



175 TownPark Drive, Suite 400,  
Kennesaw, GA 30144

## APPROVED UNDERWRITER AGREEMENT

THIS APPROVED UNDERWRITER AGREEMENT (the “Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by and between \_\_\_\_\_ (the “Company”) and AVS Underwriting, LLC, a Georgia limited liability company, (the “Approved Underwriter”).

### RECITALS

Whereas, the Company desires to engage the Approved Underwriter to provide certain life expectancy underwriting services with respect to certain individuals whose lives are insured under life insurance policies (“insured lives”), subject to the terms and conditions of this Agreement.

Therefore, for and in consideration of the mutual benefits and promises herein described, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

### ARTICLE I.

#### CONSTRUCTION

**SECTION 1.1 Usage of Terms.** The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Section, subsection and exhibit schedule references contained in this Agreement are references to sections, subsections, exhibits and schedules in or to this Agreement unless otherwise specified; with respect to all terms in this Agreement, the singular includes the plural and the plural the singular; words importing any gender include the other gender; references to “writing” include printing, typing, lithography and other means of reproducing words in a visible form; references to agreements and other contractual instruments include all subsequent amendments, amendments and restatements and supplements thereto or changes therein entered into in accordance with their respective terms and not prohibited by this Agreement; references to Persons include their permitted successors and assigns; references to laws include their amendments and supplements, the rules and regulations thereunder and any successors thereto; and the term “including” means “including without limitation.” “AVS” means AVS Underwriting, LLC.

SECTION 1.2 **Definitions.** The following definitions shall apply with regard to this Agreement:

“AVS” shall mean AVS Underwriting, LLC, a Georgia limited liability and its successors and assigns;

“Company” shall mean the company identified in the first paragraph above and its successors and permitted assigns, if any;

“Durational Life Expectancy” or “DLE” shall mean a report that represents an observation using past underwriting to calculate durational progression. A DLE is NOT to be used as an estimate of life expectancy and IS NOT to be an observation or comment on the life expectancy, if any, then given. The DLE may be influenced by changed underwriting guidelines, changed medical conditions, advances and treatments, age of the individual and advances in the use and order of pharmaceuticals.

“Historical Observation” or “HO” shall mean a report that represents an observation using past medical records to reflect on what could have been the resulting review, had the review occurred using then current methodology and underwriting guidelines now known and may be influenced by changed underwriting guidelines, changed medical conditions, advances and treatments, age of the individual and advances in the use and order of pharmaceuticals. An HO is NOT to be used as an estimate of life expectancy and is NOT to be an observation or comment on the life expectancy, if any, then given. The diagnosis and mortality of this HO is based upon medical records prior to the date listed in "Med Rec From" and Approved Underwriter is unaware of, and unable to verify, any changes in the insureds health since the "Med Rec Date" listed and the lack of medical records from the "Med Rec From" date to current could significantly change the life expectancy in this observation either positively or negatively

“Life Expectancy” or “LE” shall mean DLE, HO and a life expectancy report as defined in Section 3.5;

“Person” shall mean to include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

“Report” shall mean a LE, DLE or HO provided by AVS to Company pursuant to this Agreement.

## ARTICLE II.

### APPOINTMENT

SECTION 2.1 **Appointment.** The Company hereby appoints and engages the Approved Underwriter as a life expectancy provider with respect to the insured lives specified to the Approved Underwriter by the Company for the period commencing on the date hereof until the expiration or termination of this Agreement pursuant to Article VII hereof, subject to the terms and conditions of this Agreement.

## ARTICLE III.

### **RIGHTS AND DUTIES OF THE APPROVED UNDERWRITER**

SECTION 3.1 **Standard of Care**. The Approved Underwriter shall perform its duties with respect to the insured lives with reasonable care, using that degree of skill and attention that it exercises with respect to all comparable insured lives for which it provides life expectancy underwriting services, including compliance with all applicable state and federal regulations.

SECTION 3.2 **Errors and Omissions Policy**. The Approved Underwriter agrees to maintain an errors and omissions insurance policy in an amount no less than \$1 million per occurrence.

SECTION 3.3 **Delivery of Certain Information to the Approved Underwriter**. Prior to the commencement of any obligation upon the Approved Underwriter to provide the services contemplated by this Agreement with respect to any insured life, the Company shall deliver or cause to be delivered to the Approved Underwriter all of the following information for each insured with respect to the related life insurance policy: (i) the name, (ii) the sex, (iii) the date of birth, (iv) the attending physician, (v) all medical records available which shall be the most current available but at least within the past twelve (12) months of the date of the request for a LE and minimally three (3) years of records and preferably as many records as are available, provided, however that if the Approved Underwriter determines that there are insufficient records to underwrite a LE, the Approved Underwriter shall not be obligated to prepare a LE and shall so notify the Company, and (vi) an authorization for protected health information form that has language that would include, or be capable of referring to, life expectancy underwriters or providers and which has been executed and dated by the insured and that has not been revoked by the insured or otherwise expired by law.

SECTION 3.4 **Data used by Approved Underwriter**. **All health information data on American citizens received from a Company by Approved Underwriter is considered received in and from the United States of America. Approved Underwriter does not recognize foreign intermediary health information providers or data exporters used by foreign entities located outside of the United States of America and takes no responsibility or liability for these foreign entities or any data exporters providing inadequate or falsified health information data. It is the responsibility of the Company to provide the health information data to Approved Underwriter in requesting a life expectancy review.**

SECTION 3.5 **Calculation of Life Expectancy**. Evaluations to determine life expectancy, whether Full Review (FR) or the written summary of the insured's medical history and life expectancy, or Re-Review (RR) or a Re-Evaluation of a FR within 180 days from the date of original submission, are based on the understanding of current available medical records provided at the time of evaluation. For each insured life, the Approved Underwriter will prognosticate the average life expectancy of the respective insured(s) based on procedures set forth in one of the underwriting manuals used by such Approved Underwriter in the ordinary course of business (the "Life Expectancy"). The Approved Underwriter shall (i) apply its professional judgment in determining the number of underwriting debits to use for a given condition in such instances where the applicable underwriting manual indicates a range of debits

for such condition or (ii) establish a Life Expectancy where such underwriting manual is not applicable or is insufficient therefor because the related insured is unratable, based upon its clinical underwriting approach. Upon such prognostication, the Approved Underwriter will notify the Company in writing. The life expectancy of any individual may be impacted positively or negatively by factors that change following the date of the evaluation. Every effort is made to anticipate future favorable or adverse changes to medical conditions, but it is not possible to make representations, guarantees or assurance after the date of the evaluation. **Each Life Expectancy provided by Approved Underwriter to Company is provided as a statistical mean and Approved Underwriter makes no, and hereby disclaims all, representations that any individual will expire on or near the time period indicated in the provided Report.**

SECTION 3.6 **Due Diligence of Company.** The Approved Underwriter has the right and duty to conduct a due diligence review of Company for any and all incorporations, registrations, and/or licenses whether through the state or federal licensing agency, or a representative entity such as NIPR, NAIC, NASAA or a like entity that may be considered the licensing authority in the area of expertise of the client company, entity or individual. By signing this Agreement Company is authorizing the Approved Underwriter to submit a request to these licensing entities on behalf of the Company and its representatives who are authorized to act for, or on behalf of, the Company.

#### ARTICLE IV.

#### COMPENSATION AND EXPENSES

##### SECTION 4.1 **Compensation and Expense.**

(a) As compensation for the medical underwriting services to be rendered by the Approved Underwriter hereunder, the Company shall pay to the Approved Underwriter within 30 days after the receipt of an invoice from Approved Underwriter, such costs and expenses, if any, and fees as are established and set forth on Approved Underwriter's existing price list which shall become part of this Agreement. Fees shall be paid by cash (including check, money order, wire transfer) or approved credit card. The fees on the price list shall be reviewed as necessary by the Approved Underwriter for possible adjustment and if increased, the notification of increase shall be provided to the Company in writing at least thirty (30) calendar days before institution of any new charges.

(b) In addition to the payment of compensation in Section 4.1(a), within a reasonable time after the presentment of a reasonably detailed invoice therefor, the Company shall reimburse, or cause to be reimbursed, to the Approved Underwriter, any overnight courier or special mailing charges that are reasonably incurred by the Approved Underwriter under this Agreement and that have been previously requested by the Company.

(c) The Company shall be responsible for the payment of all amounts invoiced by Approved Underwriter and no change in the name of the Company or its ownership, directors, officers or principals shall in any way affect the obligation of the Company to promptly pay the compensation invoiced, or charges for services rendered to the Company and owed to the Approved Underwriter.

(d) Should the Approved Underwriter be required to be deposed or to testify, by, because of, or on behalf of the Company or in any legal proceeding involving the Company or its successors or assigns, or because of or related to a Report provided to Company by the Approved Underwriter, and if the costs and expenses of the deposition or legal proceeding incurred by Approved Underwriter are not paid or reimbursed by the requesting party, then the Company agrees to reimburse the Approved Underwriter for any reasonable costs and expenses of the Approved Underwriter associated with the requested deposition, legal proceeding, testimony or submission of records. Such costs shall be submitted in writing to the Company with any supporting documentation.

## ARTICLE V.

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### SECTION 5.1 Representations and Warranties of the Approved Underwriter.

The Approved Underwriter, as of the date hereof, hereby represents to the Company that:

(a) Organization and Good Standing. The Approved Underwriter is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Georgia and has organizational power and authority to own its properties and to conduct its business as such properties shall be currently owned and such business is presently conducted, and had at all relevant times, and shall now have, organizational power, authority and legal right to perform its obligations under this Agreement.

(b) Due Qualification. The Approved Underwriter is duly qualified to do business as a foreign limited liability company in good standing, and has obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business shall require such qualifications, licenses or approvals and where the failure to so qualify or to obtain such licenses and approvals will have a material adverse effect on the ability of the Approved Underwriter to conduct its business or perform its obligations under this Agreement.

(c) Power and Authority. The Approved Underwriter has full power, authority and right to execute and deliver this Agreement, has full power and authority to perform its obligations hereunder, and has taken all necessary action to authorize the execution and delivery of this Agreement.

SECTION 5.2 Survival. The representations and warranties of the Approved Underwriter set forth in this Article V shall survive the provision of services related to the Reports provided by the Approved Underwriter for the Company pursuant to this Agreement. Upon discovery by the Company of a breach of any of the foregoing representations and warranties, the Company shall give prompt written notice to the Approved Underwriter.

## ARTICLE VI.

### CONFIDENTIALITY

SECTION 6.1 **General Duty.** The Approved Underwriter and the Company hereby agree that all documentation, materials and information provided by, or made available by, the Company and by the Approved Underwriter for the performance of the Approved Underwriter's obligations hereunder shall be used solely for the purposes contemplated by this Agreement and that all such documentation, information and materials shall be deemed proprietary and confidential (collectively, "Confidential Information"); all information and materials shall be received, utilized, and maintained in confidence.

SECTION 6.2 **Reasonable Precautions.** Subject to Section 6.4, the Company and the Approved Underwriter shall take such precautions as may reasonably be necessary to protect such Confidential Information from disclosure to others or from use by itself or others for any purpose inconsistent with this Agreement.

SECTION 6.3 **Dissemination of Certain Information.** The Approved Underwriter and the Company shall at all times comply with all laws and regulations affecting life insurance policies, including but not limited to laws and regulations regarding the privacy of any insured and the insured's health information and the maintenance of all information obtained by the Company and/or the Approved Underwriter in the performance of their duties in accordance with applicable laws and regulations concerning the dissemination of such information. In the event any Confidential Information, including personally identifiable health or medical information with respect to an insured life, is accessed from either party by a third party who is not authorized to receive such information hereunder, the party from whom the Confidential Information was accessed shall promptly, at its own expense: (i) terminate such unauthorized access; (ii) report such incident to the other party, describing in detail the disclosed, accessed or lost Confidential Information; (iii) take such actions as may be necessary or reasonably requested by the other party to investigate and mitigate the effects of the problem; (iv) cooperate in all reasonable respects with the other party to mitigate the effects of the problem and any damage resulting therefrom; and (v) reasonably assist the other party in or its affiliates in making any reports or notifications required by law as a result of such loss or disclosure. This Section shall survive termination of this Agreement.

SECTION 6.4 **Confidentiality of Reports.** All Reports that the Company receives from Approved Underwriter are intended for the specific use of the Company ONLY, and may be distributed only to Persons or entities in connection with the transaction in which the original life expectancy report was requested, but shall not otherwise be distributed to any other Person, without the written consent of Approved Underwriter, which consent may be denied or granted at the sole discretion of Approved Underwriter. Medical information and/or information specific to the identity of any individual may be considered confidential under certain state and Federal laws and Company acknowledges its obligation to verify the confidential status of any medical or other information provided in any Report and to take appropriate action to protect same. If Company's state or the insured individual's state of residence requires such protection, then said state law may prohibit Company from making further disclosure of the information without specific written consent of the Person to whom it pertains, or as otherwise permitted by law.



## ARTICLE VII.

### TERMINATION

SECTION 7.1 **Term; Termination.** This Agreement will continue until (a) December 31 of the full year following the agreement date (the "Termination Date"), or such later date as may be mutually agreed by the Company and the Approved Underwriter, provided that if the Approved Underwriter or the Company has not delivered written notice of the termination of this Agreement to the other party by the Termination Date, this Agreement shall be automatically renewed for successive one (1) year terms, and the Termination Date shall be deemed to be December 31<sup>st</sup> of the next year; (b) terminated by the Company or the Approved Underwriter by delivery of written notice to the other party of a change in any applicable law or regulation that causes it to be illegal for such party to continue performing under this Agreement, (c) terminated by the Approved Underwriter or the Company by thirty (30) days written notice thereof to the Approved Underwriter or Company, depending upon whoever is the initiating party. Termination shall not affect the payment of any outstanding invoices or monies owed to the Approved Underwriter.

## ARTICLE VIII.

### LIMITATION OF USE

SECTION 8.1 **Report Limitation.** A Report **SHALL NOT** be considered as an investment recommendation, investment advice or effecting a transaction in insurance products that may be considered a security, by Company or any individual or entity reading, receiving or reviewing a Report. A Report provided by Approved Underwriter hereunder is void if used in the purchase, procurement or sale of any life insurance policy which is not issued by a licensed insurer in compliance with the laws of the state governing the issuance and/or delivery of the policy.

SECTION 8.2 **Release Limitation.** Should any Report that is provided to the Company by the Approved Underwriter be released by Company to any Person other than with respect to such Persons listed in Section 6.4, and such release is not approved by the advance written consent of Approved Underwriter, then the Company shall, and does hereby, assume all liability for the use and content of any such Report. Should the Approved Underwriter consent in writing to the release of a Report that the Company received, the Approved Underwriter shall have no liability and shall be held harmless for any use for which the approved party uses the Report in such circumstance. The Company hereby assumes all liability for its use and dissemination of any Report provided by Approved Underwriter.

## ARTICLE IX.

### MISCELLANEOUS

SECTION 9.1 **Amendment.** This Agreement may be amended from time to time only by the written mutual agreement of the Company and the Approved Underwriter.

**SECTION 9.2 Governing Law; Submission to Jurisdiction; Jury Waiver.**

(a) Governing Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF GEORGIA, WITHOUT REFERENCE TO ITS CONFLICTS OF LAWS PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) Submission to Jurisdiction. EACH OF THE PARTIES HERETO IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY FEDERAL COURT IN ATLANTA, GEORGIA OR STATE COURT SITTING IN GEORGIA, IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES TO THIS AGREEMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

**SECTION 9.3 Notices.** All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by overnight mail using a nationally recognized carrier or by registered mail, return receipt requested, to

(a) in the case of the Company, to:

Contact Person: \_\_\_\_\_,  
Mailing Address: \_\_\_\_\_,  
City, State, Zip Code: \_\_\_\_\_,  
Email Address: \_\_\_\_\_,  
Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_;

and (b) in the case of the Approved Underwriter, to

Tara Bing  
AVS Underwriting, LLC  
175 TownPark Drive, Suite 400, Kennesaw, Georgia 30144  
Email Address: tbing@avsllc.com,  
Telephone Number: (770) 926-8880 Facsimile Number: (770) 926-7933



or at such other address or facsimile number as shall be designated by either such Person in a written notice to the other. Notwithstanding the foregoing, notice of breach, service of legal process or other similar communications shall not be given by electronic mail and will not be deemed duly given under this Agreement if delivered by such means. Notices, demands and communications hereunder given by facsimile or electronic mail shall be deemed received upon oral confirmation of receipt by the addressee or upon the sender's receipt of an affirmative confirmation of receipt thereof by the addressee.

SECTION 9.4 **Severability of Provisions**. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions and terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

SECTION 9.5 **Assignment**. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither of the Parties hereto shall assign this Agreement or any of the rights created hereunder without receipt of the prior written consent of the other party. Consent shall not be unreasonably withheld.

SECTION 9.6 **Further Assurances**. The Company and the Approved Underwriter agree to do and perform, from time to time, any and all acts and to execute any and all further instruments required or reasonably requested by the other party hereto more fully to effect the purposes of this Agreement.

SECTION 9.7 **No Waiver; Cumulative Remedies**. No failure to exercise and no delay in exercising, on the part of the Company or the Approved Underwriter of any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exhaustive of any rights, remedies, powers and privileges provided by law.

SECTION 9.8 **Counterparts**. This Agreement may be executed in any number of counterparts (including counterparts by facsimile or email with scan attachment) each of which shall be deemed to be an original and all such counterparts taken together will be deemed to constitute one and the same instrument. Any such counterpart executed and delivered via facsimile transmission or via email with scan attachment will be deemed an original for all intents and purposes.

SECTION 9.9 **No Petition**. Each of the Approved Underwriter and the Company, by entering into this Agreement, hereby covenants and agrees that it will not at any time institute against the other party, or solicit or incite any other Person to institute for the purpose of joining in any such institution against that party, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings under any United States federal or state bankruptcy or similar law. This Section will survive the termination of this Agreement.

SECTION 9.10 **Third-Party Beneficiaries**. This Agreement will inure to the benefit of

and be binding upon the parties' signatory hereto. Except as otherwise provided in this Agreement, no other Person will have any right or obligation hereunder.

SECTION 9.11 **Merger and Integration.** Except as specifically stated otherwise herein, this Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by this Agreement. This Agreement may not be modified, amended, waived or supplemented except as provided herein.

SECTION 9.12 **Headings.** The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

SECTION 9.13 **No Partnership or Joint Venture.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture.

SECTION 9.14 **Information and Data.** Nothing contained in this Agreement shall be deemed or construed to limit the Approved Underwriter from utilizing any information or data from this or any other Agreement in furtherance of its underwriting or business processes and to be utilized or assimilated in any other form for the benefit of the Approved Underwriter, as long as any individual personal health information continues to be subject to those protections as provided in this Agreement.

SECTION 9.15 **HIPAA Form.** The HIPAA form used for Approved Underwriter to access the records for review to provide a Report must reflect the Company requesting the review and allow the Company's subcontractors (Approved Underwriter) to review the health information records. Failing an acceptable HIPAA release form, the Company shall, and does hereby, take full responsibility and liability for any review of the health information records requested by Company and performed by Approved Underwriter.

SECTION 9.16 **Redacted Information.** With regard to the redacted items, if any, in any of the documents reviewed in any Report, Approved Underwriter made no contribution to selecting the redaction of any item, and did not redact any of the items in the file which was used to create any Report. Approved Underwriter takes no responsibility or position regarding whether the redactions were or were not proper or whether additional redactions should be or could be made.

[Remainder of the page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers the day and year first above written.

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AVS Underwriting, LLC

By: \_\_\_\_\_

Name: Tara Bing

Title: Director of Operations