



North American Hardware and Paint Association

1025 E. 54th St.

Indianapolis, Indiana 46220

marketplace@YourNHPA.org

317-275-9400

RETAIL MARKETPLACE SELLER LISTING AGREEMENT

This Retail Marketplace Listing Agreement (the “**Agreement**”), dated as of _____ (the “**Effective Date**”), is entered into between the North American Hardware and Paint Association (“**NHPA**”), and _____ (“**Customer**,” and together with NHPA, the “**Parties**,” and each, a “**Party**”).

A. NHPA has established an advertising service, the NHPA Retail Marketplace, as a way to connect buyers and sellers of independent home improvement businesses (the “**Marketplace**”).

B. Customer is the owner of an independent home improvement business (the “**Business**”) that Customer desires to sell, and Customer desires to promote the availability of the Business for sale on the Marketplace.

C. NHPA and Customer desire to set forth the terms and conditions upon which Customer’s Listing (defined below) will be published on the Marketplace.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Agreement to Purchase and Sell Listing.

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, during the Term (as defined in 7.1), NHPA shall sell to Customer, and Customer shall purchase from NHPA, advertising space in the Marketplace (a “**Listing**”) as provided in this Agreement.

1.2 Non-Exclusivity. Nothing herein is intended nor shall be construed as creating an exclusive arrangement between Customer and NHPA. This Agreement will not restrict (a) Customer from advertising in other publications or media or (b) NHPA from selling Listings to any third parties.

1.3 Public and Private Listings.

(a) Public Listing. If Customer has selected “Public Listing” on the Listing Information Form, NHPA will include all information on the Listing Information Form in the Listing.

(b) Private Listing. If Customer has selected “Private Listing” on the Listing Information Form, the Listing will include only location (state only), annual revenue, and sale price of the business. NHPA will follow the “Request for Information” procedure described on Exhibit C when a potential buyer requests further information with respect to the Listing.

1.4 Submission of Listing. Concurrent with the execution of this Agreement, Customer shall deliver to NHPA the information included on the Listing Information Form attached as Exhibit A (“**Listing Information Form**”).

(a) Pre-Publication Approval. Prior to publication of the Listing, NHPA will provide to Customer a copy of the proposed Listing for approval. If Customer does not approve, reject, or request modification of the proposed Listing within ten (10) days of NHPA providing the proposed Listing to Customer, Customer will be deemed to have approved the proposed Listing.

(b) Amendments to Listing. Customer may amend the Listing, provided, however, that if Customer amends the Listing more than twice during the Term, Customer shall pay the amendment fee set forth on Exhibit B. Any such amendment must be delivered in writing to NHPA. An amendment shall only be applicable to the same property; the Listing cannot be amended to list an alternate property.

1.5 Publication of Listing. NHPA shall have the sole authority to choose the manner in which any listing will be displayed, searched, accessed, downloaded, copied, and otherwise used on the Marketplace and NHPA shall have the right to modify the listing in the exercise of its rights under this Agreement. Customer agrees to allow the Listing, or any part of it, to be searched, displayed, accessed, downloaded, copied, and otherwise referred to by users of the Marketplace. The listing will be published in the NHPA Retail Marketplace section of each of the publications below:

(a) Website Publication. Online publications will remain online until the expiration or earlier termination of this Agreement. The listing will be published on the following websites.

(i) YourNHPA.org

(b) Periodical Publication. Partial listings will be included in the following publications during the Term:

(i) Hardware Retailing (monthly)

(ii) Paint & Decorating Retailer (monthly)

(c) E-Newsletter Publication and Online Media. The Retail Marketplace will be promoted in the following digital communications and platforms during the Term:

(i) Hardware Retailing Newsmakers Newsletter (weekly)

(ii) Paint & Decorating Retailer Newsmakers Newsletter (biweekly)

(iii) NHPA email to subscribers of listing updates (monthly)

(iv) NHPA social media platforms (monthly)

(v) PDRmag.com

(vi) HardwareRetailing.com

2. Listing Fee and Payment.

2.1 Listing Fee. Customer shall purchase the Listing at the price set forth on Exhibit B. NHPA will invoice Customer upon NHPA's acceptance of the Listing Information Form. For Renewal Terms (defined below), if any, NHPA may adjust the prices set forth on Exhibit B by providing notice to Customer prior to the commencement of any Renewal Term.

2.2 Taxes. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Customer under this Agreement. Customer shall be responsible for all such charges, costs, and taxes, except for any taxes imposed on, or related to, NHPA's income, revenues, gross receipts, personnel, real or personal property, or other assets.

2.3 Payment. Payment for the initial listing is due and payable within thirty (30) days of the invoice date (provided, however, that no Listing will be published by NHPA prior to NHPA's receipt of payment). Payments for additional listing periods



are due and payable prior to the beginning of such listing period. Any required payments for amendments shall be made prior to NHPA amending the listing. Customer shall make all payments in US dollars.

3. NHPA's License. Subject to the terms and conditions of this Agreement, Customer grants NHPA a limited, royalty-free, non-exclusive, non-transferable, and non-sublicensable license to reproduce, publish, and distribute the Listing in the Marketplace in accordance with the terms of this Agreement.

4. Representations, Warranties, and Certain Covenants.

4.1 Mutual Representations, Warranties, and Covenants. Each Party represents, warrants, and covenants to the other that it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;

4.2 Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to NHPA that:

(a) At the time of the Listing's publication and dissemination, any statement, claim, or representation made in the Listing will be true and accurate.

(b) To the extent that any statement, claim, or representation made in the Listing becomes, after the date of the Listing's publication and dissemination, untrue or inaccurate, Customer will promptly notify NHPA and request that the Listing be amended.

(c) Customer will not permit the posting of a business on the Marketplace under a name other than that of the business owner or the named licensed business agents that have been engaged by the business owner to market the business under the terms of a duly executed, active and exclusive listing agreement with the owner.

(d) Customer shall (and shall require its sales agents, if applicable) use commercially reasonable efforts to respond to all buyer inquiries relating to the listing within seventy-two (72) business hours. Customer agrees to provide to

prospective buyers the information needed so that such prospective buyers can make a fully informed purchase decision.

4.3 DISCLAIMER BY NHPA. NHPA IS NOT A BUSINESS BROKER AND DOES NOT PROVIDE BROKERAGE OR VALUATION SERVICES. NHPA DOES NOT GUARANTEE THAT CUSTOMER WILL SELL ITS BUSINESS OR BE CONTACTED BY ANY POTENTIAL BUYERS. NHPA MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE LISTING OR THE MARKETPLACE, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, TRADE, OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY NHPA, OR ANY OTHER PERSON ON NHPA'S BEHALF.

5. Indemnification.

5.1 Customer Indemnification Obligations. Customer shall defend, indemnify, and hold harmless NHPA and its employees, officers, directors, agents, affiliates, successors, and permitted assigns (collectively, "**NHPA Indemnified Party**"), against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorney fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, "**Losses**"), incurred by NHPA Indemnified Party arising out or resulting from any claim of a third party alleging:

(a) material breach by Customer of any representation, warranty, covenant or other obligations set forth in this Agreement or reliance upon any information contained in a Listing; or

(b) gross negligence or more culpable act or omission of Customer (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement.

5.2 NHPA Indemnification Obligations. NHPA shall defend, indemnify, and hold harmless Customer and its employees, officers, directors, agents, affiliates, successors, and permitted assigns (collectively, "**Customer Indemnified Party**"),

against any and all Losses, arising out of or resulting from any third-party claim alleging:

(a) Material breach by NHPA of any material obligations set forth in this Agreement; or

(b) gross negligence or more culpable act or omission of NHPA Indemnifying Party (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement.

5.3 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, neither Party is obligated to indemnify or defend the other Party or any of its indemnified parties against any Losses to the extent arising out of or resulting from the other Party's:

(a) willful, reckless, or negligent acts or omissions; or

(b) bad faith failure to materially comply with any of its material obligations set forth in this Agreement.

5.4 Indemnification Procedures. A party seeking indemnification under this 5 (the "**Indemnified Party**") shall give the Party from whom indemnification is sought (the "**Indemnifying Party**"): (a) prompt notice of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure and (b) reasonable cooperation, at the Indemnifying Party's expense, in the defense of such claim. The Indemnifying Party shall have the right to control the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party, settle, or dispose of any claims in a manner that affects the Indemnified Party's rights or interest. The Indemnified Party shall have the right to participate in the defense at its own expense.

5.5 EXCLUSIVE REMEDY. THIS 5 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY OF EACH INDEMNIFIED PARTY FOR ANY DAMAGES COVERED BY THIS 6.

6. Limitation of Liability; Disclaimer of Warranties.

6.1 Limitation of Liabilities.

(a) NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF USE, REVENUE, OR PROFIT, BUSINESS INTERRUPTION, AND LOSS OF INFORMATION), WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) MAXIMUM LIABILITY. EXCEPT WITH RESPECT TO THE PARTIES' LIABILITY FOR INDEMNIFICATION, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO NHPA PURSUANT TO THIS AGREEMENT.

7. Term; Termination.

7.1 Term. The term of this Agreement commences on the Effective Date and continues for until the first anniversary of the date the Listing first becomes active on YourNHPA.org, unless it is earlier terminated as provided under this Agreement (the "**Initial Term**"). Customer may, at its option, elect to renew this Agreement for additional one-year periods (each, a "**Renewal Term**") by providing notice to NHPA prior to the expiration of the Initial Term and paying the fee set forth on Exhibit B. The Initial Term and all Renewal Terms, if any, constitute the "**Term**".

7.2 Suspension of Term. In the event Customer desires to suspend the Listing for a period of time, Customer will provide notice to NHPA of the date it desires to suspend the Listing. NHPA will suspend the Listing effective such date, and the Term shall be extended by the number of days such suspension is effective, with the Listing reactivated upon the date Customer notifies NHPA it desires reactivation. The reactivation shall only be applicable to the same property; the Listing cannot be

reactivated to list an alternate property. Due to publishing deadlines, it may not be possible to suspend the listing immediately in print publications; print listings will be suspended as soon as practicable.

7.3 Mutual Right to Terminate. Either Party may terminate this Agreement upon written notice to the other Party:

(a) if the other Party materially breaches any material provision of this Agreement (other than Customer's obligation to pay any amount when due, which is governed by 7.5) and either the breach cannot be cured or, if the breach can be cured, it is not cured by the other Party within thirty (30) days after its receipt of written Notice of such breach;

(b) if the other Party (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

(c) in the event of a Force Majeure Event (defined below) that continues for more than sixty (60) days.

7.4 Customer's Right to Terminate Without Cause. Customer may terminate this Agreement on ten days' prior written notice to NHPA.

7.5 NHPA's Right to Terminate. NHPA may terminate this Agreement upon written Notice to Customer if Customer fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Customer's receipt of written notice of nonpayment.

7.6 Effect of Termination.

(a) Expiration or termination of this Agreement will not affect any rights or obligations that:

(i) are to survive the expiration or earlier termination of this Agreement; and

(ii) were incurred by the Parties prior to such expiration or earlier termination. **CUSTOMER ACKNOWLEDGES AND AGREES THAT ALL AMOUNTS PAID BY CUSTOMER TO NHPA ARE NONREFUNDABLE REGARDLESS OF ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

(b) Upon the expiration or earlier termination of this Agreement, NHPA shall remove all instances of the Listing online, and no have no further obligation to include the Listing in any Print publication.

(c) Subject to 5, the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of the terminating Party's rights or remedies under this Agreement, at law, in equity, or otherwise.

8. Miscellaneous.

8.1 Entire Agreement. This Agreement, including all related exhibits, constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

8.2 Survival. Subject to the limitations and other provisions of this Agreement, (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement for a period of twelve (12) months after such expiration or termination; and (b) 5 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

8.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at

the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

8.4 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect the enforceability of any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the court may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

8.5 Amendment. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

8.6 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

8.7 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

8.8 Assignment. Neither Party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder. Any

attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

8.9 No Third-Party Beneficiaries. Except as provided in the next sentence, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. The Parties hereby designate the Customer Indemnified Parties and NHPA Indemnified Parties as third-party beneficiaries of 5 of this Agreement having the right to enforce 5.

8.10 Choice of Law. This Agreement and all and other related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Indiana, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Indiana.

8.11 Choice of Forum. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Indiana in each case located in the City of Indianapolis and County of Marion, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding.

8.12 Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations for Customer to make payments to NHPA hereunder), when and to the extent such party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) shortage of adequate

power or transportation facilities; or (i) other similar events beyond the reasonable control of the Impacted Party.

8.13 Relationship of Parties. Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

8.14 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]



[Signature Page to Retail Marketplace Seller Listing Agreement]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

NORTH AMERICAN HARDWARE AND
PAINT ASSOCIATION

By _____

Name:

Title:

[CUSTOMER NAME]

By _____

Name:

Title:



EXHIBIT B

PRICING

Public Listing	\$5,000
Private Listing	\$7,500
Listing Amendment (after two amendments per Term)	\$250

EXHIBIT C

REQUEST FOR INFORMATION PROCEDURE

1. Private Listings will contain only the state in which the business is located, the annual revenue of the business, and the sale price. If a potential buyer is interested in a Private Listing, the potential buyer will be instructed to contact a representative of NHPA to inquire about additional details.
2. The NHPA representative will require the potential buyer to execute a non-disclosure agreement.
3. Once the potential buyer has executed the non-disclosure agreement, the NHPA representative will disclose the identity of the potential buyer to Customer. Customer will either confirm, in writing, to NHPA that it desires to release additional information to the potential buyer or will decline to release additional information.
4. If customer confirms that it desires to release additional information, then NHPA will release all of the information from the Listing Information Form, including contact information, to the potential buyer.