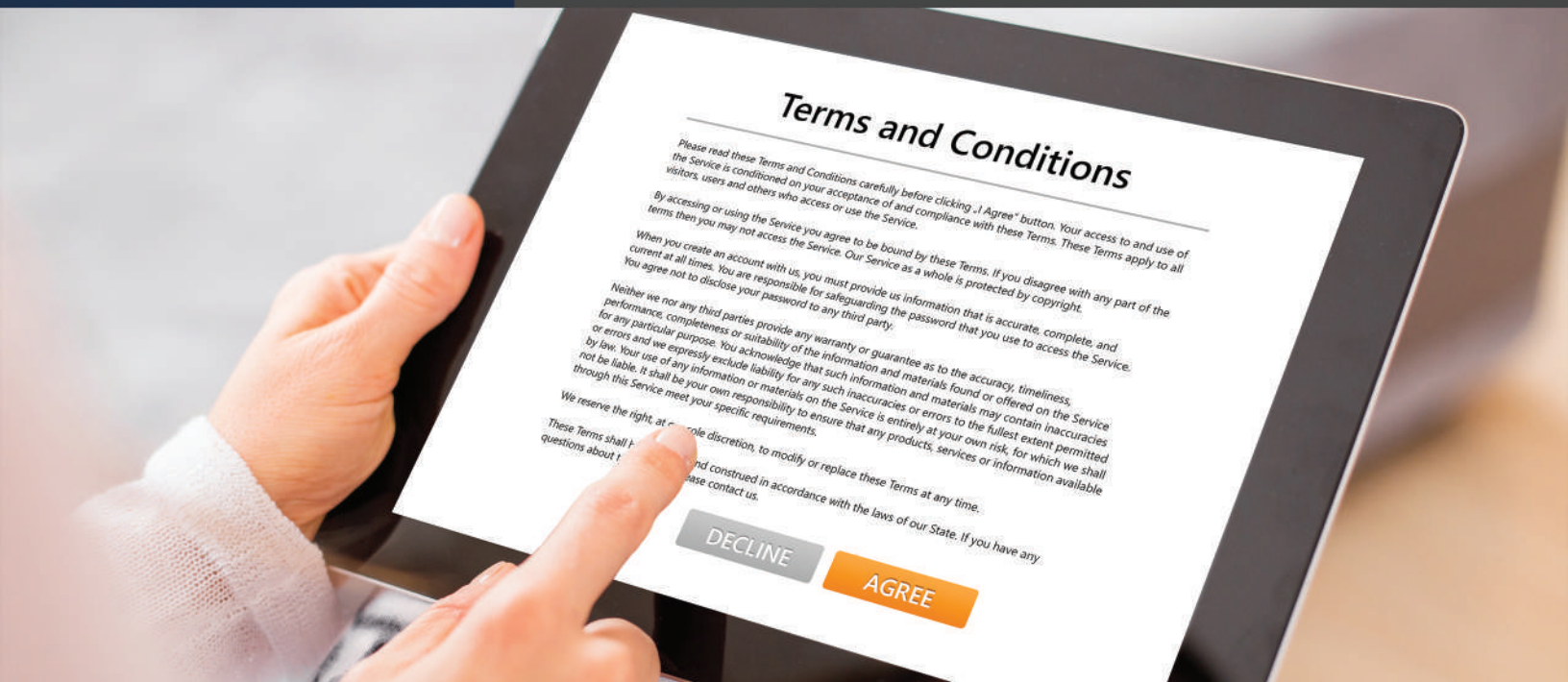


# THOBSON TERMS & CONDITIONS



**THOBSON**  
Technologies

*We Perform, You Achieve*

Thobson has been providing Effective and Scalable Design, Development and Infrastructure Integration Solutions for over a decade with a sincere commitment to customer satisfaction. Thobson is an interactive agency producing high-end web, branding, print media solutions.



[www.thobson.com](http://www.thobson.com)



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[/ThobsonTechnologies](https://www.facebook.com/ThobsonTechnologies)



## A creative problem-solving organization focused on collaboration & action

We work side by side with ambitious companies to create new value through design, technology & action.

Thobson is a global IT solutions company with over 18 years of experience and about 40+ employees. We provide full-cycle services in the areas of software development, web-based enterprise solutions, web application and portal development. We combine our solid business domain experience, technical expertise, profound knowledge of latest industry trends and quality-driven delivery model to offer progressive, end-to-end web solutions.



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## 1. INTRODUCTION

THIS SERVICES AGREEMENT (the "Agreement" and/or "Terms and Conditions"), as amended from time to time by thobson.com / Thobson Technologies Inc., a Texas corporation, its subsidiaries, affiliates, predecessors, successors and assigns (the terms "Thobson.com," "us," "we" and/or "our" shall refer to Thobson), between you (the terms "Customer," "you" and/or "your" shall refer to the individual, entity or organization that accepts this Agreement, has access to your account or uses the Services) and Thobson, sets forth the terms and conditions applicable to your purchase and/or use of our products and services (collectively, the "Services") as further set forth herein. You and Thobson together may be referred to herein as the "Parties" and each may be referred to herein as a "Party." This Agreement explains our obligations to you, and your obligations to us in relation to any Services you purchase or otherwise utilize.

You acknowledge that you have read, understand and agree to be bound by all of the Terms and Conditions of this Agreement, as well as all other applicable rules or policies, terms and conditions, or service agreements that are or may be established by Thobson from time to time and are incorporated herein by reference. You may also elect to purchase additional Services (the "Additional Services") from Thobson, our partners and/or other third parties, which may have their own service agreements or other related terms and conditions, and it is your obligation to review, accept and abide by those service agreements or other related terms and conditions, as well as this Agreement.

Thobson agrees to comply in all material respects with the Payment Card Industry Data Security Standard ("PCI-DSS") to the extent applicable to Thobson and to the extent Thobson is storing, processing, or transmitting any "Cardholder Data" or "Sensitive Authentication Data" (as those defined under the PCI-DSS) in connection with the Services.

## 2. THOBSON OBLIGATIONS

Thobson will provide Services to Customer subject to these Terms of Service.

## 3. SERVICES

This Agreement applies to all Services, whether purchased or utilized separately or as part of a complete solution or packaged bundle. Your purchase of the Services, continued use of the Services, and/or continued access to the Services constitutes your acceptance of this Agreement. If you purchase Services that are sold together as a "bundled" package (e.g., you purchase a package that includes both a domain name and a website builder or other Services, as opposed to your purchasing such Services separately), termination of any part of the Services will result in the termination of all Thobson Services provided as part of the bundled package. See Section 4 (Termination) for additional details on this subject. Thobson further reserves the right to modify the Services, at our sole and absolute discretion, either temporarily or permanently, at any time or from time to time, with or without notice to you. You agree that Thobson shall not be liable to you or any third party for any such modification of the Services and that your continued use of the modified Services, and/or continued access to the modified Services, constitutes your acceptance of any such modifications.

You acknowledge and agree that some or all of the Services you purchase or receive from us may be provided by one or more vendors, contractors or affiliates selected by Thobson in its sole and absolute discretion. As a part of your Services, Thobson may provide you access to third-party functionality or services, including, but not limited to, applications, widgets, Rich Site Summary ("RSS"), other types of news, event and industry feeds, calculators, recommended copy, forms and templates that are incorporated or offered as a part of one or more of the Services (collectively, "Third-Party Functionality").

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You acknowledge and agree that your use of any Third-Party Functionality to which you are provided access as part of any Thobson Services is in accordance with the terms of any relevant third-party licenses, agreements and/or terms and conditions. Your failure to abide by any such third-party licenses, agreements and/or terms and conditions may result in the immediate termination of your Services

provided by Thobson. You understand and agree that Thobson does not control such Third-Party Functionality and is therefore not liable to you or any third party for any issues of any kind relating to issues relating to Third-Party Functionality. Thobson reserves the right, in its sole and absolute discretion, to terminate, suspend, cancel or alter your access to Third-Party Functionality at any time and without notice to you.

#### 4. CUSTOMER OBLIGATIONS

4.1 Customer agrees: (i) comply with applicable law and these Terms of Service, (ii) pay the fees for the Services when due, (iii) cooperate with Thobson's investigation of service outages and any suspected breach of these Terms of Service, and (iv) ensure your customer account information as it appears in the online control panel is true, accurate, and complete.

4.2 Customer may resell the Services, however, Customer remains responsible for use of the Services by any third party to the same extent as if Customer were using the Services. If Customer installs third party software on the server that is hosted by Thobson, or Thobson installs the third party software for or at the request of Customer, Customer agrees to the licensing costs at the time of installation and is responsible for any increase in the third party licensing costs thereafter. Customer is solely responsible for (i) obtaining all required licenses, (ii) complying with all applicable licensing requirements set forth by the software manufacturer, and (iii) acceptance of the software manufacturer's end user license agreement and/or terms and conditions. Customer agrees to indemnify, defend, and hold harmless Thobson from and against any claims based on Customer's failure to comply with the terms set forth in this section.

4.3 Customer is solely responsible for the security and content of all Customer data stored in Thobson's hosted environment and all such data is and at all times shall, remain Customer's exclusive property ("Customer Data").

4.4 Customer is solely responsible for: (i) determining the suitability of the Services in light of the type of Customer Data stored by you or your end-user(s); (ii) the use of Thobson's hosted environment tool and/or the Services by any of your employees or other user(s) who, either with or without Customer's authorization, gain access to the hosted environment; and (iii) taking all commercially reasonable steps to mitigate the risks inherent in transmitting Customer Data to and from and while stored on the hosted environment using the Services, including any Customer Data loss or corruption.

4.5 Customer shall encrypt at the application level all data, considered sensitive data, which must be treated as confidential under state or federal law or under Customer's contractual obligations to others. Sensitive data includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

4.6 Customer shall be responsible for maintaining all backups for all Customer Data on servers not covered by Thobson's FREE Backup Service. In the event Thobson provides backup assistance on servers not covered by Backup Services, it is provided, without additional charge, as a courtesy ("Courtesy Support") to Customer. Thobson has no liability for any lost or corrupted Customer Data resulting from the provision of Courtesy Support.

4.7 Customer is responsible for selecting and securing the appropriate authentication procedures to allow access to Customer's account. Customer is not authorized to provide account access, passwords, or passphrases for Thobson technical support to any third party.

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4.8 Customer shall only use or allow the use of the Services in compliance with the terms of this agreement, (Acceptable Use) of these Terms of Service.

4.9 Customer shall promptly notify Thobson of any data breach or unauthorized access to Thobson's network or servers and accounts. Customer will take all commercially reasonable steps to cooperate with Thobson's investigation and resolution of the reported breach or unauthorized access.

## 5. ORDERING SERVICES

5.1 For purposes of these Terms of Service an order means (i) the online order that you submit or accept for the Services, (ii) any other written order (either in electronic or paper form) provided to you by Thobson for acceptance that describes the Services you are purchasing and the price of such Services, signed by Customer, either manually or electronically, and/or, (iii) your use of the Services, ("Order").

5.2 Customer's use of the Services is governed by these Terms of Service, which are incorporated by reference in the terms of your Order.

5.3 Customer's use of the Services includes a representation that the individual placing the Order for Customer has the legal authority to enter into contractual commitments and make purchases for the Customer.

5.4 Thobson's obligation to begin providing Services is contingent on Customer's satisfying Thobson's credit approval criteria. Further, Thobson may, in its sole discretion, accept or reject any Order Customer submits.

5.5 Customer warrants and represents that the Order is placed on behalf of a business and not a consumer.

5.6 The provision of the Services described in an Order constitutes Thobson's acceptance of the Order.

## 6. HOSTING SERVICES/TECHNICAL SUPPORT/LIMITED WARRANTY

6.1 Thobson will provide all Services in compliance with the terms of this agreement.

6.2 Thobson technical support services are provided via ticket system, email and/or LiveChat.

6.3 Thobson technical support is available only to its Customers.

6.4 Thobson has no support obligation to any other party.

6.5 Dedicated Server Support: Thobson provides Basic technical support and maintenance of dedicated servers at the rate specified in Customer's Order. Additional technical support will be provided, as agreed upon between the parties from time to time.

6.6 Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an AS IS basis.

6.7 Thobson has no obligation to provide security other than as expressly stated in the agreement or order.

6.8 Some of the Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the legal and regulatory requirements applicable to you and your use of the Services, and for selecting and using those Services in a manner that complies with your obligations under the Agreement and the applicable legal and regulatory requirements.

6.9 Thobson personnel may from time to time recommend third party software or other products and services for your consideration and may also make available to you third-party products or services, including third-party applications through deployment or

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implementation tools. Thobson makes no representation or warranty whatsoever regarding products and services that are not purchased from Thobson or produced/manufactured by Thobson. Your use of any such products and services is governed by the terms of your agreement with the provider of those products and services.

## 7. ACCEPTABLE USE

7.1 Customer shall use the Services in compliance with all applicable state, federal, or international laws, statutes or codes, specifically including data protection and privacy laws, as well as laws relating to unsolicited commercial electronic messages.

7.2 Customer is responsible for all acts and omissions of its users in connection with receipt or use of the Services. Customer agrees, and will ensure its users agree, to act responsibly and not use the Services for any illegal or unauthorized purpose including, but not limited to:

- a. Hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using malware, spyware, copyrighted infringement under the Digital Millennium Copyright Act ("DMCA"), trademark infringement, sharing illegal software, and any unauthorized use of images, internet accounts or computers or any activity that would violate the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act of 2003.
- b. For the purposes of Acceptable Use, the term Spamming includes, but is not limited to: (i) sending unsolicited outbound bulk email regardless of the content; (ii) Junk mail; (iii) unsolicited commercial email; (iv) unsolicited instant messaging; (v) unsolicited mobile phone messaging advertising; (vi) email address cultivating, or any unauthorized collecting of email addresses without prior notification of the email address owner and (vii) mailing lists without closed-loop ("Confirmed Opt-in"), subscription confirmation without retained messages and/or unsubscribe links.
- c. Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- d. Monitoring data or traffic on any network or system without the express authorization of the owner of the system or network.
- e. Intentionally or recklessly introducing any virus or other contaminating code into the Thobson hosted environment.
- f. Collecting or using information, including email addresses, screen names or other identifiers, by deceit, (such as, phishing, Internet scamming, password robbery, spidering, and harvesting).
- g. Use of any false, misleading, or deceptive TCP-IP packet header information in an email or a newsgroup posting.
- h. Distributing software that covertly gathers or transmits information about a user.
- i. Any activity intended to withhold or cloak identity or contact information, including the omission, deletion, and forgery or misreporting of any transmission or identification information, such as return mailing and IP addresses.
- j. Interference with service to any user of the Thobson hosted environment including, without limitation, mail bombing, flooding, or deliberate attempts to overload a system and broadcast attacks.
- k. Any action that directly or indirectly results in any of Thobson's IP space being listed on any abuse database (i.e. Spamhaus).
- l. Conducting any gambling activity in breach of the terms of this agreement.
- m. Distribution or any other use of copyrighted material not owned by Customer or Customer's end-user.
- n. Any action that is otherwise illegal or solicits conduct that is illegal under laws applicable to you or to Thobson.

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- o. Content that incites violence, threatens violence, is excessively violent, or contains harassing content or hate speech.
- p. Any action that results in Customer's official listing on the Register of Known Spam Operations (ROKSO) database maintained at <https://www.spamhaus.org/rokso/>
- q. Use of public proxies, Internet Relay Chat (IRC), or any application layer protocol when utilized to mask activities defined as malicious within these terms.

7.3 Customer may not use any shared system provided by Thobson in a way that unnecessarily interferes with the normal operation of the shared system, or that consumes a disproportionate share of the resources of the system. Note: the use of more than 10,000 inodes per GB on any Cloud Sites account may result in a warning, and if no action is taken to reduce the excessive use of inodes, your account may be suspended.

7.4 Customer agrees that we may quarantine or delete any data stored on a shared system if the data is infected with a virus, or is otherwise corrupted, and has the potential to infect or corrupt the system or other customers' data that is stored on the same system.

## 8. FEES AND PAYMENTS, TERM & RENEWALS

As consideration for the Services you purchase, order or otherwise utilize, you agree to pay Thobson all applicable prices and fees as designated in the related order process, with such prices and fees subject to change as provided in this Agreement. All prices and fees are due immediately or upon ordering and are non-refundable, except as otherwise expressly provided in this Agreement, as required by applicable law, or as such prices and fees are billed by Thobson under an invoice or order confirmation for Services issued to a Customer that expressly permits payment within thirty (30) days after Thobson has sent the Customer such invoice or order confirmation ("Net-30 Customers"). Thobson may require a Customer to successfully complete a credit application prior to such Customer qualifying to become a Net-30 Customer.

**Cancellation/Non-Renewal.** Customer may give notice of non-renewal or cancellation by logging in to their account on [portal.thobson.com](http://portal.thobson.com) and submitting a cancellation ticket. No other form of cancellation will be effective and the month-to-month agreement for services is automatically renewed each month until such notice of cancellation ticket is provided.

If you require Additional Services, then additional prices and fees will apply pursuant to then current rates, which are also subject to change in accordance with this Agreement. All quoted prices and fees exclude all applicable sales tax, use tax, value added tax ("VAT"), and other taxes and government charges, whether federal, state or foreign. You are responsible for payment of all such taxes (other than based on Thobson's income), fees, duties and charges on your payment for the purchase of Services arising from any and all fees under this Agreement.

Accordingly, you agree to pay all VAT, sales and other taxes (other than taxes based on Thobson income) related to Thobson services or payments made by you hereunder. All payments of prices and fees for Thobson Services shall be calculated in U.S. dollars. Although Thobson may display pricing in various currencies, transaction processing is supported only in U.S. dollars and the pricing displayed during the checkout process will be an estimated conversion price at the time of purchase. If the currency of your bank or credit card account is not in U.S. dollars, you may be charged exchange rate conversion fees by your bank or credit card company. In addition, due to time differences between (i) the time you complete the checkout process; (ii) the time the transaction is processed; and (iii) the time the transaction posts to your bank or credit card, the conversion rates may fluctuate and Thobson makes no representations or warranties that (a) the amount submitted to your bank or credit card for payment will be the same amount that is posted to your bank or credit card statement or (b) the estimated conversion price will be the same as either the amount processed or the amount posted to your bank or credit card statement, and you agree to waive any and all claims against Thobson based upon such discrepancies (including any

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and all claims for a refund based on the foregoing). You acknowledge and agree that you may be charged VAT, WHT (With Holding Tax), GST (General Sales Tax), SST (Services Sales Tax) based on the country's taxation laws if the payment is made to us or one of our reseller, subsidiary, sister concern, affiliate or partners or principal and will be determined by the account holder's address information associated with your account. Set up prices and fees, if any, will become payable on the applicable effective date for the applicable Services. Unless otherwise stipulated in the related order process, payment for the Services are to be made via a charge to your credit card, charge card, PayPal account or bank account provided to us ("the Account"). You are solely and absolutely responsible for any Account information that you provide to Thobson and must promptly inform Thobson of any changes or updates to the method of payment. By submitting an order for Services, you authorize Thobson to charge the order to the Account or to otherwise immediately bill you for the Services. You acknowledge and agree that unless otherwise expressly stipulated in the order process or otherwise changed afterwards in accordance with the applicable process, all annual, monthly or other recurring fees related to the Services or otherwise referenced in this Agreement are to be recurring transactions that will be billed on an ongoing basis until the Services are terminated in accordance with this Agreement. If you have provided billing information sufficient for automatic billing, then Thobson will bill you automatically in accordance with the applicable billing frequency. You are obligated to pay for the full amount of the Agreement, even if such full amount is scheduled to be paid in installments. If you elect to pay for the Services in installments, provided such a payment schedule is expressly permitted and accepted by Thobson, all installments must be received on or before the applicable due date. If you qualify, we may, at our sole and absolute discretion, extend payment terms to you under our Business Account Credit Program.

Unless otherwise specified herein, on our website or in the applicable order process, each Thobson Service is for a one-year initial term and renewable thereafter for successive terms. Any Thobson Service that provides for a monthly billing cycle may be billed every four (4) weeks. Any renewal of your Services with us is subject to our then current Terms and Conditions, including, but not limited to, successful completion of any applicable authentication procedure, and payment of all applicable service prices and fees at the time of renewal, and in the case of domain name re-registration, the domain name registry's acceptance of your domain name registration. Upon prior notice, Thobson may also charge an "Account Maintenance Fee" to maintain your active account. This Account Maintenance Fee shall be billed to your account each year, thirty (30) days following the annual anniversary date of your account creation. Except with respect to the Services to which you subscribe on a monthly (or similar billing cycle) basis, we will endeavor, but are not obligated, to provide you with notice prior to the renewal of your Services at least fifteen (15) days prior to the renewal date.

Pricing for Services, renewals, and product upgrades and add-ons may vary based upon the date of your purchase. Additional payment terms may apply to the Services you purchase, as set forth in the applicable supplemental service and product agreements to this Agreement, on our website or as otherwise outlined in the applicable order process. Services to which you subscribe to on a monthly or recurring basis automatically renew on a recurring basis until the Agreement is properly terminated in accordance with its terms. We may, at any time, activate the auto-renew service for eligible Services in your account if it is not already activated.

Further, we may provide you with an opportunity to opt-in to our automatic renewal process in accordance with the instructions (and subject to your agreement to the terms and conditions pertaining to that process) on our website or in the applicable order process. You agree that if you are enrolled in or otherwise utilizing our auto-renew service, we will attempt to renew your service at some point less than ninety (90) days prior to its expiration [without notice to you]. Such automatic renewal for your Services, if successful, may be for a shorter term than the term for which you originally purchased your Services, but in no event shall such term be longer than the term then currently in place for the Services. Such automatic renewal for your Services, if successful, shall be at the then current price for the Services. You further agree that, to turn off the auto-renew service for any of your Services with Thobson, you must call our Customer Service, or you may be able to turn off such auto-renew service utilizing the online Account Manager associated with your Services. You acknowledge and agree that the renewal price may be higher or lower than the price you paid for the then current term of the Services, and that we are authorized to charge your credit card or other payment method on file for the renewal of the Services. In any event, you are solely and absolutely responsible for the credit card or payment information you provide to Thobson and must

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promptly inform Thobson of any changes thereto (e.g., change of expiration date or account number). You acknowledge and agree that Thobson may extend the expiration date on your credit card on file with us in order to protect against unwanted expiration of your Services and to allow for the automatic renewal thereof. In addition, you are solely and absolutely responsible for ensuring the Services are renewed.

Thobson shall have no liability to you or any third party in connection with the renewal as described herein, including, but not limited to, any failure or errors in renewing the Services whether due to you, us or a third party. In order to process a renewal under our auto-renew service, we may use third-party vendors for the purpose of updating the expiration date and account number of your credit card or other payment method on file. Such third-party vendors maintain relationships with various credit card issuers and may be able to provide us with the updated expiration date and account number for your credit card by comparing the information we have on file with the information the third-party vendor has on file. By selecting our auto-renew service, you acknowledge and agree that we may share your credit card or other payment method information with such third-party vendors for the purpose of obtaining any update to your credit card expiration date, account number or payment account.

In the event that you are not enrolled in auto-renew, or have opted out of auto-renew, and want to renew your Services, you acknowledge and agree you are responsible for actively renewing your Services and you further assume all risk and consequences if you wait until the end of the Services term or otherwise to attempt to renew any Services. If any Service is not successfully renewed prior to the expiration of its then current term, all your rights to such Service will terminate, and we will have no obligation to allow you to renew a Service once its expiration date has passed. Additionally, for domain name registration services, even if a registry administrator or third-party service provider provides a grace period to Thobson upon expiration or termination of such Service, you acknowledge and agree that any post-expiration renewal or redemption processes implemented on your behalf are at our sole and absolute discretion, and may be subject to a late fee, reinstatement fee, redemption fee and/or other fee.

Without limiting any of Thobson's rights hereunder, should any fee payment become delinquent, Thobson may suspend or cancel your Services; provided, however, related charges will continue to accrue. You acknowledge and agree that Thobson is not responsible whatsoever for any effect the suspension of Services might have. If Thobson provides any Service discount to you and you default on payments or obligations as outlined herein, Thobson may rescind all discounts and require full payment for the Services. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest as a late charge of 1.5% per month or the maximum amount allowed by law, whichever is less. Thobson further reserves the right to refer any amounts owed hereunder to a third party for collection in the event of default. In the event your account is sent to collection, you agree to pay all costs of collection, including costs, litigation and attorneys' fees. A \$25.00 (Twenty U.S. dollars) collection fee may be charged for all dishonored checks. Moreover, an additional fee may also be assessed for the following reasons: (i) late payment; (ii) payment with insufficient funds; (iii) denied or invalid credit card number; or (iv) the re-starting or reinstating of Services terminated for nonpayment. Thobson will re-start or reinstate any such Service in our sole and absolute discretion and subject to our receipt of the applicable service fee, renewal fee or other fee.

If Customer pays for the Services by credit card or charge card, Customer permanently and irrevocably waives any and all right to enact a 'chargeback' (that is, a disputed, reversed or contested charge with the applicable bank, credit card, charge card or other payment method) against these payments for any reason whatsoever against Thobson. If for any reason Thobson is unable to charge your Account or other payment method for the full amount owed for the Services provided, or if Thobson receives notification of a chargeback, reversal, payment dispute or is charged a penalty for any fee it previously charged to your Account or other payment method, you agree that we may pursue all available lawful remedies in order to obtain payment, including, but not limited to, immediate cancellation, without notice to you, of any your Services (including domain names). We also reserve the right to charge you reasonable "administrative fees" or "processing fees" for (i) additional tasks we may perform outside the normal scope of the Services; (ii)

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additional time and/or costs we may incur in providing the Services, and/or (iii) your noncompliance with this Agreement (as determined by us in our sole and absolute discretion). Typical administrative or processing fee scenarios include, but are not limited to: (i) customer service issues that require additional personal time or attention; (ii) UDRP actions(s) in connection with your domain name(s) and/or disputes that require accounting or legal services, whether performed by Thobson staff or by outside firms retained by us; (iii) recouping any and all costs and fees, including the cost of Services, incurred by Thobson as the results of chargebacks or other payment disputes brought by you, your bank or other payment method processor. These administrative fees or processing fees will be billed to the Account or other payment method you have on file with Thobson.

CUSTOMER UNDERSTANDS AND AGREES THAT ALL THOBSON FEES AND CHARGES ARE NONREFUNDABLE AND THAT THOBSON MAY CHANGE ANY PRICE, FEE, RATE OR PLAN AT ANY TIME UPON NOTICE TO CUSTOMER IN ACCORDANCE WITH SECTION 26 (NOTICE) OF THIS AGREEMENT.

## 9. PRODUCT SALES TERMS

9.1 Customer acknowledges that Thobson is reselling (and not itself providing) products purchased by customer including, without limitation, hardware, software and/or software licenses ("Product(s)").

9.2 Thobson shall pass through to Customer, the manufacturer's warranties for each Product and agrees to facilitate utilization of manufacturer's product return policies. In no event will Thobson provide product return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return are subject to the manufacturer's applicable restocking fee(s).

9.3 Customer acknowledges the terms and conditions governing the use of such Products shall be solely between Customer and the manufacturer.

9.4 Customer will not use the Products sold by Thobson for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. Customer agrees that Thobson is not liable, in whole or in part, for any claim or damage arising from use of such Products.

9.5 All shipments of Products by Thobson to Customer are FOB point of shipment. Insurance coverage, transportation costs and all other expenses applicable to shipment from Thobson to Customer's identified point of delivery will be the responsibility of the Customer.

9.6 Risk of loss will pass to the Customer upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or the Customer's representative at Thobson's point of shipment.

9.7 Customer grants Thobson a security interest in and to the Products as security for payment in full of the purchase price. Customer authorizes Thobson to file and/or record any documents it deems necessary to perfect this security interest.

9.8 Customer will obtain all licenses, permits and approvals for the use of the Services or Products, which may be required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.

## 10. BILLING AND ACCOUNT SET-UP

10.1 Thobson will charge Customer and Customer agrees to pay when due the fees for the Services in accordance with its Order. Unless other payment methods have been approved, Thobson will charge Customer's credit card monthly, without invoice, beginning on the Effective Date and continuing on the same date each successive month until the end of the term. Customer shall pay all applicable taxes arising from Customer's use of Services or Customer's payment of amounts due to Thobson under the Order. 6.2 Cancellation/Non-Renewal. Customer may give notice of non-renewal or cancellation by logging in to their account on portal.thobson.com and submitting a cancellation ticket. No other form of cancellation will be effective and the month-to-month agreement for services is automatically renewed each month until such notice of cancellation ticket is provided.

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10.2 Thobson may increase fees for the Services provided under an Order upon thirty days advance written notice as follows:

- a. For Services provided on a month-to-month term, Thobson may, increase fees effective the first day of the next month following the notice period.
- b. For services provided over a term greater than one month, Thobson may, increase fees for the services provided under an Order as of the first day of the next renewal term beginning more than thirty (30) days from the date following the notice period.

10.3 Thobson may suspend all Services (including services provided under multiple Orders or other contracts with Customer) if charges to Customer's credit card or other payment facility are rejected, or Customer fails to make payment by an agreed upon alternative payment method. Thobson may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%).

10.4 In the event Thobson brings a legal action or engages a collection agency to collect Customer's unpaid balances, Customer will be liable for payment of all reasonable costs of collection, including legal fees and court costs. Any "credit" that Thobson may owe Customer, such as a credit for failure to meet a Service Level Agreement, will be applied to fees due from you for Services, and will not be paid to you as a refund.

## 11. TERMINATION

A. Generally, Thobson may terminate this Agreement immediately for any or no reason and without notice to you. Without limiting the foregoing, Thobson reserves the right to suspend or terminate all Services immediately without notice to you if Thobson determines, in its sole and absolute discretion that you have failed to comply with your obligations as set forth in this Agreement. In the event of your chargeback by a credit card, charge card or other payment method, or other non-payment by you in connection with your payments of the applicable billing cycle fee, renewal fee or other applicable fee, you acknowledge and agree that all of your Services may be suspended, canceled or terminated, in our sole and absolute discretion and without notice to you.

Unless otherwise stipulated in the related order process, you may terminate this Agreement and the Services by calling Thobson Customer Service, whereby this termination request may be recorded, and the Services will terminate as of the end of the applicable, current billing period. You are responsible for all fees incurred up to and including the date of termination and upon termination you may receive a final bill reflecting the balance due for any remaining charges and agrees to pay all such fees incurred by you and/or via your utilization of the Services. If you order any Services by telephone and do not agree to be legally bound by these Terms and Conditions at that time, you must notify Thobson within seventy-two (72) hours from the time that Thobson has sent you a welcome e-mail to your account e-mail address on record, that you desire to cancel such Services, whereby the Services will be cancelled, and a refund of any payments or fees already paid to Thobson with respect to the order of the Services will be issued, with no further obligation by either Party. Your failure to notify Thobson of cancellation of any Services as described above will indicate that you acknowledge and agree that you have read and understood these Terms and Conditions and agree to be legally bound by them.

Except as otherwise expressly set forth herein or on our website, Thobson will cease charging your credit card, if applicable, for any monthly service fees as of the expiration of the billing cycle in which the termination is effective. Unless otherwise specified in writing by Thobson, you will not receive any refund for payments already made by you as of the date of termination, regardless of whether any related Services have been performed, and you may also incur additional fees and/or be obligated to pay us for the balance of your term (in the case of a monthly or annual subscription being paid over time, as provided in various supplemental service and product agreements). If termination of this Agreement is due to your default hereunder, you shall bear all costs of such termination, including any reasonable costs Thobson incurs in closing your account and you further agree to pay any and all costs incurred by Thobson in enforcing your compliance with this Section. Upon termination, you must destroy any copy of the materials licensed to you hereunder and refer-

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enced herein. You agree that upon termination or discontinuance for any reason, we may delete all information related to you on the Service, if applicable. In addition to the terms set forth herein, certain Thobson Services may have additional terms regarding termination, which are set forth in the applicable supplemental service and/or product agreements. Moreover, should you or we cancel or terminate your Services at any time prior to the completion of the applicable term, such cancellation or termination may result in our application of an early termination fee charged to your account, in our sole and absolute discretion and without notice to you.

**B. Termination of Bundled Services.** In addition to the Terms and Conditions set forth herein, if you purchase Thobson Services which are sold together as a solution or bundled package of Services, any termination relating to any one such solution or bundled package will terminate all Thobson Services included in such solution or bundled package. For instance, without limiting the generality of the foregoing, any domain name registered with or maintained by Thobson under this Agreement (but not including any domain names you may have registered, either with Thobson or a third-party registrar, separately and not as part of a bundled package) may be cancelled and may thereafter be available for registration by another party. You acknowledge and agree that upon any termination or cancellation of your solution or bundled package, the Terms and Conditions regarding transfer of expired domain names as described in this Service Agreement may apply. Upon the effective date of termination, Thobson will no longer provide the solution or bundled package to you, any licenses granted to you will immediately terminate, and you must cease using such Services immediately; provided, however, that we may, in our sole and absolute discretion and subject to your agreement to be bound by the applicable agreements and to pay the applicable fees, allow you to convert certain Services included in the bundled Services to stand-alone Services.

**C. Free Services.** Thobson may, from time to time and at our sole and absolute discretion, offer free e-mail, website hosting or other Services to our customers. Customers are required to use these Services regularly to keep the accounts active, and Thobson reserves the right to terminate free accounts that remain idle for a period of thirty (30) days or more. Free Services may not be provisioned until such time as the Customer configures the account and logs in for the first time. It is your sole responsibility to keep your free Service in active status by regularly logging into your account.

**D. Termination for Violation.** Thobson has the right to investigate potential violations of above. If Thobson determines that a breach has occurred, then Thobson may, in its sole discretion:

- a. Restrict Customer's and its users' access to the Services;
- b. Remove or require removal of any offending Content;
- c. Terminate this Agreement for cause;
- d. Exercise any other rights and remedies it may have, at law or in equity.

**E.** Except in an emergency or as may otherwise be required by law, before undertaking the actions in this agreement, Thobson will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify Thobson of any event or circumstance related to this Agreement, Customer's or any user's use of the Services, or content of which Customer becomes aware, that could lead to a claim or demand against Thobson, and Customer will provide all relevant information relating to such event or circumstance to Thobson at Thobson's request.

**F.** Customer may, upon written notice, terminate an Order for breach of these Terms of Service if Thobson (i) materially fails to provide the Services as agreed and does not remedy that failure within fifteen (15) days of your written notice describing the failure; (ii) materially fails to meet any other obligation stated in the Order and does not remedy that failure within thirty (30) days of Customer's written notice describing the failure.

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G. Thobson may, upon written notice, terminate an Order if Customer (i) provided materially inaccurate or incomplete information of the purpose of obtaining the Services; (ii) Customer did not have the legal right or authority to enter the Order; (iii) Customer fails to make payment of any invoiced overdue amount within five (5) Business Days of our written notice of delinquency; (iv) Customer made payment arrangements via credit card or other third party, and the third party refuses to honor or reverses Thobson's charges; (v) Customer is in breach of the Acceptable Use provisions of these Terms of Service and (v) Customer fails to comply with any other obligation stated in the applicable Order and does not remedy the failure within fifteen (15) days of Thobson's written notice to Customer describing the failure.

H. Either party may terminate an Order with immediate effect on written notice if the other party (or we reasonably believe that the other party) (i) is unable to pay its debts; (ii) enters into compulsory or voluntary liquidation; (iii) convenes a meeting of its creditors; (iv) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or (v) ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts (each an "Insolvency Event"). Notwithstanding anything to the contrary in the Order, the fees for the Services shall become due immediately upon the occurrence of an Insolvency Event.

## 12. OWNERSHIP

A. Generally. Except as otherwise set forth herein, all right, title and interest in and to: (i) all registered and unregistered trademarks, service marks and logos; (ii) all patents, patent applications and patentable ideas, inventions and/or improvements; (iii) all trade secrets, proprietary information and know-how; (iv) all divisions, continuations, reissues, renewals and extensions thereof now existing or hereafter filed, issued or acquired; (v) all registered and unregistered copyrights including, but not limited to, any forms, images, audiovisual displays, text and software; and (vi) all other intellectual property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in or practiced in connection with any of the Thobson Services identified herein (collectively, "Thobson Intellectual Property Rights") are owned by Thobson or its licensors, and you agree to make no claim of interest in or ownership of any such Thobson Intellectual Property Rights. You acknowledge and agree that no title to the Thobson Intellectual Property Rights is transferred to you, and that you do not obtain any rights, express or implied, in Thobson's Service or its licensors' service, other than the rights expressly granted in this Agreement. To the extent that you create any derivative work (any work that is based upon one or more preexisting versions of a work provided to you, such as an enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted), any such derivative work is owned by Thobson and all right, title and interest in and to each such derivative work automatically vests in Thobson. Thobson has no obligation to grant you any right in any such derivative work.

B. Software Ownership and Licenses. Any software provided by Thobson under this Agreement ("Software") and all worldwide intellectual property rights therein are the exclusive property of Thobson. All rights in and to the Software not expressly granted to you in this Agreement are reserved by Thobson. You acknowledge that the Software and its structure, organization and source code constitute valuable trade secrets of Thobson. Accordingly, except as expressly allowed under this Agreement, you will not, either directly or through a third party to:

(i) copy, modify, adapt, alter, translate or create derivative works from the Software; (ii) distribute, sublicense, lease, rent, loan or otherwise transfer the Software to any third party; or (iii) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Software. In the event of expiration or termination of this Agreement for any reason, the Software licenses granted under this Agreement will automatically and immediately cease and you must destroy all copies of the Software or related documentation in your possession.

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“Background Technology” means computer programming and formatting code or operating instructions developed by or for Thobson and used to host or operate a Website or a web server in connection with a Website. Background Technology includes, but is not limited to, any files necessary to make forms, buttons, checkboxes and similar functions, as well as underlying technology or components, such as style sheets, animation templates, interface programs that link multimedia and other programs, customized graphics manipulation engines and menu utilities, whether in database form or dynamically driven. Background Technology does not include any content provided by the Customer (“Customer Content”) or any derivatives, improvements or modifications of Customer Content. All rights to the Background Technology not expressly granted to you hereunder are wholly retained by Thobson. Where such Background Technology is provided to you hereunder, you may not, either directly or through a third party, perform the following: (i) copy, modify, adapt, alter, translate or create derivative works from the Background Technology; (ii) distribute, sublicense, lease, rent, loan or otherwise transfer the Background Technology to any third party; or (iii) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Background Technology. In the event of expiration or termination of this Agreement for any reason, any Background Technology licenses granted under this Agreement will automatically and immediately cease and you must destroy all copies of the Background Technology or related documentation in your possession. Certain additional features that Thobson may make available to you may require access to and/or installation of additional software (including third-party software) that is subject to supplemental or independent terms and conditions (“Additional Software”). Similarly, Thobson may make available “Additional Services” (including third-party services) that are subject to supplemental or independent service agreements or other related terms and conditions. You agree that you will not use such Additional Software or Additional Services unless you have agreed to the applicable service agreements and/or other related terms and conditions, including, but not limited to, your payment of additional fees as required.

Customer may be responsible to correct or provide the services necessary to remedy any programming error that occurs in the Background Technology or Software due to your modification or alteration of the Background Technology or Software licensed to you. If corrections are required for the Background Technology or Software due to any modifications by you, you shall be liable to Thobson for the payment of any additional fees due to the additional technical assistance required to correct any errors due to such modifications.

C. Trademark Ownership, Licenses and Restrictions. Upon your election to use and pay the applicable fees for certain features of the Software or in conjunction with certain Services, Thobson may grant to you a non-exclusive, non-transferable, revocable, royalty-free license (without the right to grant sublicenses) to use and reproduce those trademarks expressly provided to you by Thobson for use under this Agreement (the “Thobson Marks, its logo, and the slogan “We Perform, You Achieve”). The Thobson Marks are solely for use in the display on those locations on your Website’s webpages as designated by Thobson in its sole and absolute discretion, and solely in accordance with any Thobson Trademark Use Policy, which is incorporated herein by reference and that Thobson may periodically change from time to time without notice to you. Thobson grants you no rights whatsoever in the Thobson Marks other than those expressly granted in this Section. You acknowledge and agree to Thobson's exclusive ownership of the Thobson Marks. You agree not to take any action inconsistent with such ownership and you agree not to adopt, use or attempt to register any trademarks or trade names that are confusingly similar to the Thobson Marks or in such a way as to create combination marks with the Thobson Marks. At Thobson's request, and in its sole and absolute discretion, you must immediately discontinue any use and display of the Thobson Marks. You acknowledge and agree that, except with respect to the limited trademark license expressly granted in this Section, no licenses are granted by Thobson with regard to any other trademarks, service marks or trade names owned by Thobson, its subsidiaries or affiliates.

D. Ownership of Data. You acknowledge and agree that Thobson owns all database, compilation, collective and similar rights, title and interest worldwide in our domain name and other proprietary information databases, and all information and derivative works generated from those databases. Additionally, you hereby grant to Thobson a nonexclusive, worldwide, perpetual, irrevocable, fully paid-up right and license to use in our business, however it evolves, including the rights to copy, distribute, display, perform, transmit, prepare

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derivative works from or otherwise use without restriction the following information: (i) the original creation date of a domain name registration or other Service; (ii) the expiration date of a domain name registration or other Service; (iii) the name, postal address, e-mail address, voice telephone number, and where available, fax number of the contact person for a Service, or of the registrant contact, technical contact, administrative contact, zone contact and billing contact for a domain name registration; (iv) any other information concerning a registered domain name or Service that appears or may appear in a WHOIS database or Thobson database; and (v) any other information we generate or obtain in connection with the provision of the Services. Thobson does not have any ownership interest in your specific personal registration information or other information other than our rights in our domain name and Thobson databases as set forth in this Section.

E. Use and Ownership of Images. The Services may contain, utilize or otherwise involve photo images (the “Images”) and as such Thobson may provide the Images to you in the process of providing the Services. The Images are either owned by Thobson or licensed from a third party. Unless otherwise stipulated by Thobson, your use of the Images is subject to the restrictions set forth in this Section and otherwise in accordance with this Agreement. Provided you are not in breach of this Agreement or any of the representations and warranties contained herein, and provided you have paid the applicable fees, you may perform the following actions subject to the restrictions set forth in this Section (upon termination of the Services or this Agreement all of your rights and licenses in and to the Images will immediately terminate):

- i. incorporate the Images into your own original work and publish, display and distribute your work on the Website. You may not, however, resell, sublicense or otherwise make available the Images for use or distribution separately or detached from a product or webpage. For example, the Images may be used as part of a webpage design, but may not be made available for downloading separately or in a format designed or intended for permanent storage or re-use by others. Similarly, you may be provided with copies of the Images (including digital files) as part of work product, but you are not permitted to use the Images separately or as part of any other product;
- ii. back up, copy, or archive the Images as necessary for internal use, and only as necessary for that use.

Any copy or archive you make must include the Image's copyright information; and

- iii. in the normal course of workflow, convey to a third party (such as a printer) temporary copies of the Images that are integral to your work product and without which the product could not be completed.

With respect to the use of any Images, you may not:

- i. create scandalous, obscene, defamatory or immoral works using the Images, nor use the Images for any other purpose which is prohibited by law;
- ii. use the Images or any part of it as part of a trademark, service mark or logo. Thobson and those third parties from whom they have licensed images retain the full rights to the Images, and therefore you cannot establish their own rights over any part of the Images;
- iii. remove any copyright or trademark from any place where it appears on the Images or its accompanying materials;
- iv. rent, lease, sublicense or lend the Images, or a copy thereof, to another person or legal entity without the express written consent of Thobson;
- v. transfer the rights to the Images, accompanying materials or storage media for the Images, except as specifically provided for in this Agreement. All other rights are reserved by Thobson and those third parties from whom Thobson has licensed images;
- vi. reverse engineer, decompile, or disassemble any part of the Images, accompanying materials or storage media for the Images, subject to applicable law;

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- vii. copy or reproduce the Images, accompanying materials or storage media for the Images;
- viii. display the Images in any digital format or for any digital use at a resolution greater than 640x480 pixels, except in editorial or preliminary design work. Doing so will be viewed as an attempt to distribute the Images in violation of this Agreement;
- ix. re-sell, distribute or sub-license the Images, storage media for the Images, or the rights to use the Images to anyone for any purpose, except as specifically provided for in this Agreement; or
- x. use the Images in any way that could be considered defamatory, libelous, pornographic, immoral, obscene or fraudulent, either by making physical changes to the Images or in the juxtaposition of the Images to accompanying text. You agree not to use Images as part of any use involving sensitive subject matter, as determined by Thobson in its sole and absolute discretion, including, but not limited to, the following sensitive subjects: all sexual issues, sexually transmitted diseases, substance abuse, alcohol, tobacco, cancer, mental ailments, alternative lifestyle issues and physical or mental abuse, without advance written consent from Thobson and any model in such Image. Sensitive subject usage pertains to both commercial and editorial uses.

### 13. SUSPENSION OF SERVICES

13.1 Thobson may suspend some or all of the Services without liability to Customer if Customer (i) fails to pay the applicable fees for the Services when due (ii) the Services are being used, have been used, or will, with commercially reasonable certainty, be used in breach of these Terms of Service; (iii) Customer fails to cooperate with an investigation of any suspected breach of the Acceptable Use provisions of these Terms of Service; (iv) Thobson reasonably believes that the Services have been accessed or utilized in any way by a third party without Customer's consent, or (v) suspension of services is reasonably necessary to protect Thobson's hosting environment and/or its customers.

13.2 Thobson's will provide Customer reasonable advance notice of a suspension based on a violation of these Terms of Service and a chance to cure the violation on which the suspension is based, unless Thobson determines, in its reasonable commercial judgment, that an immediate suspension is necessary to protect Thobson's network and its customers' data from an imminent, significant operational, network integrity or security risk.

13.3 Suspensions based on Customer's breach of these Terms of Service will not relieve Customer's obligation to pay for the suspended Services during the period of suspension. Any suspension imposed under this paragraph will be terminated upon Customer's cure of the breach causing the suspension. In the event the Customer is unable to cure the breach within fifteen (15) days from the date on which the breach occurred, the suspension may be treated as a termination for Cause. If Customer's Services are compromised, then Customer must resolve the cause of the compromise before Thobson will reinstate service.

13.4 In the case that Service is suspended for Customer's breach of these Terms of Service Thobson shall have the right to deny access to, and/or, destroy data stored on the compromised server or account. Thobson may at its own discretion allow access to a suspended account.

### 14. CUSTOMER RESPONSIBILITIES

A. Generally. You shall be responsible for the following (whereby you agree that your failure to perform these responsibilities shall be deemed a material breach of this Agreement):

- i. providing current and updated Customer information (including your name, address, e-mail address, postal address, phone and fax numbers, etc.) for Thobson's use in contacting you regarding the Services and otherwise as necessary with regard to the Services and

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checking those points of contact throughout the term of this Agreement for notices and/or updates from Thobson;

- ii. providing Thobson with all necessary information, data, text, music, sound, images, photographs, graphics, video, messages, tags, custom images (including, but not limited to, design, pamphlets, brochures, logos and other images) and other materials (collectively, the "Content") to be used in connection with your website or online store (the "Website") or otherwise for use in conjunction with the Services, other than that Content which Thobson expressly agrees to supply;
- iii. acquiring any authorizations necessary to use the intellectual property (including, but not limited to, copyrights and trademarks) or information of third parties;
- iv. contacting Thobson for all changes, modifications and enhancements to the Website and/or Services starting from the date of sale and otherwise remaining engaged in the related processes;
- v. providing Thobson with unrestricted access to the Website and/or related accounts as needed for Thobson to provide the Services hereunder;
- vi. granting to Thobson and its subcontractors the necessary rights and licenses with respect to the Website, the Content and materials related thereto in order to carry out obligations under this Agreement;
- vii. allowing Thobson to make a reasonable number of archival or backup copies of the Website as deemed necessary by Thobson in providing the Services;
- viii. ensuring that you maintain a current and complete backup of your Content at all times;
- ix. obtaining Internet connectivity to access the Website, to send and receive e-mail and to otherwise access and utilize the Internet;
- x. reviewing and adhering to any end user-facing policies and/or terms provided by Thobson for use on your Website (i.e., a customer privacy policy), and further revising any such policy to accurately reflect your business practices; and
- xi. contacting Thobson with notice of your decision to cancel or discontinue the Services. IF NO SUCH NOTIFICATION IS GIVEN TO THOBSON BY YOU, THOBSON WILL ASSUME YOU ARE SATISFIED WITH AND ACCEPT ALL SERVICES, AND THOBSON WILL BILL ANY RELATED SERVICE FEES DIRECTLY TO YOUR TELEPHONE BILL, CREDIT CARD, AUTOMATED CLEARING HOUSE (ACH), ACCOUNT, OR OTHER PAYMENT METHOD PROVIDED OR OTHERWISE IDENTIFIED BY YOU.

Depending on the Services you elect to receive, you may also be responsible for establishing and maintaining a commercial relationship with a financial institution or money transmitter such as a credit card processor, bank or PayPal. The terms of any such relationship are between you and that entity and such terms may be more restrictive or place limits on your use of the Services; you should therefore contact those entities for more information regarding such terms where applicable.

**B. Website Control and Content.** Unless otherwise expressly stated herein, you will be solely responsible for the development, maintenance and operation of your Website, including the accepting, processing and filing of customer orders generated through your Website, and handling any customer inquiries, complaints or disputes arising from orders or sales generated through your Website. Automatic backup services may be available for database backup and website backup depending on the Services you elect to receive. For backup on demand services in database backup and website backup, all backups done by you will be counted towards existing storage capacity elected in the Services you receive. Backup services are not guaranteed and you agree that Thobson has no obligation to hold backup information for a specified period of time nor is all backup information guaranteed to be available at all times. If backup services are not available to you or you elect to opt out of the backup services, you agree that Thobson has no obligation to backup any data related to your Website's Content, data or operation and you should independently take appropriate steps to maintain such data in accordance

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with your needs and requirements.

You will be solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling the Content on your Website, regardless of whether Thobson provides any design or customization Services to you under this Agreement, including all descriptions of the products and services you offer to customers of your Website and user-generated Content on and related to your Website. When acting as a conduit, Thobson will give you discretion over your Content provided it is compatible and interoperable with any Services or Thobson Software provided under this Agreement. You retain all rights, title and interest in and to all intellectual property rights embodied in the Content, exclusive of any Content provided by Thobson. You acknowledge that, when providing you with the ability to publish and distribute your own or third-party products, services or Content on your Website, Thobson and its Software are acting only as passive conduits for the publishing and/or distribution of such products, services or Content. Thobson has no obligation to you or any third party, and undertakes no responsibility to review your Website, the products or services listed therein or any other Content, including, but not limited to, user-generated Content published and/or distributed on your Website to determine whether any such product, service or Content may incur liability to third parties.

Except as otherwise stated in this Agreement, you are to be considered the owner of all Customer Content. During the period that Thobson provides Services to you pursuant to this Agreement, you hereby grant to Thobson and its subcontractors a limited, non-exclusive, royalty-free, worldwide license to copy, reproduce, distribute, transmit, display, perform, create derivative works from, modify, and otherwise use your Website and the Content solely for the purpose of rendering the Services hereunder. You also acknowledge and agree that Thobson reserves the right to use your domain name and your Website screen shots in Thobson's portfolio and/or other advertising and promotional materials as provided for above.

In the event that you post Content or allow your users to upload Content onto your Website, you agree to designate a copyright agent under the Digital Millennium Copyright Act (the "DMCA") (see 17 U.S.C 512(c)(3) for further detail). In the event that a copyright holder contacts Thobson's copyright agent under the DMCA, you acknowledge and agree that Thobson may take all necessary action as required under the DMCA in its sole and absolute discretion, including removing Content from your Website.

C. Customer Collection; Use of Visitor Data; Privacy Policy. You are solely responsible for maintaining all Customer Data that is collected by or disclosed to you in trust and confidence and use and disclose such information solely in accordance with your privacy policy. You must post, maintain and adhere to your privacy policy that informs your Website customers what Visitor Data is collected, how it is used, the effective date of your privacy policy and how customers of your Website can learn of changes to your privacy policy. You shall include a hyperlink to your privacy policy on the home page of your Website and on all pages where you collect Visitor Data. In addition, you must prominently include within your posted privacy policy a statement notifying your customers that your Website is hosted by Thobson and that Thobson has access to aggregated information about customers of your Website in order for Thobson to analyze performance and make improvements to Thobson products.

D. Accurate Information. You agree to: (1) provide certain true, current, complete and accurate information about you as required by the application process; and (2) maintain and update the information you provided to us when purchasing our Services as needed per our modification procedures in order to keep the information current, complete and accurate. We rely on this information to send you important information and notices regarding your account and our Services. You agree that Thobson (itself or through its third-party service providers) is authorized, but not obligated, to use Coding Accuracy Support System ("CASS") certified software and/or the National Change of Address program (and/or such other systems or programs as may be recognized by the United States Postal Service or other international postal authority for updating and/or standardizing address information) to change any address information associated with your account (e.g., registrant address, billing contact address, etc.), and you agree that Thobson may use and rely upon

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any such changed address information for all purposes in connection with your account (including the sending of invoices, order confirmations and other important account information) as though such changes had been made directly by you.

## 15. CUSTOMER REPRESENTATIONS AND WARRANTIES

Customer hereby represents and warrants as follows:

- i. Customer can form legally binding contracts under applicable law;
- ii. Customer is at least eighteen (18) years old and is responsible for supervising the activities of any under-age user;
- iii. To Customer's knowledge, there is no action, proceeding or investigation pending or threatened which questions, directly or indirectly, the validity or enforceability of this Agreement;
- iv. Entering into this agreement or otherwise purchasing the Services will not conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default or result in a termination of, any agreement or instrument to which Customer is a Party;
- v. Customer has taken all actions required by applicable law and have obtained all consents which are necessary to authorize or enable it to enter into this Agreement and/or purchase the Services;
  
- vi. To the extent that Customer is a business entity, the individual ordering the Services or otherwise entering into this Agreement on behalf of Customer has been duly authorized and is empowered to bind Customer business entity to this Agreement;
- vii. Customer shall ensure the accuracy of the materials provided to Thobson, including, but not limited to, Content, descriptive claims, warranties, guarantees, nature of business, and contact information;
- viii. Customer shall acquire any authorization necessary for hypertext links to third-party websites used on your Website or otherwise in conjunction with the Services;
- ix. To the extent Customer gathers any personal information about visitors to your Website, Customer shall not share that personal information with any third party without first obtaining a visitor's consent;
- x. Customer will not provide Content or other materials, or use the Services in any manner that either directly or indirectly infringes any rights of a third party;
- xi. Customer's Content, other materials provided in conjunction with the Services, and use of the Services will in all respects conform to all applicable laws and regulations;
- xii. Customer shall use the Services in complete accordance with Thobson's Acceptable Use Policy;
- xiii. For all domain names or uniform resource locators used by Customer in conjunction with the Services (collectively the "URLs"), any name or word submitted to be used as all or part of a domain name or URL does not infringe any trademark or any third party's domain name rights; and
- xiv. Customer has a good faith intention to use any domain name or URL it requests in connection with the Services and is not merely "cybersquatting" (i.e., obtaining a domain name merely for the purpose of selling the rights to the domain name or subdomain to a third party).

For any and all end user-facing policies and/or terms provided by Thobson to Customer for use on Customer's Website (i.e., a Customer privacy policy), Customer shall review and fully adhere to any such policy. Customer acknowledges and agrees that it is solely responsible for

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ble for revising any such policy to accurately reflect Customer's business practices. You agree that, if you are using the Services for a third party, you represent and warrant that you have: (i) provided notice to that third party of your intent to purchase the Services; (ii) obtained that third party's express consent to purchase the Services on its behalf; and (iii) the authority to nonetheless bind that third party as a principal to all Terms and Conditions provided herein, including the Uniform Domain Name Dispute Resolution ("UDRP") process. You accept sole and absolute liability for harm caused by the wrongful use of the Services.

## 16. ACCOUNT ACCESS

To access or use the Thobson Services or to modify your account, you may be required to establish an account and obtain a login name, account number, password and/or passphrase. You authorize us to process any and all account transactions initiated through the use of your password and/or passphrase. You are solely responsible for maintaining the confidentiality of your password and passphrase. You must immediately notify us of any unauthorized use of your password or passphrase and you are responsible for any unauthorized activities, charges and/or liabilities made through your password or passphrase. In no event will we be liable for the unauthorized use or misuse of your login name, account number, password or passphrase, or for the unauthorized access to your account(s) as a result of same. You agree that we may log off, terminate, or cancel any account that is inactive for an extended period of time

## 17. SCHEDULED MAINTENANCE AND DOWNTIME

17.1 Thobson will use its commercially reasonable efforts to provide services 24 hours a day, seven days a week.

17.2 Customer acknowledges that from time to time the services may be inaccessible or inoperable for various reasons, including:

- a. Periodic maintenance procedures or upgrades ("Scheduled Downtime")
- b. Service malfunctions, and causes beyond Thobson's control or which are not reasonably foreseeable by Thobson, including the interruption or failure of telecommunications or digital transmission links.
- c. Hostile network attacks, or network congestion or other failures.

17.3 Thobson is not responsible for any downtime caused by conditions specified in 15.2 or due to Customer's actions that breach any term of this Order.

17.4 Thobson will provide a minimum of 48 hours advance notice to the Customer for non-emergency maintenance or Scheduled Downtime, and will use commercially reasonable efforts to minimize any other disruption, inaccessibility and/or inoperability of its web servers.

## 18. PRIVACY, DISCLOSURE AND USE OF INFORMATION

Your privacy is important to us. We want you to feel comfortable using Thobson services. Because we gather certain types of information about the users of Thobson's services, we feel you should fully understand what information we gather and how we use that information. Thobson employees are required to familiarize themselves with this privacy policy as a condition of their employment, and any employee violating the policy is subject to disciplinary action.

The Privacy Policy sets forth your rights and responsibilities and our rights and responsibilities with regard to your personal information. You agree that we, in our sole and absolute discretion, may modify our Privacy Policy. We will post any such revised Privacy Policy on our website and any such Privacy Policy is effective upon posting. You agree to periodically review our websites, including the current

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version of our Privacy Policy. You agree that, by using our Services after modifications to the Privacy Policy become effective, you have agreed to these modifications. You acknowledge that if you do not agree to any such modification, you may terminate this Agreement. We will not refund any fees paid by you if you terminate your Agreement with us except as otherwise expressly provided in one or more of the supplemental service and product agreements. We will not process the personal data that we collect from you in a way incompatible with the purposes and other limitations described in our Privacy Policy. You represent and warrant that you have provided notice to, and obtained consent from, any third-party individuals whose personal data you supply to us as part of our Services with regard to: (i) the purposes for which such third party's personal data has been collected; (ii) the intended recipients or categories of recipients of the third party's personal data; (iii) which parts of the third party's data are obligatory and which parts, if any, are voluntary; and (iv) how the third party can access and, if necessary, correct the data held about them. You further agree to provide such notice and obtain such consent with regard to any third party's personal data you supply to us in the future. We are not responsible for any consequences resulting from your failure to provide notice or receive consent from such individuals nor for your providing outdated, incomplete or inaccurate information. You acknowledge and agree that pursuant to Thobson 's Privacy Policy (<http://thobson.com/legal>.see Thobson 's Privacy Policy), Thobson may make available information you provide or that we otherwise maintain to such public or private third parties as applicable laws require or permit, including, but not limited to, making publicly available, or directly available to third parties, some or all of such information as follows: (i) for inspection by law enforcement officials (including in the case of potential criminal activity); (ii) to respond to criminal and civil subpoenas and court orders that reasonably appear to be valid; (iii) in connection with the sale of all or certain of our assets; (iv) to enforce or apply the terms of this Agreement; and (v) to protect the rights, property or safety of Thobson, our users or others, whether during or after the term of your use of the Services. Thobson reserves the right to report activity that it believes to be potentially criminal to the appropriate law enforcement agencies.

You further acknowledge and agree that Thobson may make publicly available or directly available to third parties, some or all of the information you provide for purposes of inspection (such as through our WHOIS service) or for targeted marketing and other purposes as required or permitted by applicable laws. One of the ways that Thobson may make some or all of the information you provide available to the public or third parties is by way of bulk WHOIS data access provided to third parties who enter into a bulk WHOIS data access agreement with Thobson.

You hereby consent to any and all such disclosure and the use of guidelines, limits and restrictions on such disclosure or the use of information provided by you in connection with the registration of a domain name or use of any Services (including any updates to such information), whether during or after the term of your registration of a domain name or other Services. You hereby irrevocably waive any and all claims and causes of action you may have arising from such disclosure or use of information provided by you to Thobson. We will not process data about any identified or identifiable natural person that we obtain from you in a way incompatible with the purposes and other limitations which we describe in this Agreement. Thobson will take reasonable precautions to protect the information it obtains from you from our loss, misuse, unauthorized access or disclosure or use, or alteration or destruction, of that information. You acknowledge and agree that Thobson shall have no liability to you or any third party to the extent such reasonable precautions are taken.

In the event that (i) in applying for any Services or the registration of a domain name you are providing information about a third party or (ii) you license a domain name registered in your name to a third party, you hereby represent and warrant that you have (a) provided notice to that third party of the disclosure and use of that party's information as set forth in this Agreement and (b) obtained that third party's express consent to the disclosure and use of that party's information as set forth in this Agreement.

You acknowledge and agree that willfully providing inaccurate or unreliable information or willfully failing to update information promptly will constitute a material breach of this Agreement that will be a sufficient basis in our sole and absolute discretion to cancel your domain name registration or other Services. You further acknowledge and agree that your failure to respond for over fifteen (15)

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calendar days to an inquiry by Thobson concerning the accuracy of contact information details associated with your domain name registration shall constitute a material breach of this Agreement and is a sufficient basis for the cancellation of your domain name registration.

## 19. COLLECTION AND USE OF PERSONALLY IDENTIFIABLE INFORMATION

### 19.1 What Information Does Thobson Gather?

When you register for a Thobson account, Thobson obtains contact information, such as your name, address, and phone number, as well as payment information, such as your credit card number. When you use Thobson's service, our systems record information about your session, such as the dates and times of use, and the specific Internet address assigned to you. Thobson also tracks requests you make for information on Thobson's products and services, and responses you provide to Thobson surveys. Finally, Thobson keeps records of your payment history and communications you have with Thobson's support team. Except in extraordinary circumstances (when we receive a court order, to protect the company's rights or property, or in emergencies where someone's safety is at risk), Thobson does not keep track of what sites you visit when you are using the service.

### 19.2 What Does Thobson Do With This Information?

Thobson uses the information it gathers in order to provide you with the best online experience possible. As you might expect, contact information is used to contact you concerning your account and our company. Payment information is used to validate your identity and to bill you for the services and products you order. Information on your online sessions is used to allocate system resources and to ensure compliance with Thobson's Terms and Conditions of Use. Information on your communications with Thobson's support team is used to address the issues raised by your communications. In addition, Thobson regularly sends out mailings regarding the operation of its service and other goods and services that it believes may be of interest to you. You may request that Thobson not send you mailings relating to other goods and services at the URLs listed in this section or send an e-mail to [support@thobson.com](mailto:support@thobson.com).

Thobson reserves the right, however, to send bulletins and other important information regarding the service at its discretion and to ensure that any downtimes or service outages or scheduled or unscheduled maintenances are announced and customer be notified.

### 19.3 How We Use the Information

Thobson limits the information we collect. We may also collect information that is relevant to you but does not personally identify you. If we collect personal information for a reason other than as specified in this Privacy Policy, we will obtain your consent before or at the time the information is collected or as otherwise permitted by applicable law.

Generally, Thobson uses the information to provide the products and services or information you have requested, to personalize your experience on our website(s), to provide customer support, to improve our website(s), to enforce our agreements and policies, to resolve disputes, to improve our marketing and promotional efforts and to design new services for your future use.

Thobson may also use the information to notify you about new products and services or offers that we may have available, to provide news about Thobson; to send you notifications about planned maintenance related to Thobson infrastructure or about incidents which might impact your services.

We may contact you on behalf of business partners about a particular offering that may be of interest to you. In those cases, we do not transfer your personally identifiable information to the third party.

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#### 19.4 Does Thobson Share Subscriber Information With Third Parties?

Thobson will not share or disclose information regarding its subscribers except

- (i) when we receive legal process such as a court order;
- (ii) when reasonably necessary to protect the company's rights or property; or
- (iii) in emergencies where someone's safety is at risk.

You should be aware, however, that any information that you disclose in a public space such as a chat room, bulletin board, or personal Web site, domain registration is freely available to anyone else visiting that space. Thobson cannot safeguard any personally identifiable information you disclose in these locations, nor can it ensure that information you voluntarily supply to third parties remains private. Please review the privacy policies of third party sites you frequent to ensure that your privacy preferences are respected. All personal information is maintained in a secure location. We will retain your information for as long as needed to provide you with the products and services or as long as needed to fulfill the purpose for which the personal information was originally collected.

#### 19.5 Other Information We Collect

Some information may automatically be collected as you browse our website(s). Our web server automatically collects some information such as the user-agent (your web browser type, operating system and platform version, etc.), your Internet service provider's domain name, the Internet Protocol (IP) address used to connect your computer to the Internet, the average time spent on our site, pages viewed, information searched for, access times and other relevant statistics.

We also use cookies on our website(s). A cookie is a small data file that websites commonly write to the site visitor's hard drive when a website is visited. A cookie file contains information that can identify a return visitor each time he or she visits our website. Our website(s) may use cookies as a way to measure activity and traffic patterns on the site to continually improve your experience. A browser can be set to warn the user before accepting cookies. You can choose to refuse cookies by turning them off in the browser. You do not need to have cookies turned on to visit our website(s).

#### 19.6 Your Choices

By providing your information to us, you consent to our use of your personal information for the purposes outlined herein. We do not collect personally identifiable information about you on our website(s) without your knowledge and all such information we collect you are providing to us. You are not required to provide us with this information; however, if you choose not to provide such information or withdraw your consent to collect, use and disclose your information, we may not be able to provide you with some services and you may not be able to participate in some of the activities on our website(s).

We use the information we collect from you to allow you to participate in the site activities for which the information is collected. For example, when you give us your e-mail address to receive newsletters, information regarding our services and special promotions, your e-mail address will be added to our marketing database. We will not send solicitations via e-mail to you if you request that they not be sent. On each e-mail you receive, you are given the opportunity to unsubscribe. In addition, you can "opt-out" by sending an e-mail to us. Once you unsubscribe, you will no longer receive such e-mails. If you decide to withdraw or refuse your consent, our ability to communicate with you may be diminished and you may limit your access to services that may be of value to you.

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### 19.7 Children and Privacy

Our website(s) is not directed at children and most services offered on this site are designed for businesses and adults. We do not knowingly collect information from or about children under 13 years of age.

### 19.8 Security

We maintain our databases and systems in accordance with general industry standards to reasonably secure all of our commercial information, including information about you. All of your personal information is retained in a secure location and access to these records is provided only to our employees, third party service providers and authorized representatives having a need to know and who have signed a non-disclosure agreement. Furthermore, access will be limited to the employees who require such access in the execution of their duties. However, you should be aware that absolute security does not exist on the Internet, and that no security measures are perfect or impenetrable.

### 19.9 How Can I Correct or Update the Information?

To request a copy of the contact Thobson has on your account, send an e-mail request to [info@thobson.com](mailto:info@thobson.com). You may correct that information as appropriate by returning a message to the same address. Please keep in mind that under Thobson's Terms and Conditions of Use, subscribers are required to provide Thobson with current contact and billing information. Thobson may require a copy of a government issued form of identification or ask the customer to verify its identify and authenticity before disclosing billing information or before making changes to the billing or contact information on an account.

### 19.10 What Happens to the Information if I Leave Thobson?

If you ever leave Thobson, Thobson will normally delete your personally identifiable account information twelve months after the account is cancelled, unless we are under a legal obligation to retain it. We preserve account information for this short period of time in the event you wish to reactivate your account and retain your previous e-mail address. However, in the event of any accounting irregularities, Thobson reserves the right to retain your contact and billing information as necessary to resolve the matter.

### 19.11 Changes to Policy

If we change this Privacy Policy, we will post an updated Privacy Policy on our website(s) in advance of the changes taking effect. If we use personal information in a manner materially different from that stated at the time it was collected, we will post an update to notify users. The changes to the Privacy Policy will become effective when the revised Privacy Policy is posted on our website(s). Your continued use of the website(s) and the services following these changes means that you accept the revised Privacy Policy. If any change materially affects the privacy of your personal information, we will post the Privacy Policy before its effective date and give you a reasonable period of time to object to any changes (which you may do by ceasing to use the website(s) and/or our services).

### 19.12 Questions About Privacy

Thobson reserves the right to make changes to this policy. Those changes will become effective 30 days after notice of them is posted here. If you have any questions about this privacy policy, please send them via e-mail to [info@thobson.com](mailto:info@thobson.com)

Without limiting your obligations under this Section of the Agreement, you agree that Thobson (itself or through its third-party service providers) is authorized, but not obligated, to use certain address or billing correction services to update and/or to change any address or billing information associated with your account (including, without limitation, registrant address, billing contact address and credit

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card information), and you agree that Thobson may use such changed information for all purposes in connection with your account (including the sending of renewal notices, invoices, order confirmations or for automatic renewal charges). You acknowledge and agree that communications with us are not private and may be published either in their entirety or in edited form at any time, at the sole and absolute discretion of Thobson

## 20. PROMOTIONAL USE

Customer grants Thobson a non-transferable, non-exclusive license to utilize Customer trademarks and logos for Thobson promotional materials.

## 21. EXPORT

Customer represents and warrants:

- a. That Customer is not located in or a national of any country that is embargoed or restricted under export regulations or are otherwise a person or entity to which Thobson is legally prohibited from providing the Services.
- b. Customer will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any Information or technical data provided by Thobson under these Terms of Service or any Order or agreement in which they are incorporated in any manner which would cause Thobson to breach any applicable export control laws, rules, or regulations.
- c. Customer represents, and warrants without limitation, that it will not provide or facilitate administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of body corporate) that is located in or is a national of any country that is embargoed or highly restricted under applicable export laws, rules or regulations.

## 22. DISCLAIMER

22.1 THOBSON DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES, INCLUDING IMPLIED TERMS CONDITIONS OR WARRANTIES RELATING TO SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

22.2 ALL SERVICES PROVIDED BY THOBSON ARE ON AN "AS IS" BASIS AND THOBSON MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE PROVISION OF SUCH SERVICES.

YOU AGKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICES IS SOLELY AT YOUR OWN RISK, AND THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THOBSON EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. FURTHERMORE, THOBSON DOES NOT WARRANT THAT THE SERVICES AND/OR ANY INFORMATION OBTAINED THEREBY WILL BE COMPLETE, ACCURATE, UNINTERRUPTED, SECURE OR ERROR FREE. THOBSON FURTHER MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, NOR DOES THOBSON MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES. PLEASE DO NOT USE OUR SERVICES IF YOU DO NOT AGREE WITH ANY OF THE ASPECT, PART, PARA, WORD OR CONTENTS OF THIS AGREEMENT.

## 23. LIMITATION OF LIABILITY

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You acknowledge and agree that Thobson will not be liable under any circumstances to you or any other party, person or entity for any damages or losses that may result from the following:

- i. TERMINATION, SUSPENSION, LOSS OR MODIFICATION OF YOUR SERVICE;
- ii. USE OF OR INABILITY TO USE THE SERVICE;
- iii. INTERRUPTION OF BUSINESS;
- iv. ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THIS SITE OR A SERVICE (INCLUDING, WITHOUT LIMITATION, TO WEBSITES ACCESSED BY THE DOMAIN NAME REGISTERED IN YOUR NAME);
- v. DATA NON-DELIVERY, MIS-DELIVERY, CORRUPTION, DESTRUCTION OR OTHER MODIFICATION;
- vi. EVENTS BEYOND THOBSON'S AND ITS SUBCONTRACTORS' CONTROL;
- vii. APPLICATION OF ANY APPLICABLE LAW, REGULATION OR THOBSON POLICY (INCLUDING, BUT NOT LIMITED TO, ANY RELEVANT DISPUTE POLICY OR ANY OTHER ICANN OR SIMILAR GOVERNMENTAL OR SUCCESSOR ORGANIZATION ADOPTED POLICIES);
- viii. PROCESSING OF YOUR DOMAIN NAME APPLICATION OR OTHER SERVICE APPLICATION;
- ix. DISBURSEMENT OR NON-DISBURSEMENT OF FUNDS BY PAYMENT PROCESSORS;
- x. TRANSACTIONS CONDUCTED ON A USER WEBSITE, INCLUDING FRAUDULENT TRANSACTIONS;
- xi. LOSS INCURRED IN CONNECTION WITH YOUR SERVICES, INCLUDING, BUT NOT LIMITED TO, E-COMMERCE TRANSACTIONS;
- xii. LOSS OR LIABILITY RESULTING FROM ERRORS, OMISSIONS OR MISSTATEMENTS IN ANY AND ALL INFORMATION OR SERVICES PROVIDED UNDER THIS AGREEMENT (This includes loss of data resulting from delays, nondeliveries, mis-deliveries or service interruptions caused by Thobson's own negligence or your errors or omissions, or due to inadvertent release or disclosure of information sent by service interruptions caused by Thobson's own negligence or your errors or omissions, or due to inadvertent release or disclosure of information sent by you.);
- xiii. LOSS OR LIABILITY RESULTING FROM THE UNAUTHORIZED USE OR MISUSE OF YOUR ACCOUNT NUMBER, PASSWORD OR SECURITY AUTHENTICATION OPTION;
- xiv. UNAUTHORIZED ACCESS OR ALTERATION OF YOUR TRANSMISSIONS OR DATA;
- xv. STATEMENTS OR CONDUCT OF ANY THIRD PARTY USING YOUR SERVICES;
- xvi. LOSS OR LIABILITY RELATING TO THE DELETION OF OR FAILURE TO STORE E-MAIL MESSAGES;
- xvii. VIOLATION OF ANY THIRD PARTY RIGHTS, INCLUDING, BUT NOT LIMITED TO, RIGHTS OF PUBLICITY, RIGHTS OF PRIVACY, INTELLECTUAL PROPERTY RIGHTS AND ANY OTHER PROPRIETARY RIGHTS;
- xviii. LOSS OR LIABILITY THAT YOU MAY INCUR IN CONNECTION WITH THOBSON'S PROCESSING OF YOUR APPLICATION FOR THOBSON'S SERVICES, THE PROCESSING OF ANY AUTHORIZED MODIFICATION TO YOUR DOMAIN NAME RECORD, OR YOUR AGENT'S FAILURE TO PAY ANY FEES, INCLUDING THE INITIAL REGISTRATION FEE OR RE-REGISTRATION FEE; AND
- xix. ANY OTHER MATTER RELATING TO YOUR USE OF THE SERVICES.

Thobson disclaims any responsibility for any Content, goods and services sold by you or otherwise made available through your Website, or the quality or accuracy of any information on your Website. Thobson will not endorse, warrant, or guarantee any product or service offered through your Website, and will not be a party to or in any way monitor any transaction between you and third-party purchasers

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of products or services offered through or resulting from the services or use of your Website, including, but not limited to, all sales of goods or services, credit card transactions, banking or securities transactions, or any business, service or merchandise agreements. Additionally, the Thobson website may contain links to other Internet websites or resources (including partner websites or third-party advertising on a Thobson website). You acknowledge and agree that neither Thobson nor any third party are responsible or liable in any way for (i) the availability or accuracy of linked websites or resources or (ii) the content, advertising or products on or available from such linked websites. The inclusion of any link on our website does not imply that Thobson or a third party endorses any of the linked websites, and you agree to use the links at your own risk.

Additionally, Thobson will not be liable to you for any indirect, special, incidental or consequential damages of any kind, (including, but not limited to, lost profits, goodwill, data, the cost of replacement goods or services, business interruption or other intangible losses), whether foreseeable or not, regardless of the form of action, whether in contract or tort, including negligence, even if Thobson has been advised of the possibility of such damages.

Thobson's aggregate liability shall not exceed the total amount paid by you for the Services, but in no event shall it be greater than five hundred dollars (\$500.00), and you acknowledge and agree that this will be your exclusive remedy under this Agreement and otherwise in relation to your use of the Services. You agree that Thobson's entire liability, in law, equity or otherwise, with respect to any Services provided under this Agreement and/or for any breach of this Agreement, is solely limited to the amount you paid for such Services during the term of this Agreement, except as otherwise limited herein. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states Thobson's liability is limited to the maximum extent permitted by law.

You acknowledge and agree that any claim or cause of action arising out of or related to this Agreement or any of Thobson's Services must be filed within one (1) year after such claim or cause of action initially arose or such claim or cause of action is permanently barred.

You further agree that any dispute or disagreement relating to or arising out of this Agreement or the Services shall be resolved on an individual basis. As such you acknowledge and agree that you may not bring a claim that relates to or arises out of this Agreement or the Services as a plaintiff or a class member in a class action, a consolidated action or a representative action. You acknowledge and agree that class actions, representative actions, private attorney general actions, and consolidation with other actions are not permitted.

You acknowledge and agree that the limitations contained in this Section are an essential element of this Agreement and absent such limitations, Thobson would not enter into this Agreement or provide Services hereunder. Each Party acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein.

## 24. NO PARTNERSHIP

The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other; neither party has the right to bind the other to any agreement with a third party.

## 25. ASSIGNMENT AND SUBCONTRACTING

Neither party may assign the an Order in whole or in part without the prior written consent of the other party, provided however, Thobson may assign an Order in whole or in part to an affiliate with sufficient financial standing in order to meet its obligations under the Order or as part of a bona fide corporate reorganization or a sale of its business, and we may transfer your Confidential Information as part of any such transaction. Thobson may use affiliates and third party service providers to perform all or any part of the Services,

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but Thobson remains responsible to you under the Order for Services performed by its Affiliates and third party service providers to the same extent as if Thobson performed the Services.

## 26. INDEMNIFICATION

You agree to release, indemnify, defend and hold harmless Thobson and Thobson's officers, directors, employees, agents, subsidiaries, partners, contractors, shareholders, attorneys, assigns and affiliates from and against any loss, liabilities, damages, costs, or expenses, including reasonable attorneys' fees, resulting from any third-party claim, action or demand arising under or relating to:

this Agreement or the breach of Customer warranties, representations and obligations under this Agreement or any other Thobson term, rule, policy or agreement; ii. Customer's failure to perform in accordance with this Agreement; iii. Customer's use of the Services; iv. the Website, Content and/or URLs; v. Customer's violation of any third-party rights; or vi. Customer's application for and registration of, renewal of, or failure to renew a particular domain name. You agree that this indemnification obligation survives this Agreement's termination or expiration. You agree to give prompt, written notice to Thobson upon the receipt of notice of any claim by a third party against you which might give rise to a claim against Thobson, stating the nature and basis of such claim and, if ascertainable, the amount thereof. When Thobson is threatened with a lawsuit or is sued by a third party, Thobson may seek written assurances from you concerning your promise to indemnify Thobson. Such assurances may, without limitation, be in the form of a deposit of money by you to Thobson or its representatives to cover Thobson's fees and expenses, including, but not limited to, reasonable attorneys' fees, in any such lawsuit or threat of suit. Your failure to provide such assurances shall be considered by Thobson to be a material breach of this Agreement. Thobson shall have the right to participate in any defense by you of a third-party claim related to your use of any of Thobson's Services, with counsel of Thobson's choice. Thobson shall reasonably cooperate in the defense at your request and expense. You shall have sole and absolute responsibility to defend Thobson against any claim, but you must receive Thobson's prior written consent regarding any related settlement. The use of Thobson's Services to transmit certain kinds of information (including, but not limited to, computer software and other technical data) may violate export control laws and regulations of the United States, whether that information is received abroad or by foreign nationals within the United States. Since Thobson exercises no control whatsoever over the information that is received abroad or by foreign nationals within the United States, you agree to comply with all export and import requirements as referenced herein. Since Thobson exercises no control whatsoever over the content of information passing through its Service, the entire burden of complying with all applicable laws and regulations is your obligation. You agree to comply with such applicable laws and regulations and to indemnify and hold Thobson harmless from any damages it may suffer resulting from any violation of the export control laws of the United States.

26.1 Customer agrees to indemnify and hold Thobson, and each of its directors, officers, employees, shareholders and agents (each an "Indemnified Party") harmless from any and all damages, liabilities, fines, penalties, losses and/or claims of whatsoever kind or nature, arising from the Customer's use of Thobson's hosted environment or the Services.

26.2 Thobson may from time to time, at the request of the Customer, be enlisted to perform server administration tasks on Customer hardware, which is co-located at a Thobson facility ("Remote Hands Service"). Customer agrees and holds Thobson harmless against any damage caused to Customer in the performance of Remote Hands Service.

## 27. WAIVER

No waiver of any provision of this Agreement is effective unless it is in writing and signed by an authorized representative of Thobson. Thobson's remedies under this Agreement are cumulative and not alternative, and the election of one remedy for a breach does not preclude pursuit of other remedies. The failure of Thobson to require your performance of any Agreement provision does not affect the

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full right to require such performance at any time in the future. The waiver by Thobson of any rights arising out of any breach of any Agreement provision shall not be taken or held to be a waiver of the provision itself. Any failure by Thobson to enforce any of its rights under this Agreement or any applicable laws does not constitute a waiver of such right. Neither Party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an authorized representative and (ii) in an explicit written waiver. No waiver of any rights arising out of a breach of this Agreement will constitute a waiver of rights relating to any prior or subsequent breach of this Agreement.

## **28. SEVERABILITY**

You agree that the terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, in whole or in part, that term or provision will not affect the remainder of this Agreement. This Agreement will be deemed amended to the extent necessary to make this Agreement enforceable, valid and, to the maximum extent possible, consistent with applicable law and consistent with the original intention of the Parties; and the remaining terms and provisions will remain in full force and effect. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, Thobson will amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of Thobson as reflected in the original provision. The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement, which will remain in full force and effect.

## **29. FORCE MAJEURE**

Neither Party is deemed in default hereunder, nor will it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations under this Agreement due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout or boycott, provided that the Party relying upon this Section takes all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based; provided further, that in the event a force majeure event described in this Section extends for a period in excess of thirty (30) days in the aggregate, Thobson may immediately terminate this Agreement and will have no liability therefrom.

## **30. ENTIRE AGREEMENT**

This Agreement, as well as any additional Thobson Terms and Conditions, rules, policies and service agreements, together with all modifications thereto, constitute the entire agreement between you and Thobson concerning your use of the Services and any other subject matter related to this Agreement. This Agreement supersedes and governs all prior proposals, agreements or other communications between you and Thobson (including, but not limited to, any prior versions of this Agreement). You may not waive, modify or supplement this Agreement, in whole or in part, except for written permission or amendment by Thobson. Thobson reserves the right, in its sole and absolute discretion, to unilaterally change, modify and/or revise the Agreement, and any incorporated policies, agreements or notices, from time to time. Such changes, modifications or revisions shall be effective immediately upon posting to this website, and are provided to you via the Notice provisions set forth in Notice Section below (Notice) and it is implied you have accepted, and to be apprised of and bound by, any such modifications or revisions to the Agreement through your continued use of the Services.

## **31. HEADINGS AND INTERPRETATION**

The section headings contained in this Agreement are inserted for convenience only and do not affect in any way the meaning or interpretation of this Agreement. Also, in all references herein to any parties, persons, entities or corporations, the use of any particular

gender or the plural or singular number is intended to include the appropriate gender and number as the text of this Agreement may require.

### **32. CONFLICTS WITH OTHER AGREEMENTS**

In the event of any conflict between this Agreement and the Terms and Conditions governing your use of any Services provided by Thobson's third-party service providers or any registry administrator, the Terms and Conditions of this Agreement govern as it relates to any rights, obligations and remedies as between you and Thobson.

### **33. ASSIGNMENT**

You may not assign or transfer, either directly or through a third party, this Agreement or any of its interests, rights or obligations hereunder (in any domain, website, product or service), without the prior written consent of Thobson. Any attempted assignment in violation of the foregoing provision will be null and void and of no force or effect whatsoever. Thobson may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without notice to or consent of the Customer. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

### **34. AGENCY**

This Agreement does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between you and Thobson. Neither Party has the right or authority to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other Party or its affiliates, whether express or implied, or to bind the other Party or its affiliates in any respect whatsoever. The relationship between you and Thobson is limited to the responsibilities and obligations of both Parties as established in this entire Agreement.

### **35. NO THIRD PARTY BENEFICIARIES**

You acknowledge and agree that nothing herein, express or implied, is intended to nor is to be construed to confer upon or give to any person, other than you, any interests, rights, remedies or other benefits conveyed to you herein.

### **36. EXPORT RESTRICTIONS AND PROHIBITED TRANSACTIONS**

You acknowledge and agree that you shall not import, export or re-export directly or indirectly, any commodity, including your products incorporating or using any Thobson Services, in violation of the laws and regulations of any applicable jurisdiction. You warrant as Customer, agent and/or licensor of Customer, that you are not, nor is Customer acting on behalf of, any person or entity that is prohibited from engaging in transactions with U.S. citizens, nationals or entities under applicable U.S. laws and regulations including, but not limited to, regulations issued by the U.S. Office of Foreign Assets Control ("OFAC"). In addition, you are not, nor is Customer acting on behalf of, any person or entity that is a Specially Designated National ("SDN"), as OFAC may so designate from time to time. In addition to all other rights and remedies available to Thobson under this Agreement and at law and in equity, you and/or Customer's breach of this Section will result in immediate termination of the Agreement and forfeiture of any and all Services or amounts previously provided, paid and/or owed to Customer under this Agreement.

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### 37. U.S. GOVERNMENT USERS

In the event any Software is provided by Thobson to a U.S. Government User, the Software and accompanying documentation which are used as part of the Thobson Service are "commercial items," as such terms are defined at 48 C.F.R. 2.101 (Revised Oct 2002), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Revised Oct 2002) and is provided to the U.S. Government only as a commercial end item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (Revised Oct 2002), all U.S. Government entities acquiring the use of the Service and accompanying documentation only have those rights set forth herein.

### 38. SURVIVAL

In the event of termination of the Agreement, Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 of this Agreement survives such expiration or termination, as applicable.

### 39. GOVERNING LAW AND VENUE

Except as otherwise set forth in UDRP or any similar ccTLD policy with respect to any dispute over a domain name registration, this Agreement shall be governed by the laws of the United States of America and the State of Texas, without regard to conflict of law principles, as if the Agreement was a contract wholly entered into and wholly performed within the state of Texas. The application of the United Nations Convention of Contracts for the International Sale of Goods ("CISG") is expressly excluded. Except as otherwise set forth in the UDRP or any similar ccTLD policy with respect to any dispute over a domain name registration, you agree that any judicial proceeding relating to or arising under this Agreement or the Services will be instituted only in a federal or state court of competent jurisdiction in the State of Texas. You consent to the personal jurisdiction of such court and waive the right to challenge the jurisdiction of such court on grounds of lack of personal jurisdiction or forum non conveniens, or to otherwise seek a change of venue. You agree to waive the right to trial by jury in any action that takes place relating to or arising under this Agreement or the Services (acceptance of this Agreement, means you no longer have the right to a jury trial). You also agree to waive the right to file a class action claim relating to or arising under this Agreement or the Services.

In the event a claim is brought against Thobson in a foreign jurisdiction (a court other than in Texas), Thobson will file to have the claim dismissed per your acceptance of this Agreement existing at the time of your purchase of Services and your continued use of the Services as evidence of acceptance of the Agreement and this Section.

The Parties agree that the foregoing obligation is independent from all other obligations herein. You acknowledge that, in the event you initiate a judicial proceeding in any court other than one of the aforementioned courts in Texas, Thobson may, and likely will, incur costs and expenses, including attorneys' fees, to enforce the agreement of the Parties regarding the court where litigation relating to or arising out of this Agreement or the Services shall be instituted. You expressly agree that Customer will reimburse Thobson for any such costs and expenses, including, but not limited to, attorneys' fees, incurred by Thobson within ten (10) days of receiving a written demand from Thobson for such reimbursement. You further agree that if you do not timely reimburse Thobson within ten (10) days of receiving a written demand for reimbursement, you will be responsible for, and agree to pay, all costs and expenses, including, but not limited to, attorneys' fees, incurred by Thobson in seeking to collect or recover from you the amount reimbursable by you under this Section.

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#### 40. NOTICE

All mail Notices from Thobson to you are deemed effective when: (i) sent by certified mail, return receipt requested or by Federal Express or other recognized overnight delivery service to your last known mailing address; (ii) sent via e-mail to your last known Customer contact e-mail address; (iii) sent via fax to your last known fax number; or (iv) posted on [www.Thobson.com/legal](http://www.Thobson.com/legal) and/or any of the applicable pages linked thereto, as updated from time to time.

When you provide contact information to Thobson, you agree that Thobson may use this information to contact you in any format or manner Thobson chooses. Thobson may, but has no obligation to, send a single notice by various means of delivery (i.e., fax, e-mail, certified mail or express mail). In no event shall Thobson be liable to you for choosing to send notice in one manner or format over another.

You authorize Thobson to contact you via the contact information provided in your account information that Thobson deems is of potential interest to you. Notices and announcements may include commercial e-mails, telephone solicitations and other notices describing changes, upgrades, new products and services or other information pertaining to Internet security or to enhance your identity on the Internet and/or other relevant matters.

You shall give Notice to Thobson by contacting Thobson's Customer Service at the phone number listed on Thobson's Website or otherwise provided by Thobson.

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