

## SOFTWARE SUBSCRIPTION AND LICENSE AGREEMENT

This Software Subscription and License Agreement (this “**Agreement**”) is entered into by and between THI, Inc., a Utah corporation (“**THI**”), and the customer entity identified in this Agreement (“**Customer**”). This Agreement describes the terms and conditions pursuant to which the Customer will install, copy, download, or otherwise access THI’s electronic document systems or remotely hosted subscription software services relating generally to the enhancement of electronic file and folder digital management and communications for the processing of title and escrow transactions (the “**Software and Services**”).

*CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT UPON THE EARLIER OF USE OF ANY OF THE SOFTWARE AND SERVICES OR ACKNOWLEDGEMENT THAT CUSTOMER HAS READ AND ACCEPTED THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY, ACCESS OR USE THE SOFTWARE AND SERVICES, AND DO NOT CLICK ACCEPTANCE OF THIS AGREEMENT.*

*UPON ACCEPTANCE OF THIS AGREEMENT, CUSTOMER SHALL PAY A ONE-TIME NON-REFUNDABLE DEPOSIT IN THE AMOUNT AGREED TO BETWEEN THI AND CUSTOMER AS SET FORTH IN EXHIBIT A (ORDER SUMMARY) INCORPORATED AND ATTACHED.* In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

### 1. SUBSCRIPTION AND LICENSES.

1.1. **Desktop.** Subject to the terms and conditions of this Agreement and payment of the applicable fees, THI grants to Customer a limited, non-exclusive and non-transferable license for use on the Customer’s equipment: (a) to the Software and Services, (b) to any Software and Services subsequently ordered from THI by Customer pursuant to a subsequent Order, and (c) to associated user and system management documentation, online tutorials, and any other manuals provided by THI, if any (the “**Documentation**”).

1.1.1. **Installation and Use.** Customer may use, access, display, install or run, one copy of the Software and Services, which may include a single application for a single computer system, remote access of the single application from another terminal, or a separate server application program and one or more client application programs. To the extent applicable, any such included application of the Software and Services may be used, installed, and run on a single device, such as a computer, workstation, terminal or other device (“**Computer**”). If accessing the Software and Services from a separate terminal via one or more remote application access protocols (e.g., RDP), the Software and Services may still only be installed on a single Computer system. In the event that the Software and Services comprise a separate server and client application, only one copy of each included server application and/or client application may be installed and run on a corresponding server or client computer system, as applicable. Customer may also store or install a copy of the Software and Services on a storage device, such as a network server for backup purposes only.

1.1.2. **Remote Access.** Customer may access the Software and Services using a remote application access protocol (such as but not limited to RDP) from a different computer system

terminal via a single user profile account. In such case, the license for the computer system on which the Software and Services are installed shall be applicable to the single user profile account and to a single user associated with the user profile account. Customer agrees that access to the Software and Services may not be shared or used concurrently on different Computers at the same time, or by more than one user, even if multiple users are sharing the applicable user profile account.

1.2. **Cloud.** Subject to the terms and conditions of this Agreement and payment of the applicable subscription fees, THI grants to Customer a limited, non-exclusive and non-transferable license for Customer's access and use of the Software and Services for Customer's own business operations to manage the number of systems and number of users for which Customer has subscribed to use the Software and Services through THI Cloud server(s) in accordance with the terms of the Documentation and this Agreement. Customer agrees that access to the license for the Software and Services may not be shared or used concurrently at the same time by more than one user.

1.3. **Trademark License.** Subject to the terms and conditions of this Agreement and payment of the applicable fees, THI grants to Customer a limited, non-exclusive and non-transferable license to use the THI Trademarks solely in connection with the Customer's internal use of the Software and Services and with its business partners with approved access to the Software and Services given by THI, in accordance with applicable laws and regulations relating to the use of trademarks and with reasonable standards and specifications established from time-to-time by THI.

1.3.1. **Use of Customer Trademarks.** Subject to THI's prior approval, Customer may elect to develop its own trademarks for the Software and Services internally and with its business partners. In the event that the Software and Services is referred to by any trademark other than THI Trademarks, the use of such trademark shall, at all times where reasonably practicable, be accompanied by the phrase "*Powered by Title iO™*" in relative to proximity to the trademark and in form and appearance consistent with THI's then-current trademark use guidelines, or such other reference as THI may direct.

1.4. **Customer System.** Customer is responsible for procuring, installing and maintaining its equipment and Computer(s), together with the provision of any other necessary hardware or software required for its proper operation (collectively the "System") of the Software and Services, and for providing a suitable operating environment in accordance with the guidelines specified by the suppliers or manufacturers of the components of the System. THI is not responsible for the installation, sizing, configuration, performance or other operation of the System, and Customer shall look solely to the suppliers or manufacturers of the components of the System with respect to such matters. Customer acknowledges that updates to the Software and Services may require upgrades to certain components of the System, as set forth in the Documentation for such updates, in order to ensure optimum performance, and that Customer is solely responsible for obtaining such System upgrades.

1.5. **License Restrictions.** Customer agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party, unless expressly authorized herein or by THI in writing: (a) sell, lease, license or sublicense the Software, the Documentation or the Trademarks; (b) decompile, disassemble, or reverse engineer the Software and Services, in whole or in part; (c) write or develop any derivative software or any other software program based upon the Software and Services or any of THI's Confidential Information; (d) use the

Software and Services to provide services on a 'service as a software' basis; (e) provide, disclose, divulge or make available to, or permit use of the Software and Services by any unauthorized third party; or (f) develop, license, sell or otherwise distribute, directly or indirectly, any user interface, program or software designed to be integrated with, or otherwise used in conjunction with, the Software and Services or any other THI software that permits users to access databases, programs or systems of, or order services from, Customer, any affiliate of Customer or any third party.

**1.5.1. No Destructive Mechanisms.** Customer shall not insert or upload into THI Software and Services any "Destructive Mechanisms" which means computer code that: (a) is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions or any other software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"); (b) would disable or impair system or any other software, firmware, hardware, computer systems or networks in any way where such disablement or impairment is caused by the passage of time, exceeding an authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs," "time locks" or "drop dead" devices); (c) would permit third parties to access the system or any other software, firmware, hardware, computer systems or networks to cause such disablement or impairment (sometimes referred to as "traps," "access codes" or "trap door" devices); or (d) which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications or otherwise interfere with operations.

**1.6. Reservation of Rights and Ownership.** THI reserves all rights not expressly granted to Customer in this Agreement. The Software and Services are protected by copyright, patent, trademark, trade secret, and/or other intellectual property laws and treaties, as applicable. THI, its heirs, assigns, subsidiaries, or its authorized affiliates or suppliers, as applicable, own all intellectual property rights in the Software and Services.

**1.7. Intellectual Property Notices.** Customer agrees not to remove any copyright or trademark notice or other proprietary markings from the Software and Services, Documentation, or Trademarks and to ensure that any copy made by Customer for backup purposes shall contain the same copyright notice and proprietary markings on the Software and Services, Documentation, and Trademarks furnished by THI to Customer.

**1.8. Digital Rights Management.** THI may use digital rights management technology ("DRM") in the Software and Services to protect the integrity of its content ("Secure Content") so that THI intellectual property, including copyright, patent, trade secret, or trademark, as applicable, in such content is not misappropriated. If the DRM security has been compromised, THI may revoke this Agreement or Customer's right to copy, display, use, install, run and/or access the Secure Content or the Software and Services. THI may also require Customer to upgrade some of the DRM components ("DRM Upgrades") before accessing the Secure Content. When Customer attempts to access Secure Content, THI may notify the user that a DRM Upgrade is required and then ask for Customer's consent before the DRM Upgrade is downloaded. If the consent is declined, Customer will not be able to access content that requires the DRM Upgrade.

**1.9. Customer Data.** The Customer or the approved users maintain ownership of all mortgage and title data transmitted by or on behalf of the Customer into the Software and Services. THI

retains the right to utilize the information derived from the data in an anonymized, aggregated manner as a part of broader data sets. Customer maintains ownership of and responsibility for its content and data while using the Software and Services. By creating, submitting, posting, or otherwise making Customer's content available to THI and/or other approved users, Customer acknowledges and agrees that: (a) Customer will evaluate and bear all risks associated with the content and data provided within the Software and Services; and (b) under no circumstances will THI Parties be liable in any way for content and data as Customer or the approved user uploads or submits, including, but not limited to any errors or omissions. Customer is encouraged to practice effective content retention practices, to maintain copies on its System, to use the latest encryption and other security technology to protect Customer's content and data and to back up and protect the security and confidentiality of such. THI Parties have no control over and shall have no liability for any damages resulting from the use or misuse by any third party of Customer's content or data that Customer or approved users choose to share, directly or indirectly, or through any THI Software and Services. *IF CUSTOMER CHOOSES TO SHARE ITS CONTENT OR DATA OR MAKE ITS CONTENT OR DATA AVAILABLE OR OTHERWISE IN CONNECTION WITH THE SOFTWARE AND SERVICES, CUSTOMER DOES SO AT ITS OWN RISK.* If Customer deletes its content or data from the THI Software and Services, Customer understands it may persist in backup copies. In addition to THI rights to delete Customer's content and data upon expiration or termination of this Agreement, THI has the right (but not the obligation) to delete inactive sites or accounts or purge related content (and all backups thereof), without further notice and without liability for deletion or failure to store such content. THI Parties shall have no responsibility or liability for deletion based on Customer settings or actions or inactions or for any failure to delete Customer content or data.

## 2. THIRD PARTY SOFTWARE AND SERVICES

**2.1. Acquisition of Third-Party Software and Services.** THI may offer third party software and services, which will be provided to Customer for its approval and acceptance. Any acquisition or use by Customer of third-party products or services, including third party software, services, hosting services, and implementation, customization and other consulting services, and any exchange of data between Customer and any third party provider, is solely between Customer and the applicable third party provider. THI does not warrant or support third party software and services, except as specifically agreed to in writing between THI and Customer for such third-party software.

**2.2. Third Party Software and Services and Customer Data.** If Customer orders third party software and services for use with THI Software and Services, Customer acknowledges that THI may allow providers of the third-party software and services to access Customer's data as required for the interoperation of the third-party software and services. THI will not be responsible for any disclosure, modification or deletion of Customer data resulting from any access by third party software and services providers.

## 3. SUPPORT AND HOSTING

**3.1. Support Services.** THI shall provide support, maintenance and updates of the Software and Services (the "**Support**") that shall include: (a) technical assistance relating to the Software

during regular THI regular business hours; (b) selected updates, upgrades, modifications, or enhancements to the Software (the “**Updates**”). Any Updates provided by THI as part of the Support shall be included within the definition of “Software and Services” and, upon delivery to Customer, shall be governed by the terms of this Agreement.

**3.2. Delivery of Support.** THI may, in its sole discretion, (a) determine the method of delivery of Updates, including remote desktop protocol (RDP) ; (b) provide technical assistance relating to the Software and Services via permission-based temporary remote access to Customer’s System, (c) require Customer to provide THI with a written description of any technical assistance before performing the requested Support, and (d) provide the Support exclusively to the system manager or administrative or technical contact as designated by the Customer.

**3.3. Access to Customer Systems.** To allow THI to install and maintain the Software and Services and any Updates on Customer’s System, Customer hereby grants permission to THI to access those Systems and shall, promptly following the Effective Date, provide to THI the necessary credentials to do so. Customer shall maintain such access for THI throughout the term of this Agreement. THI agrees that it will limit its access to providing and maintaining the Software and Services and to provide the Support and any Updates.

**3.4. Support Exclusions.** The following services are excluded from the Support provided by THI: (a) support or training services determined by THI, in its reasonable discretion, to relate primarily to computer hardware, operating System software, network software, printer software or any other application software not licensed by THI, (b) the provision of updates or upgrades to software not licensed by THI, (c) onsite or online computer hardware or software support or user training services not specified in this Agreement, (d) repair of local data files, or (e) Support for versions of the Software and Services other than the then-current version. Upon Customer’s request and for additional fees agreed to by the Parties, THI may in its sole discretion provide support and training services to Customer that are not included in this Section.

**3.5. Development Services.** From time-to-time during the term of this Agreement, Customer may request and THI may agree, subject to its resources and customer priorities, to provide certain installation, configuration, and development services to modify or add functionality and/or performance to the Software and Services. Any such development services shall be subject to a written proposal from THI that outlines the scope of the development services and the fees payable to THI. Upon Customer’s written acceptance of any such proposal, THI agrees to provide such services in a timely and professional manner. The improvements or new developments resulting from the development services shall be included in the definition of “Software” hereunder, shall remain the property of THI, and shall be licensed to Customer pursuant to the terms of this Agreement.

**3.6. Hosting.** Customer may elect and pay THI to provide hosted services for Customer data, which Customer understands and agrees that the hosted services may be provided by a third-party vendor (the “**Hosting Services**”). If providing Hosting Services, THI will provide Customer with: (i) non-exclusive electronic access to the digital information processing, transmission and storage systems (the “**Hosting Servers**”) located at the computer facilities for the Hosting Services; and (ii) access, via a unique username, password or other access credentials that THI provides to Customer, to the Hosting Services from Customer’s System or other network device by Customer’s personnel and other authorized users of Customer’s account as designated from time to time in writing to THI. Customer is solely responsible for backing up all Customer data and content on the Hosting Servers and for implementing snapshots of the Hosting Servers.

Customer acknowledges that snapshots will not record an autonomous copy of any file and that Customer cannot restore lost data from a snapshot. Snapshots may enable Customer to restore the system to a specific point in time, but they are not an adequate backup solution. Customer agrees to independently create and maintain outside of the THI Hosting Services a current backup copy of all data and content stored on the Hosting Servers.

#### 4. FEES.

4.1. **THI Fees.** Customer agrees to pay fees to THI for any deposit, installation, customization, license, Support, development, or Hosting Services as agreed to between the Parties, which includes the fees for desktop installation and monthly Software and Service fees (the “**THI Fees**”). Customer agrees to pay fees to THI for any Support at the hourly or group rate as outlined on the THI Website. Customer agrees to pay fees to THI for any Development Services as set forth in the accepted proposal between the Parties. The THI Fees are due and payable as set forth in this Agreement, any order, or on the THI website during Customer’s checkout. THI may increase Software and Service fees with thirty (30) days’ prior notice or prevailing prices at THI website, which may change from time to time.

4.1.1. **Hosting Services Fees and Terms.** If Customer chooses THI Hosting Services, Customer agrees to pay all fees for the THI Hosting Services at the applicable rate set forth in this Agreement, which shall include all computing costs and overheads, including storage and bandwidth. In its sole discretion, THI may charge Customer’s credit card once per month or more frequently if THI determines it is warranted by the fees incurred by Customer for the Hosting Services. In its sole discretion, THI may also place an authorization hold on Customer’s credit card at any time for fees that Customer has already incurred. The calculation of all fees for Hosting Services shall be based solely on THI records and data.

4.2. **Invoices & Payment Terms.** THI will submit invoices to Customer as follows: (a) per folder Customer will be invoiced for folder usage at the end of the month, (b) per user Customer will be invoiced at the beginning of the month based on the number of active user licenses, which THI Fees may be adjusted based on the number of approved users, (c) Hosting Services as incurred at the end of the month, or (d) the annual maintenance and support services as agreed to between Customer and THI. Customer shall pay THI invoices within fifteen days of receipt, via any method approved by THI, some of which may incur processing fees to be paid by Customer. Any payment not made by Customer by its due date will incur interest at 1.5% per month on the outstanding balance until such balance, including interest, is paid in full to THI. The acceptance of any late payment shall not act as a waiver of any rights THI may have hereunder due to a breach by Customer relating to the late payment. If required by applicable law, THI will charge sales, use, or other tax for any software, service, or product provided by THI to Customer as set forth in this Agreement.

#### 5. LIMITED WARRANTY AND LIMITATION OF LIABILITY

5.1. **Limited Warranty.** THI warrants that the Software and Services will perform in substantial accordance with the specifications set forth in the Documentation. If the Software and Services do not perform as warranted (a “**Non-Conformance**”), THI shall undertake to correct such Non-

Conformance, or if correction is reasonably not possible, replace such Software and Services. If neither of the foregoing is commercially practicable, THI shall terminate this Agreement and refund to Customer the THI Fees actually paid by Customer but not to exceed 3 months of THI Fees paid by Customer.

**5.2. DISCLAIMER.** EXCEPT AS SET FORTH IN THE LIMITED WARRANTY, THI MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING SUPPORT, UPDATES OR HOSTING SERVICES. THI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE AND SERVICES AND DOCUMENTATION, AND WITH RESPECT TO CUSTOMER'S USE OF ANY OF THE FOREGOING. THI IS NOT RESPONSIBLE FOR THE CONTENT OF THIRD-PARTY CONTENT, SOFTWARE AND WEBSITES AND SHALL NOT BE LIABLE FOR ANY DAMAGES INCURRED BY CUSTOMER ARISING FROM OR RELATED TO CUSTOMER'S USE OF THIRD-PARTY CONTENT, SOFTWARE AND WEBSITES USED OR ACCESSED BY CUSTOMER.

**5.3. LIMITATION OF LIABILITY.** ANY ACTION ARISING FROM THIS AGREEMENT SHALL BE COMMENCED WITHIN ONE (1) YEAR AFTER THE RIGHT OF ACTION ACCRUES THE ENTIRE LIABILITY OF THI ARISING FROM OR RELATED TO THIS AGREEMENT OR THE USE OF THE SOFTWARE AND SERVICES SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE THREE (3)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE ACT OR OMISSION GIVING RISE TO THE LIABILITY OCCURRED. IN NO EVENT WILL THI BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF THI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **6. INDEMNIFICATION**

**6.1. THI Indemnification.** THI shall indemnify, defend and hold harmless Customer and its directors, officers, employees and agents and the successors and assigns of any of the foregoing (each a "**Customer Indemnitee**") from any and all claims, losses, costs, liabilities or expenses, including, without limitation, attorneys' fees and other expenses of litigation resulting from a claim, suit or proceeding made or brought by a third party against a Customer Indemnitee that the Software or Services infringe any patent, copyright, trade secret or other proprietary right of any third party; provided that Customer gives prompt written notice to THI of any such claim, action or allegation of infringement and gives THI the authority to proceed as contemplated herein. THI will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such claim, action, or allegation, except with prior written consent of THI. Customer shall give such assistance and information as THI may reasonably require to

settle or oppose such claims. In the event any such infringement, claim, action or allegation is brought or threatened, THI may, at its sole option and expense: (a) procure for Customer the right to continue to use the Software and Services or the infringing part thereof; or (b) modify or amend the Software and Services or the infringing part thereof, or replace the Software and Services or the infringing part thereof with other services or software having substantially the same or better capabilities; or, if neither of the foregoing is commercially practicable, (c) terminate this Agreement and repay to Customer the THI Fees paid hereunder over the prior three (3) month period. THI and Customer will then be released from any further obligations of indemnification provided for above and such other obligations that survive termination. The foregoing obligations shall not apply to the extent the infringement arises as a result of Customer's uses of the Software and Services beyond the scope of this Agreement or modifications to the Software and Services made by any party other than THI or THI's authorized representative. This indemnification represents the entire liability of THI and Customer's exclusive remedy with respect to infringement of any patent, copyright, trade secret or other proprietary right.

**6.2. Customer Indemnification.** Customer shall indemnify, defend and hold harmless THI and its directors, officers, employees, agents, affiliates and the successors and assigns of any of the foregoing (each a "**THI Indemnitee**") from any and all claims, losses, costs, liabilities or expenses, including, without limitation, attorneys' fees and other expenses of litigation resulting from a claim, suit or proceeding made or brought by a third party against a THI Indemnitee arising out of (a) any acts or omissions of Customer or its employees and agents in the use of the Software and Services or otherwise relating to the performance of this Agreement, (b) Customer's breach of the terms of this Agreement, including any violation of THI's privacy policy or other terms and conditions required by THI for the use, download, or access of the Software and Services; (c) the negligence or willful misconduct of Customer or its employees and agents, including any security breach or violations that compromise any data by any Party or authorized user under this Agreement; and (d) any improper use of the Software and Services, Documentation, or Trademark by the Customer or its authorized users or agents.

## **7. CONFIDENTIALITY**

**7.1. Confidential Information.** Each party acknowledges that each Party's respective Confidential Information constitutes valuable trade secrets, and each Party agrees that it shall use the other Party's Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other Party's prior written consent. Each Party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that (a) is publicly available, (b) already in the other Party's possession and not subject to a confidentiality obligation, (c) obtained by the other Party from third parties without restrictions on disclosure, (d) independently developed by the other Party without reference to Confidential Information, or (e) required to be disclosed by order of a court or other governmental entity.

**7.2. Injunctive Relief.** In the event of actual or threatened breach of the provisions of Confidential Information obligations, the non-breaching Party will have no adequate remedy at law and will be entitled to immediate and injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

## 8. TERM AND TERMINATION

8.1. **Term.** *This Agreement will take effect on the Effective Date and will remain in force perpetually. The Customer has the right to cancel this Agreement by providing 30 days advance written notification during the first year of this Agreement, and thereafter the Customer may only terminate within thirty days of the anniversary term.*

8.2. **Termination by Customer.** Customer may also terminate this Agreement upon written notice to Customer if any of the following events occur: (a) THI is in material breach of any term, condition, or provision of Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after Customer gives THI written notice of such breach; or (b) if THI becomes subject to any bankruptcy or insolvency proceeding under federal or state law.

8.3. **Termination by THI.** THI may terminate this Agreement upon written notice to Customer if any of the following events occur: (a) Customer fails to pay any undisputed amount due to THI within thirty (30) days after THI gives the Customer written notice of such non-payment; (b) Customer is in material breach of any non-monetary term, condition or provision of Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after THI gives Customer written notice of such breach; or (c) if Customer becomes subject to any bankruptcy or insolvency proceeding under federal or state law.

8.4. **Effect of Termination.** Termination of this Agreement will not affect the provisions regarding Customer's or THI's treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming THI's liability, which provisions will survive termination of this Agreement. Within ten (10) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return the Software, derivative works and all copies thereof, all related Documentation and all copies thereof, all access logins and passwords, and any other Confidential Information in its possession or control and terminate all use of any Trademarks.

## 9. MISCELLANEOUS

9.1. **Assignment.** THI shall have the right to assign, delegate, or transfer at any time, in whole or in part, any or all of the rights, duties, and interests herein granted without the necessity of obtaining Customer's consent. Customer shall not assign or transfer any of the rights of this Agreement without the prior written consent of THI.

9.2. **Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be sent by first class registered U.S. mail, delivered to to the physical address set forth below or in the Order. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of confirmed delivery if by email or three (3) business days after placement in U.S. mail as set forth above.

9.3. **Force Majeure.** Neither Party will incur any liability to the other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if

such delay or failure is primarily caused by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, viruses or pandemics, and lockdowns, but the inability to meet financial obligations is expressly excluded.

9.4. **Waiver.** Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. Except as expressly stated in this Agreement, no exercise or enforcement by either Party of any right or remedy under this Agreement will preclude the enforcement by such Party of any other right or remedy under this Agreement or that such Party is entitled by law to enforce.

9.5. **Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the Parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

9.6. **Amendments.** This Agreement may not be amended, except by a writing signed by both Parties.

9.7. **Export of Software.** Customer may not export or re-export the Software without the prior written consent of THI and without the appropriate United States and foreign government licenses.

9.8. **Applicable Law.** This Agreement will be interpreted and construed in accordance with the laws of the State of Utah, without regard to conflict of law principles.

9.9. **Arbitration.** All claims, disputes, and other matters in question arising out of, or relating to, this Agreement or the interpretation or breach thereof, shall be decided by arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. Said arbitration shall be held in Salt Lake City, Utah. This agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction. Notice of the demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. The award rendered by the arbitrator shall be final and judgment may be entered in accordance with applicable law and in any court having jurisdiction thereof. The arbitrator shall determine who is the prevailing party and shall award reasonable attorneys' fees and expenses of the arbitration to such Party.

9.10. **Entire Agreement.** This Agreement (including any exhibits or addenda hereto signed by both Parties) contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties with respect to said subject matter.