

## VERTICAL IQ LICENSE TERMS AND CONDITIONS

THESE VERTICAL IQ LICENSE TERMS AND CONDITIONS (“AGREEMENT”) SET OUT BELOW GOVERNS YOUR USE OF THE PORTAL AND THE REPORTS. TO AGREE TO THESE TERMS AND CONDITIONS, CLICK "AGREE". IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK "AGREE", AND DO NOT USE THE PORTAL OR THE REPORTS. BY CLICKING “AGREE”, YOU REPRESENT AND WARRANT THAT YOU ARE A DULY AUTHORIZED REPRESENTATIVE OF CUSTOMER WITH THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER.

This Agreement is between Vertical IQ, Inc., a North Carolina corporation located at 601 St. Mary’s Street, Raleigh, NC 27605 (“Vertical IQ”) and the customer named on the Order Form (“Customer”).

### BACKGROUND

Vertical IQ has previously developed a web-based portal (the “Portal”) that provides users with access to profiles describing industries such as nursing homes, commercial printing, dentists and approximately 225 others, which provide information for relationship managers and credit underwriters, among others, to use in researching various industries to facilitate informed decisions and advice regarding general lending considerations, banking products useful to the industry, and other information. Each industry profile contains approximately fifteen to twenty pages of portal-accessed proprietary content—including trends, challenges, financing, news, statistics, videos about the industry, email alerts, and more—along with certain user-modifiable components such as sections for internal bank notes and forum communications;

Customer desires to have access to the proprietary industry research profiles offered through the Portal (as hosted by Vertical IQ or its contractor), subject to the terms and conditions set forth in this Agreement; and

Because the Portal has been previously developed by Vertical IQ, this Agreement does not contemplate any custom development by Vertical IQ for Customer, “on-site” services (other than limited training opportunities set forth below), or the receipt by Vertical IQ of any information about customers of Customer or other sensitive information.

NOW THEREFORE, in consideration of the mutual benefits provided herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### **1. DEFINITIONS**

“**Vertical IQ Technology**” means any Vertical IQ technology, including, but not limited to, the Portal, the Internet website through which the Reports are provided, hardware, software, documents, documentation, processes, algorithms, user interfaces, and know-how created, conceived, used, or otherwise developed, licensed or acquired by Vertical IQ or embodied or otherwise incorporated in, or used to operate or provide access to the Reports, in whole or in part, including without limitation, all inventions and works of authorship included in the foregoing.

“**Authorized Users**” means those employees and authorized representatives of Customer as

described on the Order Form that are authorized to carry out functions on behalf of Customer and are authorized by the License Administrator to access and use the Reports in accordance with the terms hereof. The maximum number of Authorized Users is set forth on the Order Form.

**“License Administrator”** means the employee of Customer that Customer designates on the Order Form to manage and administer Customer’s access and use of the Reports.

**“Order Form”** means the order form or other written agreement between Customer and Business Valuation Resources, LLC, regarding Customer’s subscription to the Portal.

**“Proprietary Right”** means any patent, copyright, trademark, trade secret, trade dress, moral right, right of attribution or integrity or other intellectual or proprietary rights.

**“Reports”** means those web-based reports, works of authorship, as well as any additions, improvements, modifications, updates, upgrades, new releases, or revisions to the foregoing provided through the Vertical IQ Technology.

**“User-Modifiable Components”** means those sections of the Reports and Portal that are designated as “My Notes” and “My Bank Perspective” and the “Forum,” which sections are custom modifiable (within certain parameters) by the Customer as further set forth herein.

## **2. RIGHTS AND OWNERSHIP**

**2.1 License Grant.** Subject to the terms and conditions of this Agreement, Vertical IQ hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license to access and use the Reports as made available to Customer through the Portal during the Term solely for Customer’s internal business purposes, provided that all such use and access shall be undertaken solely by those Authorized Users subject to the maximum number stated on the Order Form. If the Order Form does not set forth the maximum number of Authorized Users, the maximum number of Authorized Users is one (1) Authorized User. The foregoing license includes the Customer’s right to share one copy of the Reports with each of their clients; provided, however, the Customer shall not charge the client for the copy of the Reports. Solely to the extent that Customer is preparing a valuation report for a client, Customer may include relevant content from the Reports in such valuation report, and may distribute the valuation report to the applicable valuation client, and to courts and regulatory and supervisory authorities in connection with such client’s use of the valuation report; provided that Customer and Customer’s client may not use such valuation reports for any other purpose, including any commercial purpose. This Agreement constitutes a license and not a transfer of title in the Reports.

**2.2 Vertical IQ Technology and Reports.** As between Customer and Vertical IQ, Vertical IQ is the sole and exclusive owner of all rights in the Reports and Vertical IQ Technology and all products or services developed by Vertical IQ in relation thereto. All rights in the Reports and Vertical IQ Technology not expressly granted hereunder are hereby retained by Vertical IQ. Customer acknowledges that the Reports and Vertical IQ Technology are proprietary to Vertical IQ, may contain confidential and unpublished material and are protected by trade secret, copyright and other Proprietary Rights.

**3. RESTRICTIONS AND REPRESENTATIONS.** Except as expressly authorized in this Agreement, Customer will not, and shall ensure that Authorized Users do not, directly or indirectly: (i) resell, transfer or broker the Reports except as set forth herein in Section 2.1; (ii) allow the publication of the Reports

or allow the Reports to be displayed publicly within the meaning of the United States Copyright Act; (iii) commingle, merge or append any Reports or information contained therein with any separate file or data bank without the prior written consent of Vertical IQ unless such activity is in the normal course of business such as internal documents or files; (iv) modify, reverse engineer, disassemble or decompile the Reports or the Vertical IQ Technology, or attempt to determine any portion of the source code or any trade secrets with respect to the Reports or the Vertical IQ Technology, or prepare derivative works based on the Reports or the Vertical IQ Technology; (v) sublicense or subcontract the right to reproduce the Reports or the Vertical IQ Technology; (vi) remove, obscure, or alter any notice of copyright, trademark, or other Proprietary Right appearing in or on any item included with the Reports or the Vertical IQ Technology; (vii) circumvent or attempt to circumvent any methods employed by Vertical IQ to control access to the components, features or functions of the Reports or the Vertical IQ Technology, or to prevent unauthorized use of the Reports or the Vertical IQ Technology; (viii) use the Reports or the Vertical IQ Technology in any commercially hosted or service bureau environment; (ix) use or authorize or permit any third party to use any "robot," "spider" or other automatic device, or a program, algorithm or methodology having similar processes or functionality, or any manual process, to monitor, copy or reverse engineer any of the web pages, data or content found on the Portal; (x) utilize any software, application, or algorithm, whether integrated in a browser or otherwise, that modifies or adds content to the layout, design, or content of the Portal; (xi) transfer any web pages, data or content, found on the Portal to any other computer, server, website, or other medium for mass distribution or for any use other than as expressly permitted hereunder; or (xii) use any device, software or routine that interferes or attempts to interfere with the normal operation of the Portal or take any action that imposes an unreasonable or disproportionate burden or load on the infrastructure of the Portal. The Reports shall at all times identify Vertical IQ as the source of the Reports. Customer may not use the Reports or any data contained therein to create, develop or enhance a competing product or service. Notwithstanding the foregoing, Customer may, through its License Administrator, modify and create derivative works of the User-Modifiable Components, solely for the Customer's internal use.

#### **4. RIGHTS AND OBLIGATIONS OF THE PARTIES**

**4.1 License Administrator.** The License Administrator is set forth on the Order Form.

**4.2 Compliance with Laws.** Each party shall comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any applicable governmental authority, in its performance of its activities hereunder.

**4.3 Access to and Use of the Portal and Reports.** In accordance with the terms of the Agreement, Vertical IQ will provide Customer's Authorized Users with access to the Portal, as hosted on Vertical IQ's dedicated servers (either owned by Vertical IQ or maintained by a third party contractor). Customer is entitled to continued access to the Portal and Reports only for the duration of the Term. Customer is solely responsible for the designation and administration of passwords ("Passwords") to access the Portal and Reports. Subject to the terms hereof, Customer will use commercially reasonable measures to prevent unauthorized access to, or use of, the Portal or Reports by any person or entity other than Authorized Users, including without limitation adhering and ensuring that Authorized Users adhere to the restrictions hereunder and any terms, conditions or rules that appear on the Portal or in the Reports from time to time and keeping and ensuring that all Authorized Users keep all user identification numbers and Passwords confidential and are not shared with any other person (including any other Customer personnel). Except as otherwise agreed by the parties in writing, Customer shall have sole responsibility for acquiring and maintaining its own technical environment, including but not limited to

the hardware and Internet access to access the Portal as permitted hereunder, which for clarity shall include satisfaction of the Minimum System Requirements set forth on Appendix A hereto.

**4.4 Publicity.** Vertical IQ shall not in any way or in any form publicize or advertise in any manner the fact it is providing services or Reports to Customer without the express written approval of Customer, obtained in advance, for each item of advertising or publicity. However, nothing herein shall preclude Vertical IQ from listing Customer as a client. In no event will Vertical IQ use the Customer trademark in any printed material, websites, or other medium without the prior written approval of Customer.

## **5. CONFIDENTIALITY**

**5.1 Confidentiality.** Each party (“**Receiving Party**”) will hold in confidence all information obtained from the other party (“**Disclosing Party**”) in connection with this Agreement (“**Confidential Information**”) and use and disclose it only as expressly permitted under this Agreement, provided that these restrictions will not apply to any information that (i) was already known to the Receiving Party without obligation of confidentiality; (ii) is or becomes properly available to the Receiving Party (under conditions which do not restrict further disclosure) from a third party source who did not obtain such information directly or indirectly from the Disclosing Party; or (iii) is or becomes part of the public domain through no fault of the Receiving Party. The Reports and the terms of this Agreement constitute Confidential Information of Vertical IQ for all purposes under this Agreement.

**5.2 Injunctive Relief.** The parties acknowledge and agree that (a) any actual or threatened breach by a party of its duties and obligations under this Section 5 will cause the other party irreparable harm for which money damages would not constitute an adequate remedy; and (b) in the event of any such actual or threatened breach, the Disclosing Party will be entitled to seek injunctive relief to prevent or eliminate such breach.

**5.3 No Customer Information.** Unless otherwise specifically agreed in writing between the parties, Customer agrees that it shall not provide Vertical IQ with any information about its customers whatsoever, including without limitation names, addresses, identification numbers, bank account information, credit card information, or any other personally-identifiable information or other similar information.

## **6. SUPPORT**

**6.1 Modification.** Vertical IQ reserves the right to modify the Portal used to provide the Reports for purposes including but not limited to accommodating evolving technology and increased network demand, and providing enhanced Reports, provided that such modifications do not have a material adverse effect on the Reports provided hereunder. Without limiting the generality of the foregoing, to the extent any such change results in a change in the Internet Protocol addresses associated with the Portal, Vertical IQ shall reasonably assist Customer to ensure that Customer’s domain names are registered with the new Internet Protocol addresses in a timely manner.

**6.2 Technical Support.** Vertical IQ will provide Customer with technical support during Vertical IQ’s normal business hours via teleconference at no additional charge to Customer.

**6.3 Updates and Improvements.** Vertical IQ will provide Customer with ongoing maintenance,

updates and improvements to the Reports that Vertical IQ provides to all of its customers at no additional charge to Customer, provided, however, that such updates and improvements do not constitute a new or separate Report, as determined in the sole discretion of Vertical IQ.

**6.4 Usage Reports.** Vertical IQ will provide Customer with usage reports once per month including number of logins, logins by user, and industry Reports accessed.

**6.5 Training.** Vertical IQ may from time to time provide Customer with such additional training webinars regarding the use of Vertical IQ's Reports and Vertical IQ Technology.

## **7. TERM AND TERMINATION**

**7.1 Term.** The Order Form sets forth the Term of this Agreement. If the Order Form does not set forth a Term, the Term shall be one year from the date of the Order Form.

**7.2 Termination.** Either party may terminate this Agreement at any time (a) upon written notice to the other if the other party commits a material breach hereunder and fails to cure such breach within thirty (30) days following receipt of written notice thereof, or (b) immediately upon written notice to the other if the other commits any breach of Sections 2 (Rights and Ownership) or 5 (Confidentiality).

**7.3 Effect of Termination.** Sections 2.2, 3, 5, 7.3, 8.2, 8.3, 8.4, 9 and 10 of this Agreement, and any other provisions which would reasonably be expected to survive, will survive any termination or expiration of this Agreement. Upon the expiration or termination of this Agreement pursuant to and in accordance with this Section 7, the following will apply unless otherwise agreed upon by the parties, Customer will immediately cease to have access to the Reports.

## **8. LIMITED WARRANTY AND INDEMNITY**

**8.1 Warranty.** Vertical IQ warrants that, to Vertical IQ's actual knowledge, the current versions of the Reports as made available to Customer by Vertical IQ, when used in accordance with this Agreement, do not infringe any third party's intellectual property rights. If the Reports do not comply with this warranty, Customer's sole remedy and Vertical IQ's sole obligation will be to indemnify and hold Customer harmless from and against any third-party infringement claims, actions, investigations or liabilities (including damages, losses, costs, expenses, and reasonable attorneys' fees) resulting specifically from the non-compliance (provided Customer permits Vertical IQ to defend Customer against any such claim), and to use commercially reasonable efforts to (A) procure for Customer the right to continue to use the Reports as set forth in this Agreement; (B) provide a reasonable workaround solution; or (C) replace or modify the Reports to make their use non-infringing without any material degradation of performance or, if alternatives (A)-(C) are not practicable, to refund a prorated portion of the fees paid by Customer for the affected Reports and terminate this Agreement as to the affected Reports upon written notice to Customer.

**8.2 Customer Indemnity.** The information contained in the Reports is intended for background preparation and general information only, and is not to be used for making lending decisions or other business purposes. Customer assumes sole responsibility for results obtained from the use of the Reports by Customer and conclusions drawn therefrom. Customer will defend, indemnify and hold Vertical IQ harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, attorneys' fees, or disbursements of any kind or nature

whatsoever that may be imposed upon, incurred by or asserted against Vertical IQ arising from (a) any violation of the terms of this Agreement; (b) results obtained by Customer's use of the Reports and conclusions drawn therefrom and (c) Customer's use of the Reports except to the extent resulting from any breach of this Agreement by Vertical IQ.

**8.3 Procedure.** In any claim described in this Section 8, the party seeking indemnification will: (a) give the indemnifying party prompt written notice of the claim; (b) permit the indemnifying party to control the defense and settlement of the claim (provided that the indemnifying party may not settle any claim without the indemnified party's prior written consent, which consent may not be unreasonably withheld or delayed); and (c) cooperate with the indemnifying party (at the indemnifying party's expense) in the defense and settlement of the claim.

**8.4 Disclaimer and Release.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, VERTICAL IQ MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING USE OF OR RELIANCE ON THE REPORTS AND THE REPORTS ARE PROVIDED "AS IS". THE WARRANTIES OF VERTICAL IQ AND THE REMEDIES OF CUSTOMER SET FORTH IN THIS SECTION 8 ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND CUSTOMER HEREBY WAIVES, RELEASES AND DISCLAIMS ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF VERTICAL IQ AND ALL OTHER REMEDIES, RIGHTS AND CLAIMS OF CUSTOMER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT, DEFICIENCY, DATA ACCURACY, OR NONCONFORMITY IN THE REPORTS, VERTICAL IQ TECHNOLOGY, DOCUMENTATION OR ANYTHING ELSE FURNISHED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY: (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY, RIGHT, REMEDY OR CLAIM IN TORT, NOTWITHSTANDING ANY FAULT, NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY OF VERTICAL IQ (WHETHER ACTIVE, PASSIVE OR IMPUTED); AND (D) CLAIM OF INFRINGEMENT (EXCEPT AS SET FORTH SPECIFICALLY IN SECTION 8.1). VERTICAL IQ DOES NOT WARRANT THAT OPERATION OF OR USE OF THE REPORTS OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR ENTIRELY SECURE. CUSTOMER WILL BEAR ALL RISK ASSOCIATED WITH ANY USE OF THE INTERNET OR OTHER MEANS OF COMMUNICATION OR DATA TRANSMISSION BY OR ON BEHALF OF CUSTOMER UNDER THIS AGREEMENT, INCLUDING WITH RESPECT TO ANY VIRUS OR HARMFUL CODE RESULTING THEREFROM, AND VERTICAL IQ DISCLAIMS ALL LIABILITY AND RESPONSIBILITY IN CONNECTION WITH SUCH USE.

## **9. LIMITATIONS**

**9.1 Excused Performance.** Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (other than monetary obligations) as a result of any cause or condition beyond such party's reasonable control.

**9.2 Limitation of Liability.** VERTICAL IQ'S LIABILITY (WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE WHETHER ACTIVE, PASSIVE OR IMPUTED) OR ANY OTHER THEORY) ARISING UNDER OR WITH REGARD TO THIS AGREEMENT OR THE REPORTS, VERTICAL IQ TECHNOLOGY, DOCUMENTATION, OR OTHER ITEMS FURNISHED HEREUNDER WILL IN NO EVENT EXCEED IN THE AGGREGATE THE TOTAL COMPENSATION PAID BY CUSTOMER TO VERTICAL IQ UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING ASSERTION OF THE APPLICABLE CLAIM.

**9.3 Limitation of Damages.** IN NO EVENT WILL VERTICAL IQ HAVE ANY OBLIGATION OR LIABILITY (WHETHER BASED ON CONTRACT, WARRANTY TORT (INCLUDING NEGLIGENCE WHETHER ACTIVE, PASSIVE OR IMPUTED) OR OTHER THEORY) FOR THE COST OF COVER OR FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LIABILITIES (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA, REVENUE, PROFIT OR BUSINESS) ARISING OUT OF OR PERTAINING TO THIS AGREEMENT OR THE REPORTS, DOCUMENTATION, VERTICAL IQ TECHNOLOGY OR OTHER ITEMS FURNISHED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10. GENERAL**

**10.1 Independent Contractors.** Vertical IQ and Customer are independent contractors, not employees, agents, or franchisees of one another. Neither party will represent or hold itself out as an employee, agent, or franchisee of the other. Neither party will be entitled to, and neither party will attempt to, create or assume any obligation, express or implied, on behalf of the other party. This Agreement will not be interpreted or construed as creating or evidencing any association, joint venture, or partnership among the parties or as imposing any partnership or franchisor obligation or liability on any party. Further, this Agreement will not be interpreted or construed to create an exclusive relationship between the parties. Each party reserves the right to promote, market and solicit sales, licenses and other offerings of its products or Reports without restriction, either directly or through others, at any time during or after the termination or expiration of the Term.

**10.2 Notices.** Any notice or other communication under this Agreement given by either party to the other will be in writing and delivered either (a) in person or by first-class, registered, or certified U.S. mail or overnight delivery service, return receipt requested, postage prepaid to the address set forth in the Order Form, or (b) by electronic mail to [info@verticaliq.com](mailto:info@verticaliq.com) (for notice to Vertical IQ) or Customer's email address set forth in the Order Form (for notice to Customer). Where a notice is sent under (a) above, notices will be deemed received twenty-four (24) hours after the same has been sent in accordance with this Section 10.2. Where a notice is sent under (b) above, notices will be deemed received upon delivery. Notices will be directed to the intended recipient at the address specified at the beginning of this Agreement or electronic mail address listed in this Section 10.2. Either party may from time to time change such addresses by giving the other party notice of such change in accordance with this paragraph.

**10.3 Assignment.** Customer will not assign or delegate this Agreement or its rights or obligations under this Agreement by operation of law or otherwise without the prior written consent of Vertical IQ. Any assignment by Customer, with or without Vertical IQ's consent, will not relieve Customer of any of its obligations under this Agreement. Subject to the foregoing restriction on assignments by Customer, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Any assignment in violation of the foregoing restrictions shall be null and void.

**10.4 Nonwaiver.** The failure of either party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and remain in full force and effect. Further, no waiver will be valid unless set forth in a written instrument signed by the party to be bound thereby.

**10.5 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the enforceability of the remaining provisions of this Agreement shall not be affected and the unenforceable provision shall be deemed modified such that it is enforceable and accomplishes the intention of the parties to the fullest extent possible.

**10.6 Applicable Law.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of North Carolina without reference to its choice of law principles to the contrary. Each party hereby consents to the jurisdiction and venue of the state and federal courts located in Wake County, North Carolina, with regard to any suit or claim arising under or by reason of this Agreement. Customer will not commence or prosecute any suit or claim to enforce this Agreement, or otherwise arising under or by reason of this Agreement, other than in such courts.

**10.7 Entire Agreement.** This Agreement, the Order Form(s), and the appendices hereto constitute the entire agreement and understanding of the parties regarding the subject matter hereof and may not be modified except by a written instrument which expressly amends this Agreement signed by an authorized representative of each party. In the event of an inconsistency between this Agreement and the Order Form, this Agreement shall control.



## **Appendix A**

### **Minimum System Requirements**

**In order to access the Portal, Authorized Users must meet the following “Minimum System Requirements”:**

- **Internet Explorer 9.0 or greater, or Firefox 4.X, or Safari 5.X**
- **Adobe Flash Player**
- **Javascript**
- **Flash Video**