

## ROCKPORT TERMS OF SERVICE

**1. AGREEMENT.** ROCKPORT PA, L.L.C., with its principal place of business located at 477 Madison Avenue, New York, New York 10022 (“ROCKPORT”) agrees to furnish to the client (“Client”) defined in its signed Letter Of Agreement (“LOA”) and the Client agrees to subscribe to and license from ROCKPORT, certain software, data and/or other services (collectively, the “Service”) described in the LOA.

**2. SCOPE OF LICENSE.** Client’s license to use the Service is non-exclusive and non-transferable. This license is for use only by the Authorized Users specified in the LOA, unless otherwise provided in the LOA. Except as otherwise provided herein, this license is restricted to Client’s internal use of the Service to evaluate commercial mortgage loans or other data provided through the Service. Client will make no representations or warranties to any third party based upon the Service, nor will Client transfer or purport to transfer or assign any rights in the Service or any portion thereof to any third party.

**3. AUTHORIZED USERS.** To use this Service, Client’s users must be registered and receive passwords. Client is responsible for maintaining the confidentiality of its passwords. Client is fully liable for all use of the Service under its passwords, including any use by a user not authorized by Client who accesses the Service using Client’s passwords. ROCKPORT may terminate a password and require a new password if it believes that the password is being used without authorization or contrary to the Agreement. Client agrees to promptly notify ROCKPORT of any unauthorized use of its passwords or other breach of security. Client is solely responsible for providing and maintaining any and all computer and telecommunications equipment required to access the Service.

**4. TERM.** This Agreement is for the term set forth in the LOA commencing on the Effective Date set forth therein and will be automatically renewed as provided in the LOA. Either party may terminate this Agreement at any time upon written notice in the event that the other has materially violated any of the provisions of this Agreement.

**5. FEES.** Current fees and terms are set forth in the LOA. Client will be responsible for any applicable sales or use tax. ROCKPORT fees and service charges will be due when invoiced to Client. Interest will accrue at the rate of 1.5% per month upon any unpaid amounts commencing forty-five (45) days after date of invoice.

**6. OWNERSHIP OF DATA; RESTRICTIONS.** The Service and related documentation may embody proprietary information of ROCKPORT and other information providers (“Information Providers”), compiled, selected, and arranged through the exercise of judgment and requiring the expenditure of substantial time, effort, and money by ROCKPORT or the Information Providers. The Service constitutes valuable commercial property and trade secrets of ROCKPORT or the Information Providers. Client will not claim any ownership interest in, or right to use, the Service except as provided herein, nor will it contest ROCKPORT’s ownership rights. Client further agrees that ROCKPORT or the Information Providers will maintain exclusive ownership and rights (including the copyright) in the Service and that this Agreement will not be construed to vest in the Client any rights with respect to the Service except to use it for its own internal purposes during the term of this Agreement. Client will treat all aspects of the Service and any information obtained there from as confidential and will not allow access to any software or databases included within the Service to any other person or entity, including any entity that is affiliated with the Client.

**7. SECURITY.** Each party shall implement commercially reasonable security measures designed to meet the following objectives: (a) ensure the security and confidentiality of Confidential Information; (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Confidential Information; and (c) protect against unauthorized access to or use of the Confidential Information. The parties will cooperate fully with each other regarding efforts to monitor compliance with this Agreement, including for example providing upon request and at no cost, copies of audits, test results, or equivalent measure of the party’s efforts to protect the Confidential Information.

ROCKPORT shall not intentionally introduce and will use reasonable safeguards consistent with industry standards to prevent third-parties from introducing into the Service any trojan horses, viruses, worms, time bombs or trap doors designed to disrupt, disable, harm, or otherwise impede the operation of the Service or to corrupt or damage Client’s data, storage media, programs, or equipment.

**8. SUPPORT.** ROCKPORT will provide commercially reasonable telephone support from 8:30 A.M. to 6:00 P.M. EST daily. Unless otherwise provided in the LOA, ROCKPORT will provide telephonic training in use of the Service as required by Client. Additional training may be agreed upon in a separate LOA. ROCKPORT shall provide reasonable disaster recovery and backup capabilities consistent with industry standards to minimize disruptions or delays in providing the Service.

**9. PERFORMANCE; LIMITATIONS OF LIABILITY.** ROCKPORT will use commercially reasonable efforts to prepare and provide the Service in accordance with the technical documentation supplied therewith but shall not be liable for any inability to provide such Service when caused by any event, condition, or circumstance beyond ROCKPORT’s or the Information Providers’ reasonable control. Client is aware that the foregoing includes, but is not limited to, possible data deficiencies such as inconsistency, incompleteness, sparseness, or untimeliness of data. Client acknowledges that ROCKPORT’s ability to deliver the Service may be dependent, in part, on the Client’s ability to deliver to ROCKPORT certain proprietary information and commentary which the Client may want included in the Service. Client further acknowledges that similar data may come from multiple Information Providers and that ROCKPORT applies ROCKPORT’s decision to the use of specific data from one source versus another. Client is solely responsible for obtaining, installing, maintaining, and operating, at its own expense, compatible computer equipment and communications devices as required to utilize the Service meeting the minimum configuration requirements published

from time to time by ROCKPORT. In providing for the compilation of data for inclusion in the Service, ROCKPORT and the Information Providers rely upon sources that they believe to be accurate, but the Client acknowledges neither ROCKPORT nor the Information Providers will independently verify significant portions of such data.

ROCKPORT does not warrant the Service to be free from defects or bugs. ROCKPORT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER ROCKPORT NOR THE INFORMATION PROVIDERS REPRESENT OR WARRANT THE ACCURACY OR ADEQUACY OF THE DATABASES OR ANY WORK PRODUCT OR PROJECTIONS BASED UPON SUCH DATABASE OR OF ANY DATA COMPILED BY ROCKPORT OR THE INFORMATION PROVIDERS IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER OR ANY WORK PRODUCT OR PROJECTIONS BASED UPON SUCH DATA INCLUDING ANY VALUATION PROVIDED TO THE CLIENT HEREUNDER. NEITHER ROCKPORT NOR THE INFORMATION PROVIDERS WILL BE LIABLE FOR ANY LOSS RESULTING DIRECTLY OR INDIRECTLY FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, OR DEFECTS, WHETHER HUMAN OR MECHANICAL, OCCURRING IN THE COURSE OF FURNISHING SERVICE, EXCEPT STEMMING FROM WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. NEITHER ROCKPORT NOR THE INFORMATION PROVIDERS WILL BE IN ANY WAY LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES. ROCKPORT'S LIABILITY HEREUNDER, REGARDLESS OF THE NATURE OR FORM OF CLIENT'S CLAIM, WILL BE LIMITED TO THE COST PAID OR PAYABLE BY THE CLIENT FOR THE SERVICE FOR THE THREE (3) MONTH PERIOD PRECEDING THE DATE ANY SUCH LIABILITY MAY ARISE. CLIENT FURTHER AGREES THAT NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO ROCKPORT SERVICES MAY BE BROUGHT BY THE CLIENT MORE THAN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO SUCH ACTION HAS OCCURRED.

**10. CONFIDENTIAL INFORMATION.** Each party acknowledges that it or its employees may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information which is proprietary to or confidential to the other, its affiliated companies or third parties to whom such party has a duty of confidentiality. Any and all non-public information of any form obtained by ROCKPORT or its employees in the performance of this Agreement shall be deemed to be confidential and proprietary information. Any and all non-public information of any form obtained by Client or its employees including, without limitation, the Service, documentation and terms of this Agreement, shall be deemed to be confidential and proprietary information. Each party agrees to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever other than as contemplated by this Agreement and to advise each employee, agent or consultants who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential. Notwithstanding the foregoing, Rockport may list Client as a client of Rockport on its website or in other material.

Confidential information shall not include information which the disclosing party can show by objective or verifiable evidence is (i) in or becomes part of the public domain other than by disclosure by a party in violation of this Agreement, (ii) demonstrably known to such party previously, (iii) independently developed by such party outside of this Agreement or (iv) rightfully obtained by such party from third parties. If the receiving party is required by law to disclose confidential information, the receiving party may do so without breaching this section upon notice to the disclosing party, unless legally prohibited, and then only to the extent necessary to comply with the law. ROCKPORT and Client understand and agree that, in the event of a breach of this section, damages may not be an adequate remedy and each party shall be entitled to injunctive relief to restrain any such breach, threatened or actual.

**11. CERTIFICATION OF CLIENT.** By viewing or using the information provided in the Service, the Client agrees as follows: The securities information is provided for the convenience of and at the sole risk of the Client. The information is not investment advice and does not constitute an offer to purchase or sell securities, and may not be used for credit reporting or for any other improper or illegal purpose. By utilizing this information the Client certifies that Client is viewing the information either because Client is a holder of the securities noted in the information or is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933) of the securities and an "accredited investor" (as defined in Regulation D under the Securities Act of 1933) (or is acting on behalf of a holder or a "qualified institutional buyer" or an "accredited investor" of the securities) or is otherwise qualified to have access to the information, and is, therefore, permitted to receive this information.

**12. NON-HIRE/NON-SOLICITATION.** Client agrees not to solicit to hire and/or hire or otherwise directly or indirectly solicit to retain and/or retain the services of any person who is or was during the previous six month period an employee of or consultant to ROCKPORT or ROCKPORT affiliates for the period beginning with the date that this Agreement is executed and ending one year after termination of this agreement. If Client does hire or otherwise directly or indirectly retain any such employee or consultant, ROCKPORT may, in its sole discretion, elect to receive from Client an amount equal to forty percent (40%) of the previous year's compensation (including bonus) for such employee or consultant. If Client retains any such employee or consultant on less than 90 days' notice to ROCKPORT, the amount of such payment will be sixty percent (60%) of the previous year's compensation (including bonus) for such employee or consultant. Client agrees that these amounts are a reasonable estimate of the cost savings Client is likely to realize from hiring such employee or consultant and of the damages ROCKPORT is likely to suffer from Client's breach of this covenant and that they do not constitute a penalty. Nothing in the preceding sentence will be construed to negate, limit, or waive any right ROCKPORT may have to equitable relief to prevent a violation of this provision, nor as a waiver of any contractual or other common law rights ROCKPORT may have with its employees or consultants.

**13. INDEMNIFICATION.** (a) ROCKPORT, at its own expense shall indemnify and hold harmless Client, its subsidiaries, affiliates, directors, officers, employees, and agents and defend any action brought against same with respect to any third party claim, demand, cause of action, debt or liability, including attorneys' fees, to the extent that it is based on a claim that the Service infringes or violates any patents, copyrights, trade secrets, licenses or other proprietary rights of any third party. Client may, at its own expense, assist in such defense if it so chooses, provided that ROCKPORT shall control such defense and all negotiations relative to the settlement of any such claim. Client shall promptly provide ROCKPORT with written notice of any claim which Client believes falls within the scope of this paragraph. This provision shall survive the termination of this Agreement.

(b) Client will indemnify and hold ROCKPORT and any Information Provider harmless from and against any claim, liability, loss, injury, damage, cost or expense (including attorneys' fees) incurred by ROCKPORT or any Information Provider to any third party arising from any use by Client of the Service supplied pursuant to this Agreement, except as related to a claim, liability, loss, injury, damage, cost or expense (including attorneys' fees) covered by clause 13(a) above or arising out of ROCKPORT's gross negligence or willful misconduct. ROCKPORT may, at its own expense, assist in such defense if it so chooses, provided that Client shall control such defense and all negotiations relative to the settlement of any such claim. ROCKPORT shall promptly provide Client with written notice of any claim which ROCKPORT believes falls within the scope of this paragraph. This provision shall survive the termination of this Agreement.

**14. REMEDIES.** In the event of a material breach or threatened material breach of any term of this Agreement that threatens any rights of ROCKPORT or any Information Provider in the Service or the economic value of the Service, ROCKPORT and the Information Providers will be entitled to preliminary and permanent injunctive relief to protect such rights and interests. Nothing herein will preclude ROCKPORT or the Information Providers from pursuing any action or other remedy for any breach or threatened breach of this Agreement, all of which will be cumulative.

**15. THIRD PARTY BENEFICIARIES.** Information Providers are intended third party beneficiaries of this Agreement with respect to the provisions of each section in which the term "Information Providers" appears.

**16. ASSIGNMENT.** Neither this Agreement, nor any rights, duties, or obligations under this Agreement may be assigned, or otherwise transferred, by Client without the prior written consent of ROCKPORT. In the case of an assignment by Client to any of its affiliates that are in substantially the same business as Client, ROCKPORT's consent will not be unreasonably withheld.

**17. APPLICABLE LAW.** This Agreement, and any modification thereto, will be governed and construed under the laws of the State of New York without giving effect to the conflicts of law principles thereof. The Client agrees to the jurisdiction of the courts of the State of New York. If any term or condition of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining terms and conditions hereof shall not in any way be affected or be impaired thereby. Each party in any judicial action or proceeding shall be responsible for its own costs, including without limitation, filing fees, attorney's fees, witness fees, expert fees, and travel expenses.

**18. SCOPE OF THE AGREEMENT.** This Agreement represents the entire agreement between ROCKPORT and the Client relating to the Services defined in the LOA. This Agreement supersedes all prior proposals, representations, understandings, and agreements, whether oral or in writing, and may not be modified or amended except by an instrument in writing executed by both parties hereto. This Agreement will not be valid until the LOA is signed by a duly authorized agent of both parties.

**19. TERMINATION RESPONSIBILITIES.** Upon termination of this Agreement, Client will return to ROCKPORT all copies of the software and data received from ROCKPORT in Client's possession, or destroy same, within thirty (30) days of termination and will certify to ROCKPORT that no copies are in the possession of Client, its employees or agents. The certification shall itemize each copy of the Software destroyed or returned. The provisions of paragraphs 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 will survive the termination of this Agreement.

**20. NOTICE.** Any notice, request, demand or other communication required or permitted to be given by one party to the other under this Agreement will be sufficient and deemed to have been given if sent in writing by certified or registered mail, by hand, facsimile or overnight courier, to the party to receive the notice at its address set forth on the attached addendum or to such other address as the party to receive the notice has designated by notice to the other party.

THIS AGREEMENT IS SUBJECT TO THE TERMS OF THE SIGNED LOA, WHICH TERMS ARE INCORPORATED HEREIN.

Date Revised: 09/15/2008