

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 Intel and Licensee, comprised of the Order Form and these Terms and Conditions.

“Authorized Users” means one or more employees and On-Site Contractors of Licensee, as identified on the Order Form, who (i) either have been issued with a password or other authentication or have provided Intel with the IP address of each terminal from which access to the Database will be gained and (ii) physically report to and work at a Site or work at Remote Locations via a Secure Network.

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

“Conditions of Use” means any conditions of use appearing on and governing use of the Website, as amended from time to time by Intel, provided that (a) any conditions of use are consistent with, and not more restrictive than, this Agreement and (b) the language of these Terms and Conditions will govern and supersede any conflicting language in the conditions of use.

“Content” means information comprised in the Database.

“Database” means data and research, 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 Intel, 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. The Database may include compilations of marketing material, including images of marketing material distributed by Licensee and third parties, all supplied by Intel as part of a news reporting function together with accompanying analysis and commentary.

“Hosted Report” 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 Intel and deployed in the Database.

“License” means the rights granted to Licensee pursuant to section 2.1.

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

“Licensor” means the licensor identified in the Order Form.

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

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

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

“Pitch” means a presentation prepared solely for the purpose of selling new 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 Mintel 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, approved in writing by Mintel prior to access by any Authorized User to the Database from such location(s).

“Royalty” means the royalty amount set out in the Order Form and payable to Mintel.

“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.

“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.

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

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

2. LICENSE, FEE, AND PAYMENT

2.1 Grant of License. Subject to these Terms and Conditions, Mintel 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 Database 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.

2.2 Royalty and Payment. Unless indicated otherwise in the Order Form, Licensee will pay the Royalty to Mintel within thirty (30) days of receipt of Mintel’s invoice. For each year of a multiple year Term and for each Renewal Term, Mintel will invoice the Royalty year by year. Mintel 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. Unless expressly provided, the Royalty excludes any sales, use, excise, or other applicable taxes, and Licensee will pay or reimburse Mintel for any such taxes (excluding any applicable taxes based on Mintel’s income) for which either Party may become or be held responsible.

3. PERMITTED USES

3.1 Generally. Subject to section 4, the License permits an Authorized User to:

3.1.1 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 3.1.1 (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 3.1.1 (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.

3.1.2 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 Intel report or other Hosted Report forming part of the Database and (ii) twenty-five percent (25%) of a section within any single Intel 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 Agreement, the License disallows Licensee or any Authorized User to:
 - 4.1.1 Remove or alter the Conditions of Use, 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 Provide, by electronic means or otherwise, to any person other than an Authorized User, any Content, except as otherwise permitted under sections 3.1.1 (c), 3.1.1 (e), and 3.1.2; and

- 4.1.4 Mount or distribute any Content on any electronic network or otherwise, including without limitation the internet and the world wide web, or otherwise publish, broadcast, or display any Content in public.

4.2 Except as otherwise permitted in this Agreement, Intel's explicit prior written permission must be obtained in order to:

- 4.2.1 Distribute any Content other than to Authorized Users;
- 4.2.2 Publish, distribute or make available the Content, works based on the Content, or works which combine any Content with any other material;
- 4.2.3 Alter, abridge, adapt, or modify the Content, except to the extent necessary to make it perceptible on a computer screen used by an Authorized User. For the avoidance of doubt, no alteration of the words or their order is permitted, except as otherwise permitted under sections 3.1.1 (e) and 3.1.2.

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 Notice of Inaccuracy. Licensee promptly and exclusively will notify Intel, Attn: Director of Research, at any time that Licensee believes that it may have discovered a potential or actual inaccuracy in any of the Content.

- 5.3 Protection of IP Rights. Licensee acknowledges the IP Rights and accordingly will:
- 5.3.1 Appropriately notify all Authorized Users of the importance of respecting the IP Rights and the Conditions of Use;
 - 5.3.2 To the extent practicable, monitor compliance by Authorized Users with these Terms and Conditions and the Conditions of Use, and immediately on becoming aware of any breach of either, notify Intel and take appropriate steps to desist such activity and to prevent any recurrence;
 - 5.3.3 Cause On-Site Contractors to comply with these Terms and Conditions and the Conditions of Use, and immediately on becoming aware of any breach of either, notify Intel and take appropriate steps to desist such activity and to prevent any recurrence;
 - 5.3.4 To the extent practicable, provide Intel with the IP addresses, or range of IP addresses, of Licensee's computers or networks from which the Database may be accessed to allow Intel to restrict access to such IP addresses;
 - 5.3.5 Where Licensee does not provide IP addresses pursuant to section 5.3.4, 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;
 - 5.3.6 To the extent practicable, keep full and up-to-date records of all Authorized Users and their access details, and, if requested, provide Intel with periodic lists of additions, deletions, or other alterations to such records;
 - 5.3.7 With regard to Licensee employees and representatives, permit access to the Database only by Authorized Users; and
 - 5.3.8 Investigate promptly upon notice by Intel the occurrence of any unusual downloading activity by any Authorized User.
- 5.4 Disclosure to Supplier of Hosted Report. Licensee accepts that when it utilizes any Hosted Report, Intel will share usage, pricing, and other relevant information regarding Licensee with the supplier of the Hosted Report.
- 5.5 Effect of Unsubscribed Access. If Licensee obtains or accesses a Database not specified on the Order Form as a result of a breach of these Terms and Conditions by a third party or otherwise, and Licensee then uses such Database, then promptly upon such discovery Licensee will notify Intel and will pay an additional fee equivalent to the then rate card value of such Database.
- 5.6 No Action to Disrupt Access. Licensee acknowledges that the current and then continuing supply of the Database is for the benefit of all licensees of the Service. Accordingly, a condition of the License is that Licensee will not take any action (or encourage or assist others to do so) to prevent Intel from providing the Database to licensees.
- 5.7 Comments. Licensee will ensure that neither libellous nor blasphemous language appears in the Comments and will be responsible for the removal of Comments.
- 5.8 Use of Company Name. Intel may include Licensee's name as a customer in Intel's

sales and marketing literature, but will not use such fact to imply that Licensee endorses the Database in particular or Intel in general.

5.9 No Disclosure to Non-Participating Retailers.

5.9.1 Definition. For purposes of this section 5.9, "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 Intel by IRI) is available from Intel at any time, or as linked at the Website. As of the Start Date, Non-Participating Retailers are Aldi, Costco, Dollar Tree, Lidl, Trader Joe's, and Whole Foods.

5.9.2 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.

5.10 No Competitive Database by Licensee. Licensee 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 Licensee's use of a third party database competitive to the Database.

5.11 Licensee Equipment. Licensee 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.).

5.12 Records; Audit. Licensee will keep all records necessary to verify its compliance with this Agreement and grants to Intel access to, and the right to examine upon reasonable notice, Licensee's records relevant to this Agreement during Licensee's normal business hours.

5.13 Effect of Merger or Acquisition. If Licensee acquires, is acquired by, or merges with a business entity which also is a licensee of the Database, 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 Royalty.

5.14 Conditions of Use. Licensee will cause Authorized Users to abide by any Conditions of Use.

6. UNDERTAKINGS BY INTEL

6.1 Delivery of Database. Intel will make the Database available to Licensee and to Authorized Users via the Website.

6.2 Website. Intel 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. Intel will provide usage information for Licensee's internal use only. If Intel assigns its rights to another party under section 12.1, Licensee may at its discretion require the assignee either to keep such usage information confidential or to destroy it.
- 6.4 Response to Inaccuracy Notice. Upon receipt of any notice pursuant to section 5.2, Intel will use commercially reasonable efforts to (i) investigate any such potential or actual inaccuracy and (ii), if necessary, rectify and correct any such inaccuracy so discovered. If Intel replies to such notice with a written explanation of the sources and methodology used, then to the extent that the Database permits Comments, Licensee will append such reply to a Comment in the Database where such inaccuracy appears.
- 6.5 Reduction in Content.
- 6.5.1 Infringement; Objectionable. Intel may withdraw from the Database, at any time and from time to time, any Content which Intel reasonably believes infringes intellectual property rights or is defamatory, obscene, unlawful, or otherwise objectionable.
- 6.5.2 Reduction Warranting Refund. Upon notice to Licensee, Intel may withdraw from Licensee 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 Agreement, and if the amount of material so withdrawn comprises ten percent (10%) or more of the Content, then Intel promptly will make a pro rata refund of any fully paid Royalty (plus any sales taxes paid) for that portion of the Service, 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 Intel. Intel represents and warrants to Licensee that (i) Intel has legal authority and an unrestricted right to enter into and perform this Agreement, (ii) the execution and performance of this Agreement by Intel does not and will not violate any agreement to which Intel is a party or by which it is otherwise bound, (iii) Intel 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 Database and any software relating thereto provided by Intel substantially will perform in accordance with any Intel user guide made available to Licensee.
- 7.2 By Licensee. Licensee represents and warrants to Intel 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 Intel. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 7, THE DATABASE IS PROVIDED "AS IS". INTEL

MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY, COMPLETENESS, OR CURRENTNESS, OR THE PERFORMANCE OR RESULTS THAT LICENSEE 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 MINTEL'S LIMITED WARRANTY, MINTEL'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 FEE DUE FROM LICENSEE 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 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 Intel. Intel 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 Database infringes any patent, copyright, trademark, trade secret, or other intellectual property right. Intel's obligations under this section are conditioned on Licensee (i) promptly notifying Intel of the existence or threat of such an action, (ii) granting to Intel sole control over the defense and settlement of the action, (iii) reasonably cooperating with Intel in connection with such action, at Intel's expense, (iv) abetting no such claim, demand, complaint, or action, and (v) neither modifying or using the Content or the Database nor breaching this Agreement in a manner but for which no infringement would have occurred. If the Database becomes, or in the opinion of Intel are likely to become, the subject of such an infringement claim, then in lieu of the indemnity under this section, Intel may, at its expense and option, (i) procure for Licensee 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) refund to Licensee 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 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) MINTEL'S INDEMNITY OBLIGATION FOR INFRINGEMENT UNDER SECTION 8.2; OR
- (f) LICENSEE'S BREACH OF SECTION 4.1.3, 4.1.4, 5.9, OR 5.10.

(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 MINTEL FOR THE PRECEDING PERIOD OF TWELVE (12) MONTHS.

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

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 Royalty for Renewal Term. Unless otherwise agreed in writing, the Royalty for each Renewal Term will be the ratecard price prevailing at the commencement of the Renewal Term for the Database 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 Intel. Intel may terminate, suspend its performance under, and/or accelerate the terms of payment of the Royalty under this Agreement:
- (a) immediately upon any threatened or actual breach by Licensee of section 4.1.3, 4.1.4, 5.9, or 5.10;
 - (b) upon reasonable notice if Licensee fails to remedy any breach of section 4 (other than sections 4.1.3 and 4.1.4) or any other agreement with Intel 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 Royalty.
- 10.4 Effect of Termination. On the date of termination Licensee immediately will cease to distribute or make available the Database to Authorized Users and will pay any Royalty that is due and payable. Upon termination, Licensee will delete all Content saved other than in accordance with section 3.1.1 (e).
- 10.5 Refund for Termination Against Intel. On termination of the Agreement due to a material and substantiated breach of the Agreement by Intel, Intel forthwith will repay to Licensee a pro rata refund of the Royalty for the unexpired portion of the Term.
- 10.6 Deletion or Preservation of Comments. Intel will delete all Comments upon the termination of this Agreement, provided that Intel will copy and deliver to Licensee the Comments in a format or medium reasonably acceptable to Licensee upon (a) notice to Intel no less than three (3) months before termination of the Agreement and (b) payment to Intel of two thousand five hundred dollars (US\$

2,500), or the equivalent local currency, plus local taxes.

- 10.7 Excess Fee. If, during the month prior to termination, Licensee 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 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 Intel, in full upon termination, an excess fee equivalent to the Royalty payable for the next Renewal Term.
- 10.8 Survival. Intel's right to receive and Licensee's obligation to pay all amounts due hereunder, as well as the obligations under sections 2.2, 3.1.1 (e), 3.1.2, 5.4-5.6, 5.9, 5.12, 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 Database permits Comments, the Comments will be confidential to Licensee, inaccessible to other subscribers of the Database and to Intel employees (except for essential database maintenance work performed by Intel IT personnel). Intel is not responsible for the content of any Comments except for those provided pursuant to section 6.4.

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 Intel 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 Intel.

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 jurisdiction in which Intel's office is situated. Neither Party will commence or prosecute any action, suit, proceeding, or claim arising out of or related to this Agreement 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 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.