



NOTICE: THE FOLLOWING TERMS AND CONDITIONS APPLY TO YOUR USE OF THE MIERCOM PUBLICATION SERVICES.

## **PUBLICATION SERVICES AGREEMENT**

*Updated November 1, 2019*

The terms and conditions listed below govern access to and use of: Publications and the Digital Library as supplied by Miercom, its affiliates, partners or licensors and the materials and content available therein as provided by Miercom, its affiliates, partners or licensors. The terms "you" and "your" in uppercase or lowercase shall mean the entity (e.g. company, corporation, partnership, sole proprietor, etc.) or government agency entering into these terms and conditions with Miercom. These terms and conditions, together with the "Use of This Report" terms in Miercom published documents, any digital rights management included in the Electronic Publications, and terms posted within the Digital Library, constitute the entire agreement between you and Miercom in relation to the provision of the Publication Services and the Materials ("this Agreement").

The following are definitions for additional terms used below.

- a. "Digital Library" is the Application Services together with the Digital Library Publications.
- b. "Digital Library Publications" are the Electronic Publications that are provided by Miercom through its proprietary website, [miercom.com](http://miercom.com), or sponsored vendor(s) website(s).
- c. "Publications" include Digital Library Publications and Non-Digital Library Publications.
- d. "Non-Digital Library Publications" include print publications and Electronic Publications not distributed on the [miercom.com](http://miercom.com).
- e. "Electronic Publications" include CD-ROM, DVD-ROM, flash drive, PDF, eBook, video, audio, or other publications distributed electronically, and other services distributing Publications electronically other than through [miercom.com](http://miercom.com).
- f. "Updates" are any supplementation, release, replacement volume, new edition and/or updates to the Publication.

### **1. GRANT OF LICENSE; RESTRICTIONS ON USE**

- 1.1. You are granted, during the term of this Agreement, a nonexclusive, non-transferable, limited license to access and use the Digital Library and Electronic Publications and Materials from time to time made available by Miercom to you only for the internal purposes of: (a) research or study; and (b) providing professional services to your clients. This license is a license for your Authorized Users (defined below) to use the Digital Library and Electronic Publications and the Materials only in the manner set out in this Agreement.
- 1.2. Using the commands of the Digital Library and Electronic Publications, you and your Authorized Users may:
  - a) search, view and electronically display Materials retrieved from the Digital Library and Electronic Publications for each such Authorized User's individual use, which individual use excludes the display of Materials through any form of network communication;
  - b) email, download or make printouts of Materials (collectively, "Authorized Printouts"); and
  - c) directly quote portions of Material in documents prepared in the ordinary course of your business

- 1.3. You and your Authorized Users may not:
- a) alter, edit or remove Material in documents;
  - b) store, distribute or transmit any content through the Digital Library and Electronic Publications that:
    - i. is defamatory, libelous or obscene
    - ii. otherwise breaches any law, statute, regulation, standard or code of practice of any relevant authority;
  - c) attempt to disassemble, reverse engineer or reverse compile any of the Digital Library and Electronic Publications and, with respect to technology related to the Digital Library and Electronic Publications, otherwise reduce to human-perceivable form;
  - d) use the Digital Library and Electronic Publications or Materials in any fashion that infringes the copyright or proprietary interests therein, including, but not limited to, exploiting the goodwill of Miercom, including its trademarks, service marks, or logos;
  - e) remove or obscure the copyright notices or other notices contained in Materials;
  - f) access or use the Digital Library and Electronic Publications via mechanical, programmatic, robotic, scripted or any other automated means not provided as part of the Digital Library and Electronic Publications. Use of the Digital Library and Electronic Publications is permitted only via manually conducted, discrete, individual search and retrieval activities; or
  - g) offer any part of the Publication Services or Materials for commercial resale or commercial redistribution in any medium or use the Digital Library and Electronic Publications or Materials to compete with the business of Miercom.
- 1.4. All right, title, and interest (including all copyrights and other intellectual property rights) in the Digital Library and Electronic Publications and Materials, regardless of the form of medium, belong to LN or its third-party suppliers. You acquire no ownership of copyright or other intellectual property rights or proprietary interest in the Digital Library and Electronic Publications, or copies thereof, except the limited rights granted herein.

## **2. ACCESS TO SERVICES**

- 2.1. You are responsible for all use of the Digital Library and Electronic Publications accessed through Miercom or its affiliates to your Authorized Users or others. You will use reasonable commercial efforts to prevent unauthorized use of access assigned to your Authorized Users and will promptly notify Miercom, in writing, if you suspect that this access is compromised or misused.
- 2.2. Materials and Digital Library and Electronic Publications are further limited by and subject to the Supplemental Terms for Specific Materials ("Supplemental Terms"), conditions published online, contained within a publication or product, online descriptions of files, online notices following file selection, and individual documents retrieved from the Digital Library and Electronic Publications (collectively, "Additional Terms"), all of which are incorporated by reference herein.
- 2.3. With respect to access to the Digital Library, you will select from your organization a Digital Library Administrator to provide first-level support to Authorized Users at your organization. Miercom Customer Support will provide a second-level support to your Digital Library Administrator(s) and is available at: [support@miercom.com](mailto:support@miercom.com). Responses to your requests will be made within a commercially reasonable time period.

- 2.4. For the Digital Library, any supported Internet browser may be used at your discretion. However, full functionality may not be available if the most current version of a mainstream internet browser is not used.

### **3. LIMITED WARRANTY**

- 3.1. Miercom represents and warrants that Miercom has the right and authority to make the Publication Services and Materials available pursuant to the terms and conditions of this Agreement.
- 3.2. Materials are provided for reference purposes only and are not intended, nor should they be used, as a substitute for professional advice or judgment or to provide legal or financial advice with respect to particular circumstances.
- 3.3. EXCEPT AS OTHERWISE PROVIDED IN CLAUSE 3.1, THE PUBLICATION SERVICES AND MATERIALS ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND MIERCOM AND EACH THIRD-PARTY SUPPLIER OF MATERIALS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **4. LIMITATION OF LIABILITY**

- 4.1. Miercom and its affiliates, partners or licensors shall not be liable for any indirect, incidental, consequential, special or exemplary damages arising out of or in connection with your access or use of the Publication or any Materials, whether or not the damages were foreseeable and whether or not Miercom was advised of the possibility of such damages. Miercom is not responsible for damages resulting from:
  - a) any errors in or omissions from the Publication(s) or Material(s) available or not included therein;
  - b) the unavailability or interruption to the supply of the Publication or features thereof or any Materials;
  - c) you or your Authorized User's use or misuse of the Publication or Materials (regardless of whether you received any assistance from Miercom in using or misusing the Publication)
  - d) loss or corruption of any data or equipment in connection with the Publication
  - e) the content, accuracy or completeness of Materials
  - f) any delay of failure in performance beyond the reasonable control of Miercom
  - g) any content retrieved from the Internet even if retrieved or linked to/from/within the Miercom website, all regardless of whether you received assistance in the use of the Publication services from Miercom.
- 4.2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE PUBLICATION SERVICES OR MATERIALS OR THIS PUBLICATION SERVICES AGREEMENT EXCEED THE LESSER OF YOUR ACTUAL DIRECT DAMAGES OR THE AMOUNT YOU PAID FOR THE PUBLICATION SERVICES IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY WHETHER FOR BREACH OF THIS AGREEMENT OR IN TORT (INCLUDING NEGLIGENCE) OR FOR ANY OTHER COMMON LAW OR STATUTORY CAUSE OF ACTION.

WITH RESPECT TO A PUBLICATION, MIERCOM WARRANTS IT WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR 30 DAYS. YOUR EXCLUSIVE REMEDY AND THE SOLE OBLIGATION OF MIERCOM FOR A DEFECTIVE PUBLICATION SHALL BE THAT MIERCOM SHALL PROVIDE A REPLACEMENT COPY OF A DEFECTIVE PUBLICATION OR REPAIR OR REPLACE THE SAME.

- 4.3. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER YOU NOR THE COVERED PARTIES SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFITS, REVENUE, OR DATA, OR OF ANY KIND WHATSOEVER INCLUDING, WITHOUT LIMITATION, LEGAL FEES, IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE PUBLICATION SERVICES, MATERIALS, OR THE FAILURE OF MIERCOM TO PERFORM ITS OBLIGATIONS, REGARDLESS OF ANY NEGLIGENCE OF MIERCOM, ITS AFFILIATES, PARTNERS OR LICENSORS. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO MIERCOM'S INDEMNITY OBLIGATIONS OR YOUR (AND YOUR AUTHORIZED USERS') INFRINGEMENT OF INTELLECTUAL PROPERTY OR MISAPPROPRIATION OF PROPRIETARY DATA BELONGING TO MIERCOM OR ITS THIRD-PARTY SUPPLIERS.
- 4.4. Notwithstanding anything to the contrary herein, if there is a breach of warranty in Clause 3.1, then Miercom, at its option and expense, will either defend you or indemnify and hold you harmless against proceedings or damages based on a third party's claim of patent, trademark, service mark, copyright or trade secret infringement related to the use of the Publication Services or Materials, provided: (a) the third party claim was not caused by your improper use of the Publication Services or Materials; (b) you give Miercom prompt notice of such third party claim; (c) you give Miercom the sole right to control and direct the investigation, defense and settlement of such claim; and (d) you, at Miercom's expense, reasonably cooperate with Miercom in connection with the foregoing.
- 4.5. If the Publication Services or the operation thereof become, or in the opinion of Miercom are likely to become, the subject of a claim of infringement, Miercom may, at its option and expense: (a) procure for you the right to continue using the Publication Services; (b) replace or modify the Publication Services so that they become non-infringing; or (c) terminate this Agreement on notice to you and grant you a pro-rata refund or credit (if either is applicable) for any fees or fixed charges you may have pre-paid.

## **5. MIERCOM PUBLICATION USE**

- 5.1. Use of Miercom publications in any way, including downloading reports for your organization, indemnifies Miercom of any End User License Agreement, Terms of Service, or other restrictive legalese preventing access, benchmark testing, evaluation or other comparison activity.