

## SURGE PROTECTION SERVICE PLAN TERMS AND CONDITIONS

These Surge Protection Service Plan Terms and Conditions ("Terms") shall govern Your purchase of the Surge Protection Service Plan ("Plan") from the Obligor for Your Covered Property located at Your Residential Address. This Plan is not a contract of insurance. Unless otherwise regulated under state law, the contents under this Plan should be interpreted and understood within the meaning of a "service contract" in Public Law #93-637.

### 1. DEFINITIONS.

1.1 Administrator means Home Warranty of the Midwest, Inc., with offices located at 303 S 2<sup>nd</sup> Ave., Rock Rapids, IA 51246. **(AT THIS TIME CLAIMS PROCESSING WILL BE HANDLED AT 1- 877-977-4949 AND WEBSITE [HOMEWARRANTYINC.COM](http://HOMEWARRANTYINC.COM))**

1.2 Aggregate Annual Claim Limit means the maximum that the Obligor will pay You for aggregate losses for all Claims from You received within a twelve-month (12) period from the Effective Date and every twelve-month period thereafter pursuant to these Terms and in accordance with Exhibit A.

1.3 Claim means Your request for payment, pursuant to these Terms, for Failure of Covered Property caused by a Power Surge.

1.4 Coverage Limit means the maximum that the Obligor will pay You for any one Claim and Power Surge event.

1.5 Covered Property means the categories of products set forth in Exhibit A that are owned by a household member, and that are located at Your Residential Address set forth in the Electronics Rider, or the Appliance and Systems Rider, or both, depending upon the coverage is selected by You, subject to the exclusions of Section 2.2 below.

1.6 Effective Date means the effective date of the coverage under the Plan as set forth in Exhibit A.

1.7 Exhibit A means the Exhibit A (Coverage Summary) attached hereto.

1.8 Failure means that Covered Property becomes inoperable and unable to perform its designed function.

1.9 Obligor means Home Warranty of the Midwest, Inc., located at 303 S 2<sup>nd</sup> Ave., Rock Rapids, IA 51246.

1.10 Plan Fee means the periodic fee for the Plan set forth in Exhibit A, plus applicable state sales tax, that you agree to pay.

1.11 Power Surge means an occurrence of a sudden and non-continuous increase or burst of electricity or electrical current, caused by natural or man-made events including lightning strikes, power returning after an outage, and wildlife interfering with power lines.

1.12 Replacement Value means the cost (excluding all applicable transactional taxes and deliveries and/or shipping costs), at the time of the Claim, to purchase property of like kind and quality and of comparable performance to the applicable Covered Property.

1.13 Residence means Your residence owned by You and used solely by You and your family for residential purposes.

1.14 Residential Address means the designated location of Your Residence, as set forth in the Rider(s), and any subsequent Residence within the service area of Obligor. You may contact Administrator for information regarding the service area of Obligor.

1.15 Rider means an attached exhibit which describes the Plan terms.

1.16 Technician means a licensed and insured individual and/or entity in the particular trade that is qualified to assess the damage to the Covered Property caused by a Power Surge.

1.17 Website means [www.homewarrantyinc.com](http://www.homewarrantyinc.com).

1.18 You or Your means the account name of record with Administrator for the Residence and who is the purchaser of the Plan.

### 2. SCOPE OF PLAN.

2.1 Plan Coverage. In consideration of payment of the periodic Plan Fee and subject to the Terms, the Plan provides for reimbursement, by the Obligor of the repair of the Covered Property, or if not repairable in accordance with Section 3.1, the Replacement Value of the Covered Property, in the event that Your Covered Property is subject to a Power Surge that results in a Failure of the Covered Property, plus reasonable Technician costs or fees associated with the evaluation or determination of the cause of Failure (Technician diagnostic fee, trip charge, etc.). If a like kind or quality product is unavailable, at the Obligor's discretion, You may receive the Replacement Value of a product that is the most comparable replacement of the Covered Property. In no event will the reimbursement by the Obligor of the Replacement Value of the Covered Property exceed the original purchase price of the Covered Property (excluding all applicable transactional taxes and delivery and/or shipping costs). The Plan Fees charged for the Plan are not subject to regulation by the Office of Insurance Regulation of the Financial Services Commission. Neither the Administrator nor the Obligor shall have an obligation to pay a Claim if You are in default of Your obligations to make payment of the periodic Plan Fee.

2.2 Property Not Covered. The Plan does not cover the following:

- a. **Failure of Covered Property prior to the Effective Date;**
- b. **Damage to any property not specifically named as Covered Property in Exhibit A, including but not limited to medical or life support equipment, antiques, and plumbing;**
- c. **Failure of Covered Property due to any cause other than a Power Surge, including but not limited to Failure resulting caused by normal wear and tear, accident, abuse, misuse, unauthorized product modifications or alterations, failure to follow the manufacturer's instructions, vandalism, Acts of God (such as fire, windstorm, flood, hurricane or other similar acts) other than lightning, continuous steady over-voltages as a result of power delivery system damage or flaws, or a caused by an onsite backup generator;**
- d. **Damage to any property not owned by a household member or located at the Residential Address at the time of loss;**
- e. **Any property that is not used for residential purposes, including but not limited to property located in a dwelling used in whole or in part for commercial purposes such as, but not limited to, a day care facility, a group home (5 or more unrelated individuals cohabiting in same household) or fraternity-type house, "bed and breakfast", church or school, and property that is used commercially.**
- f. **Failure of Covered Property not reported in a Claim within thirty (30) days of the date of the applicable Power Surge.**
- g. **Any losses, costs of fees not directly related to the Replacement Value of the Covered Property, including but not limited to loss or corruption of data and/or the**

restoration of software and operating systems associated with any Covered Property, any costs associated with upgrades, components, parts, or equipment required due to the incompatibility of any existing equipment with the replacement system, service line or component, or part thereof, any costs associated with construction, carpentry, or other modifications made necessary by the existing equipment or installing different equipment or as necessary to comply with federal, state, and local law, code, regulation, or ordinance, and any fees or costs associated with the removal, installation or re-installation, and/or disposal of (1) old and/or replacement systems, (2) service lines and/or (3) components, and any fees or any costs related to disposal fees arising from hazardous or toxic material, or asbestos.

- h. **Covered Property and or any components that do not meet industry standards; and**
- i. **Failure of Covered Property that is covered by any insurance policy or other service plan or service warranty.**

2.3 Administration. The obligations of the Administrator under the Plan shall be limited to the collection and processing of periodic Plan Fees and cancellations, the processing of Claims, the distribution of Claim payments on behalf of the Obligor, and termination of participation in the Plan. BY ENROLLING IN THE PLAN, YOU ACKNOWLEDGE AND AGREE THAT IN NO EVENT SHALL ADMINISTRATOR BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGES RESULTING FROM THE OBLIGOR'S OR THE OBLIGOR'S NON-PAYMENT OF ANY CLAIM.

### 3. **FILING A CLAIM.**

3.1 Claims Process. To initiate a Claim in the event of a Failure of Your Covered Property caused by a Power Surge, contact the Administrator by calling toll-free at 1-877-977-4949 and following the directions for filing a Claim, or following the Claims Process described on the Website. You must pay any past due Plan Fees and submit claim within 30 days of the Power Surge. Once you initiate a covered and authenticated Claim, the Administrator will have the discretion to reimburse for the cost of repair or the Replacement Value of the Covered Property.

3.2 Qualified Technician. As part of the Claims process, you may be required to engage a Qualified Technician to validate your Claim. The Obligor and Administrator reserve the right in all cases to determine, in their reasonable discretion, if a particular Technician is qualified. In order to obtain customer service related to any Claim, Administrator may be contacted at 1-877-977-4949 from 8am - 5pm Eastern Standard Time, Monday – Friday (excluding holidays and other exclusions as may be listed on the Website) or send correspondence to the address specified on the Website.

4. **WARRANTY**. The Obligor and Administrator warrant that their obligations under these Terms will be performed in a professional and workmanlike manner. NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES

ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY.

5. **TRANSFERABILITY**. Transferability of the Plan to a new Residence is subject to coverage within the service area. If You move to a new Residence within the service area of Obligor, You agree to automatically have Your Plan coverage transferred to the new Residential Address, and for continued billing of the periodic Plan fee. To confirm your new Residence is within the coverage area and remains covered under this Plan, notify Administrator by calling toll-free at 1-877-977-4949. This Plan may not be transferred to any other person or entity. . Transferability is subject to availability. Since the Administrator would not have knowledge of a move without You providing notice, if You fail to notify Administrator and you move outside of the service area of Obligor, then the Plan coverage shall be automatically terminated, as the Obligor's coverage area is subject to state law, and no premiums shall be returned to You. If You fail to notify Administrator and you move within the service area of Obligor, we ask that you notify the Administrator of Your move so that we may have up to date information regarding Your Plan and to confirm coverage. A change in rates may apply to a transferred plan. In the event of a higher rate for a new Residence, you agree to be billed for the difference in rates.

### 6. **LIMITATIONS OF LIABILITY.**

6.1 Waiver of Non-Direct Damages. IN NO EVENT SHALL THE OBLIGOR OR ADMINISTRATOR OR ITS AFFILIATES (COLLECTIVELY, "PLAN ENTITIES") BE LIABLE TO YOU OR ANY OTHER PERSON FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR REVENUE, LOST BUSINESS, LOSS OF USE OF THE COVERED PROPERTY OR ANY CONNECTED OR ASSOCIATED EQUIPMENT OR SOFTWARE, LOSS OR DAMAGE, COST OF CAPITAL, COST OF SUBSTITUTE OR RENTAL EQUIPMENT, SERVICE OR SOFTWARE, DOWNTIME, THE CLAIMS OF THIRD PARTIES, AND INJURY OR DAMAGE TO NON-COVERED PROPERTY) EVEN IF PLAN ENTITIES OR ITS CONTRACTORS WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL APPLY TO THE FULLEST EXTENT ALLOWED BY LAW IRRESPECTIVE OF WHETHER LIABILITY IS CLAIMED, OR FOUND TO BE BASED IN CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE, WARRANTY OR STRICT LIABILITY).

6.2 Maximum Liability. The total liability of the Obligor to You or any third party, for any and all claims arising from or related in any way to the Plan (whether in contract, tort, strict liability, or otherwise) is limited (1) per Claim to the Coverage Limit set forth in the attached Rider(s), and (2) in the aggregate during any twelve (12) month period from the Effective Date pursuant to these Terms and in accordance with the Aggregate Annual Claim Limit set forth in the attached Rider(s).

6.3 External Coverage. If Your claims are covered by another insurance or warranty plan, then this Plan is secondary, and the other coverage shall be primary.

7. **FORCE MAJEURE**. The Obligor and Administrator shall not be responsible to You in an event or circumstance that is not reasonably foreseeable, or that are beyond the reasonable control of and not caused by the Obligor or Administrator. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts

and governmental or administrative agencies), hurricanes, tropical storms, tornadoes, severe wind, or electrical storm, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions, floods, strikes, lockouts, supply shortages or other labor disputes or difficulties.

**8. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL, WAIVER OF CLASS ACTION.** These Terms and the Plan shall be governed by the laws of the State of Florida. Any suit relating to these Terms or the Plan shall be instituted in any state or federal court in Palm Beach County, Florida, and the parties submit to the sole and exclusive personal jurisdiction of such court. BY SIGNING UP FOR THE PLAN, YOU AGREE TO WAIVE ANY RIGHT TO HAVE A TRIAL BY JURY IN RESPECT TO ANY LITIGATION WITH ADMINISTRATOR OR OBLIGOR BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED OR RELATED WITH, THESE TERMS, THE PLAN, AND/OR THE PERFORMANCE OF SERVICES PROVIDED BY THE OBLIGOR AND ADMINISTRATOR. You agree to only bring any Claim against the Obligor or Administrator in Your individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. While this provision is mandatory, the outcome shall be non-binding on the parties, and either party shall have the right to reject the award and bring suit in a court of competent jurisdiction. This action will take place in Palm Beach County, Florida.

**9. SEVERABILITY.** If any provision of these Terms or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of these Terms, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of these Terms shall be valid and enforceable to the fullest extent permitted by law.

**10. ASSIGNMENT.** The Obligor or Administrator may, in their sole and unrestricted discretion assign, delegate, transfer, subcontract or otherwise dispose of its obligations hereunder to an affiliate or subsidiary, or other third party without notice to you. However, You shall not assign, delegate, or otherwise dispose of Your obligations hereunder without the written consent of the Obligor or Administrator. Any such assignment in violation of this Section shall be null and void.

**11. TERM, TERMINATION, RENEWAL AND REFUNDS.**

**11.1 Term.** Coverage under this Plan begins on the Effective Date and will continue on the periodic (month-to-month, annual, or multi-year) basis as agreed between You and the Administrator in the initiation of the Plan until terminated pursuant to this Section.

**11.2 Termination.** Upon notice to You in any reasonable form, the Obligor or Administrator may terminate Your Plan in the event that (a) any regulatory agency promulgates any rule or order which in effect or application substantially impedes the Obligor or Administrator from fulfilling its obligations hereunder, or materially and adversely affects the ability of the Obligor or Administrator to provide the Plan under these Terms, (b) You breach any term or condition contained herein, including without limitation, Your obligation to make payment of the periodic Plan Fee by the due date of Your bill, or for fraud or material misrepresentation by you, or (c) the Obligor or Administrator, for its convenience and in its sole discretion, makes a commercial decision to (i) generally discontinue the Plan, or (ii) to discontinue Your specific participation in the Plan. You may terminate Your Plan at any time upon thirty (30) days written notice to Administrator to Home

Warranty of the Midwest, Inc., with offices located at 303 S 2<sup>nd</sup> Ave., Rock Rapids, IA 51246 or online at **HOMEWARRANTYINC.COM**.

**11.3 Renewal.** This Plan automatically renews on the periodic basis as agreed between You and the Administrator unless terminated by you, the Obligor or Administrator in accordance with Section 11.2. The Obligor or Administrator reserves the right to change the Plan Fees and/or coverage applicable to any renewal term. Refer to the Website for Plan Fees and coverage applicable at the time of renewal.

**11.4 Refunds.** You will receive a full refund of any Plan Fee(s) if You provide Administrator a written request for refund within seven (7) days of the Effective Date and You have not filed a Claim pursuant to Section 3. The Administrator will process refunds within thirty (30) days. In the event that You terminate Your participation in the Plan pursuant to Section 11.2, the Administrator will process Your notice of termination within thirty (30) days of receipt and no refunds shall be due to you.

**12. AUTHORITY.** You represent to the Obligor and Administrator that You have the authority to enter into and bind You to these Terms, and that You shall bear all costs attributable thereto, and You shall, at Your own expense, defend, indemnify and hold the Obligor and Administrator harmless from and against all liability, loss or damage (including attorneys' fees) assessed against, suffered or incurred by the Obligor or Administrator as a result of an allegation or claim that You did not have such authority.

**13. ENTIRE AGREEMENT.** These Terms and attached Rider(s) are the entire understanding between the parties, and supersedes all prior agreements, representations, and communications regarding this subject matter. The headings in these Terms are provided for convenience of reference only and shall not affect the construction of the text of these Terms. Obligor or Administrator reserves the right to make non-material updates (e.g., phone number, mailing address) and prospectively change these Terms from time to time by posting updated Terms at the Website. You agree to the obligation to periodically review such location for authorized non-material updates to these Terms. Non-material changes to terms may include, but not be limited to, the title of the Plan and Exhibits, coverage area, and claims process. Continued participation in the Plan after any such posted changes shall constitute your acknowledgment of and consent to such non-material changes. Notwithstanding the above, the Obligor or Administrator will provide you with written notice of any changes to the Terms that are material whether beneficial or adverse to you.

**14. DISCLAIMER AND RELEASE.** The Plan is offered and provided by Home Warranty of the Midwest, Inc., an unregulated affiliate of Gexa Energy, L.P. ("Gexa"). BY ENROLLING IN THE PROGRAM: (I) YOU ACKNOWLEDGE THAT GEXA, THEIR AFFILIATES AND/OR SUBSIDIARIES (OTHER THAN HOME WARRANTY OF THE MIDWEST, INC.), DO NOT HAVE ANY OBLIGATION OR RESPONSIBILITY FOR THE PLAN, NOR DO THEY PROVIDE ANY TYPE OF GUARANTEE, WARRANTY, PROMISE OR COVENANT, EITHER EXPRESS OR IMPLIED, AS TO THE PLAN; AND (II) YOU AGREE CLAIMS MAY BE MADE SOLELY AGAINST HOME WARRANTY OF THE MIDWEST, INC. AND YOU THEREFORE RELEASE GEXA, AND ALL OF ITS AFFILIATES AND/OR SUBSIDIARIES (OTHER THAN HOME WARRANTY OF THE MIDWEST, INC) FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, OR LIABILITIES IN CONNECTION WITH THE PLAN.

## STATE SPECIFIC ADDENDUM TO SURGE PROTECTION SERVICE PLAN TERMS AND CONDITIONS

For residents of the named states below, the applicable section is inserted into the Surge Protection Service Plan Terms and Conditions and made a part thereof:

### ALABAMA

15. **CANCELLATION.** A cancellation fee of the lesser of \$25 or 10% of the purchase price of the Agreement will be assessed on any cancellation after 30 days from the date of purchase or after a claim has been made.

### COLORADO

15. **COLORADO CONSUMER PROTECTION ACT.** This contract may be covered by the provisions of the "Colorado Consumer Protection Act" or the "Unfair Practices Act," Articles 1 and 2 of Title 6, C.R.S., and a party to such a contract may have a right of civil action under those laws, including obtaining the recourse or penalties specified in those laws.

16. **CLAIM PAYMENT PERIOD.** Once a claim is properly submitted and verified, payment will be made within 30 days of verification of the claim.

### GEORGIA

15. **CANCELLATION.** No claims paid will be deducted from any refund owed. We may not cancel this Agreement for any reason other than nonpayment of the purchase price by You, fraud, or misrepresentation by You. This Agreement is backed by a surety issued by Travelers Casualty and Surety Company of America, 1 Tower Square, 2MS, Hartford, CT 06183. You have the right to make a direct claim to Travelers Casualty and Surety Company of America in the event that We do not pay a claim or provide a refund within 60 days after You have filed the proof of loss.

### IDAHO

15. **AUTOMATIC RENEWAL.** For agreements entered into via the internet: **This agreement will automatically renew on a periodic basis unless canceled by you by cancelling on HOMEWARRANTYINC.COM.**

### ILLINOIS

15. **REIMBURSEMENT POLICY.** The Obligor of the policy will reimburse You for all covered sums which the service

contract provider is legally obligated to pay under the provisions of the contract.

16. **CANCELLATION.** Notwithstanding anything to the contrary stated in this agreement, You have a right to cancel this contract, as stated herein. In the event You cancel your plan on or before the 31<sup>st</sup> day of the Effective Date, you will receive a refund, with deductions for cancellation fee calculated from mileage and claims paid. If You elect to cancel this contract on or after the 31<sup>st</sup> day after the Effective Date, the Obligor may retain a cancellation fee not to exceed the lesser of 10% of the service contract price or \$50, and You shall be refunded a pro rata amount of the service contract consideration for the unexpired term of the contract, based on the number of elapsed months, less the value of any service or claims received.

### INDIANA

15. **REGULATION.** Our obligations under this Agreement are backed by reimbursement insurance policy issued by Chubb Group of Insurance Companies, 202B Hall's Mill Road, Whitehouse Station, NJ 08889, (800)699-9916. If We have not paid a claim or provided service within 60 days of Your request being made, including refunds, You are entitled to make a claim directly with the insurer.

### IOWA

15. **FULL FAITH AND CREDIT.** Obligations of the service company under this service contract are backed by the full faith and credit of the service company and are not guaranteed under a reimbursement insurance policy.

16. **CANCELLATION.** Notwithstanding anything to the contrary stated in this agreement, You may cancel your plan on or before the 21<sup>st</sup> day of the Effective Date. If no claim has been made under this contract prior to Your cancellation, this contract shall be void, and in such event, the full purchase price of this contract shall be returned to You within 30 days of the return of this contract by You. If You cancel this contract outside of 20 days of the Effective Date, or after a claim is made under this contract, You shall be refunded an amount equal to one hundred percent of the unearned purchase price paid, calculated on a pro rata basis based upon elapsed time or mileage, less any claims paid. You may also be charged a reasonable administrative fee in an amount no greater than ten

percent of the total purchase price. If the Obligor cancels this contract, it will mail a written notice of termination to You at your last address known to Obligor at least fifteen

(15) days before the date of termination. Prior notice of cancellation by Obligor is not required if the reason for cancellation is the nonpayment of the purchase price, a material misrepresentation by You, or a substantial breach of duties by You relating to the covered product or its use. If this contract is cancelled by the Obligor for any reason other than nonpayment of the purchase price, the Obligor shall reimburse You in an amount equal to one hundred percent of the unearned purchase price paid, calculated on a pro rata basis based upon elapsed time or mileage, less any claims paid. You may also be charged an administrative fee in an amount no greater than ten percent of the total purchase price.

17. **REGULATION.** The issuer of this Agreement is subject to regulation by the Insurance Division of the Department of Commerce of the State of Iowa, Commissioner: Doug Ommen, 1963 Bell Avenue, Suite 100, Des Moines, IA 50315. Complaints that are not settled by the issuer may be sent to the Insurance Division.

#### **KENTUCKY**

15. **REGULATION.** The maker maintains a performance bond in accordance with the regulations as set forth by the Commonwealth of Kentucky. The holder of the Agreement shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within 60 days after the claim has been filed with the maker: United States Fire Insurance Company, 11490 Westheimer Rd, Ste. 300, Houston, TX 77252-2807.

#### **LOUISIANA**

15. **CANCELLATION.** Notwithstanding anything to the contrary stated in this agreement, in the event You cancel your plan on or before the 21<sup>st</sup> day of the Effective Date, you will receive a refund, with deductions for mileage and claims paid. In the event that the provider cancels your plan, it may do so by written notice of cancellation to your last address according to the provider's records. Notice of cancellation by the provider must be mailed before the 15<sup>th</sup> day preceding the effective date of the cancellation, unless the cancellation is due to non-payment, your fraud or misrepresentation, or your substantial breach of your duties and obligations under this agreement.

#### **MICHIGAN**

15. **INTERRUPTION.** If performance of the Agreement is interrupted because of a strike or work stoppage at the

company's place of business, the effective period of the Agreement shall be extended for the period of the strike or work stoppage.

#### **MINNESOTA**

15. **CANCELLATION.** In the event of Our cancellation of this Agreement due to Your nonpayment of the purchase price or material misrepresentation, We will provide only 5 days' notice of cancellation.

#### **NEVADA**

15. **DISPUTES.** In accordance with the laws of the State of Nevada, If this contract is issued in Nevada, only Nevada law, and not the laws of any other state, may govern its substantive provisions. No claims paid will be deducted from any refund owed. If You cancel this Agreement after 30 days from the date of purchase or after a claim has been made, a cancellation fee of the lesser of \$25 or 10% of the purchase price of the Agreement will be assessed. Discovery of fraud or material misrepresentation by the holder in obtaining the service contract, or in presenting a claim for service thereunder may result in cancellation of this Agreement upon 15 days written notice of the event. Weekend, Holiday, and evening service will be performed only in the event of a failure or malfunction of a covered item, for which repair is prescribed under this Agreement, which is essential to Your health and safety (Emergency Repair). A claim will qualify for Emergency Repair if the emergency involves the loss of heating or cooling, loss of plumbing, or substantial loss of electrical service and the emergency renders the dwelling unfit for a person to live in because of defects that immediately endanger the health and safety of the occupants of the dwelling. Repairs will commence within 24 hours after the report of the claim and will be completed as soon as reasonably practicable thereafter; If We determine that an Emergency Repair cannot practicably be completed within 3 calendar days after the report of the claim, We will provide a status report to you and the Nevada Commissioner of Insurance: In the event You are not satisfied with the manner in which We are handling a claim, You may file a complaint with the Nevada Division of Insurance by calling (888)872-3234.

#### **NEW JERSEY**

15. **DISCLOSURE.** This product being offered is a service contract and is separate and distinct from any product or service warranty which may be provided by the home builder or manufacturer.

## **NEW MEXICO**

15. **CANCELLATION.** The time period for payment of a full refund before a penalty is assessed is amended from 45 days to 60 days. We may not cancel this Agreement once it has been in effect for 70 days except for (1) Your failure to pay an amount when due; (2) Your conviction for a crime that results in an increase in the service required under the Agreement; (3) discovery of fraud or material misrepresentation by You in obtaining this Agreement or in making a claim; or (4) discovery of either of the following if it occurred after the effective date of the Agreement and substantially and materially increased the service required under the Agreement: (a) an act or omission by the holder; or (b) a violation by the holder of any condition of the Agreement.

## **NORTH CAROLINA**

15. **CANCELLATION.** We may only cancel this Agreement for Your non-payment or for a direct violation of this Agreement by You.

## **NORTH DAKOTA**

15. **AUTOMATIC RENEWAL.** This agreement will automatically renew on a periodic basis unless canceled by you by sending written notice to Home Warranty of the Midwest, Inc., with offices located at 303 S 2<sup>nd</sup> Ave., Rock Rapids, IA 51246 or by canceling on the website [HOMEWARRANTYINC.COM](http://HOMEWARRANTYINC.COM). You must indicate your affirmative consent to automatic renewal below.

Signature: \_\_\_\_\_

## **OKLAHOMA**

15. **FULL FAITH AND CREDIT.** Obligations of the provider under this service contract are backed by the full faith and credit of the provider. Coverage afforded under this contract is not guaranteed by Oklahoma Insurance Guaranty Association.

16. **REGULATION.** In Oklahoma, We are operating under First Home Warranty of the Midwest (Oklahoma ID #503353503).

17. **CANCELLATION.** Cancellation by You: You may cancel this Agreement at any time for any reason by submitting a written cancellation request to: Home Warranty of the Midwest, Inc., P.O. Box 1, Rock Rapids, IA 51246. Cancellation becomes effective at the end of the current month of coverage: a. If You cancel this Agreement within the first 30 days from the date of purchase and no claims have been made, You are entitled to a refund of the full purchase price of the Agreement and no cancellation

fee will be assessed. If You are entitled to a refund for such cancellation and such refund is not paid within 45 days, a penalty of 10% of the purchase price shall be added to Your refund for each month such refund remains unpaid.

b. If You cancel this Agreement after 30 days from the date of purchase or after a claim has been made, You are entitled to a prorated refund of the unearned purchase price based on months remaining on the Agreement, less the cost of claims paid and a cancellation fee of the lesser of \$50 or 10% of the purchase price.

## **SOUTH CAROLINA**

15. **DISPUTES.** In the event of a dispute with the provider of this Agreement, You may contact the South Carolina Department of Insurance, Capitol Center, 1201 Main St., Ste. 1000, Columbia, SC 29201 or (800)768-3467.

## **TENNESSEE**

15. **AUTOMATIC RENEWAL.** This agreement will automatically renew on a periodic basis unless canceled by you by sending written notice to Home Warranty of the Midwest, Inc., with offices located at 303 S 2<sup>nd</sup> Ave., Rock Rapids, IA 51246 or by canceling on the website [HOMEWARRANTYINC.COM](http://HOMEWARRANTYINC.COM). You must indicate your affirmative consent to automatic renewal below.

Signature: \_\_\_\_\_

## **TEXAS**

15. **COMPLAINTS TO DEPARTMENT.** This contract is administered under the Texas Department of Licensing and Regulation (the "Department"), whose address is 920 Colorado Street, Austin, TX 78701, and whose phone number is (512) 463-6599. If you have made a complaint to the Administrator and it remains unresolved, you may contact the Department regarding complaints concerning providers and administrators or for questions. The purchase of a residential service contract or home warranty contract is optional and similar coverage may be purchased from other residential service companies or insurance companies authorized to conduct business in Texas.

16. **REGISTRATION NUMBER.** Home Warranty of the Midwest, Inc. ("Administrator or "Provider") is registered with the Department. Its registration number is 173.

17. **FULL FAITH AND CREDIT.** Obligations of the provider under this service contract are backed by the full faith and credit of the provider and are not guaranteed under a reimbursement insurance policy.

18. **CANCELLATION.** Service under this Agreement will be Initiated within 48 hours of a request for service being made. We may not cancel this Agreement for any reason other than nonpayment of the purchase price by You, fraud, or misrepresentation by You, or if the Agreement is contingent on an interest in real property not being sold. Notwithstanding anything to the contrary stated in this agreement, in the event You cancel your plan on or before the 31<sup>st</sup> day of the Effective Date, you will receive a refund, with deductions for mileage and claims paid, and the provider is required to pay You your refund before the 46<sup>th</sup> day after it receives notice of cancellation, or it will pay a penalty of 10% of the amount owed. No cancelation fee will be assessed if You cancel your plan on or before the 31<sup>st</sup> day of the Effective Date. In the event that the provider cancels your plan, it may do so by written notice of cancellation to your last address according to the provider's records. Notice of cancellation by the provider must be mailed before the 5<sup>th</sup> day preceding the effective date of the cancellation, unless the cancellation is due to non-payment, your fraud or misrepresentation, or your substantial breach of your duties and obligations under this agreement.

19. **NOTICE:** THIS COMPANY PAYS PERSONS NOT EMPLOYED BY THE PROVIDER FOR THE SALE, ADVERTISING, INSPECTION, OR PROCESSING OF A RESIDENTIAL SERVICE CONTRACT UNDER CHAPTER 1304, OCCUPATIONS CODE.

**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 AGREEMENT. FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.**

Signature: \_\_\_\_\_

Agreement Number: \_\_\_\_\_ (We will provide)

#### **UTAH**

15. **REGULATION.** Coverage afforded under this contract is not guaranteed by the Property and Casualty Guaranty Association. In the event of a dispute with the provider of this Agreement, you may contact the Utah Department of Insurance at 350 N. Slate St. State Office Building Rm. 3110, Salt Lake City, UT 84114 or (800)439-3805. ANY MATTER IN DISPUTE BETWEEN YOU AND THE

COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A JUDGEMENT IN ANY COURT OF PROPER

16. **JURISDICTION** This Agreement shall be construed, and the legal relations between the parties determined, in accordance with the laws of the State of Utah.

17. **CANCELLATION.** Grounds for cancellation pursuant to 31A-21-303 (2)a include material misrepresentation, substantial change in risk and substantial breaches of contractual duties effective no sooner than 30 days after written notice to the contract holder. Cancellation for nonpayment is effective no sooner than 10 days after written notice to the contract holder.

#### **VIRGINIA**

15. **AUTOMATIC RENEWAL.** This agreement will automatically renew on a periodic basis unless canceled by you by sending written notice to Home Warranty of the Midwest, Inc., with offices located at 303 S 2<sup>nd</sup> Ave., Rock Rapids, IA 51246 or by canceling on the website [HOMEWARRANTYINC.COM](http://HOMEWARRANTYINC.COM). You must indicate your affirmative consent to automatic renewal below.

Signature: \_\_\_\_\_

#### **WISCONSIN**

15. **REGULATION.** THIS AGREEMENT IS SUBJECT TO LIMITED REGULATION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE. Any claim or dispute by Customer against Home Warranty may be resolved by arbitration only upon mutual consent of the parties. This Contract shall be governed, construed and enforced in accordance with the laws of the State of Wisconsin without regard to principles of conflicts of law. Exclusive jurisdiction shall be in the courts located within the jurisdiction in which the Covered Property is located.



**WYOMING**

15. **DISPUTES.** The Wyoming Constitution, Article 19, Section 8 states that, "The legislature may provide by law

for the voluntary submission of differences to arbitrators for determination and said arbitrators shall have such powers and duties as may be prescribed by law; but they shall have no power to render judgment to be obligatory on parties; unless they voluntarily submit their matters of difference and agree to abide the judgment of such

arbitrators." This agreement shall be construed, and the legal relations between the parties determined, in accordance with the laws of the State of Wyoming. Any legal proceedings shall take place in the State of Wyoming.

SAMPLE



## APPLIANCE SURGE PROTECTION SERVICE PLAN

EAS – 05.22

### EXHIBIT A- APPLIANCE RIDER

COVERAGE SUMMARY		
SURGE PROTECTION PLAN NUMBER:	EFFECTIVE DATE: XX / XX / XXXX	PLAN FEE: As of the date XX / XX / XXXX the full rate of \$10.99 / MONTH plus tax will be in effect
TYPE OF PLAN	MONTHLY	
COVERAGE LIMIT: \$5,000.00, with maximum recovery of \$250.00 for any electronic circuitry	AGGREGATE ANNUAL CLAIM LIMIT: \$10,000.00	
PLAN PURCHASER ("You or Your"):		
RESIDENTIAL ADDRESS:		
COVERED PRODUCTS AND EXCLUSIONS		
<p>A. <b>Covered Products.</b> This Appliance Rider provides coverage for physical damage to Covered Appliances as defined below, caused by a Power Surge. "Covered Appliances" must be located within the residence or within four (4) feet of the residence and include only residential grade central air conditioners, heaters, clothes washers and dryers, refrigerators, freezers, wine coolers, dishwashers, garbage disposals, ovens, stoves, stove hoods, microwaves, hot water heaters, garage door openers, ceiling fans, and the following motorized portions of well or electric pool equipment: well pump, pool heater, pool pump and spa pump. Motorized portions of electric pool or well equipment excludes: timers, accessories, fixtures and controls.</p> <p>B. <b>Exclusions.</b> Covered appliances do not include anything not specifically listed above in Section A and is subject to the exclusions of the Terms and Conditions. For the avoidance of doubt, coverage excludes (a) bodily injury to persons, (b) damages resulting from operation of the covered appliance under conditions exceeding its manufacturer's published specifications, such as surges beyond its capability, continuous steady over-voltages, voltage sags (commonly known as brownouts), under-voltages and open neutrals, as a result of power delivery system damage or flaws, (c) damages to wiring, electrical outlets, breaker panels, and meter sockets, (d) detached buildings, stand-alone buildings or buildings attached via breezeway or other such structures, (e) generators and damages caused by a customer's on-site backup generator, (f) elevators and elevator equipment, (g) electric cars or supplemental equipment associated with electric cars, (h) solar equipment, (i) any damages other than physical damage to Covered Appliances. (j) stand-alone "electronic equipment" using microchip or transistor technology, such as but not limited to, computers, stereos, televisions, DVD players, and security systems, (k) medical or life support equipment, or damage caused by a direct lightning strike not carried down the utility power lines or passing through the transformer and then the Covered Appliance.</p>		