

**Becoming an Authorized
Service Center
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Service Center**

**There are four (3) things a Service Center must do, to become
an Authorized Service Center:**

- 1, The Service Center must maintain at least one service technician who has successfully completed Aqua-Hot Factory Training and is certified as an Aqua-Hot Factory Trained Service Technician.
2. The Service Center/Individual must sign the Service Center Agreement Form.
3. The Service Center/Individual must stock the Required Stocking List.

AQUA-HOT FACTORY AUTHORIZED SERVICE CENTER AGREEMENT

This Aqua-Hot Authorized Service Center Agreement (the "Agreement") is entered into between AQUA-HOT Heating Systems, Inc. ("AQUA-HOT") and _____ ("Aqua-Hot Factory Authorized Service Center") (collectively, the "Parties") on this ___ day of ___, 20__.

PREAMBLE

The purpose of this Agreement is to set forth the respective responsibilities of AQUA-HOT and Aqua-Hot Factory Authorized Service Centers in conducting service and/or repairs on any Aqua-Hot product.

The Aqua-Hot Factory Authorized Service Center acknowledges that the standards and requirements established for compliance by a certified Factory Authorized Service Center in the Agreement are essential and reasonable for the purpose of preserving and continuing an AQUA-HOT customer's confidence in the products and services from AQUA-HOT.

IN CONSIDERATION of the mutual agreements and acknowledgments hereinafter made, the Parties agree as follows:

- 1 Definitions** - In this Agreement, the following terms shall have the meanings set forth below:
 - a. "Factory Authorized Service Center" shall mean a repair facility that complies with all requirements of this Agreement including employing at least one warranty service technician who has successfully completed the Aqua-Hot factory training and is certified by AQUA-HOT to conduct warranty repairs to Aqua-Hot heaters.
 - b. "Products" shall mean Aqua-Hot heaters and parts.
 - c. "Effective Date" shall mean the date first written above.
- 2 AQUA-HOT Responsibilities** - Unless otherwise agreed to in writing, the following are the responsibilities of Aqua-Hot Heating Systems, Inc with respect to this Agreement:
 - a. Once an applicant has been approved and accepted as a Factory Authorized Service Center, AQUA-HOT will list the Factory Authorized Service Center in the Aqua-Hot Heating Systems official referral list as an Aqua-Hot Factory Authorized Service Center. AQUA-HOT will also add the Factory Authorized Service Center to the Aqua-Hot Heating Systems North America Service Center Network.
 - b. AQUA-HOT will work with the Factory Authorized Service Center to approve warranty repairs for Aqua-Hot products as outlined in the Aqua-Hot Heating Systems Warranty Policy manual.
 - c. AQUA-HOT will provide Customer Service and Technical Support to the Factory Authorized Service Center, during the normal business hours of 7 a.m. to 4 p.m. Pacific Time, at 1-800-685-4298 or via e-mail at www.serviceweb@aqua-hot.com.
 - d. AQUA-HOT will add the Factory Authorized Service Center to the Aqua-Hot Technical Publications/Training Opportunities e-mail notification system.
- 3 Aqua-Hot Factory Authorized Service Center Requirements** - Unless otherwise agreed to in writing, the following shall apply to all Aqua-Hot Factory Authorized Service Center facilities with respect to warranty repair and service:
 - a. The Aqua-Hot Limited Warranty directs end-users to call Aqua-Hot at a toll-free number to locate an Authorized Service Center nearest to them. The Aqua-Hot Factory Authorized Service Center shall provide



warranty repairs for all customers directed to their facilities, regardless of where the products were originally purchased.

- b. Before any warranty work begins, the Factory Authorized Service Center must receive written approval for the requested warranty repairs from an Aqua-Hot warranty service representative. The request shall be submitted to AQUA-HOT by faxing a completed Warranty Service Request to 303-857-7881 or via the internet at www.serviceweb@aqua-hot.com.
- c. The Factory Authorized Service Center shall be responsible for maintaining an adequate stock of Aqua-Hot parts necessary to service Aqua-Hot products. Minimum stock requirements are set forth in Attachment A to this Agreement. These parts are to be purchased from AQUA-HOT.
- d. Labor and costs associated with all warranty repairs have been predetermined by AQUA-HOT as set forth in the Aqua-Hot Flat Rate Manual. AQUA-HOT shall be notified immediately if any unforeseen problems arise which could increase the time necessary to complete a product repair so that a revised labor cost, if any, may be determined and approved. AQUA-HOT will not reimburse FACTORY Authorized Service Center for any labor and costs in excess of the amounts set forth in the Aqua-Hot Flat Rate Manual unless Factory Authorized Service Center receives prior written approval for the increased costs from an Aqua-Hot warranty service representative. AQUA-HOT will remit labor payments to Factory Authorized Service Center within thirty (30) days after receipt of the invoice for the completed warranty work and the return of any defective parts.
- e. In making a product repair, new and original Aqua-Hot parts shall be used from either the Factory Authorized Service Center inventory or as ordered from AQUA-HOT. AQUA-HOT will reimburse Factory Authorized Service Center for replacement parts used from its inventory per the **Aqua-Hot Factory Authorized Service Center Reimbursement Agreement**. All parts removed from a Product shall be returned to Aqua-Hot. All warranty replacement parts and labor must be provided to the Customer free of charge.
- f. The Factory Authorized Service Center shall provide a high standard of repair work and customer service. Aqua-Hot Factory Authorized Service Centers shall order all necessary replacement parts and complete any necessary repairs in a timely fashion. In support of the Factory Authorized Service Centers, AQUA-HOT will assure shipments of replacement parts are completed in a timely fashion.
- g. Only Aqua-Hot Factory Authorized Service Center technicians certified by AQUA-HOT shall complete any Aqua-Hot product repairs. An Aqua-Hot Factory Authorized Service Center shall, at all times, maintain at least one service technician who has successfully completed Aqua-Hot Factory Training and is certified as an Aqua-Hot Factory Trained Service Technician.
- h. The Aqua-Hot Factory Authorized Service Center shall provide and maintain an adequate and easily accessible facility for the proper diagnostic and servicing of Aqua-Hot Products. Mobile Service is exempted from this requirement.
- i. Aqua-Hot Factory Authorized Service Centers shall service and repair products pursuant to AQUA-HOT and/or OEM recommended procedures as set forth in the Aqua-Hot Warranty Repair Manual and as specified during the Aqua-Hot Factory Training. The Factory Authorized Service Center shall use diagnostic equipment, tools and parts approved by AQUA-HOT. AQUA-HOT assumes no risk of liability and the Factory Authorized Service Center is solely responsible for any and all risk and liability resulting from any product repair or replacement that is not in conformance with the AQUA-HOT recommended procedures set forth above.



- 4 **Term** - The term of this Agreement shall commence on its Effective Date and shall continue in effect until either party terminates the Agreement as set forth below
- 5 **Termination** - Either party may terminate the Agreement, with or without cause, upon thirty (30) days notice, in writing, delivered by registered or certified mail, or personal delivery as provided in paragraph 19 below.
- a. Notwithstanding any other provision of this Agreement, AQUA-HOT may terminate this Agreement immediately in the event that:
- (i) The Aqua-Hot Factory Authorized Service Center assigns or attempts to assign this Agreement or any rights hereunder without the prior written consent of AQUA-HOT;
 - (ii) The Aqua-Hot Factory Authorized Service Center ceases to function as a going concern or ceases to conduct its operations in the normal course of business as a Factory Authorized Service Center;
 - (iii) The Factory Authorized Service Center becomes insolvent or commits any act of insolvency;
 - (iii) The Factory Authorized Service Center engages in conduct that is illegal, fraudulent, unethical or which may negatively impact the interests of AQUA-HOT;
 - (iv) Failure to maintain the AQUA-HOT aforementioned minimum qualifications;
 - (v) Failure to resolve customer complaints;
 - (vi) Failure to work with AQUA-HOT in a forthright and cooperative manner
- b. No party terminating this Agreement shall be liable to the other for any compensation, reimbursement or damages on account of expenditures, investments, losses or commitments in connection with the business or good will of the other party. AQUA-HOT shall not be liable for any loss of profit or special, indirect or consequential damages of any kind, however caused.

6. **LICENSE AGREEMENT**

This **Agreement** is made and entered into this ___ day of _____, 20___, by and between AQUA-HOT Heating Systems, Inc. ("AQUA-HOT") (hereinafter "Licensor") and _____ (hereinafter called "Licensee").

WHEREAS, Licensor is the owner of the **trademark(s)** AQUA-HOT and Aqua-Hot Heating Systems, Inc's and Aqua-Hot Factory Authorized Service Center logos, and other related marks including product, photographs, related trademarks and service marks and all common law rights in said marks (hereinafter "Licensed Marks").

WHEREAS, Licensee is desirous of using the Licensed Marks in connection with Marketing and/or sale of Aqua-Hot Products (hereinafter "Licensed Products").

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, intending to be legally bound hereby, the parties agree as follows:

- a. **GRANT OF LICENSE.** Licensor grants to Licensee a revocable, non-exclusive, non-transferable, royalty-free license to **use the Aqua-Hot Factory Authorized Service Center logo in connection with the marketing of service, repair, and/or sale of the Licensed Products as an Aqua-Hot Factory Authorized Service Center.** Licensee accepts the License subject to the terms and conditions contained herein. The rights granted to Licensee herein shall not in any way prohibit or restrict Licensor from granting and conveying other rights under different terms to use the Licensed Marks to any other person or entity. Licensor, in its sole discretion



and with thirty (30) days' advanced written notice to the Licensee, reserved the right to charge a royalty based upon Licensee's use of the Licensed Marks.

- b. This license **does not include the right to use any Aqua-Hot logo other than the Aqua-Hot Factory Authorized Service Center Logo**. This license **does not include** the right to use any AQUA-HOT Trademark in an internet domain name or as a trade name. This license does not include the right to use AQUA-HOT materials to sell products not produced by AQUA-HOT, such as clothing, hats, tools, or products similar to AQUA-HOT branded products. This license does not grant Reseller the right to use any AQUA-HOT Trade Name in connection with any event sponsorship, contest or similar promotion, without the prior written approval of AQUA-HOT for that specific event. This grant cannot be divided, sub-licensed or assigned.
- c. **PROPRIETARY RIGHTS AND GOODWILL**. Licensee acknowledges that the Licensed Marks are owned by Licensors which has the sole and exclusive right to license the Licensed Marks. Licensee agrees that nothing in this **Agreement** shall give Licensee any right, title, or interest in the Licensed Marks other than the right to use the Licensed Marks in accordance with this License. Licensee shall not contest or otherwise challenge Licensors' right in the Licensed Marks. Licensee agrees to include the appropriate **trademark** markings and notices on the:
- i. Licensed Products and on all marketing or advertising materials bearing the Licensed Marks.
 - ii. Licensee agrees that its use of the Licensed Marks is to be strictly in accordance with Licensors' guidelines and standards and that Licensee will not make any modifications to the Licensed Marks, nor use any other mark that is similar to the Licensed Marks either separately or in conjunction with the Licensed Marks.
 - iii. Any goodwill arising out of Licensee's use of the Licensed Marks shall inure solely and exclusively to the benefit of the Licensors.
- d. **USE OF MARKS**. Subject to the restrictions outlined by Licensors, including prior approval, Licensee shall have the right to use the Licensed Marks in connection with the advertising and printed materials reasonably and directly related to Licensee's marketing of the Licensed Products, including on packaging, product literature, catalogs and any other sales and supporting materials used to promote sales of the Licensed Products. Licensee is required to advise Licensors, in advance, of any intended use of the Licensed Marks beyond the rights granted in this **Agreement**, including but not limited to use of the Licensed Marks on additional products or in the promotion of additional services.
- e. **OWNERSHIP OF MARKS**. Licensee acknowledges the sole ownership of the Licensed Marks by Licensors, agrees that it will do nothing inconsistent with such ownership and that all use of the Licensed Marks by Licensee shall inure solely to the benefit of Licensors. Licensee agrees that nothing in this License shall give Licensee any right, title or interest in the Licensed Marks other than the right to use the Licensed Marks in accordance with this License. Licensee agrees that Licensors have sole **trademark** right in the Licensed Marks; and, that it will not attack the title of Licensors to the Licensed Marks or attack the validity of the Licensed Marks of this License.
- f. **Removal of Trademarks upon Termination; Injunctive Relief**. If this Agreement is terminated for any reason, the Aqua-Hot Factory Authorized Service Center shall immediately discontinue the use of the AQUA-HOT name, Trademarks and images of Product, and thereafter shall not use, display or make reference to any Trademarks or name of the company or any reproduction, counterfeit, copy or colorable imitation thereof, or anything similar thereto. At the request of AQUA-HOT, the Factory Authorized Service Center shall deliver any and all Aqua-Hot owned materials in its possession or control upon which appears or upon which any



Factory Authorized Service Center Agreement



reference is made to any Trademarks of name or Intellectual Property Rights of AQUA-HOT, including but not limited to signs, printed matter, printed blocks, advertising reproduction materials, decals, transfers, point of sales displays, name plated, labels, business cards, stationary, catalogues, price lists and other similar material.

7. **Indemnification.** Aqua-Hot Factory Authorized Service Center agrees to indemnify, protect, defend and hold harmless AQUA-HOT and its associated companies and respective agents, employees, officers, shareholders, directors, successors and assigns, from and against, any and all liabilities, obligations, losses, damages, injuries, claims (including claims by third parties), demands, actions, fines, penalties, costs and expenses, including attorneys' fees and disbursements, of whatsoever kind and nature, caused by or arising out of (a) any affirmative or omitted fault or negligence of the Aqua-Hot Factory Authorized Service Center; (b) breach of this Agreement; and/or, (c) actions or omission in repairing or servicing Products. Factory Authorized Service Center agrees that AQUA-HOT shall not be liable under any conditions for damages in respect of any special, indirect or consequential loss, including lost profits, or any claim or demand against Factory Authorized Service Center by any third party.
8. **Aqua-Hot Factory Authorized Service Center's Business** - The Aqua-Hot Factory Authorized Service Center represents and warrants that it is an independent business engaged in the diagnosis, service, repair and distribution of products other than the AAQUA-HOT products; that, as such, it invoices its own accounts and is responsible for the collection of same, that it is solely responsible for its expenses of operation, including Social Security, Workers' Compensation, Unemployment and personal property taxes. Factory Authorized Service Center shall for all purposes be an independent contractor and not the agent, employee, partner, joint venture or franchisee of AQUA-HOT. The Factory Authorized Service Center shall have the sole right to control the manner in which it performs its duties under this Agreement, subject to no control by AQUA-HOT, except as expressly provided in this Agreement. In no event shall AQUA-HOT be responsible for any obligation or liability of the Factory Authorized Service Center, whether or not any obligation or liability shall have been incurred in connection with the sale of any of the products manufactured or supplied by AQUA-HOT and the Aqua-Hot Factory Authorized Service Center shall have no authority to bind AQUA-HOT or to claim to do so in any dealings with any other person or entity. Nothing in this Agreement shall be construed as reserving to AQUA-HOT any right to exercise any control over, or to direct in any respect the conduct or management of the Aqua-Hot Factory Authorized Service Center business or operations. The entire control and direction of the Aqua-Hot Factory Authorized Service Center business shall remain with Factory Authorized Service Center.
9. **Choice of Law and Venue** - This Agreement and any claim or action arising out of or in any way related to this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties stipulate that the Weld County District Court for the State of Colorado or the United States District Court for the District of Colorado shall be the exclusive forums for resolution of any dispute in any way arising out of this Agreement or for the enforcement of obligations arising hereunder. The Aqua-Hot Factory Authorized Service Center consents to the jurisdiction of each such court for such purposes, including consenting to personal jurisdiction of such courts.
10. **Assignability** – The Aqua-Hot Factory Authorized Service Center rights and obligations under this Agreement are personal to the Factory Authorized Service Center and shall not be assigned, sub-licensed or otherwise



transferred, voluntarily, by operation of law, or otherwise, without prior written approval of AQUA-HOT, which approval may be withheld at the discretion of AQUA-HOT. AQUA-HOT shall be entitled without restriction to assign the whole or any part of this Agreement.

11. **Attorneys' Fees and Costs** - In any action brought by AQUA-HOT to enforce obligations created by this Agreement, AQUA-HOT shall be entitled to recover from the Aqua-Hot Factory Authorized Service Center any costs or expenses incurred by AQUA-HOT, including but not limited to attorneys' fees and costs.
12. **Acknowledgement.** The Aqua-Hot Factory Authorized Service Center acknowledges that he, she or it has carefully read, fully understands, and has received a copy of this Agreement. The Aqua-Hot Factory Authorized Service Center represents that if it is a corporation or other entity, the signature below is a duly authorized officer of the corporation or other entity.
13. **Amendments** - No modification or amendment of this Agreement shall be effective unless submitted and agreed to in writing by the duly authorized representatives of the parties hereto.
14. **Severability** - Should any provisions of this Agreement be invalid, ineffective or unenforceable, under present or future applicable laws, the remainder of the provisions herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
15. **Notices** - Whenever notices are required to be given hereunder, such notices shall be directed to AQUA-HOT HEATING SYSTEMS, INC. 7501 Miller Drive, Frederick, CO 80504 and to Aqua-Hot Factory Authorized Service Center at _____, unless either party shall advise the other in writing of a change in address.

The Aqua-Hot Factory Authorized Service Center agrees to the terms and conditions as set forth in this Agreement and is hereby appointed as an Aqua-Hot Factory Authorized Service Center authorized to provide warranty repairs for Aqua-Hot products.

Aqua-Hot Heating Systems, Inc. _____

By

By

Title

Title

Date

Date