

TERMS AND CONDITIONS

Vendor will supply access to the Database according to these Terms and Conditions.

1. DEFINITIONS

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

“Affiliate” means an entity explicitly named in the Ordering Document 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.

“Contract” means the entire agreement as between Vendor and Subscriber, comprised of the Ordering Document and these Terms and Conditions.

“Authorized Users” means, unless otherwise indicated in the Ordering Document, employees and Contractors of Subscriber 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 Databases.

“Content” means information comprised in the Database.

“Ordering Document” means the form by which Subscriber orders the Subscription and accepts the Contract and which specifies, among other things, the Royalty, format and level of the Database, Sites, Start Date, and the duration of the Term.

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

“Database” means data, research, and product retrieval services, as more particularly specified on the Ordering Document, including without limitation marketing intelligence, analysis, and editorial in reports and

databases published from time to time by Vendor, 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 Vendor. The Database may include compilations of marketing material, including images of marketing material distributed by Subscriber and third parties, all supplied by Vendor as part of a news reporting function together with accompanying analysis and commentary.

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

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

“Party” and “Parties” refer to Vendor and Subscriber, 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 Vendor 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 Subscriber.

“Royalty” means the royalty amount set out in the Ordering Document and payable to Vendor.

“Site” means the particular physical location or locations of Subscriber as defined on the Ordering Contract.

“Start Date” means the date on which the Subscriber starts as specified on the Ordering Contract.

“Subscription” means the rights granted to Subscriber pursuant to section 3.1.

“Subscriber” means, unless otherwise specified on the Ordering Document, the individual legal entity specified on the Ordering Document as a purchaser of the Subscription and its Affiliates.

“Taxes” means any tax, such as service tax, excise tax, customs tariff, income tax, withholding tax, and any similar tax, imposed in respect of the purchase or use of the Database or of Vendor’s provision of the Database.

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

“Vendor” means the subscription provider identified in the Ordering Document.

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

2. FEE, PAYMENT, AND TAXES

2.1 Royalty and Payment. Unless indicated otherwise in the Ordering Document, Subscriber will pay the Royalty to Vendor within thirty (30) days of receipt of Vendor’s invoice. For each year of a multiple year Term and for each Renewal Term, Vendor will invoice the Royalty year by year. Vendor 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. Subscriber, and not Vendor, will bear and pay all Taxes, whether existing at present or imposed or imposable in the future by any governmental authority. Unless expressly provided, the Royalty as invoiced excludes and is net of any Taxes. If applicable law requires Subscriber to withhold Taxes from payments to Vendor, then Subscriber will gross up the invoice amount itself (with no modifications by Vendor to the original invoice) for the purpose of withholding the applicable Taxes, Subscriber will timely pay the same to the relevant tax authority, and Subscriber will separately remit the full Royalty to Vendor, net of any Taxes, as invoiced, by Vendor.

3. PERMITTED USES

3.1 Subscription. Subject to these Terms and Conditions, Vendor grants to Subscriber a limited, non-exclusive, and non-transferable right during the Term for Authorized Users (a) to access and use the Database on the Website and (b) to reproduce, prepare derivative works of, distribute, and display the Content in electronic and print format.

3.2 Generally. The Subscription permits an Authorized User to:

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

- (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 Subscriber 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 Subscriber 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 Content in the form of reports, the Precis contains no more than (i) two and one half percent (2.5%) of any single Vendor report forming part of the Database and (ii) twenty-five percent (25%) of a section within any single Vendor report (such percentages to exclude indexes and contents pages);
- (b) For GNPD services, the Precis contains no more than five (5) records or images;

- (c) For Content 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 Contract, the Subscription disallows Subscriber to:

- 4.1.1 Remove or alter any copyright notices and other identification or disclaimers as they may appear on the Database, 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 Subscription granted, Vendor retains and reserves all right, title, ownership, and interest in and to the Databases and any intellectual property therein.

5. UNDERTAKINGS BY SUBSCRIBER

5.1 Publishing Schedules. Subscriber 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. Subscriber 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 Vendor and take appropriate steps to desist such activity and to prevent any recurrence;

5.2.3 To the extent practicable, provide Vendor with the IP addresses, or range of IP addresses, of Subscriber's computers or networks from which the Database may be accessed to allow Vendor to restrict access to such IP addresses;

5.2.4 Where Subscriber 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 Subscriber will permit Authorized Users to use only Subscriber-issued e-mail addresses that employ address nomenclature customarily used by Subscriber;

5.2.5 With regard to Subscriber employees and representatives, permit access to the Database only by Authorized Users; and

5.2.6 Investigate promptly upon notice by Vendor the occurrence of any unusual downloading activity by any Authorized User.

5.3 Disclosure to Supplier of Hosted Information. Subscriber acknowledges that when the Database includes any Hosted Information, Vendor will share usage, pricing, and other relevant information regarding Subscriber with the supplier of the Hosted Information.

5.4 Effect of Access to Unsubscribed Database. If Subscriber obtains or accesses a Database not specified on the Ordering Document as a result of a breach of these Terms and Conditions, and Subscriber then uses such Database, then

promptly upon such discovery Subscriber will notify Vendor and will pay an additional royalty equivalent to the then rate card value of such Database.

- 5.5 No Action to Impede Database. Subscriber acknowledges that the current and then continuing supply of the Database is for the benefit of all subscribers of the Database. Accordingly, a condition of the Subscription is that Subscriber will take no action, directly or indirectly, to prevent Vendor from providing the Database to subscribers.
- 5.6 Comments. Subscriber 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. Vendor may include Subscriber's name as a customer in Vendor's sales and marketing literature, but will not use such fact to imply that Subscriber endorses the Database in particular or Vendor 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 Vendor by IRI) is available from Vendor 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, Subscriber will not knowingly disclose any Content containing Infoscan Data to a Non-Participating Retailer.

- 5.9 No Competitive Database by Subscriber. Subscriber will not create or operate, or assist in the creation or operation, of, a database competitive or potentially competitive to the Database, provided that this prohibition does not apply to Subscriber's use of a third party database competitive to the Database.
- 5.10 Subscriber Equipment. Subscriber will supply, at its own expense, the equipment, software, and services necessary to be able to access the Website and Database. 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. Subscriber will keep all records necessary to verify its compliance with this Contract and grants to Vendor access to, and the right to examine upon reasonable notice, Subscriber's records relevant to this Contract during Subscriber's normal business hours.
- 5.12 Effect of Merger or Acquisition. If Subscriber acquires, is acquired by, or merges with a business entity which also is a subscriber of the Database, and if the Subscription terminates before the subscription of the other business entity terminates, then the Term will extend until the end of the term of the other subscription, and the royalty payable under the extended Term will increase, on a pro rata basis, by five percent (5%) over the then-applicable Royalty.
- 5.13 Financial Reliance. Subscriber 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 Vendor's corporate secretary to do so, which Vendor may withhold in its absolute discretion. Absent such consent, Subscriber will defend, indemnify, and hold harmless Vendor 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 Vendor based upon such encouragement or invitation.

6. UNDERTAKINGS BY VENDOR

- 6.1 Delivery of Database. Vendor will make the Database available via the Website.
- 6.2 Website. Vendor 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 Subscriber 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. Vendor will provide usage information for Subscriber's internal use only.
- 6.4 Reduction in Services.
- 6.4.1 Infringement; Objectionable. Vendor may withdraw from the Database, at any time and from time to time, any Content which Vendor reasonably believes infringes intellectual property rights or is defamatory, obscene, unlawful, or otherwise objectionable.
- 6.4.2 Reduction Warranting Refund. Upon notice to Subscriber, Vendor may withdraw from Subscriber either the entire Database or any media channel, section, or data contained in the Database. If such a withdrawal

from the Database is for reasons other than those covered elsewhere in this Contract, and if the amount of material so withdrawn comprises ten percent (10%) or more of the Content, then Vendor promptly will make a pro rata refund of any fully paid Royalty (plus any sales taxes paid) for that portion of the Database, as stated on the Ordering Document, taking into account the amount of material withdrawn, the length of time such material was unavailable to Subscriber, and the remaining un-expired portion of the Term.

7. REPRESENTATIONS AND WARRANTIES

- 7.1 By Vendor. Vendor represents and warrants to Subscriber that (i) Vendor has legal authority and an unrestricted right to enter into and perform this Contract, (ii) the execution and performance of this Contract by Vendor does not and will not violate any agreement to which Vendor is a party or by which it is otherwise bound, (iii) Vendor will perform its obligations under this Contract with the diligence and professionalism of other similar companies in the industry, but in no event with less than due care, and (iv) the Database and any software relating thereto provided by Vendor substantially will perform in accordance with any Vendor user guide made available to Subscriber.
- 7.2 By Subscriber. Subscriber represents and warrants to Vendor that (i) Subscriber has legal authority and an unrestricted right to enter into and perform this Contract, (ii) the execution and performance of this Contract by Subscriber does not and will not violate any agreement to which Subscriber is a party or by which it is otherwise bound, and (iii) Subscriber possesses all requisite authority legally to bind its Affiliates to this Contract.
- 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 Vendor. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 7, THE DATABASE IS PROVIDED "AS IS". VENDOR MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY, CURRENTNESS, OR COMPLETENESS, OR THE PERFORMANCE OR RESULTS THAT SUBSCRIBER MAY OBTAIN FROM USE, OF THE CONTENT.

7.4 Limited Remedies for Database Failure. EXCEPT FOR THE LIMITED LIABILITY EXCLUSIONS, IN THE EVENT OF ANY FAILURE OF THE DATABASE CONSTITUTING A BREACH OF VENDOR'S LIMITED WARRANTY, VENDOR'S OBLIGATION SHALL BE LIMITED TO USING ITS REASONABLE EFFORTS TO REMEDY ANY DEFICIENCIES IN THE AFFECTED DATABASE, OR AT ITS OPTION, TO CANCELLING, CREDITING OR REFUNDING THE ROYALTY DUE FROM SUBSCRIBER IN RESPECT OF ANY PERIOD IN EXCESS OF FIVE (5) WORKING DAYS IN ANY CALENDAR YEAR FOR WHICH THE DATABASE HAS 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 Contract (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 Contract 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 Vendor. Vendor will indemnify, defend, and hold harmless Subscriber 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 Contract brought against Subscriber alleging that the Database infringes any patent, copyright, trademark, trade secret, or other intellectual property right. Vendor's obligations under this section are conditioned on Subscriber (i) promptly notifying Vendor of the existence or threat of such an action, (ii) granting to Vendor sole control over the defense and settlement of the action, (iii) reasonably cooperating with Vendor in connection with such action, at Vendor expense, (iv) abetting no such claim, demand, complaint, or action, and (v) neither modifying or using the Content or the Database nor breaching this Contract in a manner but for which no infringement would have occurred. If the Database becomes, or in the opinion of Vendor are likely to become, the subject of such an infringement claim, then in lieu of the indemnity under this section, Vendor may, at its expense and option, (i) procure for Subscriber the right or license to continue using or receiving the Database free of any such liability, (ii) replace or modify, in whole or in part, the Database to make it non-infringing without degradation, or (iii) terminate the Contract and refund to Subscriber a pro rata portion of the Royalty.

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 CONTRACT 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) VENDOR'S INDEMNITY OBLIGATION FOR INFRINGEMENT UNDER SECTION 8.2; OR
- (f) SUBSCRIBER'S BREACH OF SECTION 4.1.3, 4.1.4, 5.8, 5.9 OR 5.13.

(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 CONTRACT IN EXCESS OF THE TOTAL ROYALTY PAYABLE TO VENDOR FOR THE PRECEDING PERIOD OF TWELVE (12) MONTHS.

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

9.4 Time Limitation. Neither Party will be liable for any claim arising out of or in connection with this Contract 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 Subscription will commence on the Start Date and continue for the period specified on the Ordering Document, 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 Royalty for Renewal Term. Unless otherwise agreed in writing, the Royalty for each Renewal Term will be the rate card price prevailing at the commencement of the Renewal Term for the Database subscribed to 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 Contract:

- (a) upon fourteen (14) day prior notice to the other Party following any material breach by the other Party of this Contract 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 Vendor. Vendor may terminate, suspend its performance under, and/or accelerate the terms of payment of the Royalty under this Contract:

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

10.4 Effect of Termination. Upon termination, Subscriber immediately will cease to distribute or make available the Database to Authorized Users, pay any Royalty that is 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 Vendor. On termination of the Contract due to a material and substantiated breach of the Contract by Vendor, Vendor forthwith will repay to Subscriber a pro rata refund of the Royalty for the unexpired portion of the Term.

10.6 Excess Fee. If, during the thirty (30) days prior to the date of termination, Subscriber downloads data from the Database, 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 Subscriber's monthly

downloading average in the preceding six (6) months or (b) constitutes over five percent (5%) of the Content, then Subscriber will pay to Vendor, in full upon termination, an excess fee equivalent to the Royalty payable for the next Renewal Term.

10.7 Survival. Vendor's right to receive and Subscriber'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 Contract.

11. CONFIDENTIALITY

11.1 Generally. The terms of this Contract, 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 Contract 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 Contract, 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 Contract;
- (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 Database permits Comments, the Comments will be confidential to Subscriber, inaccessible to other subscribers of the Database and to Vendor employees (except for essential database maintenance work performed by Vendor IT personnel) and deleted at the end of the Term. Vendor is not responsible for the content of any Comments.

12. GENERAL

12.1 Assignment. Neither Party will assign or transfer this Contract 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 Vendor may assign or

transfer this Contract 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 Contract remains unchanged.

12.2 Entire Agreement. This Contract 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 Contract are expressly merged in and made a part of this Contract. This Contract may be amended, or any term hereof modified, only by a written instrument duly executed by both Parties. No purchase order issued by Subscriber will modify or amend this Contract, even where the purchase order is signed by Vendor.

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 Ordering Document 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 Contract 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

Contract 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 Contract 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 Contract or affecting the validity or enforceability of such provisions in any other jurisdiction.
- 12.7 Choice of Law and Jurisdiction; Legal Fees. This Contract will be governed by and construed in accordance with the internal law, and not the law of conflicts, of the jurisdiction in which Vendor's office is situated. Neither Party will commence or prosecute any action, suit, proceeding, or claim arising out of or related to this Contract other than in the courts located in such jurisdiction. 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 Contract or to interpret any provision of this Contract, 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 Contract 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 Contract, 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 Contract are not a part of this Contract, but are merely guides or labels to assist in locating and reading this Contract.