

AWHR, LLC.
CONTRACTOR AGREEMENT

This AGREEMENT, entered into this date _____, 20 _____, between AWHR, LLC. (hereinafter called the Company) and Name _____
Address _____ City _____ State _____ Zip Code _____
(hereinafter called the Contractor).

WITNESSES THAT

Whereas the Company has a Lifetime Service Program for its customers; and
Whereas the Company wishes to obtain delivery, installation, replacement, removal, maintenance, repair and optional storage services; and
Whereas the Contractor possesses the expertise and is willing to provide such services; and
Whereas, the parties desire to enter into an agreement to set forth the terms and conditions of this relationship;
Now therefore, in consideration of the covenants, agreements and understandings as hereinafter recited, the parties agree as follows:

Term - This Agreement shall continue in full force and effect for one (1) year from the date first set forth above and shall continue on a monthly basis thereafter unless terminated by either party upon sixty (60) days prior written notice.

Compliance with Codes, Laws and Regulations - The Contractor shall comply with all federal, state, and local requirements applicable to the performance of this Agreement including but not limited to the acquiring of all required permits.

3.0 Scope of Work

- 3.1** - The Contractor shall be responsible for the delivery and installation of Rinnai tankless water heater(s) or Rinnai direct vent wall furnace(s) within customer premise(s) specified by the Company.
- 3.2** - The Contractors shall be responsible for the service and maintenance of program Rinnai tankless water heater(s) and program Rinnai direct vent wall furnace(s) that are located within the customer premise(s). The Company shall notify the Contractor of all required services and maintenance calls.
- 3.3** - The Contractor shall be responsible for the replacement and/or removal of program Rinnai tankless water heater(s) or program Rinnai direct vent wall furnace(s) from the customer premise(s). The Company shall notify the Contractor of all required replacements and/or removals.
- 3.4** - All responsibilities and procedures required for delivery, installation, service, maintenance, replacement, and removal of program Rinnai tankless water heater(s) or program Rinnai direct vent wall furnace(s) shall be performed according to the "Contractor Manual," a copy of which will be provided to the Contractor along with continuing updates.

4.0 Warranties

- 4.1** - The Contractor warrants that the services and materials provided hereunder shall conform to all requirements of this Agreement, and shall conform with the highest standards of care, skill, and diligence appropriate to the nature of the services rendered.
- 4.2** - The Contractor warrants that the personnel furnishing such services shall be qualified and competent to perform the services assigned to them and that the recommendations and performance of such personnel shall reflect their best personal knowledge and judgment.
- 4.3** - The Contractor warrants that all materials, parts and incidentals necessary for the successful completion of this Agreement and supplied by the Contractor shall be free from defects in workmanship and material, of the most suitable quality, fit for the purpose for which they are intended, and in conformance with all descriptions and requirements of this Agreement.
- 4.4** - The Contractor warrants that if the Contractor causes any injury to the Company or the Company's customers; or causes any physical damage to or destruction of any of the Company or the Company's customers' property, during the term of this Agreement, the Contractor shall be liable for such injuries and/or damage.
- 4.5** - Should the Contractor breach the warranties set forth above, the Company shall have such remedies as are allowed under the laws of the state in which the work is performed. Without limiting the generality of the foregoing, if prior to the expiration of one (1) year from the date the Contractor completes any requested service hereunder, the Company notifies the Contractor in writing that a defect, error or omission has been discovered in the Contractor's work, the Contractor shall at the option of the Company: a) correct such noncomplying, defective, or erroneous work to the Company's satisfaction at no additional cost the Company; b) refund the amount paid by the Company attributable to such noncomplying, defective, or erroneous work; or c) at the Contractor's expense, otherwise cure or have cured any such noncomplying, defective, or erroneous work.

Payment Terms - The Company shall pay the Contractor, on a fixed unit price basis, for materials and for service satisfactorily performed by the Contractor at the Company's request. The agreed to fixed prices are presented on the Pricing Addendum which shall be attached hereto and incorporated herein by reference and which shall be individually dated and executed by the Company and the Contractor.

Right to Review - The Company shall at all times have the right to review or observe the work performed by the Contractor. No review or observation will relieve the Contractor of its responsibility under this Agreement.

- 7.0 **Safety** - The Contractor shall have full responsibility and assume all liability for the safety and supervision of its employees and subcontractors while performing services hereunder.
- 8.0 **Inventory of Rinnai tankless water heater(s) and Rinnai direct vent wall furnace(s)** - The Contractor, at its discretion, shall arrange for sufficient inventory of the program Rinnai tankless water heater(s) or program Rinnai direct vent wall furnace(s) and replacement parts.
- 9.0 **Assignment** - The Contractor shall not assign or subcontract this Agreement or any rights or monies due or to become due hereunder without the prior written consent of the Company.
- 9.1 - If upon receiving written approval from the Company, any part of this Agreement is subcontracted; the Contractor shall remain fully responsible to the Company for all acts and/or omissions of the subcontractor.
- 9.2 - If the Company determines that any subcontractor is not performing in accordance with this Agreement, the Company shall so notify the Contractor who shall take immediate steps to investigate the matter. The Contractor shall report back to the Company within ten (10) days. The Contractor shall be responsible for seeing that all work performed by said subcontractor is corrected and that all future work performed by said subcontractor meets the requirements of these Agreement.
- 10.0 **Contractor Status** - In the performance of this Agreement, the Contractor is and shall be an independent contractor and not an agent or employee of the Company. For the limited purpose of executing the Lifetime Service Plan Agreement(s) with the customer(s), the Contractor shall serve as the Company agent.
- 11.0 **Insurance** - The Contractor and its subcontractors shall comply with the worker's compensation laws of the state in which work is to be performed and shall provide proof of coverage. The Contractor shall furnish insurance listed in (a) and (b) below. The Contractor shall maintain this insurance at all times during performance of services. The Contractor shall require all subcontractors to meet the insurance standards hereunder.
- (a) Commercial general liability insurance with limits of not less than \$1,000,000 each occurrence and aggregate (including completed operations liability).
Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$1,000,000 each accident.

Prior to starting work, the Contractor will furnish to the Company an acceptable certificate of insurance. This certificate shall state that the insurance carrier has issued the policies providing for the insurance specified herein, that such policies are in force, and that the insurance carrier will give the Company thirty (30) days prior written notice of any material change in, or cancellation of such policies.

- 12.0 **Non-Compete; Non-Solicitation** - Contractor agrees that during the Term and for a period of two (2) years thereafter (hereinafter called the "Non-Competition Period"), Contractor shall not, and shall cause its directors, officers and affiliated entities to not, directly or indirectly, (i) engage in Competition (as defined below) anywhere within a one hundred (100) mile radius of the Contractor's office(s) (hereinafter called the "Restricted Area"); (ii) induce or attempt to induce or aid another in inducing any employee of the Company to leave the employ of the Company; (iii) in any way interfere with the relationship between the Company and any of its employees; (iv) induce or attempt to induce or aid another in inducing any Customer, vendor, supplier, subcontractor, licensor or other business relation of the Company to cease doing business with the Company; (v) in any way interfere with the relationship between the Company and any actual or prospective customer, vendor, subcontractor, licensor or other business relation of the Company; (vi) introduce any Competitive Operation (as defined below) to any Customer, vendor, subcontractor, licensor or other business relation of the Company; (vii) solicit business for any Competitive Operation from any Customer, vendor, subcontractor, licensor or other business relation of the Company or (viii) accept employment from any Customer, vendor, subcontractor, licensor or other business relation of the Company unless such employment shall be unrelated to a Competitive Operation or otherwise expressly permitted pursuant to this Agreement. For purposes of this Agreement, (a) "Competition" shall mean providing products or services the same as or that perform the same function as those of the Company; and (b) a "Competitive Operation" is any act in which any entity or person engages, in whole or in part, which is competitive with the Company.

- 13.0 **Non-Disclosure**. It is understood that Contractor's engagement by the Company may involve access to Proprietary Information and Third Party Proprietary Information. Contractor recognizes and acknowledges that such Proprietary Information and Third Party Proprietary Information are valuable, special and unique assets of the Company. Contractor agrees that during the term of the Contractor Agreement, and for a period of five (5) years after the termination thereof, Contractor shall not disclose or transfer any Proprietary Information or Third Party Proprietary Information to any person, firm, corporation or other entity, and will not use such Proprietary Information or Third Party Proprietary Information for any purpose not directly related to the Contractor Agreement except with the express authorization of an officer of the Company. The confidentiality and non-use obligations of this Agreement shall not apply to Proprietary Information or Third Party Proprietary Information, which Contractor is able to demonstrate solely with tangible written evidence (i) is or becomes within the public domain prior to any unauthorized use or disclosure thereof by Contractor; (ii) was in Contractor's possession or within Contractor's knowledge prior to receipt thereof directly or indirectly from the Company or the Predecessor; or (iii) is lawfully received by Contractor with no restrictions upon use, after the termination of the Contractor Agreement, from a third party having a right to disclose it to Contractor. All tangible manifestations of Proprietary Information or Third Party Proprietary Information which shall at any time come into the possession of Contractor shall be the sole and exclusive property of the Company or the Third Party to whom such information relates, and shall be surrendered to the Company upon termination of the Contractor Agreement or upon request at any other time. Contractor agrees to comply with those procedures established by the Company to preserve the confidentiality of Proprietary Information and Third Party Proprietary Information, including physical security procedures and policies. Full payment for the non-competition and confidentiality covenants contained herein is through the Company's payment to Contractor pursuant to the terms of the Contractor Agreement.

Representation - Contractor represents and warrants to the Company that the execution and delivery of this Agreement does not conflict with or result in the breach by Contractor or violation by Contractor of any other agreement to which Contractor is a party or by which Contractor is bound.

Indemnification - To the extent permitted by law, the Contractor agrees to indemnify, save harmless, and defend the Company, its affiliated companies, and their respective officers, directors, employees and agents from and against any losses, liabilities, costs, expenses, suits, actions claims, and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon the Company and any reasonable attorneys' fees and any other costs of defense (hereinafter referred to as "liabilities") arising out of injuries to persons, including death, or damage to property, caused by the Contractor, its employees, its agents, its subcontractors, or in any way attributable to the performance and prosecution of the work herein contracted for, except that the Contractor's obligation to indemnify the Company shall not apply to any liability arising from the Company's sole negligence, or that portion of any liabilities that arise out of the Company's contributing negligent acts or negligent omissions. With respect to claims against the Company by Contractor's employees, Contractor agrees to expressly waive its immunity, if any, as a complying employer under the applicable worker's compensation law, but only to the extent that such immunity would bar or affect recovery under or enforcement of this indemnification obligation. This indemnification is agreed by the Contractor to expressly waive the Contractor's immunity, if any, as a complying employer under Section 35, Article II of the **Ohio** Constitution and Ohio Rev. Code Section 4123.74 from indemnifying and holding the Company harmless from claims by employees, agents or contractors of the Contractor.

Tax Compliance - The Contractor shall deduct and withhold from all wages or salaries paid to its employees in the performance of this Agreement such taxes, assessments, and contributions as are required by the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the unemployment insurance act of the state in which work is to be performed. The Contractor agrees to duly report and pay in the manner provided by law the monies required by such Acts to be deducted, withheld, and paid.

Applicable Laws - The rights and obligations of the parties arising out of this Agreement shall be governed in all respects by the laws of the state in which the work is to be performed.

Documents - The Contractor recognizes that the Company might find it necessary or desirable to make information available to the Contractor, which is deemed to be proprietary or confidential information. In this regard, it is agreed that neither the Contractor nor its personnel shall at any time disclose information which may be disclosed to them or to which they are given access during the performance of this Agreement or to publish this information in any form at any time without the Company's prior written consent during the term of this Agreement or thereafter.

Entire Agreement - This Agreement, including the Addendum attached hereto, constitutes the entire Agreement between the Contractor and the Company, with respect to the materials and services specified. All previous representations relative thereto, either written or oral, are hereby annulled and superseded.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year set forth below.

(Contractor)
By: _____
Title: _____
Date: _____

AWHR, LLC.

By: _____
Title: _____
Date: _____

USP, Inc.

By: _____
Title: _____
Date: _____