

SUBSCRIPTION AGREEMENT: BEXAR COUNTY
(Standard Version)

THIS AGREEMENT (“Agreement”) is made and entered into effective _____, 201_ (the “Effective Date”) by and between _____ (hereinafter “Subscriber”), a Texas _____, and Texas Title Data, Inc. (hereinafter “TDI”), a Texas corporation with its offices located in the City of Houston, Harris County, Texas.

WITNESSETH:

WHEREAS, TDI owns and maintains a land title evidence plant for Bexar County, Texas (the “Title Plant”) comprised of (i) digital images of tract book pages (the “Tract Books”) which contain pertinent information extracted from documents publicly filed in Bexar County, Texas (“Bexar County”) from 1837 through December 31, 1981 which affect title to real property situated within Bexar County, (ii) computerized general name and geographic indexes (the “Indexes”) dating from January 1, 1977 to those documents publicly filed in Bexar County which affect title to real property situated within Bexar County, (iii) computerized edits of Bexar County survey and subdivision information (the “Map Edits”), (iv) a computerized index (the “Grantor/Grantee Index”), initially prepared by the Bexar County Clerk, to those documents filed with and recorded by the Bexar County Clerk which affect title to real property situated within Bexar County, and (v) computerized information (the “CAD Data”) pertaining to the appraisal of real property situated within Bexar County; and

WHEREAS, TDI also owns and maintains digital documents (a “Digital Document”) which are reproductions of documents recorded by the Bexar County Clerk in Bexar County’s Official Public Records of Real Property (the “Official Records”), such Digital Documents being collectively referred to herein as the “Image Library”; and

WHEREAS, Subscriber desires to access and use the Title Plant and Image Library upon the terms and conditions set forth herein; and

WHEREAS, TDI desires to permit Subscriber to access and use the Title Plant and Image Library upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual consideration hereinafter set forth, the parties hereby agree as follows:

1. MAINTENANCE OF THE TITLE PLANT

a. Documents

TDI shall obtain copies of, or, at its option, obtain or make a synopsis of, those documents (the “Documents”) publicly filed in Bexar County which affect title to real property situated within Bexar County.

b. Pertinent Information

TDI shall use its best efforts to extract pertinent information from the Documents and integrate such pertinent information into the Title Plant in such a manner that the Title

Plant will be an accurate source for title information relating to real property situated within Bexar County.

c. **Title Plant Date**

TDI shall use its best efforts to maintain the Title Plant in such a manner that those Documents filed on a given date in the Official Records shall be integrated into the Title Plant no more than five (5) business days after receipt by TDI of copies of such Documents for such date.

2. **ACCESS TO THE TITLE PLANT AND IMAGE LIBRARY**

a. **Retrieved Information; Computer Prints; Digital Document Copies**

Subject to the restrictions and limitations set forth in this Agreement, Subscriber and its Bona Fide Employees (as that term is defined in Paragraph 2.e below) shall have the right to access the Title Plant and Image Library for the limited purpose of (i) obtaining information (the "Retrieved Information") from the Title Plant, (ii) causing such Retrieved Information to be produced as hard copy, electronic printed (PDF) copy, and/or as an Extensible Markup Language (XML) data file (the foregoing forms of Retrieved Information hereafter referred to as a "Computer Print" or "Computer Prints"), and (iii) retrieving copies of Digital Documents. Subscriber shall not allow any third party, or employees, agents, representatives, officers or owners of any third party (collectively a "Third Party"), to have access to the Title Plant or Image Library or have possession of a Computer Print unless such Third Party is the Bona Fide Employee of a Title Company (as that term is defined below) which is authorized by contract with TDI to access the Title Plant. For purposes of this Agreement, "Title Company" shall mean a title insurance company, a title insurance agent, and their employees, agents and representatives.

b. **Subscriber Equipment; Communications Line**

Subscriber shall have the right to access the Title Plant and Image Library by means of computer equipment and communications equipment (collectively the "Subscriber Equipment") of a quantity, configuration, type and location as specified, from time-to-time, by TDI, and a communications line (the "Communications Line") as specified, from time-to-time, by TDI. The cost to purchase, lease, install, maintain or use the Subscriber Equipment shall be the responsibility of Subscriber. TDI shall have the right, but not the obligation, to lease the Communications Line in its name; in such event the cost to install, lease, and maintain the Communications Line shall be reimbursed to TDI by Subscriber.

c. **Operating Hours**

TDI shall permit Subscriber to access the Title Plant and Image Library using the Communications Line and the Subscriber Equipment during the hours (the "Operating Hours") set forth at TDI's website, www.titledata.com.

d. **Passwords**

Subscriber shall obtain from TDI a unique computer password ("Password") for each Bona Fide Employee who will have access to the Title Plant and/or Image Library. Subscriber agrees (i) to prohibit its Bona Fide Employees from sharing Passwords and (ii) to require its Bona Fide Employees (who will have access to the Title Plant and/or Image Library) to execute TDI's Access and Use Agreement, a copy of which is available to Subscriber at TDI's website, www.titledata.com.

e. **Bona Fide Employees**

Subscriber acknowledges and agrees that, except as set forth in Paragraph 2.a above and Paragraph 3.b (i) below, access to and use of the Title Plant, Image Library and Computer Prints shall be restricted to its Bona Fide Employees. TDI shall have the absolute right, in its sole judgement, to deny access to the Title Plant and Image Library to any of Subscriber's Bona Fide Employees. For purposes of this Agreement, a Bona Fide Employee is defined to be an individual (i) who is employed by Subscriber in good faith, (ii) whose employment is honest, open and genuine, (iii) whose employment is not feigned, (iv) who is working for salary or wages reportable by Subscriber to the Texas Workforce Commission in accordance with the Texas Unemployment Compensation Act (or a comparable state unemployment insurance commission, agency or department in accordance with comparable state law) and to the United States Internal Revenue Service in accordance with the Internal Revenue Code, (v) who is subject to the Subscriber's power or right to control or direct such individual's employment, including without limitation material details as to how the work is to be performed, and (vi) who is not a contract laborer or contract employee.

3. **FURNISHING DERIVATIVE PRODUCTS**

a. **Furnishing Derivative Products**

Any information obtained from or products produced by Subscriber in whole or in part from the Title Plant and/or Image Library ("Products") shall not be directly or indirectly delivered, exhibited or furnished by Subscriber to any Third Party except in accordance with Paragraphs 3.b, 3.c and 3.d below.

b. **Promulgated Insurance Products; Authorized Recipients**

If Subscriber produces Products comprised of title insurance commitments, policies, binders, endorsements or other title insurance forms promulgated by the Texas Department of Insurance (collectively "Promulgated Insurance Products") Subscriber shall have the right to furnish such Promulgated Insurance Products only to Authorized Recipients. For purposes of this Agreement, an Authorized Recipient is defined to be an individual or entity playing a bona fide role in a bona fide real estate transaction which, in Subscriber's genuine belief, will result in the issuance of a title insurance policy. Authorized Recipients shall include, without limitation, the purchaser, borrower and seller in the real estate transaction, an attorney representing a party to the real estate transaction, a lender making a loan to a party to the real estate transaction, a real estate broker or agent representing a party to the real estate transaction, and a surveyor retained by a party to the real estate transaction to survey the real property which is the subject of the real estate transaction. Authorized Recipient shall exclude an individual or entity which is affiliated with a Title Company that is licensed by the Texas Department of Insurance to issue Promulgated Insurance Products for real property situated within Bexar County but is not authorized by contract with TDI to access the Title Plant, when such Title Company will receive a portion of the title insurance premium. Subscriber shall be subject to the additional restrictions and limitations set forth below when furnishing Products, including without limitation Promulgated Insurance Products, to a Fee Attorney (as that term is defined below) or Title Company.

(i) **Fee Attorneys**

Subscriber shall have the right to furnish Promulgated Insurance Products to an attorney (a "Fee Attorney") for the purpose of closing a bona fide real estate transaction which, in the Fee Attorney's genuine belief, will result in the issuance of a title insurance policy, provided that such

attorney (a) is duly licensed by the Supreme Court of Texas to practice law in Texas, (b) is licensed by the Texas Department of Insurance to act as an escrow officer for, and close real estate transactions in the name of, Subscriber pursuant to the Texas Title Insurance Act, and (c) is not a Fee Attorney for a Title Company which is licensed by the Texas Department of Insurance to issue Promulgated Insurance Products for real property situated within Bexar County but is not authorized by contract with TDI to access the Title Plant. In the event Subscriber's Fee Attorney either (a) makes application to the Texas Department of Insurance to become a Title Company authorized to issue title insurance for real property situated within Bexar County, or (b) becomes a Fee Attorney for a Title Company which is licensed by the Texas Department of Insurance to issue Promulgated Insurance Products for real property situated within Bexar County but is not authorized by contract with TDI to access the Title Plant, then Subscriber shall immediately discontinue providing such Fee Attorney with Promulgated Insurance Products and, within ninety (90) days of the date such Fee Attorney takes an action described by (a) or (b) above, Subscriber shall retrieve and secure all Promulgated Insurance Products in the possession of such Fee Attorney, including all copies thereof.

(ii) **Title Companies: Promulgated Insurance Products**

Subscriber is prohibited from furnishing any Promulgated Insurance Products to a Title Company which (a) is licensed by the Texas Department of Insurance to issue Promulgated Insurance Products for real property situated within Bexar County but is not authorized by contract with TDI to access the Title Plant, (b) is not licensed by the Texas Department of Insurance to issue Promulgated Insurance Products for real property situated within Bexar County but subscribes to a competing Bexar County title plant service, or (c) intends to furnish such Promulgated Insurance Products to another Title Company. In the event Subscriber elects to furnish a title insurance commitment to a non-prohibited Title Company, and such non-prohibited Title Company is not authorized by contract with TDI to access the Title Plant, Subscriber shall attach a *Title Insurance Commitment Cover Letter: Out-of-County Title Company (Expanded Counties Version)*, the prescribed form and content for which is available to Subscriber at www.titledata.com, to the front of any title insurance commitment so furnished.

c. **Title Information Products; End Users**

If Subscriber produces Products other than Promulgated Insurance Products, including without limitation, abstracts, title reports, title opinions, chains-of-title, ownership and encumbrance reports, property reports, nothing further certificates, limited liability reports, ownership reports, lien searches, real estate information, mineral information, and ad valorem tax information ("Title Information Products"), Subscriber shall have the right to furnish such Title Information Products only to End Users (as that term is defined below).

(i) **End Users Defined**

For purposes of this Agreement, End Users are defined to be individuals and entities which will use a Title Information Product for their own account and not for resale or dissemination to others, including (a) political subdivisions of the State of Texas (other than a Central Appraisal District) using information from the Title Plant and/or Image Library for

the purpose of acquiring, leasing or disposing of real property in their own name, collecting taxes, abating nuisances, enforcing deed restrictions and zoning ordinances, investigating criminal activity and other such public purposes, (b) agencies of the United States of America using information from the Title Plant and/or Image Library for the purpose of acquiring, leasing or disposing of real property in their own name, collecting taxes, investigating criminal activity and other such public purposes, (c) public utilities using information from the Title Plant and/or Image Library for the purpose of acquiring rights-of-way, easements or real property in their own name, (d) banks, mortgage companies and other lending institutions using information from the Title Plant and/or Image Library for the purpose of making a loan, servicing a loan or conducting a foreclosure, (e) oil and gas producers, operators and brokers using information from the Title Plant and/or Image Library for the purpose of acquiring mineral interests, royalty interests, and pipeline rights-of-way in their own name, (f) an attorney, who is not a Fee Attorney for a Title Company which is licensed by the Texas Department of Insurance to issue Promulgated Insurance Products for real property situated within Bexar County but is not authorized by contract with TDI to access the Title Plant, using information from the Title Plant and/or Image Library in the general representation of his or her clients, (g) licensed surveyors using information from the Title Plant and/or Image Library for the purpose of preparing a land survey, (h) licensed appraisers, who are not employed by or working for a Central Appraisal District, using information from the Title Plant and/or Image Library for the purpose of preparing an appraisal, (i) investors using information from the Title Plant and/or Image Library for the purpose of acquiring, leasing or disposing of real property in their own name, (j) subdivision homeowner associations using information from the Title Plant and/or Image Library for the purpose of updating their ownership records, and (k) Realtors[®] and real estate agents using information from the Title Plant and/or Image Library for the purpose of obtaining information on prospective or current listings. The term End Users shall exclude, without limitation, those individuals and entities who are identified as Non-End Users in Paragraph 3.c (ii) below.

(ii) **Non-End Users Defined**

The term Non-End Users shall mean individuals and entities which intend to use information from the Title Plant and/or Image Library for resale or dissemination to others. Non-End Users include, without limitation, (a) a Central Appraisal District, (b) individuals and entities which sell or disseminate Title Information Products, (c) oil and gas brokers which acquire mineral interests or royalty interests in the name of others, (d) an attorney, other than Subscriber's Fee Attorney, who intends to use information from the Title Plant and/or Image Library for the purpose of furnishing Title Information Products to Third Parties, (e) individuals and entities which intend to use information from the Title Plant and/or Image Library for the purpose of acquiring rights-of-way or easements in the name of others, (f) individuals and entities which prepare environmental assessment letters and certifications or other analyses, opinions and reports pertaining to the environmental hazards situated within a parcel of real property, (g) vendor management companies providing services to banks, mortgage companies and other lending institutions, (h) individuals and entities which prepare, compile, assemble or update an abstract or land title evidence plant, database or other body of records or information

relating to real property situated within Bexar County, (i) any individual or entity which intends to use information from the Title Plant and/or Image Library as an agent or fiduciary and not for such individual's or entity's own benefit, (j) a Title Company which is not authorized by contract with TDI to access the Title Plant, and (k) individuals and entities which are affiliated with a Title Company that is licensed by the Texas Department of Insurance to issue Promulgated Insurance Products for real property situated within Bexar County but is not authorized by contract with TDI to access the Title Plant.

d. **Subscriber's Title Records**

Subscriber shall not permit any Third Party to directly or indirectly have access to or use of any portion of Subscriber's abstract plant, title plant or other title records which were created or updated through the use of the Title Plant and/or Image Library, including without limitation Subscriber's base files, title files, title examinations, title reports, title insurance policies, binders, and commitments, if such Third Party is (i) a Fee Attorney or Title Company prohibited from receiving Promulgated Insurance Products as set forth in Paragraph 3.b (i) and (ii) above, or (ii) a Non-End User prohibited from receiving a Title Information Product as set forth in Paragraph 3.c (ii) above.

e. **Right of Inspection**

TDI shall have, for the purpose of monitoring Subscriber's compliance with the terms of this Agreement, (i) the right and license to enter upon the premises of Subscriber, without notice and during normal business hours, and (ii) the right to audit Subscriber's records, however and wherever such records are stored and maintained, concerning income derived from, and use of, the Title Plant and Image Library.

f. **Survival**

It is expressly agreed that the restrictive provisions of this Paragraph 3 shall survive the termination of this Agreement, however any such termination may occur.

4. **COPYRIGHT; TRADE SECRETS**

a. **Copyright**

Subscriber acknowledges and agrees that the Title Plant, Image Library, Computer Prints and computer software utilized in the Title Plant and Image Library bear a copyright in favor of TDI. Subscriber agrees to honor such copyright and agrees to protect such copyrighted materials from unauthorized duplication or display. Subscriber further agrees not to reproduce in any manner TDI's copyrighted materials without the prior written consent of TDI.

b. **Trade Secrets**

Subscriber acknowledges and agrees that the Title Plant and Image Library constitute trade secret and confidential proprietary information owned by TDI, acquired and/or developed by TDI at great expense, and that TDI is entitled to protection against unauthorized disclosure or dissemination of any part or whole of such trade secrets to any Third Party. Subscriber further agrees not to communicate or use in any manner such records and information, or any information derived therefrom, except in accordance with the terms, conditions and restrictions set forth in this Agreement.

5. COMPENSATION TO TDI

a. Fees

- (i) **Subscription Fee:** Beginning the earlier of (a) the date the Texas Department of Insurance grants Subscriber a license to issue policies of title insurance for real property situated within Bexar County, or (b) ninety (90) calendar days from the effective date of this Agreement, Subscriber shall pay to TDI a fee (the "Subscription Fee") of ONE THOUSAND NINE HUNDRED FIFTY AND NO/100 DOLLARS (**\$1,950.00**) per month.
- (ii) **Digital Document Fee:** Subscriber shall pay to TDI a fee (a "Digital Document Fee") for each copy of a (a) Digital Document which Subscriber retrieves from the Image Library, and (b) Tract Book page (or group of Tract Book pages which have been electronically joined together) which Subscriber retrieves from the Title Plant. The Digital Document Fee shall equal the amount set forth at TDI's website, www.titledata.com, and shall be subject to change by TDI in accordance with Paragraph 5.c below. As an express condition of this Agreement, Subscriber agrees to purchase from TDI any and all Digital Documents required by Subscriber to conduct its business for Bexar County, to the fullest extent that TDI makes such Digital Documents available to Subscriber in the Image Library. Notwithstanding the foregoing, Subscriber shall not be required to purchase a Digital Document when a copy of the corresponding Document is available to Subscriber, without cost, from the Bexar County Clerk.
- (iii) **Taxes:** There shall be added to the Subscription Fee and Digital Document Fees, and Subscriber shall pay to TDI, an amount equal to the total of any federal, state or local excise, sales, use, or other taxes which are required to be paid by TDI as a result of any goods and services furnished by TDI pursuant to this Agreement, exclusive of income taxes based upon TDI's net income.

b. Reimbursable Costs

Subscriber agrees to reimburse TDI for the cost of the Communications Line and any other goods or services purchased by TDI on Subscriber's behalf, subject to Subscriber's prior approval of such purchases.

c. Price Adjustment

TDI shall have the right to adjust the Subscription Fee and Digital Document Fee. Subscriber shall be given at least thirty (30) days prior written notice of such adjustments.

d. Billing; Payment

On or before the fifth (5th) calendar day of each month TDI shall invoice Subscriber for (i) the Subscription Fee due for the current month, and (ii) the Digital Document Fees and Reimbursable Costs due for the prior month. Such invoices shall be due and payable in the offices of TDI no later than the fifteenth (15th) calendar day of the month in which presented, or the next business day in the event such fifteenth (15th) calendar day falls on a Saturday, Sunday, or holiday observed by the United States Postal Service. All delinquent payments shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate that may lawfully be charged under applicable state or federal law, whichever is less.

e. **Deposit**

Upon execution of this Agreement, Subscriber shall pay to TDI a deposit in an amount equal to two (2) months Subscription Fee, which shall be returned by TDI to Subscriber, without interest, upon termination of this Agreement and payment of all monies owed TDI. Notwithstanding the foregoing, in the event Subscriber is the owner of capital stock in Title Data, Inc. TDI agrees to waive the deposit requirement and Subscriber agrees that any monies owed TDI may be collected in accordance with the Title Data, Inc. Master Agreement.

6. **OWNERSHIP**

a. **Title Plant and Image Library**

Subscriber acknowledges and agrees that nothing in this Agreement shall be interpreted to grant Subscriber or any other party any ownership interest or other rights in and to the Title Plant, Image Library or any other asset of TDI, other than Subscriber's right, during the term of this Agreement, of access and use set forth in this Agreement. Subscriber shall not by virtue of this Agreement obtain any ownership interest or other rights of any kind in, or be entitled to receive copies of, any electronic media (including magnetic media and optical media), including without limitation computerized data files, computerized document image files, computerized maps, computerized edits, or computer software, owned or utilized by TDI in the operation of the Title Plant and Image Library.

b. **Computer Prints and Digital Document Copies**

All Computer Prints and Digital Document copies shall be owned by Subscriber but shall be subject at all times to the provisions of this Agreement limiting the use, copying, and dissemination of Computer Prints and Digital Document copies.

7. **LIABILITY**

a. **Waiver of Liability; Indemnification**

Subscriber acknowledges and agrees that TDI shall not be liable to Subscriber for any losses, claims, expenses or damages, including consequential damages, sustained by Subscriber or any other party as a result of, or arising from, any breach by TDI of its obligations under this Agreement, including without limitation any error, mistake, negligence, or omission (collectively referred to as an "Error") made by TDI in the preparation, compilation and assembly of the Title Plant and Image Library or distribution of Retrieved Information, Computer Prints, Digital Document copies or other information of any kind provided by TDI to Subscriber. Subscriber shall indemnify and hold harmless TDI from any and all losses, claims, expenses or damages, including all legal fees and related costs, arising out of any claims, demands, or causes of action asserted against TDI which are based in whole or in part upon (i) Errors contained in information provided to Subscriber by TDI, (ii) Errors made by Subscriber and contained in information provided by Subscriber to a Third Party, and (iii) Errors made by a Third Party in the processing or dissemination of information originally obtained from Subscriber. Within ten (10) days of its receipt of any claim, demand, or cause of action for which indemnification is required under this Paragraph 7.a, TDI shall give written notice of same to Subscriber. Subscriber shall be entitled to participate in the defense or settlement of any such actions, however TDI and its counsel shall have the exclusive right, in their sole discretion, to make all final decisions regarding such defense or settlement.

b. **Disclaimer of Warranties**

Subscriber acknowledges and agrees that the goods and services provided by TDI hereunder shall be accepted by Subscriber AS IS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTY OF GOOD WORKMANSHIP. Subscriber further acknowledges and agrees that the cost of the goods and services furnished by TDI pursuant to this Agreement are calculated and based upon sale by TDI to Subscriber of such goods and services without warranty and without liability for negligence, and but for these terms and conditions the cost of such goods and services would be significantly greater.

c. **Survival**

It is expressly agreed that the provisions of this Paragraph 7 shall survive the termination of this Agreement, however any such termination may occur.

8. **DEFAULT**

a. **Default by TDI**

Should TDI breach any of the terms, covenants, agreements, conditions or provisions of this Agreement, Subscriber shall give written notice of such default to TDI. TDI shall have ten (10) days from the date of such notice to cure such default. If such default is not cured within the time period provided above, Subscriber may, as its sole and exclusive remedy, immediately terminate this Agreement.

b. **Default by Subscriber**

In the event of a default by Subscriber under any of the terms, covenants, agreements, conditions or provisions of this Agreement, including without limitation the obligation to make timely payment of any monies owed TDI and to comply with the provisions of this Agreement regarding use, copying, and dissemination of the Retrieved Information, Computer Prints, Digital Document copies, copies thereof, or information therefrom, TDI shall give written notice of such default to Subscriber and TDI shall have the right to immediately suspend Subscriber's access to the Title Plant and Image Library until such default is cured. Subscriber shall have ten (10) days from the date of such notice to cure such default. If such default is not cured within the time period provided above, TDI may, at its option, terminate this Agreement and Subscriber shall no longer be entitled to any rights or benefits. In addition to such termination, TDI may pursue any other remedy available to it under this Agreement, at law or in equity, to recover any monies owed to it.

9. **TERMINATION**

a. **Term**

This Agreement shall remain in effect until the earlier of (i) **two (2) years** from the Effective Date [if Subscriber is not licensed as a title insurance agent by the Texas Department of Insurance] or (ii) the date Subscriber's title insurance agent's license expires [if Subscriber is licensed as a title insurance agent by the Texas Department of Insurance]. The term of this Agreement shall be extended automatically for successive two (2) year terms unless either party gives the other party notice that it does not wish to renew at least thirty (30) days prior to the expiration of any term. Notwithstanding the foregoing, this Agreement may be terminated at any time in accordance with the provisions of Paragraphs 8, 9.b and 9.c.

b. **Termination by Subscriber**

Subscriber, provided it is not in default, may terminate this Agreement at any time without cause by giving TDI thirty (30) days prior written notice. Upon any such termination of this Agreement, Subscriber shall (i) pay to TDI any monies owed by Subscriber under this Agreement, and (ii) have no further right to access the Title Plant and Image Library.

c. **Termination by TDI**

TDI shall be permitted to terminate this Agreement (i) without cause, by giving Subscriber thirty (30) days prior written notice, (ii) in accordance with the default provisions set forth in Paragraph 8.b above, or (iii) in the event any covenant, condition, or provision of this Agreement is held to be invalid or unenforceable by a final judgement of a court of competent jurisdiction.

10. **REMEDIES; INJUNCTIVE RELIEF**

a. **Remedies**

Subscriber agrees that because of the expense and unique skill and labor required in the compilation, assembly and maintenance of the Title Plant, the Retrieved Information and Computer Prints have a value greatly in excess of the mere cost of copying same, and that the damage which TDI would suffer from the wrongful distribution or utilization of the Retrieved Information and Computer Prints, or information derived therefrom, would be uncertain and incapable of exact determination. Subscriber therefore further agrees to the following remedies.

(i) **Violations of Paragraphs 2 and 3: Other than Fee Attorneys and Title Companies**

In the event Subscriber shall violate any of the provisions set forth in Paragraphs 2 and 3 of this Agreement and the violation does not involve a Fee Attorney or Title Company, in addition to the other default remedies available to TDI under Paragraph 8.b above, TDI shall have the right to require Subscriber to pay as liquidated damages and not as a penalty the amount hereinafter set forth. The amount of such liquidated damages shall equal ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per index record extracted from the Title Plant or contained within a Computer Print, where such extracted record or Computer Print was either (i) delivered, exhibited, or furnished in violation of Paragraph 2 or 3 of this Agreement or (ii) used in a Product which was delivered, exhibited, or furnished in violation of Paragraph 2 or 3 of this Agreement.

(ii) **Violations of Paragraphs 2 and 3: Fee Attorneys and Title Companies**

In the event Subscriber shall violate any of the provisions set forth in Paragraphs 2 and 3 of this Agreement and the violation involves a Fee Attorney or Title Company, in addition to the other default remedies available to TDI under Paragraph 8.b above, TDI shall have the right to require Subscriber to pay as liquidated damages and not as a penalty the amount hereinafter set forth. The amount of such liquidated damages shall equal the greater of (a) ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) for each violation or (b) FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) per index record extracted from the Title Plant or contained within a Computer Print, where such extracted record or Computer Print was either (i) delivered, exhibited, or furnished in violation of Paragraph 2 or 3 of this Agreement or (ii) used in a Product

which was delivered, exhibited, or furnished in violation of Paragraph 2 or 3 of this Agreement.

b. **Assessment; Payment**

TDI shall invoice Subscriber for liquidated damages. Such invoices shall be due and payable in the offices of TDI no later than fifteen (15) calendar days of the date in which presented, or the next business day in the event such date falls on a Saturday, Sunday, or holiday observed by the United States Postal Service.

c. **Injunctive Relief**

In addition to the provisions relating to liquidated damages set forth in this Paragraph 10, Subscriber agrees that the terms and provisions of this Agreement may be enforced by proceedings in equity for injunctive or other equitable relief, at the institution of TDI. Subscriber further agrees that in the event suit should be instituted against it to restrain violation of the terms of this Agreement, and a restraining order or temporary injunction sought pending trial on the merits, that it would suffer no damage from being enjoined or restrained pending a trial of such action on the merits, and that a bond not exceeding the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) would be entirely adequate to protect it from damages, if any, which it might suffer in the event such injunction or restraining order should be dissolved for any reason at any subsequent time.

11. **MISCELLANEOUS**

a. **Entire Agreement**

This Agreement, including any other documents to which this Agreement is made subject, constitute the entire understanding and agreement between Subscriber and TDI. There are no terms, obligations, covenants, or conditions other than those contained or specifically referred to herein. No modification or amendment to this Agreement shall be valid and effective unless and until it is in writing and executed by duly authorized representatives of all parties hereto.

b. **Effect of Headings**

The headings or titles of the several paragraphs and sections hereof shall be solely for convenience of reference and shall not affect the meaning or the construction, interpretation, or effect of this Agreement.

c. **Severability**

Each covenant, condition, and provision of this Agreement is essential to the general purpose hereof as contemplated by the parties. In the event any covenant, condition, or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, TDI shall have the right to terminate this Agreement in accordance with Paragraph 9.c above.

d. **Binding Effect**

Except as provided to the contrary herein, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

e. **Assignability**

Subscriber has no right to assign this Agreement. TDI reserves the right to assign its full interest in this Agreement, together with its obligations hereunder.

f. **Waiver**

Any failure by a party to exercise any of its rights under this Agreement in the event of a default or breach shall not be deemed to be a waiver of any rights with respect to any future breach or event of default, nor shall such forbearance be deemed a continuing waiver.

g. **Non-exclusivity of Remedies**

No right or remedy herein conferred upon or reserved by the parties is exclusive of any other right or remedy provided by law or equity.

h. **Governing Law; Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and any proceeding or action regarding this Agreement shall be maintained exclusively in Harris County, Texas.

i. **Attorneys' Fees**

Should either party institute legal proceedings to enforce the terms or conditions of this Agreement the prevailing party shall be entitled to recover all its reasonable attorneys' fees, costs, and other expenses reasonably and necessarily incurred.

j. **Force Majeure**

It is expressly understood and agreed that in the event the performance of any covenant, agreement, obligation, or undertaking of TDI contained in this Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstance beyond the reasonable control of TDI, regardless of whether such circumstance is similar to any of those enumerated above, TDI shall be excused from doing or performing the same during the period of such delay.

k. **Notice**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if delivered by electronic mail, mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, delivered by overnight delivery service, or delivered in person. For the purposes of notice, the addresses of the parties are as follows:

TDI:

1225 North Loop West
Suite 950
Houston, Texas 77008-4722
Attn: James P. Sibley

SUBSCRIBER:

Either party hereto may change the address to which notices shall be sent by a notice of change of address, mailed or delivered in the manner set forth above.

1. **Multiple Copies**

This Agreement shall be executed in multiple copies and each such copy shall be effective as an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 201__.

SUBSCRIBER

By: _____
President

TEXAS TITLE DATA, INC.

By: _____
James P. Sibley
President

DRAFT ONLY