

RATE AND FORM FILING
DATA HOSTING SERVICES AGREEMENT

This Data Hosting Services Agreement (“Agreement”) is entered into on this ____ day of _____, 20__ (“Effective Date”), by and between the National Association of Insurance Commissioners (“NAIC”), with its principal office presently located at 1100 Walnut Street, Suite 1500, Kansas City, MO 64106 and _____ (“Customer”), with its principal office presently located at _____, collectively hereinafter referred to as the “Parties”.

PREAMBLE

A. NAIC is a nonprofit corporation organized under the laws of the State of Delaware, whose membership consists of the chief insurance regulatory officials of the fifty States, the District of Columbia and the United States Territories.

B. NAIC’s electronic rate and form filing product, known as the System for Electronic Rate and Form Filing (“SERFF”), enables the insurance industry to send and state insurance departments to receive, comment on, and approve or reject insurance industry rate and form filings.

C. As a stand-alone service, separate from the rate and form filing services provided through a license to SERFF, NAIC will electronically store rate and form filings for insurance companies (“Data Hosting Services”), pursuant to this Agreement.

D. Customer has previously agreed to the provisions of the SERFF License Agreement with NAIC and has determined it would like to use NAIC’s Data Hosting Services.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, it is hereby agreed to as follows:

AGREEMENT

1. Services

NAIC will electronically store Customer rate and form filings for filings made with state and/or territory insurance regulatory agencies occurring on or after the Effective Date of this Agreement. NAIC will also electronically store any other Customer rate and form filings migrated or imported into SERFF prior to the Effective Date. Prior to January 2020, NAIC will make every effort to migrate filings previously hosted by a data hosting vendor, subject to the data hosting vendors’ agreement.

Customer may access such filings via SERFF Advanced Search, Export Tool, and the ability to create and track paper filings will be available to Customer for its hosted filings.

2. Customer Obligations and Acknowledgements.

Customer must have agreed to the provisions of the SERFF License Agreement before any Data Hosting Services will be provided. All provisions of the SERFF License Agreement related to Title are hereby incorporated into this Agreement.

Customer acknowledges that rate and form filings submitted to the states and territories through SERFF are considered state or territory data and as such are subject to state or territory records retention and public access laws, regulations and directives. Such states and territories may remove rate and form filings from state or territory and public access using the SERFF State Data Retention Feature. Customer will retain full access to any of its filings through NAIC as a result of entering into this Agreement. Such access will be contingent upon Customer maintaining a data hosting agreement with the NAIC. In the event Customer gives notice of termination of this Agreement, filings will be subject to state or territory records retention and public access laws, regulations and directives and as such may not be available should Customer decide to enter into a new data hosting agreement at a later date.

Customer agrees to provide to the NAIC, and maintain on an ongoing basis, an accurate listing of SERFF Instances for which Data Hosting Services are being requested. For purposes of this Agreement "SERFF Instance" means each individual filing repository in SERFF.

3. Term

This Agreement shall commence on the Effective Date noted above and shall continue through December 31, 2020 ("Initial Term"). The agreement will auto-renew for up to three (3) one-year terms (each one-year term being a "Renewal Term"), unless either party terminates under the provisions in Section 9 or Customer provides notice of non-renewal thirty (30) days prior to the beginning of the Renewal Term. The Term for each SERFF Instance identified by the Customer shall run concurrently with the Customer's term regardless of when the SERFF Instance is added.

4. Fees

All fees charged are on a per SERFF Instance basis. For the Initial Term and for each SERFF Instance, the NAIC will charge Customer the same annual fee Customer paid to its rate and form filing hosting provider for the previous 12 months of service, based on invoices paid or other legal documentation. Following the Initial Term, the annual fee for each SERFF Instance will be as posted on the SERFF Web page (www.SERFF.com). There shall be no prorating of the annual fee for SERFF Instances that are added during the Initial Term or the Renewal Term. The annual fee will be posted on or before November 1 of the previous calendar year as part of the NAIC's public budget process. An e-mail notification of the Renewal Term's pricing will be sent to Customer on or before each November 15, to allow Customer to meet the requirements for a 30-day notice of non-renewal, should the Customer wish to discontinue the service.

All invoices from NAIC shall be due and payable within thirty (30) days of receipt by Customer and shall be sent to:

NAIC SERFF
P.O. Box 875976
Kansas City, MO 64187-5976

5. Confidentiality

The Parties acknowledge that in the course of this Agreement, each may acquire information about the other, its business activities and operations, technical information, trade secrets, copyrighted material, and its client and financial information, all of which shall be deemed to be Confidential Information (the "Confidential Information"). All Confidential Information shall be maintained using reasonable security measures similar to those measures used by the parties for the protection of their own Confidential Information of a similar kind. Neither party to this Agreement shall be entitled to use the Confidential Information obtained from the other, for purposes other than those contemplated by this Agreement, without express prior written consent. The term "Confidential Information" shall not include any information that, through no fault of the possessing Party, is in the public domain, is developed independently by or on behalf of a Party as shown by documentary evidence, or becomes disclosed to either Party by a third party not having an obligation of confidence to either Party or through this Agreement.

It is expressly agreed and understood that if a court of competent jurisdiction issues an order to compel the NAIC to produce Confidential Information covered by this Agreement, the NAIC may comply with such an order. The NAIC agrees to provide prompt notice of the order to compel in order to provide Customer with an opportunity to file a timely appeal from or otherwise contest the order. No compulsory disclosure to third parties of Confidential Information disclosed under the Agreement shall be deemed a waiver of any privilege, protection from disclosure or other claim of confidentiality.

6. Indemnification Obligations

NAIC represents and warrants that SERFF does not and will not violate or infringe any enforceable patent, trademark, trade secret, copyright or similar right. NAIC will pay all losses that a court finally awards or any settlement or legal costs attributed to any claim that SERFF infringes any enforceable patent, trademark, trade secret, copyright or similar right. To qualify for such payment, Customer must (1) give NAIC prompt written notification of any such claim, and (2) allow NAIC to control, and fully cooperate with NAIC in, the defense and all related settlement negotiations. But in no event shall NAIC be liable for loss of profit, goodwill, or other special or any consequential damages suffered by Customer in any way attributable to the SERFF or the Data Hosting Services.

Customer assumes sole responsibility for all of its use of SERFF Data Hosting Services and indemnifies, defends, and holds harmless NAIC from any liability or claim that is attributable to improper use of SERFF and SERFF Data Hosting Services by Customer or Customer's subsidiaries or affiliates.

7. Warranty; Limitation of Liability

Except as provided elsewhere in this Agreement, NAIC has MADE NO WARRANTY OR PROMISE, EITHER EXPRESS OR IMPLIED, with respect to Data Hosting Services covered by this Agreement. NAIC does not guarantee uninterrupted access to SERFF and electronically stored Customer data. NAIC expressly disclaims **THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.**

Except as provided elsewhere in this Agreement, THERE ARE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, THAT EXTEND BEYOND THE DESCRIPTION OF THE DATA HOSTING SERVICES SET FORTH IN THIS AGREEMENT. NAIC SHALL NOT BE LIABLE FOR AND CUSTOMER EXPRESSLY WAIVES ANY CLAIM FOR ANY LOSS, COST, OR INJURY, DIRECT OR INDIRECT (INCLUDING, BUT NOT LIMITED TO, LOST SALES, LOST PROFIT, BUSINESS INTERRUPTION, OR THIRD-PARTY CLAIMS), SUFFERED BY CUSTOMER AS A RESULT OF RELIANCE ON OR USE OF NAIC DATA HOSTING SERVICES.

Except for the Parties' indemnification obligations under this Agreement, in the event of any dispute between NAIC and Customer, it is mutually agreed and understood that both Parties' sole remedy and sole liability to the other party shall be in the form of liquidated damages which shall in no event exceed the actual fees paid by Customer, whether such claim is based on tort, negligence, or other legal or equitable theory.

8. Nonassignability

Customer agrees that neither this Agreement nor any of the rights granted hereunder shall be transferable or assignable to any other party without the express prior written permission of NAIC.

9. Cancellation or Termination

This Agreement shall remain in full force and effect until cancelled or terminated as provided herein. The NAIC can terminate this Agreement with no less than ninety (90) days written notice at the direction of its Executive Committee. There shall be no proration of the annual fee in the event of early termination, unless Customer terminates this agreement due to breach of this Agreement by NAIC.

In the event one party to this Agreement deems the other party to this Agreement to be in breach of this Agreement, the party alleging breach shall provide written notice to the other party specifying said breach and giving the party in breach of the Agreement fifteen (15) days within which to cure said breach and avoid termination. If said breach is not cured within fifteen (15) days of notification, the Agreement may be terminated by the party alleging breach.

The provisions of Sections 2, 5, 6, 7, 9, 10, 11, 12, and 13 shall survive the termination of this Agreement.

10. Publicity

Customer agrees that it will not use the name of NAIC in any form or attribution in connection with any solicitation, publicity, advertising, endorsement or other promotion without the express prior written permission of NAIC.

11. Dispute Resolution and Forum

Except for claims relating to intellectual property issues, any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration at Kansas City, Missouri, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. All arbitration proceedings shall be conducted in the English language. The Parties hereby agree that any claims relating to intellectual property issues shall be instituted in federal court in the Western District of Missouri, Kansas City, Missouri. Each party agrees not to institute any litigation or proceeding against the other party except as provided herein.

12. Governing Law

This Agreement shall be governed by the laws of the State of Missouri, U.S.A.

13. Severability

If any one or more provisions of this Agreement are held invalid by any court of competent jurisdiction or are voided or nullified for any reason, such provision shall be reformed so as to be effective as nearly as intended by the Parties, and together with the other remaining provisions and paragraphs shall continue in full force and effect and shall be binding upon the Parties so as to carry on the intents and purposes of the Parties as nearly as possible.

14. Notices

Any and all notices that may be served with respect to this Agreement, including notice of termination, shall be in writing and shall be deemed sufficiently served if mailed by registered mail addressed to the Parties specified below.

NAIC:
Donna L. Powers
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, Missouri 64106

Customer:

15. Miscellaneous.

Nothing in this Agreement shall be construed to constitute or appoint either party as a partner, joint venturer, agent or representative of the other party for any purpose whatsoever, or to grant to either party any rights or authority to assume or create any obligation or responsibility, express or implied, for or on behalf of or in the name of the other, or to bind the other in any way or manner whatsoever.

THIS AGREEMENT CONTAINS A PROVISION FOR BINDING ARBITRATION.

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

NAIC

Customer

By

By

James Woody

Printed Name

Printed Name

Chief Financial Officer

Title

Title

Date

Date