



## Long & Foster Home Warranty Plan Contract Terms

*This Home Warranty Agreement, hereinafter referred to as the "Agreement", is marketed through HMS National, Inc. The Agreement is issued by the entity listed for your state in Section IX. 9. of this Agreement. Such entity is hereinafter referred to as the "Issuing Company", or "we", "us", and/or our". The owner of the home covered by this Agreement is hereinafter referred to as "you" and/or "your". This is a Home Warranty Agreement, not an insurance policy.*

This Agreement is intended to provide protection against the cost of repairing certain items in your home due to mechanical failure. **Please read the Agreement carefully. Coverage includes only certain mechanical failures of the specific items listed as covered on your Agreement Coverage Summary and excludes all other failures and/or items. The Agreement Coverage Summary is attached to and made a part of this Agreement.** Coverage is subject to the limitations and conditions specified in this Agreement.

**This Agreement has provisions for the use of final and binding arbitration to resolve disputes and otherwise limits the remedies available to you. Please see DISPUTE RESOLUTION section for more information about arbitration.**

### I. TYPES OF WARRANTIES/EFFECTIVE DATES

Your Agreement type, effective date and expiration date are listed on your Agreement Coverage Summary. Types of warranties are as follows:

- 1. A Seller Home Warranty**, is placed on the home by a prospective home seller at or near the time of listing, is effective immediately upon receipt and processing of the Seller Home Warranty application by us and continues for the remaining term of the listing agreement, not to exceed one hundred and eighty (180) days from the date of listing, unless sooner terminated by the sale of the dwelling (see Buyer Conversion Warranty below) or cancellation of the listing agreement. The Seller Home Warranty may be extended by us at our sole discretion. The Seller Home Warranty converts to a Buyer Conversion Warranty (see below) on the date of closing (title transfer), provided required payment has been received by us within seven (7) business days of closing.
- 2. A Buyer Conversion Warranty**, is a Seller Home Warranty that has converted to benefit a home buyer after closing, is effective on the date of closing, provided required payment has been received by us within seven (7) business days of closing.
- 3. A Buyer Direct Warranty**, is purchased by or on behalf of a home buyer at the time of closing, is effective on the date of closing, provided required payment is received by us within seven (7) business days of closing, unless otherwise agreed to by us in writing.



4. **A New Home Warranty**, is purchased by or on behalf of a home buyer at the time of closing of a newly constructed single family home. Coverage becomes effective on the 366<sup>th</sup> day from the date of closing, and continues for three years from that date, provided required payment has been received by us within seven (7) business days of closing, unless otherwise agreed to by us in writing.

5. **An Open Direct Warranty**, is available to homeowners not immediately purchasing or selling their home (i.e., when the home is not listed for sale and/or it is more than seven (7) business days after closing), is effective thirty (30) days after required payment has been received by us, unless we otherwise agree in writing.

## **II. BASIS FOR COVERAGE**

**We agree to pay the covered costs to repair or replace the items listed as covered in your Agreement Coverage Summary if any such items become inoperable during the term of this Agreement due to mechanical failure caused by routine wear and tear, subject to the terms and conditions of this Agreement.** Determination of coverage for any claim will be made solely by us, considering but not limited to, our independent contractor's diagnosis.

This Agreement covers only mechanical failures relating to the mechanical parts and components of those domestic-grade items that were in the home and in proper operating condition on the Agreement effective date. "Mechanical failure" occurs when a covered item becomes inoperable and unable to perform its designed function, subject to the limitations and conditions set forth herein. We will cover an unknown pre-existing mechanical failure provided the failure could not have been detected by visual inspection or simple mechanical test. A visual inspection of the covered item is considered to mean the viewing of an item to verify that it appears structurally intact and without damage or missing parts that would indicate inoperability. A simple mechanical test means the ability to turn the unit off and on verifying the item operates without irregular sounds or smoke that may indicate a problem. In certain instances, we may require documentation from you during a claim review.

Mechanical failure due to rust and corrosion is not covered in the Seller Home Warranty. Mechanical failure due to rust and corrosion is covered after the Agreement effective date in the Buyer Conversion, Buyer Direct, Open Direct or New Home Warranty. The covered item will be deemed to have been in "proper operating condition" on the Agreement effective date if it was correctly located within the home, was properly installed to code at the time of installation, was fully connected, was capable of successfully performing all operations commensurate with the manufacturer's original design intention, and did not pose any hazard to life or property. Determination of the operating condition as of Agreement effective date, and the nature of any failure, will be made by us based upon the professional opinion of our direct employees, considering but not limited to, our independent contractor's diagnosis.



### III. DEFINITION OF ITEMS

This Agreement provides coverage only for those items specifically listed as covered in your Agreement Coverage Summary. **An additional fee may be required for certain systems, appliances or optional coverages. Coverage of some items may not be available under all plans or in every state.**

**This Agreement defines precisely what mechanical systems and appliances, and which of their parts and components, are covered; only those items specifically so described are covered, subject to the limitations and conditions herein.** Covered Items must be \"Domestic-grade\" items which are designated by the manufacturer, manufactured and marketed solely for installation and use in a residential single family dwelling. The items listed in this section as \"Examples of Items/Conditions Not Covered\" are not meant to be all-inclusive and are provided for illustration. They do not limit our right to decline coverage for items not on the lists and should not in any way be deemed an expansion of items specified as Covered.

#### 1. Central Air Conditioning/Cooling System

**Description of Covered Items:** Mechanical parts and components of all centrally ducted air conditioning systems, heat pump system or evaporative (swamp) cooler unit (excluding geothermal and water source heat pump systems), as follows: accessible ductwork from the air conditioning unit to the point of attachment at registers/grills; air handler; blower fan motors; capacitors; compressors; condensers; condenser fan motors; condenser coils; evaporator coils; fan blades; internal system controls; internal wiring; motors (excludes dampers); primary/secondary condensate drain pans; refrigerant; refrigerant filter dryer; refrigerant piping interior to the unit (excluding interconnecting line sets and geothermal piping); relays; reversing valves; switches and controls; and thermostats. We cover all centrally ducted air conditioning systems, each with maximum of five (5) ton capacity, and designed for residential application. If the primary cooling system in the home is comprised of wall units, all wall units located within the home will be covered.

**Examples of Items/Conditions Not Covered:** Primary/secondary condensate pumps, and lines; asbestos insulated ductwork or piping; ductwork insulation; concrete encased or inaccessible ductwork; dampers; filters (including electronic/electrostatic and de-ionizing filter systems); fossil and dual fuel control systems and other energy management systems and controls; geothermal heat pump systems; geothermal piping; heat recovery unit; humidifiers; interconnecting Freon lines (external of the equipment); panels and/or cabinetry; registers and grills; recapture/reclaim of refrigerant; structural components; water source heat pump systems; water pumps, valves and lines (external of the condenser unit); wall units (except as noted above); window units, and water cooling towers. Gas systems, including ammonia systems, and chilled water systems, are not covered.



## 2. Central Heating System

**Description of Covered Items:** Mechanical parts and components of all heating systems, either hot water and steam heating system or centrally ducted forced air gas/electric/oil heating system or electric baseboard units, if providing the primary source of heat in dwelling, as follows: accessible ductwork from covered heating unit to point of attachment to register/grill; blower fan motors; burners; controls; fan blades; heat/cool thermostats (programmable and electronic set back units will be replaced only with standard units); heat exchangers; heating elements; ignitor and pilot assemblies; internal system controls; wiring; and relays; motors (excludes dampers); and switches. If the primary heating system in the home is comprised of wall units, all wall units located within the home will be covered. Electric baseboard units are covered if they are the primary source of heating for the property.

**Examples of Items/Conditions Not Covered:** Chimneys, flues, and liners; cleaning and re-lighting of pilots; concrete encased or inaccessible ductwork; concrete encased or inaccessible steam or radiant heating coils or lines; conditions of water flow restriction due to scale, rust, minerals and other deposits; fossil and dual fuel control systems and other energy management systems and controls; dampers; asbestos insulated ductwork or piping; electric baseboard heat unless primary heating system in home; filters (including electronic/electrostatic and de-ionizing filter systems); fireplaces and their respective components and gas lines; free-standing or portable heating units; fuel storage tanks, lines, and filters; gas log systems, including gas feed lines; humidifiers; inaccessible water/steam lines leading to or from system; individual space heaters; maintenance and cleaning; panels and/or cabinetry; radiant heating systems built into walls, floors or ceilings; registers and grills; secondary units; solar heating devices and components; and structural components.

## 3. Central Vacuum System

**Description of Covered Items:** Motor; relay; switches; wiring.

**Examples of Items/Conditions Not Covered:** Attachments; hoses; handles; knobs; panels and/or cabinetry; powerhead assemblies; secondary units; structural components.

## 4. Electrical System

**Description of Covered Items:** Standard mechanical parts or components located within the perimeter of the outer load bearing walls consisting of ceiling fan motors and their controls (excluding transmitters and remotes); attic/whole house exhaust fans; door bells and chimes; interior standard light switches, smoke detectors including battery and hardwire systems; main breaker or fuse panel/box receptacles and general line voltage wiring.



**Examples of Items/Conditions Not Covered:** Bathroom exhaust fans; direct current (DC) wiring and systems; exterior wiring and components (except main panels mounted to exterior wall); any wiring or components servicing a detached structure; exhaust fans; fire, carbon monoxide alarm and/or detection systems; batteries; intercom or speaker systems; lighting fixtures; load control devices; low voltage systems including wiring and relays; service entrance cables; telephone systems; timers; touch pad assemblies; transmitters and remotes; utility meter base pans; and wall fans. Failures and conditions caused by inadequate wiring capacity, circuit overload, power failure/shortage or surge, and corrosion caused by moisture are not covered.

## 5. Garage Door Opener

**Description of Covered Items:** Mechanical parts and components of a single primary unit as follows: drive trains; motor; receiver board; relays; switches and sensors. If there is no attached garage, we will cover one (1) opener if installed in a detached garage.

**Examples of Items/Conditions Not Covered:** Batteries; damage caused by door malfunctions; all door assemblies including door panels, tracks, rollers, hinges, cables and springs; frequency interference; lights; sending units; touch pads and/or key pads; transmitters and remotes.

## 6. Jetted Bathtub

**Description of Covered Items:** Mechanical parts and components as follows: accessible electrical controls; accessible plumbing lines; air pumps; drains; gaskets; and primary circulation pump and motor.

**Examples of Items/Conditions Not Covered:** Bathtub shell; caulking and grout; jets; conditions of water flow restriction due to scale, rust, minerals and other deposits; failures due to dry operation of equipment; gaining access to electrical, component parts, and/or piping; tiles and marble; and tub enclosure.

## 7. Kitchen/Laundry Appliances

**Description of Covered Items:** Mechanical parts and components affecting the proper operation of one (1) of each of the following appliances: refrigerator or combination refrigerator/freezer; built-in dishwasher; built-in microwave oven; range/oven/cook-top; self-contained range exhaust unit located above the range; built-in trash compactor located in the primary kitchen; and clothes washer; clothes dryer. Covered mechanical parts and components include only the following: automatic soap and rinse dispensers; belts; compressor; condensers; control timers (oven/range clock-timers are excluded unless failure prohibits normal cooking function); defrost heaters; clothes dryer heating elements; clothes dryer drum; clothes dryer drum rollers; electronic components; evaporators; fan motors; gas valves; hinges; hoses; ignitor and pilot assemblies; ice maker; internal wiring; latch assemblies (excluding self-cleaning latch mechanisms); motors; power cords; pulleys; pumps; ram assembly; range/cooktop/heating elements/burners (sensi-temp elements/burners will be replaced only with standard elements/burners); solid state control boards; switches and relays; thermostats; touch pads;



tracks; transmissions; wash arm assemblies (dishwasher only); washing machine tubs and agitators; and water valves (dishwasher and clothes washer only).

**Examples of Items/Conditions Not Covered:** Automatic deodorizers; buckets; commercial units; damage to clothing; doors; door cables; door glass; door seals; drawers; drip pans; exhaust fan not solely for venting range/cooktop fumes; independent telescoping range exhaust; filters and screens; food spoilage; ice and beverage dispensers and their respective components including water supply lines; reclaim of refrigerant; interior lining; internal shelves; knobs and handles; light bulbs and fixtures; lock and key assemblies; panels and/or cabinetry; racks; removable minitubs; rollers other than clothes dryer drum rollers; rooftop exhaust units; rotisseries and probes; secondary units; shelves; springs; stand-alone freezers; structural components; timers and clocks; self-cleaning mechanisms including door latches; trays; venting; conditions of water flow restriction due to scale, rust, minerals and other deposits.

## 8. Plumbing System/Plumbing Pipes

**Description of Covered Items:** Mechanical parts and components of the following: garbage disposal; interior hose bibs; point of service water system/instahot; pressure regulating devices; shower and tub valves; toilet tanks, bowls, and toilet mechanisms within the toilet tank. The clearing of plumbing stoppages using standard snake/auger systems, of drain, waste or vent lines up to 125 feet from point of access where accessible ground level cleanout is existing, and which can be cleared with standard cable. Request to clear the same line(s) after fourteen (14) days' time has elapsed will be considered a new claim and require a new deductible. Leaks and breaks of water, gas, drain, waste and vent lines/pipes within the perimeter of the main foundation are also covered. Repair and finish of any walls or ceilings where it is necessary to break through to effect repair is not covered under the Seller Home Warranty; under all other warranty types it is covered only to the following extent: repair of walls or ceilings to rough finish up to \$1,000 per claim. Rough finish is defined to include hanging of drywall, patching of drywall, stucco, and lath. Repair to rough finish does not include supplies or labor for paint, sanding, wall texture, wallpaper and/or tile work.

**Examples of Items/Conditions Not Covered:** All plumbing in or under the ground, foundation or slab; all piping and plumbing outside of the perimeter of the foundation; any piping or plumbing in a detached structure; bath tubs; bidets; caulking or grout; color or purity of the water in the system; concrete encased plumbing; conditions of insufficient or excessive water pressure; conditions of water flow restriction due to scale, rust and sediment (scale, minerals and other deposits); exterior hose bibs; faucets; freeze damage; holding and pressure tanks; jet pumps; laundry tubs; lawn sprinkler systems; repair and finish of any floors where it is necessary to break through to effect repairs; septic tanks and systems in or outside of the home; sewage ejector pumps; sewer and water laterals; shower enclosures and base pans; shower heads; sinks; solar systems; toilet tank lids and toilet seats; water damage; water filters; water purification systems; wells.



## 9. Septic Tank/Septic Tank Pumping

**Description of Covered Items:** This plan covers the mechanical parts and components of one (1) sewage ejector pump (located within the perimeter of the main foundation). The clearing of stoppages within the connecting waste line (leading from the house to the primary septic tank ) which are attributable to normal wear and tear and can be accessed through an existing clean out without excavation. In the event the septic tank needs to be pumped or replaced, you may be responsible for locating an independent contractor to perform the necessary repairs or replacement. In no event shall we be liable for claims in excess of \$500 to pump the septic tank or \$1,000 to replace the septic tank, per agreement term.

**Examples of Items/Conditions Not Covered:** Broken or collapsed sewer lines; tile fields; leach beds; leach lines; lateral lines; insufficient capacity; seepage pits; cesspools and sewage ejector pumps not associated with the septic system. We do not cover the cost associated with locating or gaining access to the septic tank or sewer hook-ups nor do we cover the cost of installing cleanouts or hook ups if they do not already exist; disposal of waste; chemical treatments of the septic tank or sewer lines, stoppages caused by root invasion and/or stoppages caused by foreign objects, such as but not limited to, toys and bottle caps.

## 10. Spa

**Description of Covered Items:** Mechanical parts and components as follows: above ground accessible plumbing lines leading to and from unit; air pumps; blower motor; filters (freestanding housing body, laterals, pressure gauges, back flush valves); gaskets; impellers; internal spa pack heater; internal switches; primary circulator pump and motor; and relays.

**Examples of Items/Conditions Not Covered:** Automatic feeders and chemicals; chlorinators; \"creepy crawlers\" and similar cleaning units; electrical lines; external heaters; filter elements or media (i.e., cartridges, grids and sand); inaccessible underground and/or concrete encased plumbing; jets; lighting; portable spas or spas without hard pipe or hard wire installation; pop up heads and turbo valves; secondary/auxiliary cleaning equipment and accessories including built-in or detachable cleaning equipment, skimmers; solar heaters and related components; conditions of water flow restriction due to rust and sediment (scale, minerals and other deposits); structure, liner or shell of the spa; timer and remote control systems and their components.

## 11. Sump Pump

**Description of Covered Items:** Mechanical parts and components of the pump assembly located within the home and hard piped installed.

**Examples of Items/Conditions Not Covered:** Any unit located outside the covered property and/or within crawl spaces; back-up power assemblies; portable or non-hard piped installed unit.



## 12. Swimming Pool

**Description of Covered Items:** Mechanical parts and components as follows: above ground accessible piping lines leading to and from the unit; filters ( housings, laterals, pressure gauges, back flush valves); gaskets; primary circulator pump and motor; and relays and impellers.

**Examples of Items/Conditions Not Covered:** Automatic feeders and chemicals; chlorinators; \"creepy crawlers\" and similar cleaning units; electrical lines; filter elements or media (i.e., cartridges, grids and sand); jets; lighting; pop-up heads and turbo valves; secondary/auxiliary cleaning equipment and accessories including built-in or detachable cleaning equipment; skimmers; solar heaters and related components; conditions of water flow restriction due to rust and sediment (scale, minerals and other deposits); structure, liner or shell of the pool; timer and remote control systems and their components; and inaccessible underground and/or concrete encased plumbing.

## 13. Heater for Swimming Pool and/or Spa

**Description of Covered Items:** Mechanical components and parts of gas, electric, oil, and heat pump units. In no event shall we be liable for claims in excess of \$1,000 in the aggregate per Agreement term, per covered property with respect to pool or spa heaters.

**Example of Items Not Covered:** Cabinetry and structural components; recapture/reclaim of refrigerant; timer and remote control systems and their components.

## 14. Combination (shared equipment) Swimming Pool and Spa

**Description of Covered Items:** Mechanical parts and components as follows: above ground accessible plumbing lines leading to and from unit; air pumps; blower motor; filters (freestanding housing body, laterals, pressure gauges, back flush valves); gaskets; impellers; internal spa pack heater; internal switches; primary circulator pump and motor; and relays.

**Examples of Items/Conditions Not Covered:** Automatic feeders and chemicals; chlorinators; \"creepy crawlers\" and similar cleaning units; electrical lines; filter elements or media (i.e., cartridges, grids and sand); heaters; inaccessible underground and/or concrete encased plumbing; jets; lighting; pop-up heads and turbo valves; secondary/auxiliary cleaning equipment and accessories including built-in or detachable cleaning equipment, skimmers; solar heaters and related components; structure, liner or shell of the pool and spa; timer and remote control systems and their components.

## 15. Water Heater

**Description of Covered Items:** Mechanical parts and components of one (1) water heater/tankless, including circulatory pumps and domestic hot water coils attached to boilers, but excluding solar and heat recovery units. Includes mechanical failures resulting from sediment build up.





**Examples of Items/Conditions Not Covered:** Auxiliary and secondary holding/storage tanks; base pans; color or purity of water; flues; vent pipes/lines; insulation and insulation blankets; heat recovery units; any noise without a related mechanical failure; racks; straps; timers; and solar heaters, including all parts and components..

## 16. Water Softener

**Description of Covered Items:** Mechanical parts and components of basic single water softener unit, including central head assembly; multi-level/twin softeners; piping to and from unit(s) and system tanks.

**Examples of Items/Conditions Not Covered:** Any and all treatment, purification, odor control, iron filtration components and systems; discharge drywells; failure due to excessive water pressure or freeze damage; failures due to mineral and/or sediment; resin bed replacement and salt.

## 17. Well Pump System or Well Pump System with Booster Pump

**Description of Covered Items:** Mechanical components and parts of the submersible or above ground well pump and booster pump utilized as the sole source of water supply only for the main dwelling, excluding irrigation system, as follows: controls; impellers; motor; pump and seals. For units that also supply water for use outside the main dwelling, only the capacity required to supply water to the main dwelling, excluding irrigation system, is covered.

**Examples of Items/Conditions Not Covered:** Contamination or lack of water; excavation or other charges necessary to gain access to, or to remove, or to reset the pump; failure attributed to well impurity; joint wells; piping and electrical lines leading to and from the unit; pressure, holding or storage tank(s); re-drilling of wells; auxiliary/secondary; and well casings.

## IV. SERVICE

1. **When repair or replacement services covered by this Agreement are required, call us at 1-800-432-1033 or submit a claim through the website [www.hmsnational.com](http://www.hmsnational.com).** If you fail to notify us of any mechanical failure prior to the expiration of the term of the Agreement during which the failure occurred, we will not be responsible for the cost of any repairs and/or replacements resulting from the mechanical failure.

2. We will provide you with a referral to an independent contractor. We will use reasonable efforts to provide a referral to an independent service contractor within two (2) hours after the service request is received during normal business hours and within twenty-four (24) hours for requests received after normal business hours and on weekends or holidays. In the event we determine, at our sole discretion, that there is an emergency situation requiring expedited service, we will make reasonable efforts to expedite service. We will determine, at our sole discretion, which repairs constitute an emergency and will give consideration to covered mechanical failures that affect the habitability of the dwelling.



3. We have sole authority to select independent contractors. All repair and/or replacement work covered by this Agreement must be performed by an independent contractor and approved by us in advance. **We are not responsible for expenses you incur without our express consent.** We will not reimburse you for any costs associated with unauthorized repairs or work performed by unauthorized contractors.

4. **This Agreement may include a deductible charge, as listed on your Agreement Coverage Summary. If a deductible is required, it must be paid for each trade on each service call and will be used towards the covered portion of any claim.** When a covered claim requires more than one trade to complete the covered repair/replacement only one deductible charge will be required. Trades include appliance, air conditioning, heating, electrical, plumbing, and any other trade specifically required to service items listed on your Agreement Coverage Summary. You will be responsible for and shall pay the independent contractor directly for the service call and for actual work performed and/or items installed, up to the amount of the deductible at the time of visit(s), in a manner acceptable to the independent contractor. You are responsible and must pay the independent contractor for any amounts due for services performed or parts installed that are not covered under the terms, conditions and provisions of this Agreement. A service call includes, without limitation, the action of inspecting, diagnosing, and/or performing service for the repair or replacement of a malfunctioning item.

5. You agree to provide access to the covered property during normal business hours for the independent contractor to diagnose, obtain approval for, and/or complete repairs for covered mechanical failures. You agree to pay us and/or our independent contractor any service charge and additional charges assessed by our independent contractor resulting from your failure to provide access and/or for missed appointments.

6. Should any building or zoning permits be necessary, you are responsible for paying for and/or obtaining these permits and the cost associated with these permits.

7. At our discretion, we may elect to replace a covered item rather than repair it. **The decision to replace rather than repair items is solely our option.** Should we choose to replace an item, the replacement will be the base model that meets all applicable federally mandated minimal manufacturers' standards, performs the same primary function, and has a capacity comparable with the covered item, when available with domestically assembled units. We will make reasonable efforts to provide replacement items of similar mechanical capabilities and/or efficiency of the original unit, when available. We are not liable to provide exact match in color, dye, lot, material, type or brand. When replacing systems or appliances, we will be responsible for the installation of the replacement item but not for the cost of the construction, modifications, carpentry or transitional work made necessary in order to accommodate the replacement, nor for any costs to upgrade or modify items for any reason. Should we determine to replace an item and you instead choose to elect a repair that item is excluded from further coverage under this Agreement and subsequent renewals.



8. At our discretion, we may give you the option to elect to receive a repair/replacement credit or cash payment (net of deductible) in lieu of providing a repair/replacement. In such cases, the amount of such credit shall be equal to the lesser of our approved cost of repair/replacement or your actual and/or estimated cost of repair/replacement. If you elect a credit to our independent contractor, we will pay that amount directly to the independent contractor after the work has been completed. If you elect the cash payment, you must supply documentation supporting that the item in question has been purchased, replaced or repaired prior to receiving the cash payment. Any replacement item must be installed in the covered property as listed on the Agreement Summary Page. **The amount of the approved cost of repair or replacement will be established by us at our sole discretion.** We reserve the right to inspect repaired and/or replacement items.

9. We reserve the right to obtain, at our expense, a second opinion by an independent contractor prior to determining eligibility for coverage.

## V. GENERAL EXCLUSIONS AND LIMITATIONS

1. This Agreement shall not cover any item(s) if they are: mismatched systems with components having incompatible capacity ratings; modified from the original manufacturer design or application; items determined to be defective by the Consumer Product Safety Commission or the manufacturer and for which either has issued, or issues, a warning or recall, or which is otherwise necessitated due to failure caused by the manufacturer's improper design, use of improper materials and/or formulas, manufacturing process or any other manufacturing defect; improperly installed; or below the slab or basement floor of the home; or located outside the perimeter of the main foundation (i.e., outside the outer load bearing walls of the structure with the exception of central air conditioning unit, main electrical panel mounted to the outside wall, pool, spa, septic tank, and well pump).

2. This Agreement covers only repairs and/or replacements due to mechanical failure attributable to ordinary wear and tear. Accordingly, the Agreement does not cover failures which may result from other causes, such as without limitation: abuse, misuse and/or neglect; improper installation; lightning strikes; missing parts; animal, pet and/or pest damage; power failure; power surge; fire; casualty; acts of God; structural and/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 property. This Agreement does not cover mechanical failures resulting directly or indirectly from or caused by mold, mildew, mycotoxins, fungus, bacteria, virus, condensation, and/or wet or dry rot regardless of the source, origin, or location and any other cause or event contributing concurrently or in any sequence to the mechanical failure.



3. This Agreement does not cover upgrading or making modifications to items due to, but not limited to, the following reasons: capacity (over or undersized); dimensional or design change; conditions of insufficient or excessive water pressure; conditions of inadequate wiring capacity; circuit overload; power failure and/or surge; failure to meet building code(s); zoning requirements; utility regulations; or failure to comply with local, state or federal laws or regulations.

4. This Agreement does not cover any costs associated with construction, carpentry, or other modifications made necessary by the repair or replacement of existing equipment or installing different equipment. This Agreement does not cover any costs associated with any upgrades or modifications to comply with federal, state, and/or local law, code, regulation, or ordinance. All such costs are your responsibility.

5. SEER (Seasonal Energy Efficiency Ratio) operational compatibility: If we elect to replace an air conditioning condenser or heat pump unit, and it becomes necessary to make a mechanical modification to the evaporator coil in order to provide operational compatibility, we agree to pay the covered costs for one (1) of the following (determination is at our sole discretion) only: expansion metering device, or coil, or air handler. This Agreement does not cover any costs associated with modifications or upgrades required to match efficiency value, rating or ratio.

6. This Agreement does not cover: fees associated with the removal and/or disposal of old systems, appliances and components; any fees or costs associated with Freon reclamation.

7. This Agreement does not cover: fees associated with the removal and/or disposal of hazardous or toxic material or asbestos.

8. This Agreement does not cover repair or replacement of systems, appliances or components classified by the manufacturer as commercial-grade.

9. This Agreement does not cover (a) fees associated with use of cranes or other lifting equipment required to service any item or system; or (b) excavation or other charges associated with gaining access to the well pump; or (c) electronic computerized energy management systems or devices, or lighting and/or appliance management systems.

10. This Agreement does not cover ductwork with the sole exception of ductwork that is exposed and readily accessible to service a mechanical failure of a covered air conditioning or heating system or item. This Agreement does not cover: asbestos insulated ductwork; concrete encased or inaccessible ductwork; crushed/collapsed ductwork; ductwork damaged by moisture, water, pests and/or animals; insulation; registers, grills and dampers; underground ductwork. Inaccessible ductwork refers to ductwork that is used in central heating and/or air conditioning systems that is not exposed and cannot readily be accessed for replacement or repair due to design and installation obstacles such as, but not limited to, permanent partitions, chimneys, etc., and ductwork embedded in floors, walls or ceilings.



11. This Agreement does not cover any costs, including costs associated with equipment, incurred to gain access to, or service, a covered item, system, appliance or component. When there is not adequate capacity or space for serviceability caused by, but not limited to, walls, floors, ceilings, permanently installed fixtures, cabinets, snow/ice covered areas, flooded areas, or personal property and it is necessary to open or move such items to perform a diagnosis or service, we are not responsible for costs to move or restore such openings, items, or property.
12. This Agreement does not cover delays or failures to provide service caused by, or related to: any of the exclusions listed herein; shortages of labor and/or materials; or any other cause beyond our reasonable control. This Agreement does not cover additional charges to access or transport materials, supplies, or independent contractors to the covered property due to lack of or inhibited serviceability, such as, but not limited to, tolls, required use of ferries or barges and/or remote locations.
13. This Agreement does not cover any incidental, consequential, special, and/or punitive damages, and you agree to waive any and all claims for such damages, arising from, resulting from and/or related to the failure of any item or system, including, but not limited to, food spoilage, loss of income, additional living expenses, and/or any loss, damage, cost or expense directly or indirectly arising out of or resulting from, or in any manner related to mold, mildew, mycotoxins, fungus, bacteria, viruses, condensation, wet or dry rot and/or other property damage.
14. This Agreement does not cover repairs or replacements of any item covered by other insurance, warranties or guarantees, including but not limited to, manufacturer's, contractor's, builder's, distributor's, or in-home warranty's. Our coverage is secondary to such insurance, warranties, or guarantees.
15. This Agreement does not cover any mechanical failure when the covered item or system has been repaired, modified, disabled or adjusted in any way which prevents us or our independent contractor(s) from inspecting, diagnosing and/or repairing the mechanical failure.
16. This agreement does not cover items that have had: improper alterations; installations; repairs; or improper modification of any system, appliance or component covered by this Agreement; or if it is damaged in the course of remodeling or repair, we will no longer be obligated to cover such item(s).
17. This Agreement does not cover performance of routine maintenance. You are responsible for performing all routine maintenance and cleaning for all covered items and systems as specified and recommended by the manufacturer and for maintaining all areas around covered items and/or systems to ensure that they are able to function properly as specified by the manufacturer.



18. We are not liable for any damages that result from an independent contractor's service, delay in providing service or failure to provide service. We are not liable for any incidental, consequential, special, and/or punitive damages, whether caused by negligence or any other cause, and you agree to waive any and all claims for such damages, arising from, resulting from or related to any independent contractor's service, delay in providing service or failure to provide service, including, but not limited to, damages, resulting from delays in securing parts and/or labor, the failure of any equipment used by an independent contractor, labor difficulties, and/or the negligent, tortuous and/or unlawful acts or omissions of any independent contractor.



## **VI. PROPERTIES ELIGIBLE FOR COVERAGE**

1. This Agreement covers a single family residence, including a condominium, townhouse or villa used solely for residential purposes. Two (2) to four (4) unit multi-family property owned and operated as residential income producing properties, are also eligible for coverage although seller coverage is restricted to only the owner occupied unit. Any dwelling used in whole or in part for commercial purposes such as, but not limited to, a day care facility, a group home (five (5) or more unrelated individuals cohabiting in same household) or fraternity-type house, "bed and breakfast", church or school will not be covered. Notwithstanding the exclusion of "group homes", this Agreement provides coverage under a special exception for special purpose group homes devoted to housing persons with mental and physical disabilities, as those terms are defined by the Americans with Disabilities Act at Title 42 of the United States Code Section 12102(2)(A). Homes listed in any historical register are not covered, which will include any homes registered on the National Register of Historic Places. Whether or not this Agreement covers a condominium unit, mobile home, manufactured home, or multi-family property, any repairs and/or replacements will be limited to the items solely used by and located and serviceable within such single unit (unless specified otherwise). No common area items shared by non-warranted units shall be covered by this Agreement.

2. If coverage is provided on tenant occupied units under the Buyer Conversion Warranty, Buyer Direct Warranty, New Home Warranty, or Open Direct Warranty, you, the owner, (not the tenant) are responsible to report the claim and pay the deductible charge. Multi-family property is not eligible for the New Home Warranty.

3. Mobile homes constructed within ten (10) years of the effective date of the Agreement are eligible for coverage, provided they are permanently secured to the ground and that the land they are located on is owned by you. Mobile/manufactured homes that are located in a division operated similar to a condominium, where maintenance is provided, are also eligible for coverage.

## **VII. CANCELLATION**

1. You may void this Agreement within 30 (thirty) days of the coverage effective date for a full refund of the contract fees paid if no claim has been made. The right to void this Agreement as provided in this paragraph is not transferable. A ten percent penalty per month will be added to any refund required under this paragraph, including any accrued penalties, that is not paid or credited within 30 (thirty) days after termination of this Agreement pursuant to this paragraph.



2. You may cancel this Agreement within 30 (thirty) days of the coverage effective date if a claim has been made, or at any time thereafter, at which time you may be entitled to a refund of unearned contract fees paid based on the short rate schedule less a processing fee of twenty-five dollars (\$25) and less the cost of any services performed pursuant to the Agreement, where permitted by law. If the refund calculation results in you owing us payment for services provided, we may bill you for the lesser of the net amount due to us or the unpaid annual term contract fee. We will bill or charge you any balance owed to us through the same mechanism as any previous installment billings, or we will direct bill you if such a mechanism is not available.

3. In the event a real estate listing agreement is cancelled while your home is covered by a Seller Home Warranty and a claim has been paid, you agree to pay to us the lesser of: (1) any claims paid under the Seller's coverage, or (2) the applicable Buyer Conversion Warranty price. In the event a home which was covered under the Seller Home Warranty during the listing period is sold, regardless of whether a claim is paid under the contract, the seller will be liable to us for the applicable Buyer Conversion Warranty price.

4. We may terminate this Agreement immediately, after any applicable notice provisions, for non-payment, fraud or material misrepresentation. If we terminate for fraud or material misrepresentation, this Agreement is void and we shall refund all paid contract fees if no claims have been made. If a claim has been made, we will follow normal cancellation procedures as outlined in this section.

## **VIII. DISPUTE RESOLUTION**





**1. ARBITRATION:** All disputes, controversies or claims of any sort, arising out of or in any way relating to this Agreement, its negotiation, and the Services provided pursuant to it, whether based in contract, tort, regulation, or any other legal or equitable theory (collectively "Disputes"), shall be resolved at the consumer's choice by settlement or final and binding arbitration or in and through a small claims court having jurisdiction over such Disputes. Arbitration shall be conducted within the geographical limits of the applicable federal district court where the Covered Property is located, or such other location upon which both parties mutually agree. The Commercial Arbitration Rules and Supplementary Procedures for Consumer-Related Disputes of the American Arbitration Association (the "Arbitration Rules") in effect at the time arbitration is demanded by either party shall govern the arbitration proceeding and the selection of one neutral arbitrator to preside over the proceeding. The arbitrator is empowered to decide all Disputes and all questions related to the enforceability and scope of these Dispute Resolution provisions, including but not limited to the validity, interpretation and applicability of these Dispute Resolution provisions. Additionally, this transaction involves interstate commerce, and these Dispute Resolution provisions shall be governed by the Federal Arbitration Act, as amended (9 USC 1). No arbitration may proceed on a class or representative basis, and the arbitrator may not consolidate any arbitration proceeding governed by these Dispute Resolution provisions with any other person's arbitration proceeding, and may not otherwise preside over any form of a representative or class proceeding. Under the Arbitration Rules, although each party is required to pay certain administrative and arbitrator fees, the amount the consumer may be required to pay is limited. Each party to arbitration is responsible for its own attorney's fees, if the party chooses to be represented by an attorney.

**2. CLASS ACTION AND JURY TRIAL WAIVER:** Each party to this Agreement may bring a Dispute against the other only in its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. Each party gives up or waives any right it may have to have any Disputes between them resolved by a jury.



## IX. OTHER CONDITIONS

1. **Term.** A Buyer Conversion Warranty, Buyer Direct Warranty or Open Direct Warranty expires one (1) year from Agreement effective date, unless renewed. A New Home Warranty expires three (3) years from Agreement effective date, unless renewed. Renewal term will be for a one (1) year period.
2. **Renewal.** A Buyer Conversion Warranty, Buyer Direct Warranty, Open Direct Warranty or New Home Warranty will automatically renew at the option of the Issuing Company and where permitted by state law, for successive one (1) year periods, unless cancelled by you or us in accordance with the cancellation provisions. You will be notified of any rate and/or coverage changes not less than thirty (30) days prior to the expiration of the warranty.
3. **Assignment.** In the event of assignment or transfer of title of the covered property, this Agreement may be assigned and/or transferred at our option, where permitted by state law and when the applicable fee has been paid. We reserve the right to charge a transfer fee not to exceed \$25.
4. **Installment Billing.** In certain cases you may be permitted, at our sole and exclusive discretion, to pay for your coverage on an installment basis. Should you suffer a mechanical failure covered by this Agreement at a time when there are unpaid installments due from you, whether or not such payments are due or overdue, we reserve the right to deduct all or any portion of any unpaid amounts from the amount of loss covered by this Agreement for such incident, or to require payment of the entire remaining unpaid balances prior to covering the loss for you as we deem necessary or desirable. Our failure to exercise any such right on one occasion shall not be deemed a waiver of such right on other occasions.
5. **Waiver.** Should we waive any of our contractual rights; such waiver will not constitute a future waiver of said rights.
6. **Disclosure.** The price of the Agreement includes the full amount of all fees due and payable as well as the costs of processing and administration for the Issuing Company and its agents where allowable by law. Any applicable state or local sales taxes are in addition to the price of the Agreement.
7. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.
8. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreement and understandings of the parties hereto, oral or written, with respect to the subject matter hereof. Except as provided herein, all other warranties, expressed or implied, are hereby disclaimed.



**9. Issuing Company.** The HMS Home Warranty Agreement is issued by HomeSure Services, Inc., except in the following states where it is issued by the identified entity: in Alabama, Arizona, Florida, Illinois, Iowa, Massachusetts, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, South Carolina, Texas, Utah, Vermont, Washington, Wisconsin and Wyoming by HomeSure of America, Inc.; in California by HomeSure Protection of California, Inc.; and in Virginia and Oregon by HomeSure of Virginia, Inc. Services are provided by independent tradespeople/contractors.

**10. Marketing.** This Agreement is marketed through HMS National, Inc. HMS is a registered trademark of HMS National, Inc., P.O. Box 551299, Fort Lauderdale, FL 33355-1299; telephone 954-845-9100.

**11. Corporate/Administrative Office.** Cross Country Home Services, Inc., P.O. Box 551540, Ft. Lauderdale, FL 33355-1540, 954-835-1900.

HMS-MPP07A 07/13

### **Premier Upgrade Package Option (Buyer Only)**

Adding this package to your Home Warranty Agreement provides additional benefits, including mismatched systems and components having incompatible capacity ratings on a covered claim. Certain repairs or replacements may require additional fees that are not normally covered under your Home Warranty Agreement, such as, but not limited to, disposal of equipment; duct, electrical and/or plumbing modifications; reclamation of refrigerant; code upgrades; permits; condenser pads; etc. **Depending on which package you select, we will provide up to either \$500 or \$1,000 towards typically excluded non-covered charges when repairing or replacing a covered item. In no event shall we be liable to cover fees and/or disposal arising from hazardous and/or toxic materials or asbestos.** Package limits apply to one (1) covered item, per claim. **Each claim event is capped for up to either \$500 or \$1,000;** any unused portion of the benefit cannot be applied towards a future claim. **In no event shall we be liable for more than two (2) claims per agreement term, for an aggregate amount of up to \$1,000 or \$2,000.** This benefit does not apply to equipment; items; or failures deemed ineligible for coverage.

### **PREVENTIVE MAINTENANCE BENEFIT**

**1. Eligibility:** During the first year of your HMS Home Warranty Agreement ("Agreement"), if you have not placed any claims, you will be eligible for one (1) air conditioning and/or heating system maintenance visit, up to \$100, at the completion of month nine (9) of your contract. The maintenance visit is available on an active Agreement from month ten (10) and through the end of the contract term. The maintenance visit must be scheduled and occur between months ten (10) and twelve (12) before the first term of the Agreement expires.



2. **Process:** For information on how to use this benefit, call HMS National at 866-607-9925. If you fail to schedule a maintenance visit during the Eligibility period you may not \"make-up\" the maintenance visit during any subsequent period. No make-up will be given for a missed maintenance visit. Based on the Eligibility qualifications noted above, you must schedule and complete the maintenance service between months ten (10) and twelve (12) of the Agreement period.