

## TERMS AND CONDITIONS

Licensor will supply access to the Services according to these Terms and Conditions.

### 1. DEFINITIONS

For purposes of the Agreement, the following terms have the meanings indicated:

“Affiliate” means an entity explicitly named in the Order Form that controls, is controlled by, or is under common control with a Party. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity through the ownership of voting securities.

“Agreement” means the entire agreement as between Licensor and Licensee, comprised of the Order Form and these Terms and Conditions.

“Authorized Users” means, unless otherwise indicated in the Order Form, employees and Contractors of Licensee who physically report to and work at a Site or work at Remote Locations.

“Comments” means notes made and saved by Authorized Users in text fields appended to the Content, with such functionality available only for certain Services.

“Content” means information comprised in the Services.

“Contractor” means an independent contractor engaged by Licensee who (a) is approved in writing by Licensor prior to accessing the Services, (b) is subject to obligations of confidentiality no less stringent than such obligations on Licensee under this Agreement, and (c) exclusively uses the Services on behalf of, and while providing services to, Licensee.

“Fee” means the fee set out in the Order Form and payable to Licensor.

“Hosted Information” means a report or other information supplied by a third party and incorporated into the Services.

“IP Rights” means all patents, copyrights, trademarks, trade secrets, database rights, confidential information, know how, and other intellectual property rights owned or licensed by Licensor and deployed in the Services.

“License” means the rights granted to Licensee pursuant to section 3.1.

“Licensee” means, unless otherwise specified on the Order Form, the individual legal entity specified on the Order Form as a purchaser of the Services and its Affiliates.

“Licensor” means the services provider identified in the Order Form.

“Order Form” means the form by which Licensee orders the Services and accepts the Agreement and which specifies, among other things, the Fee, format and level of Services, Sites, Start Date, and the duration of the Term.

“Party” and “Parties” refer to Licensor and Licensee, individually and together, respectively.

“Pitch” means a presentation prepared solely for the purpose of selling new business or renewing current business.

“Precis” means a concise summary of essential points, statements, or facts developed by distilling, summarising, and analysing the Content (excluding any special alert, whether electronic or otherwise, by Licensor to an Authorized User) and which contains no more than five (5) records, video segments, or still images extracted from the Content.

“Remote Location” means a particular physical location(s), other than a Site, where a single Authorized User works among neither other Authorized Users nor employees of Licensee.

“Secure Network” means a private network (whether a standalone network or a virtual network within the internet) operated and regulated by Licensee which is accessible to Authorized Users only with the prior approval of Licensee, requiring identity to be authenticated at the time of login and periodically thereafter consistent with current best practice.

“Services” means data, research, and product retrieval services, as more particularly specified on the Order Form, including without limitation marketing intelligence, analysis, and editorial in reports and databases published from time to time by Licensor, the contents of which relate to a variety of market sectors, product categories, and territories which are, subject to these Terms and Conditions, available in electronic format on the Website or in print format, if at all, directly from Licensor. The Services may include compilations of marketing material, including images of marketing material distributed by Licensee and third parties, all supplied by Licensor as part of a news reporting function together with accompanying analysis and commentary.

“Site” means the particular physical location or locations of Licensee as defined on the Order Form.

“Start Date” means the date on which the License starts as specified on the Order Form.

“Taxes” means any sales, use, excise, value-added, or other taxes applicable to the Services as rendered under this Agreement (excluding ordinary personal property taxes, Licensor’s corporate franchise taxes, or taxes based on Licensor’s net income or status as an employer).

“Term” means the term of this Agreement as defined in section 10.1.

“Website” means websites, including www.comperemedia.com, www.mintel.com, www.gnpd.com, and other websites, owned and operated by Licensor that may be amended or deployed at alternate URL addresses by Licensor from time to time.

## 2. FEE, PAYMENT, AND TAXES

2.1 Fee and Payment. Unless indicated otherwise in the Order Form, Licensee will pay the Fee to Licensor within thirty (30) days of receipt of Licensor’s invoice. For each year of a multiple year Term and for each Renewal Term, Licensor will invoice the Fee year by year. Licensor may issue any invoice in electronic or print format. A fee for late payments will be assessed equal to the lesser

of one and one half percent (1.5%) per month and the maximum rate permitted by law.

2.2 Taxes. Unless expressly provided otherwise, the Fee excludes Taxes. Each Licensor invoice will itemize Taxes. Licensor will apply any Licensee payment first to Taxes and thereafter to the Fee. Upon request, Licensor will provide Licensee with the necessary tax certification (e.g., Form W-8 or Form W-9) and any required supporting documentation in order to certify Licensor’s tax status, or the tax status of the Services, as legally may be required. Licensee will pay or reimburse Licensor for any Taxes for which either Party may become or be held responsible, and Licensor will remit such amounts to the appropriate taxing authority and keep appropriate records of the assessment and payment of the Taxes. Licensor exclusively will be liable for any penalties, interest, and other charges of any jurisdiction arising from Licensor’s failure (a) to assess, or timely to assess, any applicable Taxes (provided that Licensee will remain liable for the underlying Taxes that Licensor failed to assess) or (b) to remit to the appropriate taxing authority any amounts collected from Licensee for Taxes. Licensor reasonably will cooperate with Licensee in Licensee’s efforts lawfully to minimize any Taxes and to claim a refund of paid Taxes.

## 3. PERMITTED USES

3.1 Grant of License. Subject to these Terms and Conditions, Licensor grants to Licensee a limited, non-exclusive, and non-transferable right and license during the Term for Authorized Users (a) to access and use the Services on the Website via a Secure Network and (b) to reproduce, prepare derivative works of, distribute, and display the Content in electronic and print format.

3.2 Generally. The License permits an Authorized User to:

3.2.1 Internal Use and Distribution. Solely for internal use and distribution by Licensee:

- (a) View, retrieve and display the Content;
- (b) Electronically save the Content only to the extent and for the time period necessary to use it for the purpose for which it was downloaded, but in no event longer than the Term, always allowing for usage as permitted in section 3.2.1 (e);
- (c) Distribute to employees of Licensee one-off selections of the Content in print format, with the source clearly identified;
- (d) Subject to the time limitations of section 3.2.1 (b), distribute to other Authorized Users one-off selections of the Content in electronic format, with the source clearly identified; and
- (e) Prepare, distribute only to employees of Licensee located within the Site, and indefinitely save a Precis, with the source clearly identified.

3.2.2 External Use. Solely for external use, prepare, present, and indefinitely save a Precis as part of a Pitch, provided that:

- (a) For report services, the Precis contains no more than (i) two and one half percent (2.5%) of any single report forming part of the Services and (ii) twenty-five percent (25%) of a section within any single report (such percentages to exclude indexes and contents pages);
- (b) For database services, the Precis contains no more than five (5) records or images;
- (c) For those Services provided in a PowerPoint format, the Precis

contains no more than two (2) pages (or their contents); and

- (d) The source of the Precis is clearly identified.

#### 4. PROHIBITED USES

- 4.1 Except as otherwise permitted in this Agreement, the License disallows Licensee to:
  - 4.1.1 Remove or alter any copyright notices and other identification or disclaimers as they may appear on the Services, on the Website, or on any print format thereof;
  - 4.1.2 Systematically make copies, electronic or otherwise, of multiple extracts of the Content for any purpose;
  - 4.1.3 Distribute any Content other than to Authorized Users; and
  - 4.1.4 Mount or distribute any Content on any electronic network, such as an intranet or the internet, or otherwise publish, broadcast, or display any Content in public.
- 4.2 For the avoidance of doubt, except for the License granted, Licensor retains and reserves all right, title, ownership, and interest in and to the Services and any intellectual property therein.

#### 5. UNDERTAKINGS BY LICENSEE

- 5.1 Publishing Schedules. Licensee acknowledges that future publishing schedules of the Content are subject to modification from time to time, in common with standard industry practice.
- 5.2 Protection of IP Rights. Licensee acknowledges the IP Rights and accordingly will:

- 5.2.1 Appropriately notify all Authorized Users of the importance of respecting the IP Rights;
- 5.2.2 Cause Authorized Users to comply with these Terms and Conditions, and immediately on becoming aware of any breach of them, notify Licensor and take appropriate steps to desist such activity and to prevent any recurrence;
- 5.2.3 To the extent practicable, provide Licensor with the IP addresses, or range of IP addresses, of Licensee's computers or networks from which the Services may be accessed to allow Licensor to restrict access to such IP addresses;
- 5.2.4 Where Licensee does not provide IP addresses pursuant to section 5.2.4, issue passwords or other access information only to Authorized Users and ensure that Authorized Users do not divulge their passwords or other access information to any third party, provided that if any such password or other access information constitutes an e-mail address, then Licensee will permit Authorized Users to use only Licensee-issued e-mail addresses that employ address nomenclature customarily used by Licensee;
- 5.2.5 With regard to Licensee employees and representatives, permit access to the Services only by Authorized Users; and
- 5.2.6 Investigate promptly upon notice by Licensor the occurrence of any unusual downloading activity by any Authorized User.
- 5.3 Disclosure to Supplier of Hosted Information. Licensee acknowledges that when the Services include any Hosted Information, Licensor will share usage, pricing, and other relevant information regarding Licensee with the supplier of the Hosted Information.
- 5.4 Effect of Access to Unsubscribed Services. If Licensee obtains or accesses Services not specified on the Order Form as a result of a breach of these Terms and Conditions, and Licensee then uses such Services, then promptly upon such discovery Licensee will notify Licensor and will pay an additional fee equivalent to the then rate card value of such Services.
- 5.5 No Action to Impede Services. Licensee acknowledges that the current and then continuing supply of the Services is for the benefit of all licensees of the Services. Accordingly, a condition of the License is that Licensee will take no action, directly or indirectly, to prevent Licensor from providing the Services.
- 5.6 Comments. Licensee will ensure that neither libellous nor blasphemous language appears in the Comments and will be responsible for the removal of Comments.
- 5.7 Use of Company Name. Licensor may include Licensee's name as a customer in Licensor's sales and marketing literature, but will not use such fact to imply that Licensee endorses the Services in particular or Licensor in general.
- 5.8 No Disclosure to Non-Participating Retailers.
- 5.8.1 Definition. For purposes of this section 5.8, "Non-Participating Retailer" means a retailer and its subsidiaries, each as defined by Information Resources, Inc. ("IRI"), where the retailer, or one of its associated companies, has declined to participate in IRI's Infoscan information service ("Infoscan Data") by not providing its data to IRI. A current written list of Non-Participating Retailers and subsidiaries (as notified to Licensor by IRI) is available from Licensor at any time, or as linked at the Website. As of the Start Date, Non-Participating Retailers are Aldi, Amazon, Costco, Dollar Tree, Lidl, Trader Joe's, and Whole Foods.

- 5.8.2 Prohibition. The purchase or use of any Content containing Infoscan Data by (or disclosure to) a Non-Participating Retailer or its employees (or agents/professional advisors working on its account) is prohibited. Accordingly, Licensee will not knowingly disclose any Content containing Infoscan Data to a Non-Participating Retailer.
- 5.9 No Competitive Services by Licensee. Licensee will not create or operate, or assist in the creation or operation, of services competitive or potentially competitive to the Services, provided that this prohibition does not apply to Licensee's use of services competitive to the Services.
- 5.10 Licensee Equipment. Licensee will supply, at its own expense, the equipment, software, and services necessary to be able to access the Website and Services. Such equipment and services may include, without limitation, Internet access service via an Internet service provider and associated necessary hardware and network connectivity for either a dial up or Internet connection (i.e. modem, cable modem, digital subscriber line, T-1 connection, etc.).
- 5.11 Records; Audit. Licensee will keep all records necessary to verify its compliance with this Agreement and grants to Licensor access to, and the right to examine upon reasonable notice, Licensee's records relevant to this Agreement during Licensee's normal business hours.
- 5.12 Effect of Merger or Acquisition. If Licensee acquires, is acquired by, or merges with a business entity which also is a licensee of the Services, and if the License terminates before the license of the other business entity terminates, then the Term will extend until the end of the term of the other license, and the fee payable under the extended Term will increase, on a pro rata basis, by five percent (5%) over the then-applicable Fee.
- 5.13 Financial Reliance. Licensee neither will encourage financial reliance by third parties

upon, nor invite investment from others based upon, the Content without first obtaining the written consent of Licensor's corporate secretary to do so, which Licensor may withhold in its absolute discretion. Absent such consent, Licensee will defend, indemnify, and hold harmless Licensor against any direct loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any third party legal action taken against Licensor based upon such encouragement or invitation.

## 6. UNDERTAKINGS BY LICENSOR

- 6.1 Delivery of Services. Licensor will make the Services available via the Website.
- 6.2 Website. Licensor will use commercially reasonable efforts to do the following regarding the Website:
- 6.2.1 Capacity. Ensure that its server has adequate capacity and bandwidth to support access by Licensee to the Website at a level commensurate with the standards of availability for information services of similar scope operating via the world wide web, as such standards evolve during the Term; and
- 6.2.2 Availability. Make the Website available at all times, save for routine maintenance, and to restore access to the Website as soon as reasonably practicable in the event of an interruption or suspension of the service.
- 6.3 Usage Information. Licensor will provide usage information for Licensee's internal use only.
- 6.4 Reduction in Services.
- 6.4.1 Infringement; Objectionable. Licensor may withdraw from the Services, at any time and from time to time, any Content which Licensor reasonably believes infringes intellectual property rights or is

defamatory, obscene, unlawful, or otherwise objectionable.

- 6.4.2 Reduction Warranting Refund. Upon notice to Licensee, Licensor may withdraw from Licensee either the entire Service or any media channel, section, or data contained in the Services. If such a withdrawal from the Services is for reasons other than those covered elsewhere in this Agreement, and if the amount of material so withdrawn comprises ten percent (10%) or more of the Content, then Licensor promptly will make a pro rata refund of any fully paid Fee (plus any sales taxes paid) for that portion of the Services, as stated on the Order Form, taking into account the amount of material withdrawn, the length of time such material was unavailable to Licensee, and the remaining un-expired portion of the Term.

## 7. REPRESENTATIONS AND WARRANTIES

- 7.1 By Licensor. Licensor represents and warrants to Licensee that (i) Licensor has legal authority and an unrestricted right to enter into and perform this Agreement, (ii) the execution and performance of this Agreement by Licensor does not and will not violate any agreement to which Licensor is a party or by which it is otherwise bound, (iii) Licensor will perform its obligations under this Agreement with the diligence and professionalism of other similar companies in the industry, but in no event with less than due care, and (iv) the Services and any software relating thereto provided by Licensor substantially will perform in accordance with any Licensor user guide made available to Licensee.
- 7.2 By Licensee. Licensee represents and warrants to Licensor that (i) Licensee has legal authority and an unrestricted right to enter into and perform this Agreement, (ii) the execution and performance of this Agreement by Licensee does not and will not violate any agreement to which Licensee is a party or by which it is otherwise bound, and (iii) Licensee

possesses all requisite authority legally to bind its Affiliates to this Agreement.

## 7.3 Disclaimer.

- 7.3.1 By Both Parties. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 7, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.
- 7.3.2 By Licensor. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 7, THE SERVICES ARE PROVIDED "AS IS". LICENSOR MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY, CURRENTNESS, OR COMPLETENESS, OR THE PERFORMANCE OR RESULTS THAT LICENSEE MAY OBTAIN FROM USE, OF THE CONTENT.

- 7.4 Limited Remedies for Service Failure. EXCEPT FOR THE LIMITED LIABILITY EXCLUSIONS, IN THE EVENT OF ANY FAILURE OF THE SERVICES CONSTITUTING A BREACH OF LICENSOR'S LIMITED WARRANTY, LICENSOR'S OBLIGATION SHALL BE LIMITED TO USING ITS REASONABLE EFFORTS TO REMEDY ANY DEFICIENCIES IN THE AFFECTED SERVICES, OR AT ITS OPTION, TO CANCELLING, CREDITING OR REFUNDING THE FEE DUE FROM LICENSEE IN RESPECT OF ANY PERIOD IN EXCESS OF FIVE (5) WORKING DAYS IN ANY CALENDAR YEAR FOR WHICH THE SERVICES HAVE FAILED TO PERFORM CORRECTLY IN ALL MATERIAL RESPECTS.

## 8. INDEMNIFICATION

- 8.1 Generally. Each Party ("Indemnitor") will, to the extent permitted by law, indemnify,

defend, and hold harmless the other Party from and against any and all claims, demands, complaints, or actions of third parties (including employees of the Parties) arising from or relating to this Agreement (including personal injury, death, and property damage) to the extent caused or arising out of the violation of law, gross negligence, fraud, willful misconduct, or breach of this Agreement by the Indemnitor. Further, in the event the Parties are jointly at fault or negligent, they will indemnify each other in proportion to their relative fault or negligence.

8.2 Infringement Indemnity by Licensor. Licensor will indemnify, defend, and hold harmless Licensee from and against any and all claims, demands, complaints, or actions of third parties (including employees of the Parties) arising from or relating to this Agreement brought against Licensee alleging that the Services infringe any patent, copyright, trademark, trade secret, or other intellectual property right. Licensor's obligations under this section are conditioned on Licensee (i) promptly notifying Licensor of the existence or threat of such an action, (ii) granting to Licensor sole control over the defense and settlement of the action, (iii) reasonably cooperating with Licensor in connection with such action, at Licensor's expense, (iv) abetting no such claim, demand, complaint, or action, and (v) neither modifying or using the Content or the Services nor breaching this Agreement in a manner but for which no infringement would have occurred. If the Services become, or in the opinion of Licensor are likely to become, the subject of such an infringement claim, then in lieu of the indemnity under this section, Licensor may, at its expense and option, (i) procure for Licensee the right or license to continue using or receiving the Services free of any such liability, (ii) replace or modify, in whole or in part, the Services to make them non-infringing without degradation, or (iii) terminate the Agreement and refund to Licensee a pro rata portion of the Fee.

8.3 Scope. The claims, demands, complaints and actions covered under this section 8 include

all settlements, losses, liabilities, judgments, court costs, reasonable attorney fees, fines, penalties and other litigation costs and expenses arising from or related to such claims, demands, complaints or actions.

## 9. LIMITATION OF LIABILITY

9.1 Limitations on Damages; Exclusions. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF GOOD WILL AND LOST PROFITS OR REVENUE, WHETHER OR NOT SUCH DAMAGES ARE BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), EXCEPT FOR SUCH DAMAGES ARISING FROM:

- (a) FINES OR PENALTIES;
- (b) PERSONAL INJURY OR DEATH;
- (c) FRAUD OR WILLFUL MISCONDUCT;
- (d) ANY BREACH UNDER SECTION 11 (CONFIDENTIALITY);
- (e) LICENSOR'S INDEMNITY OBLIGATION FOR INFRINGEMENT UNDER SECTION 8.2; OR
- (f) LICENSEE'S BREACH OF SECTION 4.1.3, 4.1.4, 5.8, OR 5.9.

(together, "LIMITED LIABILITY EXCLUSIONS").

9.2 Cap on Damages. EXCEPT FOR THE LIMITED LIABILITY EXCLUSIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR DAMAGES STEMMING FROM THIS AGREEMENT IN EXCESS OF THE TOTAL FEES PAYABLE TO LICENSOR FOR THE PRECEDING PERIOD OF TWELVE (12) MONTHS.

9.3 Remedy Limitation. Except for a breach of section 11 (Confidentiality) by Licensor, Licensee's sole remedy is in damages for any breach of this Agreement by Licensor.

- 9.4 Time Limitation. Neither Party will be liable for any claim arising out of or in connection with this Agreement brought more than one (1) year after the Party knew, or should have known, that the cause of action had accrued.
- 9.5 Essential Purpose Unmet. The limitation of liability under this section 9 will apply notwithstanding any failure in the essential purpose of any limited remedy.

## 10. TERM AND TERMINATION

- 10.1 Term. Unless terminated early pursuant to section 10.3, the License will commence on the Start Date and continue for the period specified on the Order Form, then automatically will renew for consecutive twelve (12) month periods thereafter ("Renewal Term") unless a Party serves notice of termination at least sixty (60) days before the then current Term ends.
- 10.2 Fee for Renewal Term. Unless otherwise agreed in writing, the Fee for each Renewal Term will be the rate card price prevailing at the commencement of the Renewal Term for the Services licensed in the previous Term (or their nearest equivalent).
- 10.3 Early Termination; Other Remedies.
- 10.3.1 By Either Party. Either Party may terminate this Agreement:
- (a) upon fourteen (14) day prior notice to the other Party following any material breach by the other Party of this Agreement and the failure of the other Party to cure such breach prior to the expiration of such fourteen (14) day period and
  - (b) immediately upon notice based on (i) the commencement of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the other Party of its debts under any bankruptcy,

insolvency, or other similar law now or hereafter in effect, that authorizes the reorganization or liquidation of the other Party or its debt or the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property; (ii) the other Party consenting to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it; (iii) the other Party making a general assignment for the benefit of creditors; (iv) the other Party becoming insolvent; or (v) the other Party taking any corporate action to authorize any of the foregoing.

10.3.2 By Licensor. Licensor may terminate, suspend its performance under, and/or accelerate the terms of payment of the Fee under this Agreement:

- (a) immediately upon any threatened or actual breach by Licensee of section 4.1.3, 4.1.4, 5.8, or 5.9;
- (b) upon reasonable notice if Licensee fails to remedy any breach of section 4.1.2 or any other agreement with Licensor within a reasonable period, but in no event longer than seven (7) days; or
- (c) upon ten (10) day prior notice to Licensee based on Licensee's failure timely to pay any Fee.

10.4 Effect of Termination. Upon termination, Licensee immediately will cease to distribute or make available the Services to Authorized Users, pay all Fees that are due and payable, and delete all Content saved other than in accordance with section 3.2.1 (e) and 3.2.2.



- 10.5 Refund for Termination Against Licensor. On termination of the Agreement due to a material and substantiated breach of the Agreement by Licensor, Licensor forthwith will repay to Licensee a pro rata refund of the Fee for the unexpired portion of the Term.
- 10.6 Excess Fee. If, during the month prior to termination, Licensee downloads data from the Services, notwithstanding section 3.1.1 (b) and regardless of whether such activity constitutes a breach of section 4.1.2, such that the data downloaded (a) is twice that of Licensee's monthly downloading average in the preceding six (6) months or (b) constitutes over five percent (5%) of the Content, then Licensee will pay to Licensor, in full upon termination, an excess fee equivalent to the Fee payable for the next Renewal Term.
- 10.7 Survival. Licensor's right to receive and Licensee's obligation to pay all amounts due hereunder, as well as the obligations under sections 2.1, 3.2.1 (e), 3.2.2, 5.3 - 5.5, 5.8, 5.11, 5.13, 8, 9, 10.4, 11, and 12, will survive the termination of this Agreement.

## 11. CONFIDENTIALITY

- 11.1 Generally. The terms of this Agreement, including pricing, and any information and data that either Party has received or will receive from the other Party about matters relating to each Party's respective business, including any technical or business information, data collection, production, or editorial technique or scheduling, process, experimental work, trade secret, user name or password for use at the Website, or any other confidential matter, is proprietary and confidential information of the disclosing Party ("Confidential Information"), including without limitation any information that is marked as "confidential" or reasonably should be understood to be confidential or proprietary to the disclosing Party. Neither Party will use Confidential Information of the other Party except for purposes contemplated by this Agreement or disclose it except on a need to know basis to employees and authorized representatives who have signed confidentiality agreements containing, or are

otherwise bound by, confidentiality obligations no less stringent than those of this section 11. Each Party will take appropriate measures to ensure compliance by such employees and authorized representatives with this section 11. Upon termination of this Agreement, each Party will deliver to the other or certify destruction of any documents and materials constituting Confidential Information of the other Party.

- 11.2 Exceptions. The confidentiality and non-use obligations under this section will not apply to information that:
- (a) the receiving Party can document was already lawfully in the receiving Party's possession before receipt from the disclosing Party;
  - (b) is or becomes publicly available through no fault of the receiving Party;
  - (c) is rightfully received by the receiving Party from a third party without a duty of confidentiality;
  - (d) is disclosed by the disclosing Party to a third party without a duty of confidentiality on the third party;
  - (e) is independently developed by the receiving Party without a breach of this Agreement;
  - (f) is disclosed by the receiving Party with the prior written approval of the disclosing Party; or
  - (g) is disclosed as required by a government body or court of law, provided that the receiving Party provides reasonable advance notice to the disclosing Party so that the disclosing Party may contest the disclosure or seek a protective order.
- 11.3 Injunctive Relief. Each Party acknowledges that injury from improper disclosure of Confidential Information may be irreparable. Accordingly, the injured Party is entitled to seek equitable relief, including a temporary

restraining order and a preliminary injunction, without the posting of any bond or other security, in addition to all other remedies.

- 11.4 Comments. To the extent that the Services permit Comments, the Comments will be confidential to Licensee, inaccessible to other subscribers of the Services and to Licensor employees (except for essential database maintenance work performed by Licensor IT personnel), and deleted at the end of the Term. Licensor is not responsible for the content of any Comments.

## 12 GENERAL

- 12.1 Assignment. Neither Party will assign or transfer this Agreement or any of the rights or benefits hereunder, in whole or in part, without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that Licensor may assign or transfer this Agreement and all of its obligations and duties hereunder upon any corporate reorganization whereby ultimate ownership of the business division or assets related to the subject matter of this Agreement remains unchanged.
- 12.2 Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof. All express or implied agreements and understandings, either oral or written, previously made with respect to the subject matter of this Agreement are expressly merged in and made a part of this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by both Parties. No purchase order issued by Licensee will modify or amend this Agreement, even where the purchase order is signed by Licensor.
- 12.3 Notices. All notices, demands, and other communications provided for or permitted hereunder will be made in writing and will be by personal delivery, commercial courier service, facsimile, or registered or certified first-class mail, return receipt requested, to each Party's respective address or facsimile number identified in the Order Form or to such other address or facsimile number as one Party will notify the other Party. All such notices and communications will be deemed to have been duly given when delivered, if delivered in person or by commercial courier service; when receipt is mechanically acknowledged, if sent via facsimile; and five (5) business days after being deposited in the mail, postage prepaid, if mailed.
- 12.4 Force Majeure. Neither Party will be liable for damages for any delays or default in performing its obligations hereunder if such delay or default is caused by matters beyond the reasonable control of the non-performing Party, such as wars or insurrections, acts of government, strikes, fires, floods, earthquakes, work stoppages, embargoes and/or inability to obtain materials.
- 12.5 Waiver. The waiver by either Party of any right under this Agreement or of the failure to perform or of a breach by the other Party will not be deemed a waiver of any other right under this Agreement or of any other breach or failure by the other Party whether of a similar nature or otherwise.
- 12.6 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective only to the minimum extent necessary without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.
- 12.7 Choice of Law and Jurisdiction; Legal Fees. This Agreement will be governed by and construed in accordance with the internal law, and not the law of conflicts, of the State of Illinois applicable to contracts made and wholly to be performed in that state. Neither Party will commence or prosecute any action, suit, proceeding, or claim arising out of or related to this Agreement other than in the state or federal courts located in Cook County, State of Illinois. Each party irrevocably consents to the jurisdiction and venue of such courts in connection with any such action, suit, proceeding, or claim. In any suit, arbitration, mediation, or other action to

enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the substantially prevailing party will be entitled to recover its costs, including reasonable attorney fees, including without limitation, costs and fees incurred on appeal or in a bankruptcy or similar action.

12.8 Independent Contractors. This Agreement is not intended to create or evidence any agency, partnership, joint venture, or similar relationship of any kind whatsoever, between the Parties. Neither Party shall, by virtue of this Agreement, have any right or power to create any obligation, express or implied, on behalf of the other Party.

12.9 Headings. The captions to the sections of this Agreement are not a part of this Agreement, but are merely guides or labels to assist in locating and reading this Agreement.