

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "Agreement") is entered into as of, 2017, by the undersigned company ("Company"), for the benefit of **Sub-Zero Group, Inc.**, a Wisconsin corporation ("Sub-Zero").

RECITALS:

A. Sub-Zero designs manufacture and/or markets appliances under the Sub-Zero, Wolf and ASKO brands. Sub-Zero has a network of factory certified technicians that service these appliances ("Brand Appliances").

B. Sub-Zero has established a USA Approved Member Program (the "Program") with United Servicers Association, a non-profit trade association ("USA"), for certain independent service professionals that are members of USA ("USA Approved Members") to assist those USA Approved Members in connection with the servicing of Brand Appliances.

C. Company wishes to become a USA Approved Member.

D. One of the requirements to become a USA Approved Member is to execute and deliver an indemnification agreement in the form of this Agreement for the benefit of the Indemnified Parties.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company hereby agrees as follows:

1. DEFINITIONS.

Capitalized terms used herein shall have the meaning defined in the recitals set forth above or shall have the meaning defined herein. In addition, the following terms when used with initial capitalization shall have the following meanings:

"Claim" means any threatened, pending or completed claim, action, demand, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal.

"Damages" means any losses, liabilities, damages (including consequential, special and incidental), claims, demands, obligations, judgments, settlements, fines, penalties, taxes, expenses and costs (including Defense Costs).

"Defense Costs" means any costs, charges, bonds, fees and expenses, including reasonable attorneys' fees and fees of experts and consultants, reasonably incurred in the investigation, defense or prosecution of any Claim.

"Indemnified Parties" means (a) Sub-Zero, (b) any corporation, firm, limited liability company, partnership or other entity that directly or indirectly controls or is controlled by Page 2 of 7 Initial

or is under common control with Sub-Zero, (c) the distributors, including parts distributors, of any of the Brand Appliances, and (d) the shareholders, directors, officers, managers, members, equity holders, trustees, agents, attorneys and employees of any of the Persons described in (a), (b) or (c) of this definition.

"Person" means an individual, partnership, limited partnership, corporation, company, association, business trust, limited liability company, trust, unincorporated association, joint venture, or governmental entity, authority or agency.

"Third Party" shall mean any consumer, customer, trustee, receiver, creditor, contractor, vendor or service provider to Company or any other person doing business or otherwise associated with Company.

2. INDEMNIFICATION BY COMPANY; LIMITATIONS.

(a) **Third Party Claims.** Company shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all Damages asserted against or suffered or incurred by any of the Indemnified Parties in connection with any Claim brought by any Person, including any Third Party, arising from, relating to or resulting from any alleged acts or omissions of Company, its employees or agents in connection with the servicing of Brand Appliances.

(b) **Reimbursement for and Advancement of Defense Costs.** Company shall reimburse the Indemnified Parties for any and all Defense Costs relating to a Claim subject to indemnification under Section 2(a) incurred by the Indemnified Parties in accordance with Section 3. Defense Costs incurred by the Indemnified Parties shall be paid by Company in advance of the final disposition of such Claim, within 20 days after the receipt by Company of a statement from Sub-Zero requesting such advance payment. Each statement submitted pursuant to this Section shall include an undertaking by each Indemnified Party to repay any previously advanced Defense Costs in the event that it is ultimately determined that such Indemnified Party is not entitled to indemnification under Section 2(c).

(c) **Limitation on Indemnification.** Anything to the contrary herein notwithstanding, Company shall not be required hereunder to indemnify an Indemnified Party for any Damages to the extent the underlying Claim arises from acts or omissions which (i) constitute intentional misconduct of such Indemnified Party, (ii) constitute a knowing violation of law by such Indemnified Party, or (iii) are specifically prohibited from being included in an otherwise enforceable indemnification provision or agreement by applicable law.

(d) **No Obligation to Make Insurance Claims.** No Indemnified Party shall have any obligation to file any insurance claim or assert any contractual rights against any third party in order to mitigate its Damages.

(e) **Non-Exclusivity.** Nothing herein shall be deemed to diminish or otherwise restrict any Indemnified Party's right to indemnification under applicable law, or any other agreement, instrument or document.

3. INDEMNIFICATION PROCEDURES.

(a) Notice of Claim. Sub-Zero shall promptly notify Company in writing of any Claim in respect of which indemnification could be sought under this Agreement. Such notice shall be given with reasonable promptness after Sub-Zero becomes aware of such Claim; provided, however, that failure to give prompt notice shall not adversely affect or disqualify any claim for indemnification hereunder except to the extent Company is materially prejudiced thereby. Such notice shall specify the nature of the Claim, the amount of Damages (to the extent such amount is then known to Sub-Zero and without prejudice to any right any Indemnified Party may have to thereafter be indemnified in any greater amount) and all material information regarding such Claim which is then known to Sub-Zero.

(b) Control of Defense by Sub-Zero. Following delivery of the notice described in Section 3(a), Sub-Zero shall keep Company fully informed and, unless Company exercises the right of control set forth in Section 3(c), shall use its reasonable efforts to contest and defend such Claim with its own legal counsel and present any defense reasonably suggested by Company or its counsel. To the extent Sub-Zero controls, the defense of such Claim, Company shall reimburse or pay the Defense Costs as they are incurred, or advance such Defense Costs as requested in accordance with Section 2(b). If, in accordance with Section 3(c), Company properly elects to assume and control defense of such Claim, then Company shall immediately reimburse the Indemnified Parties for any unreimbursed Defense Costs incurred or paid by, or on behalf of, the Indemnified Parties in connection with the defense of such Claim prior to the receipt by Sub-Zero of the Assumption and Acknowledgment Notice (as such term is defined below) relating to such Claim. If Company assumes and controls defense of such Claim, the Indemnified Parties shall reasonably cooperate with Company in such defense. If Company does not assume and control defense of such Claim, Company shall continue to have the right to participate in the defense of such Claim (subject to the right of the Indemnified Parties to control the defense of such Claim), at its own expense.

(c) Assumption and Control of Defense by Company. Subject to Section 3(d), Company, upon written notice to Sub-Zero (the "Assumption and Acknowledgement Notice") within 30 days after receipt of the notice described in Section 3(a), may assume and control, at its own expense, the defense of the Claim with counsel approved by Sub-Zero (which approval shall not be unreasonably withheld). The Assumption and Acknowledgment Notice shall notify Sub-Zero of (i) Company's intention to assume and control the defense of such Claim, and (ii) Company's unconditional acknowledgement of its indemnification liability hereunder for the full amount of Damages arising under or relating to such Claim. At all times, Sub-Zero shall retain the right to approve all pleadings and other submissions of whatever kind relating to the Claim prior to their filing or submission (which approval shall not be unreasonably withheld) and shall be kept fully informed of all stages of the Claim.

(d) Restrictions on Company's Ability to Assume and Control Defense. Notwithstanding anything in Section 3(c) to the contrary, Company shall not be entitled to control the defense of any Claim if (i) Company fails to provide the Assumption and Acknowledgment Notice within 30 days after receipt of the notice contemplated in Section 3(a), (ii) Sub-Zero has reasonably concluded that there may be legal defenses available to the Indemnified Parties that are different from or in addition to those available to Company, or (iii) Company has not

employed counsel satisfactory to Sub-Zero to assume the defense of such Claim within a reasonable time after receiving notice of the commencement of such Claim. In any such case, Sub-Zero shall be entitled to control the defense of such Claim and be reimbursed in accordance with Section 2(b).

(e) Continued Participation by Sub-Zero. If Company assumes control of the defense of a Claim in accordance with the provisions of Sections 3(c) or 3(d), any Indemnified Party may notify Company in writing that it thereafter desires to retain separate counsel in order to participate in or proceed independently with the defense of such Claim, at such party's own expense; provided that, such Indemnified Party shall be reimbursed by Company for the reasonable fees and expenses of such counsel incurred by such party if (i) Company, in its discretion, provides written authorization to such Indemnified Party for the employment of such counsel and the reimbursement of such fees and expenses, or (ii) there are legal defenses available to the Indemnified Party that are not available to Company, or counsel representing Company and Sub-Zero, under applicable ethical rules and opinions, would be required to seek consent to such joint representation of Company and the Indemnified Party.

(f) Settlement of the Claim. If an Indemnified Party desires to claim indemnification hereunder with respect to the compromise or settlement of any Claim, as a condition precedent to such indemnification, such Indemnified Party shall first notify Company in writing of any firm settlement or compromise proposal it receives or intends to make with respect to such Claim prior to accepting or offering such proposal. No Indemnified Party shall settle or compromise any Claim in respect of which it is entitled to be indemnified by Company hereunder without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed. The exercise of any right of consent or withholding of consent under this Section 3(f) shall not affect, excuse, modify or relieve Company of any of its obligations under this Agreement.

4. REPRESENTATIONS AND WARRANTIES. Company hereby represents and warrants to Sub-Zero as of the date of execution hereof that:

(a) Organization; Good Standing. Company is the type of entity set forth under its signature block below, duly organized, validly existing and in good standing under the laws of its state of organization set forth under Company's signature block below and is duly authorized to transact business and is in good standing in its state of organization.

(b) Authorization. Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

(c) Non-Contravention. The execution and delivery by Company of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all necessary company actions and do not and will not conflict with, result in a breach of or constitute a default under any material contract, agreement or other instrument to which it is a party or by which it or its property is bound.

(d) Execution and Binding Effect. This Agreement has been duly authorized, executed and delivered on behalf of Company and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

5. EVENTS OF DEFAULT.

(a) Events of Default. It shall constitute an event of default hereunder (each, an "Event of Default ") with respect to Company if any of the following shall occur:

(i) Company fails to pay all Damages covered by a valid obligation to provide indemnification hereunder within 30 days after (A) Company's receipt of written notice that either a judgment or order in respect of the Claim giving rise to such Damages has been rendered by a competent governmental authority, (B) the reaching of a final settlement or compromise in relation to such

(ii) Claim in accordance with Section 3(f) hereof, or (C) Company waives, whether by affirmative action or inaction, its right to contest such Claim in any judicial proceeding in accordance with Section 3;

(iii) Company fails to pay, in accordance with Section 2(b), any Defense Costs incurred by an Indemnified Party in connection with the contest or defense of any Claim with respect to which Company is responsible pursuant to Section 3; or

(iv) Company breaches any other term or provision of this Agreement and such breach cannot be cured or is not cured within 30 days after notice by Sub-Zero to Company of such breach.

(b) Remedies. If an Event of Default occurs, any affected Indemnified Party may at any time thereafter bring suit against Company to recover any unpaid amounts or obtain such other relief available to the Indemnified Party at law or in equity. In the event an Indemnified Party is successful, in whole or in part, in obtaining any such unpaid amounts or other relief contemplated in this Section 5(b), Company shall reimburse the Indemnified Party for all costs and expenses associated with the efforts of the Indemnified Party to obtain such relief.

6. TERMINATION. This Agreement shall continue until, and terminate upon the later of: (a) the expiration of any applicable statute of limitations with respect to those matters which the Indemnified Parties are granted rights of indemnification or advancement of expenses hereunder, or (b) the final termination of all pending proceedings in respect of which the Indemnified Parties are granted rights of indemnification or advancement of expenses hereunder and of any proceeding commenced by an Indemnified Party pursuant to Section 5(b) of this Agreement relating thereto.

7. MISCELLANEOUS.

(a) Headings; Interpretation. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement. All terms defined in this Agreement include the plural as well as the singular. Whenever the words "include," "includes" and "including" are used in this Agreement, they are deemed to be followed by the words "without limitation."

(b) Severability. If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement will continue in full force and effect.

(c) (c) Entire Agreement; Amendments. This Agreement constitutes a complete statement of all of the agreements between the parties as of the date hereof with respect to the matters contemplated hereby, supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between them with respect thereto and cannot be changed or terminated orally.

(d) (d) No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right to insist later on adherence thereto, or thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party against whom or which enforcement is sought in order to be effective.

(e) (e) Assignment; Successors. This Agreement may not be transferred or assigned by Company (including by merger or operation of law) without the prior written consent of Sub-Zero (which consent shall not be unreasonably withheld). Any attempted transfer or assignment by Company without the prior written consent of Sub-Zero will be void. To the extent this Agreement or any rights or obligations hereunder are transferred or assigned in a manner that is permitted by this Agreement, this Agreement shall be binding upon all assigns and successors in interest of the parties hereto (including any transferee or assignee of all or substantially all of such party's assets and any successor by merger or operation of law).

(f) (f) Third Party Beneficiaries. The provisions of this Agreement shall not confer any rights or remedies upon any person or entity, other than (i) Sub-Zero and its assigns and successors in interest, (ii) the other Indemnified Parties and their assigns and successors in interest, and (iii) Company and its permitted assigns and successors in interest.

(g) (g) Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipt of which is acknowledged by the party to whom or which said notice or other communication shall have been directed, (ii) mailed by certified mail with postage prepaid, on the third business day after the date on which it is so mailed, (iii) sent by overnight courier, when received and signed for at the appropriate address listed below, or (iv) sent by facsimile, .pdf and email or other electronic means, at the time when received in legible form by the recipient at the appropriate address listed below and when the recipient has been requested to acknowledge receipt of the entire electronic transmission upon the sending or receiving of the acknowledgment of receipt (which acknowledgment the recipient will promptly give) when received if sent by overnight courier, addressed as follows: (A) If to Sub-Zero, to Sub-Zero Group, Inc., 6061 Basswood Drive, Fitchburg, WI 53719, Attn: Lance Ley, Customer Service, Email: Lance.Ley@subzero.com; and (B) If to Company, to the

address set forth under Company's signature block below; or, in either case, to such other address as a party may specify from time to time by notice hereunder.

(h) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin (without reference to the conflicts of laws principles thereof). Each party hereto hereby irrevocably and unconditionally (i) consents and submits to the exclusive jurisdiction of any state or federal court located in Dane County, Wisconsin, for any actions, suits or proceedings arising out of or relating to this Agreement (and agrees not to commence any litigation relating thereto except in such courts), and (b) waives any objection to the laying of venue of any such court.

(i) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement, or caused it to be duly executed and delivered, as of the date first set forth above.

COMPANY: _____

By: _____

Name: _____

Title: _____

Street Address: _____

City, State, Zip Code: _____

Phone Number: _____

Email: _____

State of Organization: _____

Type of entity (e.g., corporation or LLC):
