



**National Water Company
2730 W Marina Dr.
Moses Lake, WA 98837**

AGENCY AGREEMENT

This Agency Agreement (hereafter "Agreement"), by and between **National Water Company, LLC**, a Montana registered company, ("NWC"), and [REDACTED] ("Agency"), a [REDACTED] ("State") company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and intending to be legally bound, the parties hereto agree as follows:

1. AGENCY'S REPRESENTATIONS AND WARRANTIES

Agency represents and warrants to NWC that Agency and any individual Agency it employs or contracts with to perform any of Agency's obligations under this Agreement:

- a. Shall have and maintain all licenses, permits, certifications and authorizations required to perform Agency's obligations under this Agreement.
- b. Has not been convicted of any criminal felony involving dishonesty, breach of trust or a violation of the Violent Crime Control and Law Enforcement Act of 1994, as amended (18 USC §§ 1033-1034), unless Agency or such person has obtained the specific written consent of the appropriate state insurance regulatory official.

All representations and warranties of the Agency contained in this Agreement will be true, accurate and complete at the time of execution of this Agreement and throughout the term of this Agreement.

2. AUTHORITY OF AGENCY

Unless otherwise required by state law to act as an Agency, Agency acts solely as the Agency or broker for an applicant for an insurance policy with NWC and not as an Agency of NWC. If Agency is placing business with NWC that has been directed to it by another legally established insurance Agency, Agency accepts full responsibility for that submission as if it were the originator of such placement. Agency does not have binding authority or any authority to act on behalf of NWC pursuant to this Agreement, except to the limited extent required by the law of any state in which Agency is licensed. NWC does not grant or delegate any authority to Agency by this Agreement, except to place business with NWC.

Subject to requirements imposed by law and the terms of this Agreement, the Agency is authorized on behalf of NWC in the jurisdictions where NWC is licensed to do any insurance policy business to:

- a. Solicit, receive and transmit applications to NWC for: (i) insurance policies for the classes of insurance policies which NWC lawfully has authority to write and for which a commission is specified.
- b. The Agency shall promptly forward to NWC all applications and copies of all policies, and any

other documents issued by the Agency that create, add or modify coverage and otherwise notify NWC in writing of all liability accepted by Agency, so that NWC receives such documents or notification not later than the fifth working day following the inception date of coverage or the date of acceptance of coverage, whichever occurs first. Notwithstanding anything else stated in this Agreement, NWC reserves the right to reject any of the applications, or other documents that create, add or modify coverage or written acceptances of liability submitted by the Agency. Rejection by NWC is to be in effect immediately upon written notification of the rejection to the Agency. Should NWC notify the Agency of the rejection of submitted applications, or other documents that create, add or modify coverage or written acceptances of liability, it is the sole responsibility of the Agency to notify the party(ies) effected by the rejected submission.

- c. Perform all the services usual and customary to an insurance Agency on all insurance policies placed by the Agency with NWC, including, without limitation, promptly responding to all customer inquiries and promptly forwarding to Company any notice of claim or customer complaint information received by Agency.

Notwithstanding anything stated above:

- i. Beyond the limited binding authority discussed above, Agency has no authority to bind any insurance policy on behalf of NWC.
- ii. Agency will not alter any insurance policy or other form provided by Company without Company's express written approval.
- iii. Agency will not create any liability, indebtedness or expense on behalf of NWC.
- iv. Agency will not draft or issue a certificate of insurance policy that is in any way inconsistent with the terms and conditions of the related insurance policy(s). Agency will not indicate or suggest that a certificate of insurance policy, whether or not submitted to NWC, are materials that provide coverage or bind NWC in any manner to provide coverage.
- v. Agency may not appoint sub-agencies for NWC without the prior written consent of NWC.
- vi. Agency has no authority to settle claims under the insurance policies placed under this Agreement.

3. AGENCY'S RECORDS

During the term of this Agreement and for at least five (5) years thereafter, the Agency shall keep true and complete books and records of all transactions on behalf of NWC, including, but not limited to, all policies, and all correspondence, accounts and other documents which relate to any of these. NWC, its authorized representatives and regulators shall be permitted to examine these books and records and to make such extracts from or copies thereof as desired and to examine such other of the Agency's books and records only as far as they relate to transactions on behalf of NWC. NWC, its authorized representatives and regulators may have access to these materials at any reasonable time, upon providing reasonable advance notice to the Agency. The Agency will not alter, modify or destroy any record relating to NWC in violation of its obligations under this Agreement.

4. PREMIUM ACCOUNTING AND PAYMENT

All premium accounting and payments will be conducted by NWC. NWC will remit commissions to Agency according to the specified rates, and to the Agency's address listed on Addendum A of this agreement. Any changes in Agency's address must be made in writing. Distribution of commissions by any other form must be mutually agreeable by NWC and the Agency, and must be in writing.

5. COMMISSIONS

- a. Commissions are paid at a rate of 10% of gross premium paid and collected. The minimum number of monthly sales required to receive commissions is 6. Commissions will be calculated and paid quarterly.
- b. The commission rate stated in this Agreement may be changed from time to time in accordance with the following provisions:
 - i. The Agency and NWC may change the commission rates at any time by attachment of mutually agreed revised commission schedule.

- ii. NWC may change the commission rates by giving at least 90 days written notice to the Agency. The commission rate stated in the revised commission schedule will remain in effect for at least one year; but this provision does not apply to commission rates for which changes are required sooner based upon modification of expense factors in the rate making formula of any rating organization, rating bureau or governmental agency of which NWC is a member or subscriber or to whose rating plans NWC is subject.

6. RESPONSIBILITY OF AGENCY

NWC assumes no responsibility toward Agency, any insured, any covered, subsidiary, or any other party, with regard to the adequacy, amount, or form of coverage obtained through any provider.

Agency understands that NWC, in providing an insurance policy hereunder, must rely upon the accuracy of information provided to it by the purchaser of the insurance policy directly and/or through the Agency. It is the responsibility of Agency to disclose to NWC the existence of any conditions that Agency knows or reasonably should be aware of that may affect the insurability of the insured.

7. AGENCY'S ERRORS & OMISSIONS COVERAGE

As long as NWC has any outstanding liability with respect to insurance policies issued pursuant to this Agreement, the Agency will maintain, with an insurance company with an AM Best's rating of at least A minus, errors and omissions coverage with limits of liability of not less than one million (\$1,000,000) per occurrence and with a self-insured retention or a deductible not in excess of an amount satisfactory to NWC. Upon the Agency's execution of this Agreement, the Agency will provide NWC with an appropriate Certificate of insurance for such coverage. At NWC's request, the Agency will promptly provide NWC with a copy of the policy providing such coverage and evidence of it being in force. Agency will promptly notify NWC of any cancellation or modification of such coverage.

8. INDEMNIFICATION BY COMPANY

- a. NWC agrees to indemnify and hold harmless the Agency ("Agency Indemnified Party") and its affiliates and their respective directors, officers and employees from and against any Losses (as defined in part 8b. below) caused by or resulting from any of the following, except to the extent that any Agency Indemnified Party's or any Agency's representatives acts, errors, omissions, failures or breaches caused, contributed to or compounded the Agency Indemnified Party's Losses:
 - i. Error or omission of NWC or its employees in its preparation or handling of insurance policies placed with NWC by the Agency, including, without limitation, any related billing procedures;
 - ii. Acts or omissions of NWC or its employees in connection with loss control counseling, surveys or similar related undertakings;
 - iii. Failure of NWC or its employees to comply with the requirements of applicable law; or
 - iv. Any breach of any provision of this Agreement by NWC or its employees.
- b. For purposes of this part 8, "Losses" shall mean losses, claims, fines, damages, judgments, liabilities, actions, costs or expenses (including any reasonable fees and expenses of attorneys, actuaries, accountants and other consultants), but "Losses" shall not include any punitive, exemplary, treble or consequential damages of whatever nature.
- c. If any event occurs for which indemnification is required pursuant to part 8a, the Agency Indemnified Party shall provide NWC with written notice of such event as soon as reasonably possible, but no later than thirty (30) calendar days after the earlier of such time as the Agency Indemnified Party has actual knowledge of the occurrence of such event, or such time as the Agency Indemnified Party receives notice that an action has been filed in a court, or action has been taken by any administrative agency or tribunal alleging the occurrence of an event that entitles the Agency Indemnified Party to indemnification. If such notice is not provided in the time frame contemplated by the previous sentence, the Agency Indemnified Party shall still be entitled to indemnification from NWC except to the extent that NWC is actually prejudiced by the late notice.

- d. NWC shall, at its own cost, be entitled to control the defense of any third-party claim or demand in the name of the Agency Indemnified Party, with counsel reasonably satisfactory to the Agency Indemnified Party. Such control of the defense by NWC shall be without prejudice to the right of the Agency Indemnified Party to participate therein through counsel of the Agency Indemnified Party's own choosing, which participation shall be at the Agency Indemnified Party's sole expense. Whether or not the Agency Indemnified Party chooses to participate in the defense of such claim, the Agency Indemnified Party shall cooperate in the defense of such claim and shall furnish records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested in connection therewith.

9. INDEMNIFICATION BY AGENCY

- a. The Agency agrees to indemnify and hold harmless NWC and its affiliates and their respective directors, officers and employees ("NWC Indemnified Party") from and against any Losses (as defined in part 9b. below) caused by or resulting from any of the following, except to the extent any Company Indemnified Party's acts, errors, omissions, breaches or failures have caused, contributed to or compounded NWC Indemnified Party's Losses:
 - i. Error or omission of the Agency or its employees or representatives in their preparation or handling of insurance policies placed with NWC by the Agency, including, without limitation, any related applications and billing procedures;
 - ii. Acts or omissions of the Agency or its employees or representatives in connection with loss control counseling, surveys or similar related undertakings;
 - iii. Any failure of the Agency or its employees or representative to comply with applicable law; or
 - iv. Any breach of any provision of this Agreement by the Agency or its employees or representatives.
- b. For purposes of this part 9, "Losses" shall mean losses, claims, fines, damages, judgments, liabilities, actions, costs or expenses (including any reasonable fees and expenses of attorneys, actuaries, accountants and other consultants), but "Losses" shall not include any punitive, exemplary, treble or consequential damages of whatever nature.
- c. If any event occurs for which indemnification is required pursuant to part 9a., NWC Indemnified Party shall provide the Agency with written notice of such event as soon as reasonably possible, but no later than thirty (30) calendar days after the earlier of such time as NWC Indemnified Party has actual knowledge of the occurrence of such event, or such time as NWC Indemnified Party receives notice that an action has been filed in a court, or action has been taken by any administrative agency or tribunal alleging the occurrence of an event that entitles NWC Indemnified Party to indemnification. If such notice is not provided in the time frame contemplated by the previous sentence, NWC Indemnified Party shall still be entitled to indemnification from the Agency except to the extent that the Agency is actually prejudiced by the late notice.
- d. The Agency shall, at its own cost, be entitled to control the defense of any third-party claim or demand in the name of NWC Indemnified Party, with counsel reasonably satisfactory to NWC Indemnified Party. Such control of the defense by the Agency shall be without prejudice to the right of NWC Indemnified Party to participate therein through counsel of NWC Indemnified Party's own choosing, which participation shall be at NWC Indemnified Party's sole expense. Whether or not NWC Indemnified Party chooses to participate in the defense of such claim, NWC Indemnified Party shall cooperate in the defense of such claim and shall furnish records, information and testimony and attend such conferences, Discovery proceedings, hearings, trials and appeals as may be reasonably requested in connection therewith.

10. RELATIONSHIP OF THE PARTIES

- a. The Agency is an independent contractor. Nothing contained in this Agreement and no act done pursuant to this Agreement is intended or shall be construed to create a partnership, joint venture or employer-employee relationship between NWC and the Agency.
- b. Agency has exclusive control of the Agency's time, the conduct of the Agency's business and the selection of insurers that the Agency represents.

- c. Agency shall make and file all reports and returns required by any municipal, state or federal statute or regulation and pay all taxes levied by any municipal, state or federal government by virtue of doing business as an independent contractor.
- d. The Agency shall pay and is solely responsible for all agency expenses, including, but not limited to, rent, utility expenses, salaries, legal fees and costs, postage, telephone charges, advertising, licensing fees, countersignature fees or any other agency expense, except as specifically otherwise provided herein.

11. SALE OR TRANSFER OF AGENCY'S BUSINESS

The Agency shall give NWC thirty (30) days advance written notice of any sale or transfer of all or a material part of Agency's business, or any consolidation of Agency's business with a successor firm, in order that NWC may at its election and with the consent of the parties of interest:

- a. Allow Agency to assign this Agreement to the successor, or
- b. Enter into a new Agency Agreement with the successor, or
- c. Place in effect its Limited Agency Agreement with the successor authorizing the successor to service in-force insurance policies until expiration or termination.

Agency may not assign, transfer, encumber or otherwise dispose of this Agreement or any interest in this Agreement without NWC's prior written consent.

12. CHANGES IN AGREEMENT

Changes in this Agreement (other than changes for which specific provision is made elsewhere in this Agreement) may be made from time to time in accordance with the following provisions:

- a. The Agency and NWC may change this Agreement at any time by mutually agreed written revision signed by duly authorized representatives of the parties.
- b. NWC may change this Agreement after having given the Agency at least ninety (90) days written notice which sets forth the proposed revision and its effective date and provides that, at the Agency's prompt request, a NWC representative will meet with the Agency at least thirty (30) days before the effective date of the revision to discuss the reasons for the revision. Provided NWC has complied with the requirements of this part 12b, the proposed revision shall become effective on the effective date specified in the notice without further action being required of either party.

13. COMPLETE AGREEMENT

This signed Agreement incorporates all previous and contemporaneous discussions, representations, understandings, and agreements between the parties (if any) with respect to the placement of insurance policy business with NWC. No verbal or other statements, inducements, or representations have been made to or relied upon by Agency. The terms and conditions expressed in this Agreement shall not be altered except in writing, signed by an authorized officer of Agency and an authorized officer of NWC.

14. TERMINATION OF AGREEMENT

This Agreement shall terminate:

- a. Automatically, without notice, if any public authority cancels, suspends or declines to renew the Agency's license or certificate of authority in Agency state of residence; or
- b. Automatically on the effective date of the sale or transfer of all or a material part of the Agency's business, or its consolidation with a successor firm, unless this Agreement is assigned as provided in part 11; or

- c. Immediately upon either party giving written notice to the other in the event of abandonment, fraud, insolvency, bankruptcy or gross and willful misconduct on the part of such other party; or
- d. Upon thirty (30) days prior written notice by one party to the other party if the other party is in breach of this Agreement, unless the breach is cured within the thirty (30) day period.
- e. Upon sixty (60) days prior written notice by one party to the other party for any reason and at any time.

15. MISCELLANEOUS

- a. All unused forms, applications and other supplies, and any other property, furnished to the Agency by NWC shall always remain the property of NWC and shall be accounted for and promptly returned by the Agency to NWC on demand.
- b. The Agency shall not use or distribute any advertisements or other items in any format (e.g., written, electronic, etc.) referring to NWC, its services or insurance policies, not furnished or approved in writing by NWC.
- c. This Agreement supersedes all previous agency contracts or Agreements, whether oral or written, between the Agency and NWC and shall be effective as of the effective acceptance date stated on the last page of this Agreement and shall remain in full force and effect until suspended or terminated as provided in this Agreement.
- d. Parts 3, 4, 7, 8, 9, 10, 15, 16 and 17 shall survive the termination of this Agreement.
- e. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto. This Agreement may not be assigned or transferred, by operation of law or otherwise, by any party without the prior express written consent of the other party.
- f. The final determination of the invalidity or unenforceability of any provision or clause or portion thereof of this Agreement shall in no way impair or affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.
- g. The failure to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions nor shall any waiver of any breach or default or any relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such breach, default, right or power at any other time or times.
- h. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
- i. No party shall use, publish, circulate, or display the name, logos, trademarks of the other party, or any advertisements (including, but not limited to, any advertisements published on the internet), circulars, brochures, or other materials that name either of the other parties or their respective business partners unless the content thereof has received the prior written approval of the party named therein.
- j. Agency insureds who subsequently purchase water and or sewer line coverage from NWC whereby the sale is consummated by the Agency or in all cases where the insured's name was supplied by the Agency to marketing campaigns. NWC will have a relationship with the customer solely for the purpose of additional NWC product sales and service of the water and sewer line coverage and NWC shall not solicit any additional insurance products to any such insured that would compete with any of the Agency's current product offerings.

16. ARBITRATION

Except for equitable relief for breaches of part 17 (see part 17e.), if any disagreement between the Agency and NWC should arise between the Agency and NWC related to the interpretation or performance of this Agreement, including its formation or validity or any transaction under this Agreement whether arising before or after its termination, the Agency and NWC shall make a good faith effort to settle such disagreement.

However, if they are unable to settle such disagreement within fourteen (14) days or such longer period as may be agreed upon by both parties, then such disagreement shall be submitted to arbitration at the request of either party for settlement in accordance with the rules of the American Arbitration Association for commercial disputes, except as may be modified below. The following procedure shall apply:

- a. The party requesting arbitration shall so notify the other party in writing and shall specify the points of disagreement to be arbitrated,
- b. Within fifteen (15) days after receipt of such notification, the Agency and NWC shall jointly select an arbitrator, if they agree to submit the disagreement to one arbitrator; otherwise, within such period, the Agency and NWC shall each select an arbitrator and give his or her name and address to the other. These two arbitrators shall promptly select a third arbitrator. Any and all arbitrators selected shall be disinterested, former or active executives of a property and casualty insurance company or agency.
- c. The arbitrator(s) shall make all decisions consistent with the customs and practices of the insurance policy business and with a view to effect the general purpose of the Agreement in a reasonable manner. The arbitrator(s) shall be prohibited from awarding punitive, exemplary, treble or consequential damages of whatever nature.
- d. The written and signed decision of the jointly selected arbitrator, or a majority of the three arbitrators, consistent with the provisions of part c. above, shall be final and binding on the Agency and NWC. A copy of the decision shall be given to each the Agency and NWC within sixty (60) days after the date of the request for arbitration.
- e. All expenses of arbitration shall be borne equally by the Agency and NWC.

17. CONFIDENTIALITY AND PRIVACY

- a. Notwithstanding any provision of this Agreement to the contrary, all Confidential Information, as defined below, disclosed by the disclosing party (the "Owner") to the receiving party (the "Recipient") pursuant to this Agreement, shall be treated and maintained by the Recipient as confidential and shall not be used or disclosed by the Recipient except: (a) to the Recipient's employees and representatives to the extent that such use or disclosure is reasonably necessary for the performance of the Recipient's duties under this Agreement and such use or disclosure is not prohibited by applicable privacy laws, including, without limitation, the Gramm-Leach-Bliley Act and applicable federal and state regulations promulgated there under ("GLB"); (b) upon the written consent of the Owner; or (c) as required by law or regulatory authority. Prior to the disclosure of Confidential information to any third party that is permitted under the terms of this Agreement, except as required by law or regulatory authority, the Recipient shall require such parties receiving Confidential information to enter into a nondisclosure agreement to maintain all Confidential information in confidence according to terms that are at least as restrictive as this part 17.
- b. For purposes of this Agreement, "Confidential Information" means any information or material that is proprietary to a party or designated as Confidential Information by the Owner and not generally known by others, including, but not limited to, Nonpublic Personal Information (as that term is defined by GLB) of Owner's Customers and Consumers (as those terms are defined by GLB) and all confidential and proprietary information relating to the business of each party. The term Confidential Information includes information in both oral and written form or contained in any other type of storage medium. Confidential information shall not include:

- i. Information that is known by the Recipient at the time of receipt from the Owner and that is not subject to any other nondisclosure agreement between the parties;
 - ii. Information that the Recipient has a reasonable basis to believe is publicly available through no fault of the Recipient; or
 - iii. Information that is otherwise lawfully developed by the Recipient or lawfully acquired from a third party. "Lawfully developed" means information that is independently developed as shown by the books and records of the developer, "Lawfully acquired" means acquired from a third party without restrictions on further disclosure when the third party had the right to provide the information to the party receiving the information.
- c. Each party shall maintain adequate administrative, technical and physical safeguards to ensure the security and confidentiality of Confidential information it receives, to protect against any anticipated threats or hazards to the security or integrity of such information and to protect against any unauthorized access to or use of such information.
- d. In the event that the Recipient or anyone to whom the Recipient transmits the Confidential information becomes legally required to disclose the Confidential information, the Recipient shall provide the Owner with prompt written notice thereof so that the Owner may seek a protective order or other appropriate remedy, except Recipient is not required to provide notice to Owner for disclosures that are required to be made to regulatory agencies overseeing the activities of the Recipient in the Recipients ordinary course of business. The Recipient shall cooperate with the Owner in its efforts to obtain such remedies, but the Recipient shall not be required to undertake litigation or legal proceedings in its name. In the event that the Recipient is legally obligated to disclose any Confidential information, the Recipient shall furnish only the portion of the Confidential information which is legally required and shall exercise its reasonable best efforts to assure that confidential treatment shall be accorded the Confidential Information.
- e. Each party acknowledges that damages from a breach of its obligations under this part 17 would be difficult or impossible to measure and that the injured party shall be entitled to equitable relief, including injunction, in the event of a breach. Exclusive to this part 17, a party may seek equitable relief with respect to this part 17 in a court of law. The injured party may concurrently or alternatively seek legal relief by way of arbitration as provided for in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the _____ day of _____, 20____.

FOR THE AGENCY BY:

FOR NWC BY:

Name

Name

Title

Title

Effective Acceptance Date