

## MARKETING AGREEMENT

This MARKETING AGREEMENT ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the Town of Purcellville, Virginia ("**Town**"), a municipal corporation, and Utility Service Partners Private Label of Virginia Inc. d/b/a Service Line Warranties of America ("**Company**"), herein referred to singularly as "Party" and collectively as the "Parties".

### RECITALS:

**WHEREAS**, sewer and water line laterals between the mainlines and the connection on residential private property are owned by individual residential property owners residing in the Town ("**Property Owner**"); and

**WHEREAS**, Town desires to offer Property Owners the opportunity, but not the obligation, to purchase a service plan and other similar products set forth in Exhibit A or as otherwise agreed in writing from time-to-time by the Parties (each, a "**Product**" and collectively, the "**Products**"); and

**WHEREAS**, Company, a subsidiary of HomeServe USA Corp., is the administrator of the National League of Cities ("NLC") Service Line Warranty Program and has agreed to make the Products available to Property Owners subject to the terms and conditions contained herein; and

**NOW, THEREFORE**, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties agree as follows:

**1. Purpose.** The Company intends to offer and market the Products to Property Owners in the Town subject to the terms and conditions herein. A Property Owner who has purchased a Product is a member ("**Member**") and, following such purchase, all data in Company's control or possession relating to Members is Company's property.

### **2. Town License.**

A. Grant of License. Town hereby grants to Company a non-exclusive license ("**License**") to use Town's name and logo or other branding ("**Marks**"), on letters, bills and marketing materials to be sent to Property Owners from time to time, and to be used in advertising (including on the Company's website), all at Company's sole cost and expense and subject to Town's prior review and written approval. Town agrees that it will complete its review of such materials within sixty (60) days. Company's use of the Marks in accordance with this Agreement will not infringe any other party's rights. In the event that Town extends a similar license to a competitor of Company during the Term and any Renewal Term of this Agreement, the Town shall provide thirty (30) days' notice prior to such grant of license and Company may immediately terminate this

Agreement. The Grant of License to the Company to use the Town's name, logo, or Marks shall be revoked immediately upon the termination of the Agreement; provided, that Town's name, logo, or Marks may be used in any Company marketing initiative that remains to be completed as referenced in Section 3 of this Agreement.

### **3. Term.**

(a) The term of this Agreement ("**Initial Term**") shall be for one (1) year from the Effective Date. The Agreement will automatically renew for additional one (1) year terms (each a "**Renewal Term**", and collectively with the Initial Term, the "**Term**") unless one of the Parties gives the other written notice at least sixty (60) days prior to the end of the Initial Term or of a Renewal Term that the Party does not intend to renew this Agreement.

(b) **Termination For Breach and Non-Appropriation.** Either Party may terminate this Agreement immediately upon a material breach of any term, provision, or requirement by the other Party, that has not been cured within thirty (30) days after receipt of written notice of such breach. The Company acknowledges and agrees that this Agreement shall immediately terminate without any penalties to the Town if the governing body of the Town does not appropriate funding for this Agreement.

(c) Company will be permitted to complete any marketing initiative initiated or planned prior to termination of this Agreement for any reason, after which time, neither Party will have any further obligations to the other and this Agreement will terminate.

**4. Confidentiality.** Each party will treat all non-public, confidential and trade secret information received from the other party as confidential, and such party shall not disclose or use such information in a manner contrary to the purposes of this Agreement. Notwithstanding the foregoing, the Town shall not be liable for any disclosure of confidential information that is required to be disclosed under any applicable public records act or under court order. Town shall provide notice to Company prior to any such disclosure.

**5. Code Change.** The Parties understand that the pricing of the Products provided for in this Agreement are based upon the currently applicable City, municipal or similar codes. In the event Company discovers a code change, Company shall have the ability to reassess the pricing in this Agreement. If pricing of the Products will be modified by the Company so as to be higher than the costs (including, for the avoidance of doubt, the permitted adjustment in monthly prices for the Products) stated in Exhibit A, Section III, the Town may immediately terminate this Agreement at its sole discretion, subject to Company's right after termination of this Agreement to complete any outstanding marketing initiatives.

**6. Indemnification.** The Company hereby agrees to protect, indemnify, and hold the Town, its officers, employees, contractors, subcontractors, and agents (collectively or individually, "**Town Indemnitee**") harmless from and against any and all third party claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees and court costs (individually or collectively, "**Claim**"), which the Town Indemnitee may suffer or which may be sought against or are recovered or obtainable from the Town Indemnitee, as a result of or arising out of any breach of this Agreement by the Company, or any negligent or fraudulent act or omission of the Company or its officers, employees, contractors, subcontractors, or agents in

the performance of this Agreement; provided that the Town Indemnitee notifies the Company of any such Claim within a reasonable amount of time. The Town Indemnitee hereunder may participate in its own defense, but will be responsible for all costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

**7. Notice.** Any notice required to be given hereunder shall be deemed to have been given when notice is (i) received by the Party to whom it is directed by personal service, (ii) sent by electronic mail (provided confirmation of receipt is provided by the receiving Party), or (iii) deposited as registered or certified mail, return receipt requested, with the United States Postal Service, addressed as follows:

**To:** Town:  
ATTN: David A. Mekarski, AICP  
Town of Purcellville  
221 S. Nursery Ave  
Purcellville, VA 20132-3204  
Email: dmekarski@purcellvilleva.gov  
Phone: (540) 338-7421

**To:** Company:  
ATTN: Michael Backus, Chief Sales Officer  
Utility Service Partners Private Label of Virginia Inc.  
4000 Town Center Boulevard, Suite 400  
Canonsburg, PA 15317  
Email: michael.backus@homeserveusa.com  
Phone: (203) 840-8276

With a copy to:  
Hilary E. Glassman, General Counsel  
e-mail: hilary.glassman@homeserveusa.com

**8. Modifications or Amendments/Entire Agreement.** Except for the list of available Products under the Agreement, which may be amended from time to time by the Parties in writing and without signature (including by email), any and all of the representations and obligations of the Parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing signed by that Party.

**9. Assignment.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party unless such assignment or delegation is to an affiliate or to an acquirer of all or substantially all of the assets of the transferor.

**10. Insurance.** The Company must provide the Town with a Certificate of Insurance (COI) and an endorsement naming the Town as and additional insured on their commercial general liability policy and automobile liability policy. The Company's insurance must be endorsed so

that their coverage is primary and non-contributory and with a waiver of subrogation in favor of the Town. Copies of all endorsements stated herein must be provided to the Town prior to the start of work. The COI must show current general commercial liability coverage with a minimum of \$1,000,000 per occurrence coverage limits and \$2,000,000 general aggregate limits and Cybersecurity and Data Breach insurance with minimum limits of \$1,000,000 per occurrence. All required insurance coverage must be kept current throughout the term of the Agreement. Prior to sending staff or employees to the Town under the Agreement, the Company shall provide a copy of their required statutory workers' compensation insurance and current automobile liability coverage with \$1,000,000 minimum coverage and endorsed as stated herein.

**11. Counterparts/Electronic Delivery: No Third Party Beneficiary.** This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any Party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

**12. Choice of Law/Attorney Fees.** The Parties shall maintain compliance with all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, judgments, orders and interpretations with respect to its obligations under this Agreement. The governing law shall be the laws of the Commonwealth of Virginia, without regard to the choice of law principles of the forum state. The Parties agree that the Courts of the County of Loudoun shall have jurisdiction over this Agreement. In the event that any suit, claim, or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys, accountants and experts, which shall include, without limitation, all fees, costs and expenses of all appeals.

**13. Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including but not limited to fire, floods, pandemics, epidemics, embargoes, war, acts of war, insurrections, riots, strikes, lockouts or other labor disturbances, or acts of God; provided, however, that the Party so affected shall use reasonable efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with written notice of any delay or failure to perform that occurs by reason of force majeure.

**14. Incorporation of Recitals and Exhibits.** The above Recitals and Exhibits A and B attached hereto are incorporated by this reference and expressly made part of this Agreement.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and year first written above.

**TOWN OF PURCELLVILLE, VIRGINIA**  
**A Municipal Corporation**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UTILITY SERVICE PARTNERS PRIVATE LABEL OF**  
**VIRGINIA INC.**

\_\_\_\_\_

Name: Michael Backus

Title: Chief Sales Officer

**Exhibit A**  
NLC Service Line Warranty Program  
Town of Purcellville  
Term Sheet  
August 17 , 2021

I. Initial Term. One year

II. License Conditions. Use of Town logo and name on letterhead, advertising, signature line, and marketing materials following the written consent and approval of the Town.

III. Products. In exchange for the license conditions above, Company will offer the following discounted rates to Property Owners:

- a. External water service line plan (initially, \$5.25per month)
- b. External sewer/septic line plan (initially, \$7.25 per month)
- c. Interior plumbing and drainage plan (initially, \$9.49 per month)

Company may adjust the foregoing Product fees; provided, that any such adjustment shall not exceed \$.50 per month in any 12-month period, unless otherwise agreed by the Parties in writing.

IV. Scope of Coverage.

- a. External water service line plan:
  - Property Owner responsibility: From the meter and/or curb box to the external wall of the home.
  - Covers thawing of frozen external water lines.
  - Covers well service lines if applicable.
- b. External sewer/septic line plan:
  - Property Owner responsibility: From the external wall of the home to the main.
  - Covers septic lines if applicable.
- c. Interior plumbing and drainage plan:
  - Water supply pipes and drainage pipes within the interior of the home.

V. Marketing Campaigns. Company shall have the right to conduct up to three campaigns per year, comprised of up to six mailings and such other channels as may be mutually agreed. Initially, Company anticipates offering the Interior plumbing and drainage plan Product via in-bound channels only.

**Exhibit B**  
**Terms Required Pursuant to the Code of Virginia**

I. Compliance with federal, state, and local immigration law. During the term of the Agreement, the contractor does not and shall not during the performance of the Agreement for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.  
§ 2.2-4311.1 of the Code of Virginia, as amended.

II. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.

A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section. Compliance with state law, foreign and domestic businesses authorized to transact business in the Commonwealth of Virginia. If the contractor is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the contractor shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as



amended, or as otherwise required by law. § 2.2-4311.2 of the Code of Virginia, as amended.

III. No Discrimination Against Faith-Based Organizations. The Town of Purcellville does not discriminate against faith-based organizations as that term is defined § 2.2-4343.1 of the Code of Virginia, as amended.

#### IV. Payment Clauses Required by Va. Code § 2.2-4354

A. The Company shall take one of the two following actions within seven days after receipt of amounts paid to the Successful Offeror by the Town for all or portions of the goods and/or services provided by a subcontractor: (a) pay the subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor under that contract; or (b) notify the Town and subcontractor, in writing, of the Company's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

B. Pursuant to Virginia Code § 2.2-4354, the Company that is a proprietor, partnership, or corporation shall provide its federal employer identification number to the Town. Pursuant to Virginia Code § 2.2-4354, the Company who is an individual contractor shall provide his/her social security numbers to the Town.

C. The Company shall pay interest to its subcontractors on all amounts owed by the Company that remain unpaid after seven days following receipt by the Company of payment from the Town for all or portions of goods and/or services performed by the subcontractors, except for amounts withheld as allowed in Subparagraph 1. above.

D. Pursuant to Virginia Code § 2.2-4354, unless otherwise provided under the terms of the Contract interest shall accrue at the rate of one percent per month.

E. The Company shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

F. The Company's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in Virginia Code § 2.2-4354 shall not be construed to be an obligation of the Town. A Contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

V. Employment discrimination by contractor prohibited; required contract provisions. All public bodies shall include in every contract of more than \$10,000 the following provisions:

During the performance of this contract, the Company agrees as follows:

A. The Company will not discriminate against any employee or applicant for employment

because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The Company, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

C. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. The Company will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 2.2-4311 of the Code of Virginia as Amended.

VI. Drug-free workplace to be maintained by contractor; required contract provisions. All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

§ 2.2-4312 of the Code of Virginia, as amended.