

MARKETING AGREEMENT

This MARKETING AGREEMENT (**Agreement**) is entered into by and between the City of Fresno, California (**City**), and Utility Service Partners Private Label Inc., a Delaware corporation, d/b/a SLWA Insurance Services (**Company**), herein collectively referred to singularly as “Party” and collectively as the “Parties”. This Agreement shall be effective on the last signature date set forth below (**Effective Date**).

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 City (**Property Owner**); and

WHEREAS, City desires to announce to 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 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.** City hereby grants to Company the right to market the Products to Property Owners subject to the terms and conditions herein.

2. **City Obligations.**

A. **Grant of License.** City grants to Company a non-exclusive license (**License**) to use City’s designated names, symbols, trademarks, service marks, logotypes, trade names and insignias owned by City or its affiliates (**Marks**), which may include the use of City’s logo and name in, in signature lines, and in marketing materials to be sent to Property Owners, all at Company’s sole cost and subject to City’s prior review and approval, which will not be unreasonably conditioned, delayed, denied, or withheld. City represents, warrants and covenants that as of the Effective Date, and at all times during the Term, City has, and shall have, the full right, power and authority to grant the License, and such grant does not, and will not, infringe the intellectual property rights of any third party. In the event that City extends a similar license to a competitor of Company during the Term, City shall provide thirty (30) days’ written notice prior to such grant of license and Company may immediately terminate this Agreement.

B. **Property Owner Data.** If City elects to do so, on or immediately after the Effective Date, City will provide Company with “zip plus 4” data for its Property Owners in a mutually agreed-upon electronic format. Thereafter, throughout the Term, City shall promptly notify Company of any updates to such data. Company may obtain any name, service address, postal address, and any other appropriate or necessary data for Property Owners in the City (**Property Owner Data**) from a third party, for use by Company in furtherance of the advertisement, marketing, and sale of the Products and such Property Owner Data shall be the property and Confidential Information of Company. 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.

3. **Term.** The term of this Agreement (**Initial Term**) shall be for Five Years 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 ninety (90) days prior to end of the Initial Term or of a Renewal Term that the Party does not intend to renew this Agreement. In the event that Company is in material breach of this Agreement, City may terminate this Agreement thirty (30) days after giving written notice to Company of such breach, if said breach is not cured during said thirty (30) day period. Beginning eighteen (18) months after the Effective Date, City may also terminate this Agreement for any reason on ninety (90) days’ written notice to Company. Company will be permitted to complete any marketing initiative initiated prior to termination of this Agreement after which time, neither Party will have any further obligations to the other and this Agreement will terminate.

4. **Consideration.** As consideration for the License granted in Section 2.A. above, Company shall pay City a fee (**Brand Fee**) as set forth in Exhibit A. Payment of the Brand Fee for the first year of the Initial Term is subject to the approval and mailing of the first campaign for that year. Thereafter, payment of the Brand Fee is subject to City’s timely approval of all other marketing materials for the prior year of the Term and the approval and mailing of the first campaign of the then current year of the Term. Company will pay the applicable Brand Fee to City within thirty (30) days after such campaign mailings have been made and applicable City approvals secured.

5. **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, City 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. City shall provide notice to Company prior to any such disclosure.

6. **Ruling and/or Code Change.** In the event that: (i) a change or proposed change in any laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, judgments, orders and interpretations (**Applicable Laws**), or municipal or similar codes; or (ii) an interpretation, policy, ruling, or order by any court, tribunal, arbitrator, regulatory agency, commission, including a public service commission or similar body of a municipality, or other instrumentality of the United States, or any state,

county, city, or other political subdivision; negatively or potentially negatively impacts the terms of this Agreement or the obligations of the Parties set forth in this Agreement, the Parties shall negotiate in good faith to modify the terms of this Agreement accordingly. Should the Parties be unable to reach a mutual agreement to revise this Agreement, then either Party may terminate this Agreement on thirty (30) days' written notice to the other Party.

7. **Indemnification.** To the furthest extent allowed by law, Company shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers ("Indemnitees") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Company or any other person or its Indemnitees, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Company's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence, or caused by the willful misconduct, of City or any of its Indemnitees.

If Company should subcontract all or any portion of the work to be performed under this Agreement, Company shall be liable to City for the acts and omissions of such subcontractors in their performance of such work and shall indemnify the City and its Indemnitees hereunder as if such work was performed by employees of Company .

This section shall survive termination or expiration of this Agreement.

8. **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: City:
ATTN: Georgeanne White, City Manager
City of Fresno
2600 Fresno St.
Fresno, CA 93721
Email: Georgeanne.white@fresno.gov
Phone: (559) 621-7770

To: Company:
ATTN: Chief Growth Officer
Utility Service Partners Private Label Inc.,
d/b/a SLWA Insurance Services
601 Merritt 7, 6th Floor
Norwalk, CT 06851
Phone: (866) 974-4801

9. **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, 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.

10. **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.

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 email 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.** The Parties shall maintain compliance with all Applicable Laws with respect to its obligations under this Agreement. The governing law shall be the laws of the State of California, without regard to the choice of law principles of the forum state.

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

14. **Nondiscrimination.** To the extent required by Applicable Laws, Company shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Company agrees as follows:

A. Company will comply with all Applicable Laws providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

B. Company will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Company shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Company's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. To the extent required by Applicable Laws, Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

C. To the extent required by Applicable Laws, Company will, in all solicitations or advertisements for employees placed by or on behalf of Company in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

D. To the extent required by Applicable Laws, Company will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Company's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. If Company should subcontract all or any portion of the services to be performed under this Agreement, Company shall cause each subcontractor to also comply with the requirements of this Section 14.

15. Independent Contractor.

A. In the furnishing of the services provided for herein, Company is acting solely as an independent contractor. Neither Company, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control, supervise, or direct the manner or method by which Company shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Company is performing its obligations in accordance with the terms and conditions thereof.

B. This Agreement does not evidence a partnership or joint venture between Company and City. Company shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Company shall bear its own costs and expenses in pursuit thereof.

C. Because of its status as an independent contractor, Company and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Company shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Company shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Company's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Company may be providing services to others unrelated to City or to this Agreement.

16. **Waiver**. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

17. **Attorney's Fees**. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

[Signature Page Follows]

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

CITY OF FRESNO,
a municipal corporation

UTILITY SERVICE PARTNERS PRIVATE LABEL INC., D/B/A SLWA INSURANCE SERVICES

By: _____

By: _____

Name: _____

Michael Backus
Chief Growth Officer
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM
ANDREW JANZ
City Attorney

By: _____

By: _____

Brandon M. Collet
Supervising Deputy City Attorney

Name: _____

Title: _____

(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

Date: _____

TODD STERMER, CMC
City Clerk

By: _____

Name: _____

Title: _____

Date: _____

Attachment: Exhibit A

EXHIBIT A

NLC Service Line Warranty Program City of Fresno

- I. Initial Term. Five Years.
- II. Brand Fee. During the Initial Term, Company will pay City \$ 615,000.00 spread across the first five years of the Initial Term, as follows:
 - A. Year 1 - \$ 123,000.00
 - B. Year 2 - \$ 123,000.00
 - C. Year 3 - \$ 123,000.00
 - D. Year 4 - \$ 123,000.00
 - E. Year 5 - \$ 123,000.00The Brand Fee shall be \$123,000.00 for each Renewal Term
- III. Products.
 - A. External water service line plan (initially, \$6.75 per month)
 - B. External sewer/septic line plan (initially, \$9.75 per month)
 - C. Interior plumbing and drainage plan (initially, \$9.99 per month)Pricing does not include taxes. Company may adjust the foregoing Product fees, provided, that any such monthly fee adjustment shall not exceed \$0.50 in any 12-month period. If such adjustment shall exceed \$0.50, both Parties must agree in writing.
- IV. Scope of Coverage.
 - A. External water service line plan:
 - i. Covers Property Owner responsibility: From the meter to the external wall of the home.
 - ii. Covers well service lines if applicable.
 - B. External sewer/septic line plan:
 - i. Covers Property Owner responsibility: From the external wall of the home to the sewer main.
 - ii. Covers septic lines if applicable.
 - C. Interior plumbing and drainage plan:
 - i. Covers 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 (each campaign consists of two mailings) and such other channels as may be mutually agreed. Initially, Company anticipates offering the interior plumbing and drainage plan Product via in-bound phone or web only.