



# Rockport VAL / Rockport ENGINE Terms of Service

**LAST UPDATED: 10 MAY 2023**

## **1. AGREEMENT**

These Terms of Service (the “Agreement”) form a contract between ROCKPORT VAL, LLC, with its principal place of business located at 505 Fifth Avenue, New York, NY 10017 (“ROCKPORT VAL”) and the client identified in any order form, invoice or payment confirmation (“Client”) and governs Client’s subscription to and license of ROCKPORT VAL’s commercial real estate cash flow modeling and valuation software, data and/or other services (collectively, the “Service”). By clicking or selecting the “I Accept” option provided at the time of purchase of the Services, or otherwise accessing or using the Services, Client agrees to the terms and conditions in this Agreement, and Client’s subsequent use of the Services confirms its unconditional acceptance of the terms and conditions of this Agreement. The person clicking or accepting this Agreement represents and warrants that such person has the legal authority to bind the Client to this Agreement.

## **2. SCOPE OF LICENSE**

Subject to Client’s continued compliance with this Agreement, ROCKPORT VAL grants Client a non-exclusive, non-transferable, and non-sublicensable right to access and use the Service. This license is for use only by the specified number of named employees of the Client (“Authorized Users”) and in the authorized departments, if applicable, unless otherwise agreed upon in writing by ROCKPORT VAL. 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, Authorized Users must be registered and receive passwords. Client is responsible for maintaining the confidentiality of its passwords and agrees not to allow Authorized Users to share passwords or log in information. 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 VAL 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 VAL of any unauthorized use of its passwords or other breach of security. Client's failure to comply with the terms of this section may subject Client to additional fees. 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 VAL.

### **4. BETA TESTING, EVALUATION AND DEMONSTRATION USE 'Trial Use'**

If Client has received access to the Service for trial or evaluation purposes or has been provided access to the Service for demonstration or beta testing purposes, Client is permitted to use the Service for beta testing, trial, evaluation or demonstration (i.e. non-production) purposes only for fourteen (14) calendar days unless a longer period is approved in writing by ROCKPORT VAL. Trial Use of the VAL application excludes commercial use. Use of the trial license for commercial purposes subjects Client to the then-current annual license fee. Client may provide suggestions for changes or enhancements to the Services, which ROCKPORT VAL may accept or reject in its sole discretion. The Service may contain an automatic disabling mechanism that prevents its use beyond the permitted beta testing, trial, evaluation or demonstration period. Access to and use of the Software for beta testing, trial, evaluation or demonstration purposes is entirely at Client's own risk. IF THE SERVICE IS

PROVIDED FOR BETA-TESTING, TRIAL, EVALUATION OR DEMONSTRATION PURPOSES, THE SERVICE IS PROVIDED “AS IS”, FREE OF CHARGE AND ANY WARRANTY IN SECTION 11 AND OBLIGATIONS IN 14(a) OF THIS AGREEMENT WILL NOT APPLY. If Client has a paid subscription for the Service, then this section does not apply.

## **5. EDUCATIONAL USE**

(a) If Client has been granted access to the Service for educational purposes directly related to Client’s academic coursework, Client represents that Client is a student or teaching professional in an academic program in which the Service is being or will be used (“Educational Purpose”) and agrees to use the Service and information, data or work product derived from the Service solely for the Educational Purpose and not for any commercial purpose. Upon completion of Client’s applicable academic coursework, Client shall cease to have access to the Service and shall return or destroy data derived from the Service together with all copies and all documentation and related materials.

Client shall not directly or indirectly, (i) use the Service or information, data or work product derived from the Service for any purpose other than the Educational Purpose, (ii) sell, assign, lease, sublicense, disclose, grant access to, or otherwise transfer the Service or information, data or work product derived from the Service or any copy thereof to any other party, (iii) reverse engineer, modify or create derivative works of the Service, or (iv) use the Service or data, information or work product derived from the Service in connection with third-party products or services or in any way that would compete with the Service. Client agrees that the use of the Service and data, information or work product derived from the Service is subject to all of the restrictions, limitations and obligations contained in these Terms of Use. ROCKPORT VAL may, in its sole discretion terminate Client’s access to the Service without notice. NOTWITHSTANDING THE FOREGOING, IF CLIENT HAS BEEN GRANTED A

LICENSE SOLELY FOR USE OF THE SERVICE FOR EDUCATIONAL PURPOSE, THE SERVICE IS PROVIDED “AS IS”, FREE OF CHARGE AND ANY WARRANTY IN SECTION 11 AND OBLIGATIONS IN 14(a) OF THIS AGREEMENT WILL NOT APPLY.

(b) Client shall obtain no intellectual property ownership regarding the Service or data, information or work product derived from the Service and hereby assigns to ROCKPORT VAL any enhancements of the Service generated in the course of Client’s academic coursework.

Without limitation, Client acknowledges and agrees that the Service and documentation and related materials are Confidential Information of ROCKPORT VAL as defined in Section 12. Client shall use such Confidential Information solely for the Educational Purpose and shall protect such Confidential Information by using the same degree of care to prevent disclosure of Client’s own similar information but in any event shall use no less than a reasonable degree of care.

(c) ROCKPORT VAL will be given full credit and acknowledgement for the support provided to Client in any publications resulting from the Educational Purpose.

## **6. TERM AND TERMINATION**

(a) If Client signs up for the “Monthly” plan, the Term of this Agreement begins on the date specified in the order form, invoice or payment confirmation, as applicable, and automatically renews on a month-to-month basis at ROCKPORT VAL’s current monthly rate for the Service until Client or ROCKPORT VAL terminates this Agreement. If Client signs up for the an annual or multi-month plan, the Term of this Agreement begins on the date specified in the order form, invoice or payment confirmation, as applicable, and automatically renews for the same period at ROCKPORT VAL’s then current rate for such term unless Client or ROCKPORT VAL

gives a notice of non-renewal at least thirty (30) days prior to expiration of the initial term or then-current renewal term, as applicable.

(b) Except as expressly set forth below, if Client terminates this Agreement, the termination will become effective at the end of the then current Term. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon written notice in the event that the other party has materially violated any of the provisions of this Agreement. In addition, ROCKPORT VAL may terminate the Agreement on the occurrence of any of the following:

(a) Client fails to pay any fees or other amount payable to ROCKPORT VAL by Client set forth hereunder;

(b) Client attempts to transfer this Agreement (or any rights or licenses under this Agreement) to any third-party in violation of Section 17 (Assignment) below;

(c) Client's use of the Service exceeds the permitted uses set forth in this Agreement or other documents approved in writing by Rockport VAL; or

(d) Client is the subject of any proceeding relating to insolvency, bankruptcy, receivership, liquidation, or composition for the benefit of creditors.

## **7. FEES & REFUNDS**

(a) The fees for the Service are stated in the invoice or payment confirmation and are non-refundable. Unless otherwise specified in writing by Client and ROCKPORT VAL, ROCKPORT VAL may not increase the fees during Client's initial term but may increase its fees for any renewal term. ROCKPORT VAL may in its sole discretion change its subscription plans or adjust pricing for its services or any components thereof in any manner and at any time as it may determine. Rockport VAL will attempt to provide Client with advance notice of any such price changes prior to the next billing cycle but will not provide notification of any changes in applicable taxes. If Client does

not wish to accept a price change for an upcoming Term, Client may cancel the subscription in accordance with this Agreement effective as of the termination date of the then current Term. Any discounts described in the invoice or payment confirmation are for the initial term only unless otherwise stated and agreed upon in writing by Rockport VAL.

(b) Fees are stated and must be paid in United States Dollars. The stated Fees do not include any sales, use, VAT or like taxes ("Sales Tax"). Client must pay any applicable Sales Tax that ROCKPORT VAL is required to collect from Client under applicable law. ROCKPORT VAL reserves the right to charge Sales Tax on or after the first day of each billing cycle.

(c) Unless Client has made other arrangements with ROCKPORT VAL, Client must authorize and maintain a current valid means for ROCKPORT VAL to collect the fees for the Service at all times during the Term. ROCKPORT VAL may charge the fees on or after the first day of each billing cycle. If ROCKPORT VAL agrees to accept payments against invoices, ROCKPORT VAL may invoice the fees on or after the first day of each billing cycle. Invoiced fees are due upon receipt of invoice date except as otherwise agreed to by ROCKPORT VAL in writing.

(d) ROCKPORT VAL may suspend or terminate the Service or Agreement if Client's payment is overdue, including if a charge to Client's payment card or account is rejected. ROCKPORT VAL may charge interest on overdue amounts at 1.5% per month. If ROCKPORT VAL takes legal action to collect an overdue amount, Client must also pay ROCKPORT VAL's reasonable costs of collection, such as attorney fees and court costs.

(e) REFUNDS WILL NOT BE PROVIDED FOR ANY SERVICE OR PLAN. WE DO NOT PROVIDE CREDIT, REFUNDS OR PRORATED BILLING FOR SUBSCRIPTIONS THAT ARE CANCELLED MID-MONTH OR DURING THE TERM.

In such a circumstance, Client will continue to have access to the Service until the end of the initial or renewal term, as applicable. Please note that Client must cancel this Agreement in accordance with Section 6 of this Agreement in order to avoid being charged the Fees for the next Term.

## **8. OWNERSHIP OF DATA; RESTRICTIONS**

ROCKPORT VAL owns all right, title and interest, including all intellectual property rights, in and to the Service and related documentation, any data related to Client's use of the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client relating to the Service and Client assigns and agrees to assign any and all rights therein to ROCKPORT VAL. The Service constitutes valuable commercial property and trade secrets of ROCKPORT VAL and/or its third-party information providers ("Third Party Providers"). Client will not claim any ownership interest in or right to use the Service except as provided herein, nor will it contest ROCKPORT VAL's or its Third Party Providers ownership rights. Client further agrees that ROCKPORT VAL and its Third Party 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 therefrom as confidential. Client will not (i) adapt, reverse engineer, decompile or disassemble any portion of the Service or otherwise attempt to derive its source code; (ii) remove any identification markings, including but not limited to copyright notices and trademarks, from the Service; (iii) make any modification, enhancement, or derivative work of the Service, or incorporate the Service, or any portion thereof, into or with any other software; or (iv) sell, assign, lease, sublicense, disclose, grant access to, or otherwise transfer the Service or information, data or work product derived from the Service or any copy thereof to any

other party. Client represents, warrants, and covenants that it owns or otherwise has all rights, licenses, permissions and approvals necessary to make the assignment described above, to provide the consents described in Section 11, and to perform all of its other obligations hereunder.

## **9. 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 but not limited to providing, upon request and at no cost, copies of audits, test results or an equivalent measure of the party's efforts to protect the Confidential Information. ROCKPORT VAL 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.

## **10. SUPPORT**

ROCKPORT VAL will provide commercially reasonable telephone support from 8:30 A.M. to 6:00 P.M. EST daily including introductory telephonic training in use of the Service. Additional training may be agreed upon in a separate agreement approved of in writing by Rockport VAL. ROCKPORT VAL shall provide reasonable disaster recovery and backup capabilities consistent with industry standards to minimize disruptions or delays in providing the Service. To provide certain support services ("Support Services") requested by Client, ROCKPORT VAL may engage outside



consultants (“Consultants”) who will have access to User Data, as defined in Section 11, and Confidential Information. In certain circumstances, Consultants may communicate with Client directly. All Consultants are bound by written agreement to maintain industry standard data security safeguards and to nondisclosure obligations consistent with this Agreement. By requesting or using those Support Services, Client agrees that ROCKPORT VAL may disclose User Data or Confidential Information required to provide the requested Support Services to Client and that ROCKPORT VAL is not responsible for any losses of User Data, breaches of confidentiality or other liability arising from acts or omissions of the Consultants.

## **11. PERFORMANCE; LIMITATIONS OF LIABILITY**

(a) ROCKPORT VAL 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 VAL’s or any Third Party Providers’ reasonable control (“Service Disruptions”). Client is aware that the foregoing Service Disruptions include, but are not limited to, possible data deficiencies such as inconsistency, incompleteness, sparseness, or untimeliness of data. Client acknowledges that ROCKPORT VAL’s ability to deliver the Service may be dependent, in part, on the Client’s ability to deliver to ROCKPORT VAL certain proprietary information and commentary which the Client may want included in the Service. Any and all such information and commentary uploaded, transmitted, stored, or otherwise provided by or on behalf of the Client (including by any Authorized Users) in connection with Client’s use of the Service is referred to collectively as “User Data.” Client further acknowledges that similar data may come from multiple Third Party Providers and that the use of specific data from one source versus another is in ROCKPORT VAL’s sole discretion. In providing for the compilation of data for inclusion in the Service, ROCKPORT VAL and the Third Party Providers rely upon

sources that they believe to be accurate, but the Client acknowledges neither ROCKPORT VAL nor Third Party Providers will independently verify significant portions of such data.

(b) By registering for and/or using any Service, Client consents to the use of User Data (including any personal data or information such as name, address, and IP address(es) contained therein), as described below. User Data may be stored, processed, and used by ROCKPORT VAL and its affiliates in connection with providing, maintaining, and supporting the Service (for example, to improve user experience and/or tailor user interaction with the Service), and for other related purposes. ROCKPORT VAL may also: (i) use User Data in aggregated, anonymized format for any lawful purpose;

(ii) share User Data with its/their respective affiliates and successors, and third-party service providers and/or business partners, in connection with the above-described uses; and (iii) share User Data in connection with the sale, assignment, merger or other transfer of its/their respective business(es), as applicable. Such third parties will be subject to contractual confidentiality requirements regarding User Data. ROCKPORT VAL will not redistribute or resell Client data including aggregated and anonymized data.

(c) ROCKPORT VAL does not warrant the Service to be free from defects or bugs or to be error-free. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ROCKPORT VAL DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. NEITHER ROCKPORT VAL NOR THE THIRD PARTY 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 VAL OR THE THIRD PARTY 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. NO REPRESENTATION IS MADE THAT THE SERVICE WILL PRODUCE CERTAIN RESULTS. ANY ANALYSES, OPINIONS, ESTIMATES, RATINGS OR RISK CODES PROVIDED BY ROCKPORT VAL OR THROUGH THE SERVICE ARE PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY, AND ARE NOT INTENDED TO PROVIDE, NOR SHOULD THEY BE INTERPRETED AS PROVIDING, ANY FACTS REGARDING, OR PREDICTION OR FORECAST OF, ANY PARTICULAR EVENT OR RISK. CLIENT FULLY AND KNOWINGLY ASSUMES ALL RISK THAT ANALYSIS, DATA OR OTHER RESULTS, EVALUATIONS OR CONCLUSIONS OBTAINED OR DERIVED USING THE SERVICE WILL BE ACCURATE, VALUABLE OR USEFUL. IN NO EVENT SHALL ROCKPORT VAL OR THE THIRD PARTY PROVIDERS BE LIABLE TO CLIENT OR ANYONE ELSE FOR ANY DECISION MADE OR ACTION TAKEN BY CLIENT IN RELIANCE THE SERVICE. NEITHER ROCKPORT VAL NOR THE THIRD PARTY 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 VAL NOR THE THIRD PARTY PROVIDERS WILL BE IN ANY WAY LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES. ROCKPORT VAL'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 VAL SERVICES MAY BE BROUGHT BY THE CLIENT MORE THAN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO SUCH ACTION HAS OCCURRED. CLIENT AGREES AND ACKNOWLEDGES THAT ROCKPORT VAL IS NOT AN INVESTMENT ADVISOR, A FINANCIAL ADVISOR OR A SECURITIES BROKER. THE SERVICE HAS BEEN PREPARED SOLELY FOR INFORMATIONAL AND EDUCATIONAL PURPOSES, AND IS NOT AN OFFER TO ORIGINATE, BUY OR SELL ANY MORTGAGE INSTRUMENT, TO BUY OR SELL OR A SOLICITATION OF AN OFFER TO BUY OR SELL ANY SECURITY OR INSTRUMENT OR TO PARTICIPATE IN ANY PARTICULAR TRADING STRATEGY. THE SERVICE IS INTENDED TO BE AN AID TO CLIENT'S OWN INVESTMENT PROCESS AND CLIENT'S INVESTMENT ACTIONS SHOULD BE SOLELY BASED UPON ITS OWN DECISIONS AND RESEARCH.

## **12. CONFIDENTIAL INFORMATION**

(a) 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 VAL or its employees in the performance of this Agreement shall be deemed to be confidential and proprietary information ("Confidential 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 of its employees, agents or consultants who may be exposed to such Confidential Information of their obligations to keep such information confidential. Notwithstanding

the foregoing, ROCKPORT VAL may list Client as a client of ROCKPORT VAL on its website or in other material. In no event shall Client utilize any findings about ROCKPORT VAL or the Service in any direct or indirect publication, disclosure or dissemination (written or oral) by Client or any type of comparative analysis, benchmarking, summary, surveys, business technology summaries, or other similar market assessment, report or like information concerning, referencing, describing, critiquing or evaluating services similar to those provided ROCKPORT VAL, except with the express written consent of ROCKPORT VAL in each instance.

(b) 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 under no known confidentiality obligation. 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 VAL 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 seek injunctive relief to restrain any such breach, threatened or actual.

### **13. 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 VAL or ROCKPORT VAL 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

VAL 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 VAL, 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 VAL 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 VAL 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 VAL may have with its employees or consultants.

#### **14. INDEMNIFICATION**

(a) Except as otherwise provided herein, ROCKPORT VAL shall (i) at its own expense defend Client with respect to any third-party claim that the Service as used by Client in accordance with the terms of this Agreement infringes or violates any U.S. patents, copyrights, trade secrets, licenses or other proprietary rights; and (ii) pay the resulting costs and damages finally awarded against Client by a court of competent jurisdiction that are the result of the third-party claim, the amounts negotiated and agreed to by ROCKPORT VAL in a written settlement. The foregoing obligations are subject to Client promptly providing ROCKPORT VAL with written notice of any claim which Client believes falls within the scope of this paragraph, Client reasonably cooperating with ROCKPORT VAL's request for information, and Client not being in material breach of this Agreement. Client may, at its own expense, assist in such defense if it so chooses, provided that ROCKPORT VAL shall control such defense and all negotiations relative to the settlement of any such claim. This provision shall survive the termination of this Agreement.

(b) If the Service or any portion of the Service becomes, or in ROCKPORT VAL's opinion is likely to become subject to any claim of infringement, ROCKPORT VAL will either (i) procure for Client the right to continue exercising its rights under this Agreement with respect to the Service; or (ii) replace or modify the Service to make it non-infringing, or if, neither (i) nor (ii) are, in Rockport Val's sole discretion, commercially feasible, terminate this Agreement and refund to Client a pro-rated portion of the applicable fee paid for the Service, in which case Client will immediately cease all use of the Service. The provisions in Sections 14 (a) and (b) are ROCKPORT VAL's sole obligation and Client's sole remedy with respect to any infringement claim.

(c) Client will indemnify and hold ROCKPORT VAL and any Affiliated Provider harmless from and against any claim, liability, loss, injury, damage, cost or expense (including attorneys' fees) incurred by ROCKPORT VAL or any Affiliated 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) (i) covered by Section 14(a) above or (ii) arising out of ROCKPORT VAL's gross negligence or willful misconduct. ROCKPORT VAL 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 VAL shall promptly provide Client with written notice of any claim which ROCKPORT VAL believes falls within the scope of this section. This provision shall survive the termination of this Agreement.

## **15. REMEDIES**

In the event of a material breach or threatened material breach of any term of this Agreement that threatens any rights of ROCKPORT VAL or any Affiliated Provider in the Service or the economic value of the Service, ROCKPORT VAL and the Third Party Providers will be entitled to preliminary and permanent injunctive relief to protect such rights and interests. Nothing herein will preclude ROCKPORT VAL or the Third

Party Providers from pursuing any action or other remedy for any breach or threatened breach of this Agreement, all of which will be cumulative.

## **16. THIRD PARTY BENEFICIARIES**

Third Party Providers are intended third-party beneficiaries of this Agreement with respect to the provisions of each section in which the term appears.

## **17. ASSIGNMENT**

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

## **18. APPLICABLE LAW; SEVERABILITY**

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. If, after a good faith effort to negotiate, the parties are unable to resolve the dispute, either party may submit the dispute for resolution by binding arbitration before a mutually-agreeable arbitrator to be conducted in accordance with the rules of the American Arbitration Association. The Federal Arbitration Act and federal arbitration law apply to this Agreement. All dispute resolution shall take place in New York City, Borough of Manhattan, New York and the parties irrevocably waive any objection to such venue. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity. The parties acknowledge that this binding arbitration requirement restricts the right to sue in court, that there is no judge or jury,



and court review of an arbitration award is limited. CLIENT AGREES THAT ANY CLAIMS WILL ONLY BE BROUGHT ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. CLIENT AND ROCKPORT VAL HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, TRANSACTIONS CONTEMPLATED HEREBY AND ANY OTHER ANCILLARY AGREEMENTS. 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.

## **19. SCOPE OF THE AGREEMENT**

This Agreement represents the entire agreement between ROCKPORT VAL and the Client relating to the Services. This Agreement supersedes all prior proposals, representations, understandings, and agreements, whether oral or in writing. ROCKPORT VAL may, in its sole discretion, revise or modify this Agreement at any time. Such changes, modifications, additions or deletions shall be effective immediately upon notice to Client, which may be given by any means including, but not limited to, posting on the ROCKPORT VAL website, or by electronic or conventional mail, or by any other means by which Client obtains notice thereof. Client should continue to review these terms whenever using the Service. By using the Services, the Client also agrees to and accepts the terms of ROCKPORT VAL's Privacy Policy, which is incorporated by reference herein and may be found [here](#). The provisions of Sections 6, 7, 8, 11, 12, 13, 14, 15, 16, 18, and 19 and all such similar

terms which, by their substantive intent should survive the expiration or termination of this Agreement shall so survive.

## **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 email to [Subscriptions@rockportval.com](mailto:Subscriptions@rockportval.com) and a copy by certified or registered mail. Notice to ROCKPORT VAL shall be sent to: ROCKPORT VAL, LLC, 505 Fifth Avenue, New York, NY 10017, Attn: Legal Department. Notice to Client shall be sent to the addresses provided by Client in its order for the Services or to such other address as the party to receive the notice has designated by notice to the other party.

## **21. FORCE MAJEURE**

Except for payment of fees, neither party will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party's reasonable control.

## **22. EXPORT**

Client agrees that it will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of, the Service, or any technical information or documentation about the Service, to any country for which the United States Export Administration Act, any regulation thereunder, or any similar United States law or regulation, requires an export license or other United States government approval, unless the appropriate export license or approval has been obtained and such use is otherwise within the limits of the rights licensed to Client under this Agreement.