

Delafield Warranty Services

Residential Extended Labor Warranty Contract

PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY

THIS CONTRACT CONTAINS A DISPUTE RESOLUTION AND ARBITRATION AGREEMENT AND CLASS ACTION WAIVER AND JURY TRIAL WAIVER

I. DEFINITIONS:

Definitions of key words used in this **Agreement** (key words appear in bold type):

Agreement means this document. It describes the terms, conditions, and exclusions that apply.

Coverage Period means the period during which this **Agreement** is in effect.

Covered Product means the item(s) described as such on the **Summary Description**.

Effective Date means the date **You** purchased this **Agreement**.

Expiration Date means the earlier of the (i) expiration of **Manufacturer's Warranty** or (ii) voiding of the **Manufacturer's Warranty**.

Labor Costs means, upon the occurrence of a **Warranty Event**, the usual and customary costs of the labor, plus applicable taxes, in **Your** location required to perform services for repairs to or installation of a replacement of the **Covered Product** in accordance with the **Manufacturer's Warranty**. **Labor Costs** do not include replacement or component parts, a replacement **Covered Product** or any other materials.

Light Commercial means offices, restaurants, medical facilities, banks, free-standing retail centers, and warehouses, that are less than four stories and under 25,000 square feet.

Manufacturer's Warranty means a written warranty provided by the original manufacturer of the **Covered Product** which (i) provides for replacement or component parts, a replacement **Covered Product**, or any other materials, in accordance with its terms but does not cover or include **Labor Costs** and (ii) complies with the federal Magnuson Moss Warranty Act, the regulations promulgated thereunder and, if applicable, any state warranty law.

Purchase Price means the amount listed as such on the **Summary Description**.

Purchaser means the individual listed as such on the **Summary Description**.

Per-trip Fee means the amount listed as such, if any, on the **Summary Description**.

Servicing Dealer means the entity that sold the **Covered Product** or this **Agreement** or responsible for completing **Your** authorized repairs for a **Warranty Event**.

Summary Description means the page of this **Agreement** listing information about the **Purchaser**, the **Servicing Dealer**, **Seller**, and the **Covered Product(s)**.

Warranty Event means a failure of the **Covered Product** or component part thereof, which results in a covered **Manufacturer's Warranty** claim to repair or replace the **Covered Product** or component part thereof.

We, Us, Our and **Administrator** means Delafield Warranty Services, Inc. located at PO Box 774, Des Moines IA, 50303; phone: 515-205-7944.

You and **Your** refers to the **Purchaser** listed on the **Summary Description**.

II. COVERAGE PERIOD:

The **Coverage Period** begins on the **Effective Date** and lasts until the earlier of: (1) the **Expiration Date**, unless extended pursuant to Section VIII. B, (2) the cancellation of this **Agreement**, or (3) the date that **You** no longer own the **Covered Product**.

III. WHAT YOUR AGREEMENT COVERS:

During the **Coverage Period**, and upon the occurrence of a **Warranty Event**, the **Servicing Dealer** shall repair or replace such **Covered Product** as permitted by, and in accordance with, the **Manufacturer's Warranty**. Upon such **Warranty Event**, there shall be no cost to **You** for the **Labor Costs** of the **Servicing Dealer**, other than any applicable the **Per-trip Fee**, to repair or replace those items specifically listed as a **Covered Product** on the **Summary Description**. Costs of replacement or component parts, a replacement **Covered Product**, or any other material, are not covered in this **Agreement**. This **Agreement** covers **Labor Costs** only. Coverage is subject to terms, conditions and exclusions specified in this **Agreement**.

IV. COVERAGE TERMS AND CONDITIONS:

A. The **Covered Product** must at all times be:

1. Located within the confines of the main foundation of the property (with exception to an exterior air conditioner, pool or spa equipment, heat pumps and generators);
2. In good working order on the **Effective Date**;
3. Covered by the **Manufacturer's Warranty** on the **Effective Date** and have a remaining term of not less than one (1) year on the **Effective Date**;
4. Properly installed and periodically maintained in accordance with the requirements and recommendations in the **Manufacturer's Warranty**, and used for its intended purpose throughout the **Coverage Period**; and
5. Not located in a vacant (meaning no more than 30 consecutive days of being unoccupied) or foreclosed property.

B. Our obligation to satisfy **Labor Costs** of the **Servicing Dealer** on **Your** behalf are limited to the purchase price of the **Covered Product**, excluding all installation costs, taxes and delivery costs.

C. In no event shall we be liable for more than (i) five (5) covered claims made under this **Agreement** during the **Coverage Period** if it is five (5) years or less; or (ii) ten (10) covered claims made under this **Agreement** during the **Coverage Period** if it is greater than five (5) years.

- D. We reserve the right to offer cash settlement for any claim made under this **Agreement** based on what **We** would ordinarily expect to pay for the **Labor Costs**, which may be less than actual retail cost.
- E. **We** reserve the right to use an alternative, qualified servicing dealer to complete **Your** authorized repairs. In the event **You** do not wish to have an alternative servicing dealer, **You** will be given the option to cancel this **Agreement** and receive a pro-rata refund, less the amount of any **Labor Costs** we have previously paid pursuant to this **Agreement**. Such option must be exercised within 30 days of **You** being notified that the **Servicing Dealer** has changed.
- F. In the event that there is any other collectable insurance, warranty, service contract or extended warranty available to **You** covering a **Covered Product** which is also covered by this **Agreement**, and provided that not all **Labor Costs** have been satisfied under such insurance, warranty, service contract or extended warranty, this **Agreement** will pay in excess of and not contribute with other insurance, warranty or guaranty until all **Labor Costs** have been satisfied.

V. COVERAGE EXCLUSIONS:

- A. **We** are NOT responsible for **Labor Costs** due to:
 - 1. Wear and tear; abuse; misuse or neglect; rust or corrosion; noise without a related mechanical failure; chemical or sedimentary build up; lightning strikes; missing parts; animal, pet or pest damage; power failure; power surge; fire; casualty; acts of God; structural or property damage; flood; smoke; earthquake; freeze damage; accidents; war; acts of terrorism; nuclear explosion, reaction, radiation, or radioactive contamination; insurrection; riots; vandalism; or intentional destruction of or to the **Covered Product**.
 - 2. Any known or unknown pre-existing conditions, deficiencies or defects which are not covered by the **Manufacturer's Warranty**.
 - 3. The hauling away or disposing of the **Covered Product** and related materials.
 - 4. Construction, carpentry, or other modifications made necessary by existing equipment or installing different equipment, nor the restoration of wall coverings, floor coverings, tiles, countertops, paint, cabinets, or the like, or the repair of any other cosmetic defects.
 - 5. The lack of capacity, adequacy, efficiency, design or improper installation of any **Covered Product** as well as any modification from the original manufacturer design or application; a **Covered Product** determined to be defective by the Consumer Product Safety Commission.
 - 6. Any service or repair associated with hazardous material treatment, removal, or disposal.
 - 7. The diagnosis, repair, removal or remediation of mold, mildew, bio-organic growth, rot, fungus, bacteria or virus, or any damages resulting from or related to mold, mildew, bio-organic growth, rot, fungus, bacteria or virus even if caused by or related to the malfunction, repair or replacement of the **Covered Product**.
 - 8. The use of cranes or other lifting equipment required to service any item or system, nor excavation.

9. The performance of routine maintenance for the **Covered Product** in accordance with the requirements and recommendations in the **Manufacturer's Warranty**.
10. Other than **Light Commercial** use, any **Covered Product** used in commercial properties, including, but not limited to, apartments and multifamily dwellings (other than those **Covered Products** sold to a tenant under an existing residential lease to own rental agreement) and dwellings used for (i) rest homes, (ii) day care centers or (iii) schools.
11. The costs of correcting or upgrading any **Covered Product** or associated items in order to comply with any federal, state or local laws, regulations, or ordinances or utility regulations, or to meet changes in efficiency requirements (including but not limited to, heating system efficiency requirements), or to meet current building or zoning codes requirements, or to correct for code violations. This includes any corrections or upgrades at the time of repair, which are required by law, regulation or ordinance. **We** are not responsible for service when permits cannot be obtained, nor will **We** pay any costs relating to permits.
12. Cost to transport materials, supplies, or the **Servicing Dealer** to the covered property due to lack of or inhibited serviceability such as, but not limited to, tolls, required use of ferries or barges or remote locations.
13. The **Covered Product** having been repaired, modified, disabled or adjusted in any way which prevents the **Servicing Dealer** from inspecting, diagnosing or repairing the **Covered Product** or having been improperly altered, repaired, installed, modified, or damaged in the course of remodeling or unauthorized repair.
14. Delays or failures to provide service caused by, or related to, any of the exclusions listed herein; shortages of labor or materials; or any other cause beyond **Our** reasonable control.

VI. HOW TO OBTAIN SERVICE:

- A. To make a claim under this Agreement, **You** must contact the Repair Service phone number on the **Summary Description** or the **Servicing Dealer** at its telephone number listed in the **Summary Description** to report your claim for the **Covered Product** .
- B. **You** are required to pay any applicable **Per-trip Fee** to the **Servicing Dealer** for each service or inspection request **You** submit to the **Servicing Dealer**.
- C. To the extent this paragraph C is applicable, the **Per-trip Fee** applies to each service trip dispatched and scheduled including, but not limited to, those service trips where coverage is approved or denied, included or excluded, covered or not covered. The **Per-trip Fee** also applies in the event **You** fail to be present at a scheduled time for performance of service, or in the event **You** cancel a service request at the time the **Servicing Dealer** is in route to **Your** home or at **Your** home. The **Per-trip Fee** is payable by **You** to the **Servicing Dealer** at the time **You** request service.

VII. CANCELLATION OF THE AGREEMENT:

- A. **You** may cancel the **Agreement** only by contacting and requesting cancellation by the **Servicing Dealer**.

- B. If **You** cancel this **Agreement** within 30 days after the **Effective Date**, and if no claims have been made under this **Agreement** as of the effective date of cancellation, **You** will receive a full refund of the **Purchase Price** less a \$95 cancellation fee.
- C. If **You** cancel this **Agreement** within 30 days of the **Effective Date**, and a claim has been made, or if **You** cancel this **Agreement** anytime thereafter, **You** will receive a pro-rata refund based on the time expired in the originally intended **Coverage Period**, less a \$95 cancellation fee and less the amount of any **Labor Costs** we have previously paid pursuant to this **Agreement**.
- D. **We** may cancel this **Agreement** in the event of **Purchaser** fraud, failure to maintain the **Covered Product** in accordance with the requirements and recommendations in the Manufacturer's Warranty ("**Failure to Maintain**"), non-payment, or material misrepresentation in connection with this **Agreement**, including any claim or service request made hereunder. If we cancel for **Purchaser** fraud, **Failure to Maintain**, or material misrepresentation, this **Agreement** is void, and **You** will receive a full refund of the **Purchase Price** if no claims have been made under this **Agreement**. If a claim has been made before cancellation, **You** will receive a pro-rata refund of the **Purchase Price** based on the time expired in the originally intended **Coverage Period** less the amount of any **Labor Costs** for all prior covered claims.

VIII. TRANSFERABILITY AND COVERAGE PERIOD EXTENSIONS:

- A. This **Agreement** is transferable by **You** to a (i) new owner of the residential home address listed on the **Summary Description** if **You** own the residence when **You** purchased this Agreement or (ii) new lessee of the residential home address listed on the **Summary Description** if **You** leased the residence when **You** purchased this Agreement, for a one-time \$39 transfer fee payable by **You** to **Us**. This **Agreement** is non-transferable to a new address and is only valid for the original residence identified as the home address on the **Summary Description**. **You** shall contact **Us** to initiate a transfer of this Agreement and such transfer is only for the remaining duration of the **Coverage Period**.
- B. To request an increase in the length of the **Coverage Period** ("**Extension**"), **You** shall contact the **Servicing Dealer** who shall determine if the **Covered Product** is eligible for an **Extension**, and the condition of the **Covered Product** by either (i) performing an inspection of the **Covered Product** or (ii) waive such inspection if the **Covered Product** was recently serviced by the **Servicing Dealer**. In the event of an inspection, **You** must pay the applicable **Per-trip Fee** to the **Servicing Dealer**. Based upon the then condition of the **Covered Product**, and the remaining duration of the **Coverage Period**, **We** may offer **You** a quote for the requested **Extension**, and **We** may condition our quote on **Your** purchase of a preventative maintenance agreement with the **Servicing Dealer** and its performance of, and **Your** payment to the **Servicing Dealer** of its service fees for performing, any applicable repairs to the **Covered Product** then deemed necessary by the **Service Dealer**. Such **Extension** shall not exceed the remaining duration of any **Manufacturer's Warranty**.

IX. DISPUTE RESOLUTION AND ARBITRATION:

- A. This **Agreement** requires binding arbitration if there is an unresolved dispute between **You** and **Us** concerning any matter arising out of this **Agreement**.
- B. The rules of the American Arbitration Association ("**AAA**") (www.adr.org) shall apply to any arbitration under this **Agreement**. In arbitration, a single arbitrator selected pursuant to **AAA** rules

and procedures, will conduct the arbitration and render a decision after hearing **Your** and **Our** positions. The decision of the arbitrator will determine the outcome of the arbitration, and the decision of the single arbitrator shall be final and binding and cannot be reviewed or changed by, or appealed to, a court of law.

- C. To start arbitration, either **You** or **We** must make a written demand to the other party for arbitration. This demand must be made within one (1) year of the earlier of the date the **Warranty Event** occurred or the dispute arose. To begin an arbitration, **You** must send a letter requesting arbitration and describing **Your** claim to our registered agent at Redfern Mason Larson & Moore PLC, 415 Clay Street, Cedar Falls IA, 50613 and the American Arbitration Association. The expense of the arbitrator will be shared equally by **You** and **Us**. Unless otherwise agreed to by **You** and **Us**, the arbitration will take place in the county and state in which **You** live. The arbitration shall be governed by the Federal Arbitration Act (9 U.S.C.A. § 1 et. seq.) and not by any state law concerning arbitration. Any arbitration that **You** attend will take place at a location within the federal judicial district that includes **Your** billing address at the time the claim is filed. The arbitrator shall apply relevant, substantive law and applicable statutes of limitation and shall provide written, reasoned findings of fact and conclusions of law.
- D. Notwithstanding the above, **YOU MAY CHOOSE TO PURSUE YOUR CLAIM IN COURT AND NOT BY ARBITRATION IF YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS AGREEMENT** (the "**Opt Out Deadline**"). **You** may opt out of these arbitration procedures by sending a letter by U.S. certified mail, return receipt requested, to Delafield Warranty Services, Inc., PO Box 774, Des Moines IA, 50303, Attention: Legal Department. Any opt-out received after the **Opt Out Deadline** will not be valid, and **You** must pursue **Your** claim in arbitration or small claims court.
- E. For all disputes, whether pursued in court or arbitration, **You** must first give us an opportunity to resolve **Your** claim by sending a written description of **Your** claim to Delafield Warranty Services, Inc., PO Box 774, Des Moines IA, 50303, Attention: Legal Department. We each agree to negotiate **Your** claim in good faith. If we are unable to resolve the claim within sixty (60) days after we receive **Your** claim description, **You** may pursue **Your** claim in arbitration.
- X. **CLASS ACTION WAIVER. WE EACH AGREE THAT ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. IF A COURT OR ARBITRATOR DETERMINES IN AN ACTION BETWEEN YOU AND US THAT THIS CLASS ACTION WAIVER IS UNENFORCEABLE, THE ARBITRATION AGREEMENT WILL BE VOID AS TO YOU. NEITHER YOU, NOR ANY OTHER CUSTOMER, CAN BE A CLASS REPRESENTATIVE, CLASS MEMBER, OR OTHERWISE PARTICIPATE IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE PROCEEDING.**
- XI. **JURY TRIAL WAIVER. IF A CLAIM, DISPUTE OR ACTION RELATED TO THIS AGREEMENT PROCEEDS IN COURT RATHER THAN THROUGH ARBITRATION, WE EACH IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL.**
- XII. **MISCELLANEOUS:**
- A. The contract terms expressly listed herein constitutes the entire agreement between **Us** and **You**. This **Agreement** shall be binding upon and inure to the benefit of **Us** and **You** and their respective successors and permitted assigns.

- B. This **Agreement** is not a contract of insurance or residential service contract regulated by the Iowa Department of Insurance.
- C. Headings and captions are for convenience only and are not to be used in the interpretation of this **Agreement**.
- D. This **Agreement** does not cover any incidental, consequential, special, or punitive damages and **You** hereby expressly and irrevocably waive the right to recover all such damages. **Your** sole remedy under this **Agreement** is recovery of the **Labor Cost** of the required repair or replacement for the **Covered Product**, whichever is less.
- E. **We** are not a **Servicing Dealer** and are not ourselves undertaking to repair or replace any such **Covered Product**. We are not liable for any damages that result from a **Servicing Dealer's** service, delay in providing service, or failure to provide service and **You** hereby irrevocably waive any and all claims for such damages arising from, resulting from, or related to any **Servicing Dealer's** service, delay in providing service, or failure to provide service including, or the negligent, tortious or unlawful acts or omissions of any **Servicing Dealer**.
- F. **You** hereby irrevocably waive any and all claims for such damages arising from, resulting from or related to the failure of the **Covered Product**, including but not limited to, food spoilage, loss of income, additional living expenses, or any loss, damage, cost, or expense directly or indirectly arising out of or resulting from, or in any manner related to, mold, mildew, bio-organic growth, rot, fungus, bacteria or virus.
- G. Any failure by **Us** to assert a right, remedy or enforce a requirement under this **Agreement** shall not be deemed a waiver of that or any other right, remedy or requirement and shall not preclude **Us** from asserting any right, remedy or enforcing any requirement at any time.
- H. If any provision of this **Agreement** is held to be illegal, invalid, or unenforceable, for any reason, that provision shall be limited or eliminated to the minimum extent necessary so that all the other provisions of this **Agreement** remain in full force and effect and enforceable.
- I. The laws of the state of Iowa (without giving effect to its conflict of law principles) exclusively govern all matters arising out of or relating to this **Agreement** and all transactions contemplated by this **Agreement**, including, without limitation, the validity, interpretation, construction, performance and enforcement of this **Agreement**.