

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
AUTOMATED VALUATION SERVICE PLUS (AVS+)
LICENSE AGREEMENT FOR THIRD PARTY ADMINISTRATORS

THIS AGREEMENT IS MADE 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”. This License Agreement begins February 1, 20__ for an initial term of one year. Thereafter, the effective date of this agreement shall be from February 1 of the current year through January 31 of the following year.

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 Plus (AVS+) system.
 - b) **Access Fee** shall mean the fees described in Exhibit A, 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 Exhibit A.
 - 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 for a security.
 - g) **AVS+** shall mean Automated Valuation Service Plus, a proprietary database of reported insurer investments and the Association Values assigned to such investments by the NAIC, 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** shall mean the Exhibit attached to this License Agreement and so designated. A new Exhibit A will be made available each year to Licensee.
 - 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.
 - 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 the securities of a Licensed Client and not of any other Person, entered into the AVS+ by Licensee.

- o) **Portfolio Rights** shall mean the right and ability of each Licensee to access the AVS+, maintain Licensed Clients' Portfolios and request Valuation Reports for said portfolios.
 - p) **Purposes and Procedures Manual** shall mean the most recent version of the *Purposes and Procedures Manual of the NAIC Investment Analysis 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) **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.
 - w) **Year End Period** shall mean the time period commencing January 1 and ending with the NAIC's Addendum Processing.
 - x) **Bill-To Contact** shall mean the person responsible for prompt payment of all AVS+ invoices and to whom all invoices shall be addressed.
 - y) **Primary User Contact** shall mean the person responsible for AVS+ account actions, activity, and usage; and to whom any correspondence will be mailed or shipped.
- 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 6, 7 and 8, and for the price described in Exhibit A. This access shall be specifically granted to the user(s) selected by the Licensee.
 - 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.
 - 4) **Fees.** The Licensee hereby agrees to pay the fees described in Exhibit A. 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 A 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 9(c).
 - 5) **Standard Services.** The following services are provided as part of the Annual Access Fee:
 - a) Users may create and maintain AVS+ portfolios online.
 - b) Users may obtain valuation information on securities which may or may not be owned by the Licensee.
 - c) Users may request unlimited Reports during the service period, excluding posted system shut-down and maintenance periods.
 - d) A Year-End Report will be automatically created for all active portfolios, unless the user has elected not to receive same.
 - e) Users may customize receipt of notifications regarding specific securities.
 - 6) **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 each Licensed Client's Portfolio

separately and not commingle such with that of any other Person to generate a Report. Licensor shall assign separate Access Codes to Licensee and each Licensed Client as necessary to ensure compliance with this provision.

- c) **No Distribution.** The Licensee agrees that its use of the AVS+ shall be solely for its own internal use as a Third Party Administrator. 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 named as a Licensed Client on Exhibit A. Notwithstanding the foregoing, Licensee shall have the right to reproduce the information and data for its internal use. Violation of this limitation on use will result in termination of this license and may result in legal action.
- d) **Nonassignable.** 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 and the information contained therein is and shall remain valuable intellectual property owned by, or licensed to, CUSIP Global Services ("CGS") 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. Any use by Licensee outside of the clearing and settlement of transactions requires a license from CGS, along with an associated fee based on usage. Licensee agrees that misappropriation or misuse of such materials will cause serious damage to CGS and ABA, and that in such event money damages may not constitute sufficient compensation to CGS and ABA; consequently, Licensee agrees that in the event of any misappropriation or misuse, CGS and ABA shall have the right to obtain injunctive relief in addition to any other legal or financial remedies to which CGS and ABA may be entitled.

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 clearing and settlement 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 master file or database of CUSIP descriptions or numbers for itself or any 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, DB, INTERNET, ELECTRONIC, CD-ROM Services and/or any other future services developed by the CGS.

7) 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 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.

8) 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 CGS, 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 CGS, 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 CGS, 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, CGS 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+.

9) 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 6 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 10 (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 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 9 (c). Any notice required to be given hereunder shall be sent to the NAIC as specified in Section 10 (e).

10) 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 securitiessupport@naic.org, or via standard mail at ATTN: AVS+ Administrator, NAIC Central Office, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
AUTOMATED VALUATION SERVICE PLUS
LICENSE AGREEMENT FOR THIRD PARTY ADMINISTRATORS
Exhibit A

1. THIRD PARTY ADMINISTRATORS IDENTIFICATION

TPAs must pay an annual access fee of \$4,500.

For TPAs, the annual access fee is a flat fee, regardless of how many Licensed Clients' Portfolios are maintained. Payment of the annual access fee allows the TPA to utilize AVS+ in the name of each Licensed Client for that annual period. If a TPA's service is deactivated for non-payment of the AVS+ Annual Fee, any subsequent reactivation shall be subject to a reactivation fee in the amount of \$500 in addition to the Annual Fee listed above.

Each Licensed Client of a TPA must execute its own AVS+ License Agreement and pay its annual fee in full to the NAIC before access shall be granted to the designated TPA.

Year End Reports will be created for all active client portfolios.

2. Annual Access Fee for Licensee for the current period: \$4,500

3. Licensee Contacts and System User Identification. Access shall be specifically granted to the user(s) selected by Licensee.

* Additional users beyond the three listed above shall be \$150 per user per year.