

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
AUTOMATED VALUATION SERVICE (AVS)
LICENSE AGREEMENT FOR INSURERS

THIS AGREEMENT IS MADE THIS ___ day of _____, 2011 by and between the National Association of Insurance Commissioners, a Delaware nonprofit corporation with its principal place of business located in Kansas City, Missouri (“Licensor” and sometimes referred to as the “NAIC” or “SVO”), and the “Licensee”, hereafter defined as _____, located at _____. The Effective Date of this agreement shall be February 1, 2011.

RECITALS

The NAIC maintains a database of reported investments of insurers with Association Values. The Licensee has represented to the NAIC that it wishes access to the AVS and that its needs are consistent with Association Purposes (hereafter defined). Licensor is willing to grant such access on the terms and conditions set forth in this Agreement.

TERMS

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- 1) Definitions. The parties agree that the following words shall have the following meanings when used in this Agreement.
 - a) **Access Code** shall mean the user identification code assigned to the Licensee that allows access to the Automated Valuation Service (AVS) system.
 - b) **Access Fee** shall mean the fees described in Exhibit B, and any subsequent increases or decreases made by NAIC.
 - c) **Addendum Processing** shall mean the portion of the Year End Period (hereafter defined) whereby the VOS Database and FE Datafile are finalized for the current annual period.
 - d) **Agreement** shall mean this License Agreement together with Exhibits A, B, C, and D.
 - e) **Association Purposes** shall mean the entry of Association Values on Annual Statements as a means to determine eligibility for certain accounting treatment in the manner contemplated by applicable state insurance law, rules, regulations, procedures and policy and shall include activity reasonably related thereto.
 - f) **Association Value** shall mean, collectively, an NAIC Designation from the VOS Database or FE Datafile and the Unit Price published in the VOS CD-ROM for a security.
 - g) **AVS** shall mean Automated Valuation Service, a proprietary database of reported insurer investments and the Association Values assigned to such investments by the NAIC, published five times per year in the VOS CD-ROM (hereafter defined) together with the software, reports, files, Access Code, user instructions, and procedures by which the Licensee is granted access to the AVS.
 - h) **CUSIP** shall mean a securities identification system owned by the American Bankers Association and maintained by Standard and Poor’s CUSIP® Global Services.
 - i) **Exhibit A, B, C and D** shall mean the Exhibits attached to this License Agreement and so designated.
 - j) **Licensed Client** shall mean an insurer with licensed access to the AVS that has designated a Third Party Administrator to manage its Portfolio and assigned said Third Party Administrator its Portfolio Rights.
 - k) **Licensee** shall mean the undersigned, along with affiliates/subsidiaries identified in Exhibit A, each of which must have an NAIC Company Code identifier.
 - l) **NRSRO** shall mean Nationally Recognized Statistical Rating Organization, as defined by the Securities Exchange Commission in its Rule 240.15c3-1.
 - m) **Person** shall mean a natural person, state, municipality or other political subdivision, corporation, partnership, unincorporated association or other business or legal entity, whether related to Licensee or not.

- n) **Portfolio** shall mean a list of CUSIP numbers, representing an insurer Licensee's securities and not the securities of any other Person, entered into the AVS by Licensee or designated Third Party Administrator.
 - o) **Portfolio Rights** shall mean the right and ability of Licensee to access the AVS, create and maintain a Portfolio, and request Valuation Reports for said Portfolio.
 - p) **Purposes and Procedures Manual** shall mean the most recent version of the *Purposes and Procedures of the NAIC's Securities Valuation Office*, owned, authored, and published by the NAIC, setting forth the SVO's rating and valuation methodology.
 - q) **Rating Agencies** shall mean those organizations which analyze the default probability of securities and express credit opinions via a proprietary alphanumeric system to allow investors to compare default probability between one or more securities in public and private transactions. As used herein the term Rating Agencies includes NRSROs and excludes the SVO.
 - r) **Report** shall mean a list of CUSIPs with corresponding Association Values created and delivered electronically by the AVS.
 - s) The phrases **Annual Statements, FE Datafile, NAIC Designations, SVO, Unit Price** and **VOS Database** shall have the meaning used in the *Purposes and Procedures Manual*.
 - t) **SVO** shall mean the Securities Valuation Office of the NAIC.
 - u) **Third Party Administrator** shall mean an individual or group of individuals that are in the business of advising, managing, or procuring AVS data for insurance companies' investment portfolios, and have been retained by one or more Licensed Clients to do so.
 - v) **VOS CD-ROM** shall mean the Valuation of Securities CD-ROM published by the NAIC each quarter and the Supplement published at or about February of the following year.
 - w) **Year End Report** shall mean a Report of Licensee's Portfolio produced by the AVS during the Year End Period and constituting final and official Association Values.
 - x) **Year End Period** shall mean the time period commencing January 1 and ending with the NAIC's Addendum Processing.
 - y) **Bill-To Contact** shall mean the person responsible for prompt payment of all AVS invoices and to whom all invoices shall be addressed as described in Exhibit C.
 - z) **Ship-To/Sold To Contact** shall mean the person responsible for AVS account actions, activity, and usage; and to whom any correspondence will be mailed or shipped as described in Exhibit C.
- 2) **Grant of License.** The Licensor hereby grants to the Licensee a nonexclusive, nontransferable License to the AVS for the term described in Section 3, in accordance with the limitations in Sections 5, 6 and 7, and for the price described in Exhibit B. This access shall be specifically granted to the user selected by the Licensee as defined in Exhibit C.
 - 3) **Term.** The initial term of the Agreement shall commence on the Effective Date and shall expire on January 31 of the following year. The agreement is renewable for subsequent one-year terms and notification will be made to the Licensee at least sixty (60) days prior to the expiration date of each such term through the NAIC's request for the Licensee to update Exhibit A prior to January 31 in order for the Licensee to access the AVS at the start of each subsequent term.
 - 4) **Fees.** The Licensee hereby agrees to pay the fees described in Exhibit B. **NAIC reserves the right to increase or decrease the fees described herein no more than once annually, and may do so by issuing a revised Exhibit B at least 60 days prior to January 31 of each year, which shall be effective unless the Licensee terminates the agreement in accordance with Section 8(c).**

5) Limitations on Use.

- a) **Association Purposes Only.** The Licensee represents and warrants that it will use the AVS only for Association Purposes.
- b) **Separate Portfolio.** Licensee shall exercise Portfolio Rights only for its Portfolio and not commingle such with the Portfolio of any other Person to generate a Report.
- c) **No Distribution.** The Licensee agrees that its use of the AVS shall be solely for its own internal use. Licensee may not market, publish, sell, share, transfer, license or redistribute its Access Code or any information derived from the AVS in any manner or form, to any entity or person that is not an affiliate as named on Exhibit A. Notwithstanding the foregoing, Licensee shall have the right to reproduce the information and data for its internal use, provided such internal use does not violate Section 5(f) below. Violation of this limitation on use will result in termination of this license and may result in legal action.
- d) **Nonassignable.** Except as to affiliates/subsidiaries identified in Exhibit A, Licensee's right to the AVS, Access Code, and any documentation or documents related thereto may not be assigned, licensed, or otherwise transferred without the prior written consent of the NAIC.
- e) **No Transfer of Title, Copyright.** The AVS is proprietary to the NAIC. Licensee acknowledges that the grant of this License does not transfer title or ownership of the AVS or any of its parts to the Licensee. The Licensee hereby expressly acknowledges that the contents of the AVS are copyrighted by the NAIC. Except for a reasonable number of back-up copies, any software or other material transferred to the Licensee in connection with the AVS may not be duplicated on any media, including without limitation, software, magnetic tape, disk or electronic memory.
- f) **CUSIP Database.** Licensee agrees and acknowledges that the CUSIP Database is and shall remain valuable intellectual property owned by, or licensed to CUSIP Service Bureau, Standard & Poor's ("S&P") and the American Bankers Association ("ABA"), and that no proprietary rights are being transferred to Licensee in such materials or in any of the information contained therein. Licensee agrees that misappropriation or misuse of such materials will cause serious damage to S&P and ABA; consequently, Licensee agrees that in the event of any misappropriation or misuse, S&P and ABA shall have the right to obtain injunctive relief.

Licensee agrees that Licensee shall not publish or distribute in any medium the CUSIP Database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the normal internal processing of security transactions. Licensee further agrees that the use of CUSIP numbers and descriptions is not intended to create or maintain, and does not serve the purpose of the creation or maintenance of a file of CUSIP descriptions or numbers for any other third party recipient of such service and is not intended to create and does not serve in any way as a substitute for the CUSIP MASTER TAPE, PRINT, ELECTRONIC and/or CD-ROM Services.

6) Representations

The NAIC encourages the Licensee to become familiar with the most recent version of the *Purposes and Procedures Manual*, which can be purchased separately. Licensee understands and acknowledges that:

- a) Association Values are final only when published in the VOS CD-ROM or as part of an AVS Period End order and that until so published may be changed at any time in the sole discretion of the NAIC;
- b) The legal appropriateness of investments, limitations or restrictions on investments of a particular type or the final accounting treatment actually accorded to insurer investment are state functions legally entrusted to insurance officials in context of applicable law and practice. The SVO has no regulatory authority;
- c) NAIC Designations are not market substitutes for or functional equivalents of the credit ratings of Rating Agencies and are not produced to permit investors to compare the likelihood of default or of full and timely payment between one or more securities; and
- d) NAIC Designations or prices are not intended to be and should not be used as the basis upon which to buy or sell any security.

7) Warranties and Indemnification

Licensee agrees that the following terms and conditions shall survive any termination of its right to access the materials identified above.

- a) Association Values are produced solely to assist NAIC members in determining appropriate accounting treatment for the investments of insurers. Many NAIC Designations are derived from the rating of Rating Agencies or NRSROs and NAIC prices are often derived from professional pricing services. All Association Values are based on information provided by or on behalf of insurers or obtained by SVO analysts from publicly available information. All such information is believed to be accurate and reliable; however, the truth, accuracy and completeness thereof is necessarily dependent upon the source of the information. Also, there is the possibility of human or mechanical error in the production or transmission of information as well as the possibility of incomplete or untimely disclosure by insurers or other third party providers of information. LICENSOR EXPRESSLY DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND NO EXPRESS OR IMPLIED WARRANTY IS MADE RESPECTING THE TRUTH, ACCURACY, TIMELINESS OR COMPLETENESS OF ASSOCIATION VALUES BY THE LICENSOR TO THE LICENSEE OR ANY OTHER PERSON OR ENTITY.
- b) NEITHER S&P, ABA NOR ANY OF THEIR AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY OF THE INFORMATION CONTAINED IN THE CUSIP DATABASE. ALL SUCH MATERIALS ARE PROVIDED TO LICENSEE ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE NOR WITH RESPECT TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF SUCH MATERIALS. NEITHER S&P, ABA NOR THEIR AFFILIATES SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF S&P, ABA OR ANY OF THEIR AFFILIATES PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE EXCEED THE FEE PAID BY LICENSEE FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH SUCH CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN. FURTHERMORE, S&P AND ABA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.
- c) LICENSEE ASSUMES SOLE RESPONSIBILITY AND RISK FOR ITS USE OF THE AVS AND INDEMNIFIES AND HOLDS LICENSOR HARMLESS FROM AND AGAINST ANY LIABILITY OR CLAIM OF ANY PERSON THAT IS ATTRIBUTABLE TO THE USE, INABILITY TO USE, OR IMPROPER USE BY LICENSEE OF THE AVS OR INFORMATION CONTAINED THEREIN.
- d) Licensor shall not be liable for and LICENSEE EXPRESSLY WAIVES ANY CLAIM FOR ANY LOSS, COST OR INJURY, DIRECT OR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOST SALES, LOST PROFIT, BUSINESS INTERRUPTION, OR THIRD PARTY CLAIMS), SUFFERED BY LICENSEE AS A RESULT OF RELIANCE ON OR USE OF ASSOCIATION VALUES. In the event of any dispute between the Licensee and the Licensor, the parties agree that the Licensee's sole remedy and Licensor's sole liability shall in no event exceed the actual License fee paid by the Licensee during the current period, whether such claim is based on tort, contract or other legal or equitable theory.

- e) Notwithstanding the foregoing, Licensor represents and warrants that the AVS does not and will not violate or infringe any enforceable patent, trademark, trade secret, copyright, or similar intellectual property right. Licensor will defend all claims and pay all losses that a court finally awards or any settlement attributed to any claim made against Licensee alleging that the AVS infringes upon an enforceable patent, trademark, trade secret, copyright or similar intellectual property right, provided Licensee (1) gives Licensor prompt written notification within 15 days of receipt of notice of any such claim; and (2) allows Licensor to control, and fully cooperates with the Licensor in the defense and all related settlement negotiations. In no event shall Licensor be liable for loss of profit, goodwill, or other special or any consequential damages suffered by Licensee in any way attributable to the AVS.
- 8) Violation, Termination and Administrative Procedure.
- a) Violation. Licensee agrees that the violation of any term of this License Agreement shall constitute a violation of the License.
 - b) Termination. Upon Licensee's violation of Section 5 of this License, the NAIC may, in its sole discretion, immediately terminate the License. If the NAIC shall decide to terminate the License it shall terminate the Access Code and delete Licensee's Portfolio from the AVS. The Licensee understands and agrees that it shall have no right of action for such termination.
 - c) Voluntary Termination by Licensee. As previously noted in Section 3, the initial term of the Agreement shall commence on the Effective Date and shall expire on January 31 of the following year. The agreement is renewable for subsequent one-year terms. Licensee may terminate this Agreement effective on the expiration date. In the event that Licensee desires to terminate the agreement, notification must be made prior to January 31 or Licensee will remain liable for the full annual access fee. Notification of said termination must be made in writing as per the contact in Section 9(e). All charges incurred by Licensee prior to receipt of written termination notice that has been acknowledged by the NAIC are valid and must be paid.
 - d) Administration. Licensor may modify or alter the form of the License Agreement at any time by providing Licensee with a written notice of such change(s). If the Licensee agrees to the proposed terms it shall execute a copy of the revised License Agreement and return it to the Licensor. If the Licensee does not agree to the changes it will notify the Licensor in writing and such notice shall constitute the notice to terminate contemplated in Section 8(c). Any notice required to be given hereunder shall be sent to the NAIC as specified in Section 9(e).
- 9) Miscellaneous Provisions.
- a) Force Majeure. Neither party shall be liable for any delay or failure to perform any aspect of this Agreement as a result of any interruption of service, resulting directly or indirectly from natural disasters, acts of public enemies, war, accidents, fires, electrical failures, machine failures or unavailability, postal delays, explosions, the elements, strikes, lockouts, labor disputes, governmental orders or regulations, observations of holidays, shortages of suitable parts, materials or any other cause beyond the control of either party.
 - b) Law Governing Agreement; Arbitration. This Agreement shall be construed in accordance with the laws of the State of New York. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
 - c) Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties respecting the subject matter of this Agreement and merges all prior discussions between the parties. Neither of the parties shall be bound by any conditions, definitions, Warranties, understandings or representations with respect to the subject matter of this Agreement other than as expressly provided herein or as duly set forth in a written modification of this agreement as contemplated by Section 8(d) above.

- d) **Survivability.** The provisions of Sections 6, 7 and 8 of this Agreement shall survive the expiration or termination of this agreement.
- e) **Notification.** Notification to Licensor can be made via fax at 816-460-0117, via email at avsis@naic.org, or via standard mail at ATTN: NAIC Sales & Marketing Manager, NAIC Central Office, 2301 McGee, Suite 800, Kansas City, MO 64108.

In Witness Whereof, the parties have hereunto set their hands, intending to be bound.

NAIC

Company Name

By

By

Julienne L. Fritz
Printed Name

Printed Name

Director
Title

Title

Date

Date

Exhibit A

INSURANCE COMPANY AND ITS AFFILIATES/SUBSIDIARIES IDENTIFICATION

The following insurance companies are either the Licensee or affiliates/subsidiaries of the Licensee to be covered by the 2011 License Agreement. The company listed first must be the company named as the Licensee, under which the AVS Account will be created. Changes to Exhibit A can be made annually before January 31.

	(1) Full Company Name and Physical Address	(2) Contact for AVS	(3) Contact Phone Number and email address	(4) NAIC Code	(5) Figure on Line 1, column 3, for most recent Annual Statement Assets Page.	(6) Figure on Line 2.1, Column 3, for most recent Annual Assets page.	(7) Figure on Line 2.2, Column 3, for most recent Annual Statement Assets page.	(8) Total of Columns 5+6+7
	<i>Sample Insurance Co 5555 Main St Anytown, MN. 555555</i>	<i>John Doe</i>	<i>(555)555-5555 John.doe@sampleinsco.com</i>	55555	555,555,5555	123,456,789	987,654,321	1,6,666,666,665
1								
2								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Total for Licensee	
---------------------------	--

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
AUTOMATED VALUATION SERVICE
LICENSE AGREEMENT FOR INSURERS

Exhibit B
AVS Standard Service and Pricing Information

The following Standard Services are provided under the Annual Access Fee:

- Users may create and maintain AVS portfolios online.
- Users may obtain valuation information on securities which may or may not be owned by the Licensee.
- Users may request unlimited Reports during the service period, excluding posted system shut-down and maintenance periods.
- A Year End Report will automatically be created for all active portfolios, unless the user has elected not to receive such by de-selecting the appropriate box on the Year-End Order section of the AVS system.
- Optional customizable notification report of rating changes.

Please refer to the AVS System User's Guide for complete directions.

The AVS Annual Fee shall be determined based on the tiered fee structure outlined in the table below. Licensee must fully disclose all information required by Exhibit A of this Agreement. The AVS Annual Fee is determined based on the total value of Schedule D securities as listed on the "Total for Licensee" line in Exhibit A.

For example, if Exhibit A lists four insurers with a total value of Schedule D securities of \$2,000,000,000, the AVS Access fee for the Licensee would be \$6,500.

Value of Schedule D Securities	Annual AVS Access Fee
\$200 Billion +	\$30,000
\$100 Billion up to \$200 Billion	\$25,000
\$50 Billion up to \$100 Billion	\$20,000
\$25 Billion up to \$50 Billion	\$15,000
\$10 Billion up to \$25 Billion	\$10,000
\$3 Billion up to \$10 Billion	\$7,500
\$1 Billion up to \$3 Billion	\$6,500
\$750 Million up to \$1 Billion	\$5,500
\$500 Million up to \$750 Million	\$4,500
\$250 Million up to \$500 Million	\$3,500
Up to \$250 Million	\$2,500

NAIC reserves the right to increase or decrease the fees described herein.

Annual Access Fee for License for the current period: _____.

Optional Information on Products Referenced in Section 6 of this Agreement

Valuations on CD-ROM (VOS CD-ROM): The product is a copy of the VOS Database and FE Datafile for each quarter and the year end addendum period. Licensee is eligible to receive a significant discount on the VOS CD-ROM. Please call the NAIC Publications Department at (816) 783-8300 to order.

Purposes and Procedures Manual: Users are strongly urged to purchase this publication as it contains vital information on the policies of the SVO and in turn the workings of the AVS. The manual is published twice each year and is available for download via the NAIC's online store at NAIC.org or by calling (816) 783-8300 to order.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
AUTOMATED VALUATION SERVICE
LICENSE AGREEMENT FOR INSURERS

Exhibit C
LICENSEE CONTACTS AND SYSTEM USER IDENTIFICATION

Access shall be specifically granted to the user selected by the Licensee, which is detailed below:

A) Bill-To Contact as defined in Section 1(w)

Company Name: _____

Address: _____

City, State, Zip Code: _____

Company Phone Number: _____

Contact Name: _____

Contact Phone Number: _____

Contact E-Mail Address: _____

B) Ship-To/Sold-To Contact as defined in Section 1(x)

Company Name: _____

Address: _____

City, State, Zip Code: _____

Company Phone Number: _____

Contact Name: _____

Contact Phone Number: _____

Contact E-Mail Address: _____

C) IDENTIFICATION OF LICENSEE USERS NEEDING ACCESS TO THE AVS SYSTEM:

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
AUTOMATED VALUATION SERVICE
LICENSE AGREEMENT FOR INSURERS

Exhibit D
DESIGNATED THIRD PARTY ADMINISTRATOR AUTHORIZATION

This Designated Third Party Administrator Authorization is made this _____ day of _____, 201__ between _____ (also known as Third Party Administrator) located at _____ and _____ (also known as the Licensed Client) located at _____.

Licensee and its affiliates / subsidiaries as identified in Exhibit A of this agreement hereby authorize _____ to act as a Third Party Administrator on its behalf.

Licensee recognizes that by completing this Authorization only the aforementioned designated Third Party Administrator shall have access to modify the Licensee's Portfolio or request AVS information on behalf of the Licensee. The Third Party Administrator shall use its own AVS Access Code to access this information. This shall be set up on the AVS System as follows:

User ID: _____

Bill-To Contact as defined in Section 1(v)

Company Name: _____

Address: _____

City, State, Zip Code: _____

Company Phone Number: _____

Contact Name: _____

Contact Phone Number: _____

Contact E-Mail Address: _____

Ship-To/Sold-To Contact as defined in Section 1(w)

Company Name: _____

Address: _____

City, State, Zip Code: _____

Company Phone Number: _____

Contact Name: _____

Contact Phone Number: _____

Contact E-Mail Address: _____

This authorization becomes effective upon payment by both Licensee and Third Party Administrator of their respective AVS fees and will remain in effect until terminated by either Licensee or Third Party Administrator. However, this authorization will terminate immediately upon the termination of the Agreement between the NAIC and the Licensee or upon the termination of the Agreement between the NAIC and the Third Party Administrator.