Customer shall use the Appliance only at the premises located at the service address shown on the first page of this Agreement and shall not remove any of the Appliance from those premises or from the location at those premises where the Appliance was installed. Company makes no warranties, either express or implied, as to the suitability of the floors of the structures (including walls, ceiling, etc.) adjoining the floor for supporting the weight of the Appliance; and Customer warrants that the floor and adjoining structures are capable of supporting the weight of the Appliance such that installation of the Appliance will be in compliance with any applicable building regulation. If Customer requests Company to move or relocate the Appliance and Company agrees, Customer agrees to pay Company for the work of removing and relocating the Appliance, at Company's normal service charge then in effect plus cost of materials. Customer further agrees not to remove, transfer, tamper with, adjust or repair the Appliance or remove any tag or label attached to the Appliance evidencing ownership by Company without prior written permission of Company. Customer shall notify Company of any sale or transfer of the premises at least 30 days prior to the date of sale or transfer, and shall notify any prospective purchaser or tenant that Company holds title to the Appliance, and that any sale or transfer of the premises is subject to this Agreement.

13) Default. If Customer fails to make any payment required under this Agreement when due or if Customer fails to fully and promptly perform any of its obligations hereunder, Customer will be in default under this Agreement. Upon the occurrence of any such default, Company may at its option, take any or all of the following actions: (a) terminate this Agreement; (b) repossess and remove the Appliance; (c) declare any unpaid amounts immediately due and payable, including without limitation the fair market value of the Appliance, plus applicable taxes, costs of Appliance repossession or removal, and reasonable attorneys' fees, court costs, and other disbursements; and (d) exercise any and all other rights and remedies available at law and in equity, all of which are cumulative and not exclusive.

14) Costs of Enforcement. In connection with any claims by one party against the other arising from or in

connection with this Agreement, the prevailing party shall be entitled to an award of its costs and expenses, including without limitation reasonable attorneys' fees, court costs and other disbursements.

15) Mandatory Arbitration of Disputes. ANY CLAIM, CONTROVERSY OR DISPUTE OF ANY KIND BETWEEN CUSTOMER AND COMPANY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION OR ANY OTHER LEGAL OR EQUITABLE THEORY) WILL BE RESOLVED BY BINDING ARBITRATION, PURSUANT TO THE COMMERCIAL DISPUTE RESOLUTION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR SUCH OTHER ARBITRATION ENTITY AS AGREED UPON BY THE PARTIES. THE ARBITRATOR'S AWARD SHALL INCLUDE THE COSTS INCURRED (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, THE ARBITRATOR'S FEES AND FEES PAID TO THE AAA). NOTWITHSTANDING THE FOREGOING, CUSTOMER RETAINS THE RIGHT TO TAKE ANY CLAIM, CONTROVERSY OR DISPUTE THAT QUALIFIES TO SMALL CLAIMS COURT RATHER THAN ARBITRATION.

16) Notices. All notices or other communications required or permitted to be given under this Agreement will be deemed to be delivered when sent and will be effective only if in writing and delivered by an overnight courier service with guaranteed next day delivery, or mailed by standard U.S. mail, postage prepaid, or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows (or to such other address as such party shall have specified most recently by like notice): (a) if to Company, AWHR, 11 Grandview Circle, Suite 100, Canonsburg, PA 15317 attention Appliance Leasing Department and (b) if to Customer, at Customer's billing address listed on the first page of this Agreement or if no such billing address is listed, at the service address listed on the first page of this Agreement.

17) Assignment. Customer agrees not to assign, lease or otherwise transfer the Appliance or any of Customer's rights or obligations hereunder, in whole or in part without the prior written consent of Company. Company may sell, assign or otherwise transfer the Appliance and/or this Agreement and the transferee thereof will have the same rights and benefits as Company and will not be subject to any claims, defenses or setoffs which Customer may have against Company.

18) Miscellaneous. This Agreement contains the entire agreement between the parties and supersedes any and all previous or contemporaneous agreements, whether oral or in writing between the parties relating to its subject matter; except as otherwise provided herein, this Agreement may not be amended except by a written agreement signed by the parties; if any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect or circumstance, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement; section headings are used for convenience of reference only and not to affect the meaning of any provision of this Agreement; facsimile copies, or electronic counterparts of this Agreement executed by the parties, will be considered for all purposes, including delivery, as originals.