



2015 ABC HOME SERVICES CONTRACTOR AGREEMENT

This Contractor Agreement (“Agreement”) is entered into between ABC HOME SERVICES (“ABC”), and the Servicer (“Servicer”) effective as of the date on which ABC receives the completed 2013 ABC HOME SERVICES CONTRACTOR AGREEMENT from the Servicer (the “Effective Date”). The parties agree as follows:

1. Agreement. This Agreement contains the general terms and conditions pursuant to which Servicer will provide services (“Services”) to ABC and its customers (“Customers”). Service requirements related to each program offered by ABC including, but not limited to, home protection plans, (the “Programs”) are incorporated herein by reference. .

2. ABC Responsibilities.

a) ABC shall be responsible for fielding Customer calls, determining the appropriate Servicer and potential scope of services, and for providing the Servicer with the Customer’s contact information.

b) ABC shall notify Servicer of any hazardous conditions of which it has knowledge. Servicer hereby acknowledges that ABC does not create or control Servicer’s workplace or means of performing or completing any service, nor is ABC responsible for any safety conditions relating to Servicer’s work.

3. Servicer Obligations.

a) Servicer shall at all times represent ABC in a professional manner to Customers and shall not make any written or oral representations, either direct or implied, to any Customer that are or could reasonably be construed to be negative or defamatory in nature toward ABC, its business, the brand name of the equipment it selects, or its Customer contracts.

b) Servicer shall ensure that its officers, owners, employees, independent contractor technicians, and authorized subcontractors who provide Services as part of any Program (collectively, “Servicer Associates”) understand Servicer’s obligations under this Agreement and agree to comply with and be bound by such obligations, and that Servicer is responsible for the actions and omissions of its Servicer Associates. Servicer shall be responsible for ensuring that Servicer and Servicer Associates comply with all ABC operating policies and procedures.



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c) Servicer will provide and pay for all labor, tools, materials, services, supplies, storage, transportation, insurance, equipment, and any other items and expenses including applicable sales tax payments, necessary to promptly complete the Services required under any service work orders or other service requests assigned and authorized by ABC (collectively, a “Dispatch”) as part of any Program.

d) Servicer represents that is qualified to do the work and possesses all necessary licenses and permits to perform and complete Services as more fully set forth in Sections 6 and 7. Servicer shall ensure that its employees, Servicers, and agents also possess all required licenses and permits while performing Services under this Agreement. Servicer shall ensure that only certified persons perform services for which any certification or license may be required.

e) Servicer agrees to conduct itself, and to require its Servicer Associates to conduct themselves, in strict compliance with all applicable federal, state, and local laws, rules, and regulations of all governmental authorities, including but not limited to, the Occupational Safety and Health Act of 1970 and any amendments thereto, as well as any state or local occupational safety and health requirements that may apply, laws on preventing transactions with terrorists or terrorist support organizations, and to act at all times consistent with the highest standard of fair trade, fair compensation, and business ethics, including compliance with all federal, state, and local building codes, environmental, and/or hazardous waste recapture and removal laws, and federal, state, and local laws, regulations, and ordinances regarding public safety, and agrees to hold ABC harmless against any such liabilities or violations. Servicer agrees that its or its Servicer Associates' failure to comply with any applicable laws and/or failure to adhere to any applicable standards constitutes a material breach of this Agreement, and that ABC may immediately terminate the Agreement upon such a breach and pursue any and all legal or equitable remedies.

f) Servicer shall provide ABC a written or verbal quote for any services expected to exceed \$300.00. Servicer shall seek clarification from authorized personnel of ABC with respect to any material inconsistencies between contract documents, Customer needs, provisions of this Agreement, or other instructions that affect completion of Services. Failure to seek clarification which results in Servicer making corrections or performing work beyond the scope of any Dispatch which could have been avoided by seeking clarification shall result in non-payment of any overages incurred by Servicer.



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Service shall promptly notify ABC in writing of any changes to the Services if requested by the Customer. Service shall not perform any changes requested by anyone, including the Customer, unless ABC authorizes them following the procedures described in Section 11. ABC shall not pay Service for any changes in Services or any other changes that have not been pre-authorized by ABC.

g) Service, as required by state law or upon request by ABC, shall provide motor vehicle reports and evidence of conducting biennial criminal background checks from state or third-party resources that meet ABC's minimum criteria for such checks for all Service Associates and acting on behalf of or under the direction or control of the Service whose duties require entry into a Customer's residence. This requirement pertains to all existing and future Service Associates hired, contracted, or otherwise retained by Service's firm or anyone else acting on behalf of or associated with Service. If any Service Associate or anyone else associated with Service fails a required check or if Service becomes aware of information that would cause such a person to fail a required check, Service shall prohibit that person from providing Services to, or performing any other work of any kind for, ABC's Customers.

h) In the event a Customer harms or threatens to cause harm to Service, a Service Associate or ABC, Service will immediately report such harm or threat to ABC and, to the extent such harm or threat of harm is serious, to local law enforcement officials.

i) If Service:

- i. fails to contact a Customer;
- ii. fails to initiate or complete a Dispatch; or
- iii. breaches any other term of this Agreement, then ABC may, in its sole discretion and without further notice, engage another service contractor, put Service's account on hold, and/or terminate this Agreement.

If ABC is required to pay the Customer liquidated damages or other similar fees because of Service's failure to comply with schedules and quality standard stated in this Agreement, Service shall reimburse ABC for the same within 30 days of timely submission by ABC of such claim.



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4. Warranty. Servicer shall perform and warrant all its work to be constructed in a workmanlike and habitable capacity. Servicer warrants its work against all deficiencies and defects in materials and/or workmanship for a period of one year from the date of substantial completion of the work. The Servicer's warranty shall be of the same standards and duration as the ABC's warranty provided to the Owner. A copy of such warranty is available upon request of the Servicer.

5. Materials and Liens. Servicer shall only use materials that are free of liens in performing the Services. Servicer shall remove any lien attached to a Customer's property as a result of Servicer's Services within twenty-four (24) hours after ABC's or Customer's request. Servicer waives its rights to place, hold, or have any liens on Customer's property, and Servicer shall not use or cause to be issued any liens in connection with Services related to or in connection with covered work under this Agreement.

6. Licensing. Servicer will at all times obtain and maintain in good standing valid, current licenses, certifications, and qualifications as required by applicable federal, state and local laws and regulations. This includes, but is not limited to, any permit or certification required by the U.S. Environmental Protection Agency.

a) Servicer shall immediately provide ABC written notice of any changes with regard thereto including, without limitation, voluntary or involuntary license status, suspension, revocation, cancellation, lapse, disciplinary action, scope, type, or change of name. Servicer shall provide ABC with current copies of any and all applicable licenses, certifications or other supporting documentation:

- i. Upon request;
- ii. Within 15 days of any change in status, renewal, change of business form or other alteration; and
- iii. Annually, regardless of whether any change in form, status or name has occurred.

Servicer agrees that failure to provide such documentation shall be deemed a material breach of this Agreement.

b) Failure of ABC to demand copies of licenses, certifications, or other supporting documentation shall not be construed as a waiver of Servicer's obligation to maintain such licenses, certifications, or other supporting documentation.



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c) Servicer warrants and represents that:

- i. Any and all of its contractor's licenses and certifications are held in the proper name of the individual and/or entity;
- ii. If applicable, its licenses and certifications are legally assigned to the business entity, in the form of business under which the business is registered;
- iii. Servicer's form of business is proper and is appropriately set forth in this Agreement at the time of execution and at all times thereafter unless Servicer specifically notifies ABC of any such change; and
- iv. The name on Servicer's licenses and certifications is consistent with the name under which Servicer entered into this Agreement.

Servicer will require that all Servicer Associates are properly and currently licensed and registered; as may be required by law, prior to allowing any such individual Service Associate to perform Services for ABC under any of the Programs.

7. Permits. In addition to the obligations set forth in Paragraph 6 of this Agreement, Servicer agrees that:

- a)** For Services requiring a permit by law or regulation, Servicer will comply with such permitting requirement and shall provide proof of compliance to ABC upon request;
- b)** For Services where pertinent laws or regulations require obtaining a permit prior to service work or replacement installation, Servicer shall obtain a permit in a timely manner and shall provide proof of compliance to ABC upon request; and
- c)** Servicer is knowledgeable about all permitting laws for the Services that its business performs, in the states, counties, cities and any other legal jurisdiction where it operates.
- d)** Servicer shall adhere to the standard applicable industry practices and applicable building and electrical codes to the extent they apply to the work to be performed.



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8. Insurance.

a) As of the Effective Date, Servicer shall maintain the following insurance coverages at all times during the term of this Agreement with limits no less than indicated. Servicer shall at least annually thereafter (and upon ABC's request or upon any insurance provider's change, amendment, cancellation, renewal, or modification) supply ABC with a certificate of insurance evidencing:

i. General Liability.

A. Servicer shall maintain commercial general liability insurance with a limit of not less than \$500,000 per occurrence and \$1,000,000 in the aggregate;

B. Coverage shall include contractual liability, independent contractor, property damage, bodily injury, liability assumed under an insured contract, products and completed operations, and premises coverage; and

C. Coverage shall name ABC and its subsidiaries, parent and affiliated companies as additional insured (including completed operations).

ii. **Automobile Liability.** Coverage for owned, hired, and non-owned vehicles (listed and rated for business use) shall:

A. Have minimum of \$1,000,000 combined single limit

B. Name ABC and its subsidiaries, parent and affiliated companies as additional insureds.

iii. **Workers Compensation.** Coverage shall include occupational disease and employer's liability coverage at statutory limits for workers' compensation and employer's liability at a minimum limit of \$500,000 each.

b) All Servicer's insurance shall be:

i. Endorsed as primary coverage listing ABC coverage as excess insurance;

ii. Occurrence-based;

iii. Non-contributory with ABC's own insurance; and



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iv. Provided by carriers with an A.M. Best rating of at least A-.

c) Servicer's coverage shall not be deemed a limitation on Servicer's liability hereunder, including, without limitation, damages for mold or improper services. Servicer waives all rights, including subrogation, against ABC and its agents, directors, employees, subsidiaries, parents, and affiliated companies for damages. Servicer shall cause each independent contractor technician or subcontractor to:

i. Purchase and maintain insurance of the type and in the amounts listed above in this Section 8, subsections (a) and (b) shall name ABC, its subsidiaries, parents, and affiliated companies as additional insureds; and

ii. Furnish certificates of insurance or copies of policies to ABC.

d) Servicer shall supply ABC with a certificate of insurance as coverages are renewed, amended, modified, canceled, terminated, or replaced.

e) ABC does not represent that the coverage and limits required under this Section 8 will necessarily be adequate to protect Servicer.

f) All certificates of insurance shall provide for at least thirty (30) days written notice to ABC prior to the cancellation or material change of any insurance referred to in this Section 8. Failure of ABC to demand such certificates or other evidence of full compliance with these insurance requirements or failure of ABC to identify a deficiency from evidence that is provided shall not be construed as a waiver of Servicer's obligation to maintain such insurance.

g) If Servicer's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

9. Invoicing. Invoices must be received by ABC through mail, email, fax or as otherwise directed by ABC. Servicer shall maintain all invoices for seven (7) years or such other timeframe as is required by state law. **All of Servicer's invoices whether submitted electronically or via regular U.S. mail, are subject to audit by ABC.** If Servicer is selected for an audit:

a) Servicer shall provide paper copies of the original invoices to ABC's auditors within five (5) business days of ABC's request.



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b) Servicer's account may be placed on hold by ABC if Servicer fails to provide the invoices requested; and

c) In the event any overpayment is found during an audit, Servicer will pay the amount of the overpayment to ABC immediately upon receipt of notice of the overpayment.

10. Payment. Payment to Servicer shall be due and payable net thirty (30) days after ABC's approval and verification of invoices. ABC has the right to offset payments due to Servicer against any amount Servicer owes to ABC and/or unapproved invoices.

11. Non-Covered or Additional Services. Servicer may agree to provide services to a Customer that are not covered under or included in an ABC Program ("Non-Covered/Additional Services"). Servicer accepts sole responsibility for any work performed by Servicer Associates or anyone else acting on behalf of or associated with Servicer on any Non-Covered/Additional Services. Servicer agrees that ABC has no responsibility for Non-Covered/Additional Services nor payment or collection of monies for Non-Covered/Additional Services. Servicer shall notify Customer prior to commencement of any Non-Covered/Additional Services that:

a) Customer can choose its own vendor;

b) Servicer is providing such work solely on its own behalf and not in conjunction with ABC;

c) ABC is not responsible for Servicer's rates or charges on Non-Covered/Additional Services; provided, however, Servicer shall charge competitive market rates for such Non-Covered/Additional Services; and

d) Servicer will notify ABC, provide Customer with a written estimate, acquire Customer's signature as written authorization before beginning any Non-Covered/Additional Services, and provide ABC a copy of such documents upon request. Servicer shall retain in its business records a copy of such notice along with the invoice reflecting the work performed. Servicer agrees to perform such Non-Covered/Additional Services pursuant to the same standards as ABC-authorized work. Servicer agrees to provide ABC a list of its standard rates and charges for Non-Covered/Additional Services as may be requested by ABC from time to time.



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12. Confidential Information – Information Security. Servicer acknowledges that it may receive Confidential Information in connection with providing Services hereunder. For purposes of this Agreement, “Confidential Information” shall include (a) trade secrets and proprietary information of ABC, including but not limited to financial information, manuals and procedures, communications, dispatch information and related costs, pricing and rate information, and any other materials or information provided by ABC to Servicer in connection with performance of Services under this Agreement, and (b) personal information related to a Customer, including but not limited to social security number, driver’s license number, state or federal identification number, date of birth, and financial information (including but not limited to account numbers, credit or debit card numbers and access codes). Servicer shall not use or disclose any Confidential Information for any purpose other than providing Services under this Agreement. Servicer shall implement and maintain security controls and measures necessary to protect Confidential Information from unauthorized access, loss, destruction, disclosure or use. In all events, Company shall comply with any information security compliance requirements provided by ABC, as may be updated and revised by ABC from time to time. Servicer shall not allow persons outside the United States to access Confidential Information without ABC’s prior written consent. Servicer shall immediately notify ABC of any security breach or unauthorized disclosure of Confidential Information. Without limiting any other right or remedy that ABC may have under this Agreement, Company shall pay ABC promptly for all expenses or claims associated with unauthorized disclosure of Confidential Information, including assessments, fines, losses, costs, penalties, and expenses assessed, incurred, charged, imposed or collected by a credit, debit or charge card organization or issuer.

13. Relationship. In performing the Services, Servicer shall be acting solely as an independent contractor, and neither Servicer nor any of its Servicer Associates shall be deemed to be employees of ABC. Neither ABC nor Servicer shall have the authority to bind, commit or incur any liability on behalf of the other party or to otherwise act in any way as an agent or representative of the other party. Servicer shall be solely responsible for any income, employment, sales, use, service, payroll, withholding, workers' compensation, unemployment and other taxes that may be imposed with respect to the performance of the Services and any payments made by ABC to Servicer. Servicer shall reimburse, indemnify and hold harmless ABC for, from and against any claims or liabilities that relate to or arise out of Servicer's failure to pay such taxes. Servicer agrees that acceptance of work or performance of Services under this Agreement binds Servicer to a contract with the Customer on all work performed and any bond required of Servicer shall be actionable by the Customer.



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14. Subcontractors and Independent Contractors. Servicer agrees that:

- a) ABC must approve the use of any subcontractor or independent contractor technician before using them to provide Services hereunder; and
- b) Servicer shall be responsible for ensuring that any subcontractor or independent contractor technician used by Servicer to provide services under this Agreement shall comply with all applicable provisions of this Agreement, including, without limitation, insurance, licensing, name on license, laws and state regulations, professionalism, workmanship, materials, and confidential information.

15. Term and Notice.

- a) This Agreement shall remain in effect for one (1) year commencing on the Effective Date and shall be automatically renewed for successive one (1)-year periods unless terminated earlier in accordance with the terms of this Agreement. Either party may immediately terminate this Agreement at any time by giving written notice to the other party.
- b) If Servicer does not cure any breach under this Agreement within ten (10) days after receiving notice from ABC, then Contractor shall be in default of this Agreement and ABC, at its sole discretion, may seek damages, including without limitation, court costs, attorney fees, and consequential secondary damages.
- c) ABC also may terminate this Agreement as set forth herein. Servicer shall immediately notify ABC of Servicer's insolvency, bankruptcy, or potential financial instability.
- d) Any notice or other written communication is deemed given:
 - i. Three (3) days after deposit in the U.S. Mail, postage prepaid;
 - ii. When sent by facsimile or electronic mail (with date/time noted);
 - iii. On the next business day if sent overnight by priority courier; or
 - iv. When personally delivered to an authorized representative of the party receiving notice.



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16. Indemnification.

- a)** All work performed by Servicer shall be at the sole risk of Servicer.
- b)** To the fullest extent permitted by law, Servicer shall indemnify, hold harmless and defend, at Servicer's sole expense (including expenses and attorney's fees), ABC, its subsidiaries, parent and affiliated companies, and the agents, directors, and employees of ABC, its subsidiaries, parents and affiliated companies against any and all commenced or threatened claims, demands, liabilities, losses, expenses, suits and actions, investigations, and/or damages (whether or not any indemnified party is a party thereto) for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise (or which may be alleged to have arisen) out of or in connection with the Services covered by this Agreement, alleged to have been incurred or caused, either directly or indirectly, by the acts or omissions of Servicer or any of its Service Associates or any other person acting on Servicer's behalf or associated with Servicer ("Claim") in relation to any Services performed for any Program, any non-covered items or additional services, and/or any and all consequential damages arising out of, as a result of the performance of, and/or the attempted performance of services for Customers, whether or not part of the original Dispatch initiated by ABC.
- c)** If the resolution of any Claim is reasonably expected to have a significant adverse effect on ABC or if Servicer fails to assume the defense of such Claim within fifteen (15) days after receipt of notice of a Claim, then ABC may elect, at its sole discretion, to control the defense, compromise, or settlement of such Claim (at Servicer's sole cost, risk, and expense). If ABC assumes the defense of the Claim, ABC will keep Servicer informed of the progress of any such defense, compromise, or settlement. Servicer shall be liable for any settlement of any action effected in accordance with this paragraph and for any final judgment (subject to any right of appeal).
- d)** Servicer must pay all such costs and expenses promptly upon receipt of an invoice therefore from ABC. Such amounts shall bear interest at the rate of 1 ½% for each 30 days they remain unpaid. ABC shall be entitled to withhold from payment otherwise due pursuant to this Agreement such amount or amounts as may be reasonably necessary to protect it against liability for any personal injury, death or property damage resulting from the performance of the Services hereunder.



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17. Trademarks. Servicer shall not use, modify, or change the trademarks, service marks, logo types, Customer contracts, or other commercial and promotional materials of ABC without ABC's prior written consent.

18. Assignment. Servicer shall not assign or transfer any of its rights, duties, or obligations under this Agreement without the prior written consent of ABC. ABC may assign or transfer this Agreement, in whole or in part, as it deems appropriate.

19. Other. This Agreement supersedes all prior Service and/or Operational Agreements along with any negotiations, proposals and/or understandings, and constitutes the entire understanding of the parties. This Agreement shall not be modified or amended in any manner except in writing, signed by the parties; provided, however, this Agreement can be modified or amended electronically in accordance with applicable law. The invalidity or unenforceability of any provision shall not affect the enforceability of the remaining provisions. ABC's failure to exercise any of its rights does not constitute a waiver of such right. To the extent such waiver is permitted by law, the parties waive trial by jury in any proceedings. For quality assurance and other purposes, ABC may record calls between ABC and Servicer and Servicer hereby authorizes such recordings.

Agreement made as of the _____ day of _____, _____

Between ABC Home Services, 707 S. Front Street, Columbus, Ohio 43206 and the Servicer :

(name)

(address)

(city, state, zip)

This Agreement entered into as of the day and year written above.

ABC Home Services
Timothy J. Morbitzer, President

Servicer (Signature)

(Printed name and title)

Revised 01-01-14