

## **Addendum: Hardware and Software Maintenance Agreement**

This HARDWARE AND SOFTWARE MAINTENANCE AGREEMENT is between Abtech and Client to establish the specific terms and conditions that govern the Service relationship between both parties.

Upon mutual acceptance, Client and Abtech may add Amendments, Exhibits, and Schedules (each an "Addendum" and collectively "Addenda") that define more specific services and additional terms and conditions as Client and Abtech agree to. This Hardware and Software Maintenance Agreement and any Addenda (collectively "Maintenance Agreement") shall automatically (whether or not explicitly stated) incorporate by reference, as if fully set forth herein as a full and binding part of this Maintenance Agreement, the Abtech Master Services Agreement ("MSA").

### **1. DEFINITIONS**

The definitions in this section shall apply to this Maintenance Agreement. Any capitalized term used but not defined herein shall have the meaning as set forth in the MSA or Service Order.

- **Authorized Contract Administrator ("Administrator"):** Client designated administrator who may make changes to this Maintenance Agreement or request, authorize, and commit Client to Projects.
- **Authorized User:** Any user designated by the Administrator who may place a Service Request.
- **Covered Hardware:** shall mean the various machines, hardware options, hardware features and interconnections as listed in Schedule A: Equipment List for which Abtech agrees to provide Service and any subsequent amendments modifying Schedule A and accepted by Abtech.
- **Covered Software:** shall mean any unique intellectual property, including but not limited to operating systems, databases, applications, updates, tools, diagnostics, firmware, patches, fixes, and documentation thereof which is detailed in Schedule A and any subsequent amendments modifying Schedule A and accepted by Abtech for which Abtech agrees to provide Service.
- **Covered Environment:** The complete Client environment initially listed in Schedule A to include Covered Hardware and Covered Software and any subsequent amendments modifying Schedule A and accepted by Abtech for which Abtech agrees to provide Service.
- **Monthly Management Charge (MMC):** Monthly fee paid to Abtech by Client in consideration of Service of the Covered Environment
- **Period of Maintenance (POM):** Shall mean the standard hours during which the maintenance services shall be performed. The POM shall be defined as set forth in Schedule A with the exception of Abtech recognized holidays unless explicitly included in Schedule A. Abtech recognized holidays are available upon request.
- **Project:** Any Service that Client requires that is outside the scope of this Maintenance Agreement as outlined in Section 3. Projects are not part of the Service and are invoiced to Client separately as per Schedule B.
- **Service:** The performance of a series of reactive and proactive services as outlined in Section 2.
- **Service Request:** A request made by an Authorized User to Abtech for the delivery of Service. Such Service Requests shall only be made through the Abtech toll free service request telephone number or via the Abtech Client Portal. Direct communication by Client to Abtech engineers, salespeople, or management shall not be considered a Service Request and as such any and all Service Level Agreements regarding that particular Client incident will not be applicable.

### **2. SERVICE DESCRIPTION**

**2.1** In consideration for the MMC and if specified in Schedule A, Abtech shall provide one or more of the following Services defined below:

- A. **Preventive Maintenance** - Abtech shall perform routine preventive maintenance, of a type and frequency to be determined by Abtech, to help prevent hardware product failures and extend the useful life of the equipment. All Preventive Maintenance calls shall be scheduled at a mutually agreed upon date and time.
- B. **Remedial Maintenance** - Abtech shall respond to a hardware Service Request by placing a qualified Client Engineer at the Client's site within the response time set forth in Schedule A provided that the call is received within the POM. Abtech agrees that calls responded to within the POM which continue beyond the POM shall be considered work performed during the POM.
- C. **Maintenance Costs** - Abtech shall assume all responsibilities and costs for tools, test equipment, spare parts, replacement units, and any other items required to provide adequate preventive and remedial maintenance on the system(s) hardware and equipment.
- D. **Swap Equipment** - Abtech may at its option swap failed equipment with like equipment when extensive repairs may be necessary, or when extensive system "down time" may result. Swapped equipment will be equal to or better than the original, with respect to form, fit, function, capabilities and reliability and shall not exceed the maintenance cost of the original item. The swapped equipment will become the property of the Client and will replace the original item in the Covered Environment. Displaced parts or systems shall become the property of Abtech unless explicitly agreed to in advance.
- E. **Remote Hardware Support:** In some instances Client may opt to replace defective hardware with Abtech replacement parts themselves. Abtech shall help the Client diagnose the hardware failure remotely, and, to the best of Abtech's ability, provide the most likely suspected failed part via priority overnight shipping or an alternative shipping method of Client's choice (priority overnight shipping only available for parts under 30 pounds). Abtech shall not be held responsible for delays in shipment beyond Abtech's reasonable control. Damage to equipment by Client is not normal wear and tear and is therefore not covered under this Agreement.
- F. **Software Support:** At any time, Client may call Abtech regarding use of Covered Software. Abtech's engineers shall assist Client via telephone in the use of Covered Software products, identify problems and provide fixes and workarounds, if possible. The maximum response time for returning calls after a telephone request has been received is two (2) hours, unless otherwise specified. Abtech may, from time to time, require access to Client's system via remote dial-up, VPN, or other remote facilities, in order to remediate a Service Request. Abtech will safeguard any temporary logins or passwords provided by Client, however, in no event shall Abtech be liable for the security of Client's system. Software support does not include the distribution of any third party Intellectual Property, training Client staff that does not have a base level understanding of the Covered Software, or data recovery.
- G. **Extended Coverage** - Should Client specifically request support services at a time outside the POM, such service will be provided by Abtech at Client rate of one thousand two hundred fifty dollars (\$1,250) per emergency response and shall be invoiced separately. Labor, travel and parts will be covered under this Maintenance Agreement subject to any limitations set forth herein.

### **3. SUITABILITY OF COVERED ENVIRONMENT**

**3.1** In order for Client's Covered Environment to qualify for Services, some minimum standards apply. These standards include adherence to Intellectual Property Warranties in the MSA, that all equipment is in good working and cosmetic condition, and that all equipment is being used in an industry standard way within

the usage guidelines, configuration, and controlled environment appropriate for the equipment as recommended by the manufacturer. Other standards may be discussed before and during the Service. Items in the Covered Environment that do not meet these standards will be identified, presented to Client, and Abtech and Client shall determine if the device will be provided the Services on a good faith basis or not.

**3.2** Should the Covered Environment not meet the minimum standards, all Services shall be performed on a good faith effort basis. Abtech shall make no guarantees regarding the ability of Abtech's engineers or technologies to provide Services to any item of the Covered Environment that does not meet the minimum standards. Abtech's may be required to, and without breach, delay in providing Services on any item in the Covered Environment that does not meet these minimum standards until such minimum standards are met and after which Services on those items will resume.

**3.3** Client shall provide Abtech full and free access to Covered Environment both physically and remotely. Client agrees to allow the installation of Services technology on Client's network as necessary to allow for the performance of Services. Client agrees that any restrictions regarding full and free access to Covered Environment or installation of Service technology may hinder Abtech's ability to perform Services and that any Services provided to Covered Environment with such restrictions shall be performed on a good faith basis. Abtech may be required to, and without being deemed to be breach, delay in providing Services on any part of the Covered Environment with restricted access until such access is given and after which Service on those items will resume. Abtech shall make no guarantees regarding the ability of Abtech's engineers or technologies to perform Services on any part of the Covered Environment that is considered to be restricted.

#### **4. EXCLUDED SERVICES**

**4.1** Service rendered under this Maintenance Agreement does not include any service not explicitly stated in Schedule A, including but not limited to the following out of scope tasks:

- a) Any service that changes or is the result of a change the Covered Environment including but not limited to hardware or software installations, relocations, moves, or adding more storage or servers, service or repair made necessary by the alteration, upgrading, configuration, or modification of Covered Environment by Client, manufacturer, or any other party including Abtech.
- b) Services to any user, equipment, software, or location that is not included in Schedule A.
- c) Repair of equipment prior to becoming part of Covered Environment. All products shall require a pre-inspection by Abtech. Should products not be up to proper maintenance standards, Client may elect to employ Abtech to do the necessary work. Only when the product meets Abtech standards will it be regarded as covered under this Maintenance Agreement;
- d) Repair of damage resulting from acts of God including but not limited to flood, lightning, fire, earthquake; failure of air conditioning or humidity control; abuse, misuse or neglect; accident, transportation or moving by parties other than Abtech; physical breakage due to any other party other than Abtech working on the Covered Environment' or any causes other than normal usage;
- e) Consumable supplies including but not limited to batteries of any sort, toner, toner cartridges, ink, ink cartridges, pens, ribbons, paper goods, film and vellums, tape, tape cartridges, floppy disks, removable hard discs, and CD-ROMs;
- f) Structural, cosmetic, electrical work or cabling external to the system(s) or equipment;
- g) Relocating, installing, or upgrading system(s) or equipment; installing, upgrading, configuring, or training for software packages or programs;
- h) Non-standard configurations. Only standard systems as determined by the OEM will be maintained. Any 3rd party accessories, unless specifically listed in Schedule A, are not covered under this Maintenance Agreement. Any breakage due to non-standard, non-OEM configurations, unless specifically listed in Schedule A, is not covered under this Maintenance Agreement.
- i) Any programming, scripting, compiling, configuration, or consulting level work on software.
- j) System administration or day to day management of Client's environment
- k) Any additional services required to accommodate Client's regulatory requirements (including but not limited to HIPAA, PCI, or Sarbanes-Oxley) to bring Client and Abtech into compliance

**4.2** Client understands and agrees that any request which is beyond the scope of this Maintenance Agreement is considered a Project. Client may elect to have Abtech perform these Projects and will be invoiced at Abtech's then current consulting rates. Additional materials, supplies, and equipment may also be required which may be quoted to Client upon Client's request. Project Services and products will be provided only after Client's written acceptance of Abtech's written estimate and shall be invoiced separately from the MMC.

#### **5. FEES AND PAYMENT**

**5.1** Payment of MMC and any setup fee shall be due upon acceptance of this Maintenance Agreement. The MMC will become due and payable on the first day of each month in advance of Service rendered. If applicable, any onboarding fees will be invoiced after the onboarding of Client has been completed.

**5.2** Payment method will be Automated Clearing House (ACH) payment, or by bank or company check. Checks returned for insufficient funds shall be assessed the maximum returned check fee as limited by state law. Late payments shall accrue 1.5% interest for every day that payment is late.

**5.3** Service requiring hourly billing or travel (after any minimums are executed) shall be invoiced in 15 minute increments, rounded up to an equal segment.

**5.4** Client shall pay all applicable state and local sales and use taxes (notwithstanding their designation as excise or privilege taxes) in connection with Abtech's performance of Services to Client.

**5.5** Client understands and agrees that the MMC to provide Service for the Covered Environment was calculated in good faith and based on information given to Abtech by Client, including but not limited to: type, make, age, configuration, reliability, adherence to any Minimum Support Requirements, and quantity of Covered Hardware and Covered Software; quantity and level of sophistication in terms of technical knowledge of Authorized Users; and past service history of Covered Environment.

**5.6** As the MMC is a good faith estimate of the price Abtech will charge Client to perform Services for the Covered Environment, Abtech may, at its sole discretion and on a quarterly basis, review and adjust the MMC if the amount of labor or technical resources need to be increased to meet changes in the Covered Environment, Client's satisfaction, or Abtech's business requirements. If Client does not agree to the new MMC, Client's sole remedy is the termination of this Maintenance Agreement subject to Section 6: Term and Termination.

**5.7** Client agrees to pay Abtech for any goods delivered or service rendered regardless if such good or service provided the results Client expected. If an invoice for Services or other charges under this Maintenance Agreement, or an invoice for other products or Services provided to Client by Abtech under a different agreement with Abtech remains unpaid following five (5) days from the payment due date Abtech may suspend performance of its obligations under this Maintenance Agreement until all past due amounts are paid without liability to Client.

**5.8** Client agrees that failure to pay invoices is a material breach of the Maintenance Agreement and is subject to the termination remedies in Section 6.

**6. TERM AND TERMINATION**

**6.1** This Maintenance Agreement shall commence on the Service Start Date when accepted by Abtech. Regardless of date of acceptance of the Maintenance Agreement, Services and payment for such Services will continue for the higher of a) twelve (12) months from Service Start Date or b) any minimum term stated in Schedule A, after which time the Maintenance Agreement will automatically renew for an additional twelve (12) month term. Client must notify Abtech in writing of its intent not to renew this Maintenance Agreement in full or in part no less than sixty (60) days' notice before the end of the term.

**6.2** Notwithstanding the foregoing, either party may terminate this Maintenance Agreement or any Addendum immediately if the other party: (a) experiences a Change of Control; (b) experiences a Bankruptcy Event unless it is succeeded by a permitted assignee under this Maintenance Agreement; (c) fails to fulfill in any material respect its obligations or breaches any material term or condition under this Maintenance Agreement and does not cure such failure within thirty (30) days of receipt of written notice; (d) or is no longer in the commercial interest of either party to continue the Maintenance Agreement or any Addendum.

**6.3** Upon termination of this Maintenance Agreement and any Addenda for any reason (including the expiration of this Maintenance Agreement by its terms for the termination of the Maintenance Agreement for cause):

**6.3.1** Client shall permit the removal of all Abtech property, Services, and supplies by Abtech within fifteen (15) days from date of termination. Failure to return these items within the time allotted will result in further invoices until such time that the items are received by Abtech. Abtech is responsible for any damage in transit from Client back to Abtech. Client to put any Abtech owned equipment under Client insurance policy to cover for damage while at Client site.

**6.3.2** Client shall pay to Abtech within ten (10) days of the termination date all charges due, including, if any, liquidated damages.

**6.3.3** Abtech shall assist Client with the termination or transfer of Maintenance Services, including assisting Client in the timely transfer of Services to another designated service provider. Client agrees to pay Abtech in advance for the rendering of such assistance as a Project.

**6.4** If termination by either party results from any reason besides Abtech's failure under 6.2(c) or 6.2(d), Client agrees that it would be difficult to ascertain the damages to Abtech of such termination, and that Client shall pay Abtech all MMC for the remainder of the term and any term-related discounts as liquidated damages, and not as a penalty.

**6.5** If termination by either party results from Abtech's failure under 6.2(c) or 6.2(d) within the cure period defined in 6.2(c), Abtech agrees to refund any pre-paid amount from Client for Services minus the charges to provide such Services to Client up to the last date that Abtech provides Services to Client.

**6.6** Client may delete equipment no longer in use at any time during the Maintenance Agreement term by providing a thirty (30) day written notice to Abtech unless Client and Abtech has agreed that such equipment must be on contract for a minimal term. If Client adds the cancelled system back on support, Abtech shall first inspect the equipment to verify it is in good working condition. If it is not in good, working condition, the repair shall be considered a Project and quoted accordingly. Client may add equipment at any time during the Maintenance Agreement term by providing notice to Abtech and executing a new Addendum.

**6.7** Sections 5.2, 5.4, 5.7, and any section stating an explicit duration will survive the termination of this Maintenance Agreement.

**7. ONSITE ABTECH PROPERTY**

**7.1** In the event that Abtech owned Property (including but not limited to onsite spare parts, tools, or software) is kept at a Client site, Client agrees to take reasonable care to protect Property from loss, damage, or tampering during the term of this Maintenance Agreement. Client shall keep Property in a climate controlled, accessible location, and have Client staff familiar with Property's physical location so as to not delay Service.

**7.2** Property is, and will remain, and at all times be deemed to be the sole and exclusive property of Abtech, and Client has no rights of Property herein. Property shall not be transferred or delivered to any person or corporation without prior written consent or instruction of Abtech. Client shall be responsible for bi-annual inventory verification scheduled by Abtech and/or periodic site audits. Abtech shall create an Addendum to this Maintenance Agreement which details Property, including quantity, part numbers, and description.

**7.3** Client agrees to notify Abtech immediately upon consumption of Property, if Property "seal(s)" and/or anti-static package with seal is opened or damaged, or if any physical damage to Property is observed. Client shall be responsible for the replacement of Property that Client damages.

**7.4** Should Client fail to redeliver the Property in the condition it was received within thirty (30) days after termination of this Maintenance Agreement and/or written request of redelivery by Abtech, Client agrees to remit payment of the full value of the Property as determined by Abtech.

**8. ACCEPTANCE**

**8.1** Each party to this Maintenance Agreement represents that it is a sophisticated commercial party capable of understanding all terms of this Maintenance Agreement, that it has had the opportunity to review this Maintenance Agreement with its counsel, and that it enters this Maintenance Agreement with full knowledge of the terms of the Maintenance Agreement.

**8.2** Client acknowledges that it has read this Maintenance Agreement, the MSA, and any Addenda prior to acceptance and once are all are accepted be bound hereto. When accepted, this and each Addendum will form a separate and complete agreement between both parties and will replace any other agreements or communications regarding that subject matter. This Maintenance Agreement may not be modified or altered except by mutual written agreement and signed by both parties.

**8.3** Client agrees that this Maintenance Agreement is accepted when (a) both parties physically or digitally sign an Abtech Service Order that references the Maintenance Agreement; (b) both parties electronically sign via a purchasing portal or website an Abtech Service Order that references the Maintenance Agreement; or (c) Abtech accepts in writing a transactional document (eg. purchase order, purchase requisition, etc.) that explicitly references the Service Order or the MSA, Maintenance Agreement, and any Addenda.

## Schedule B: Professional Services Pricing

All Projects will be billed at the following rates:

<b>Additional Services Outside of Agreement</b>	<b>Abtech Business Hours</b>	<b>Outside Business Hours</b>	<b>Abtech Holidays*</b>
Helpdesk/NOC - Remote/Telephone:	\$200/hour	\$250/hour	\$300/hour
Minimum:	15 minute increments	1 Hour	1 Hour
Helpdesk/NOC – Onsite, portal to portal:	\$200/hour	\$250/hour	\$300/hour
Minimum:	2 Hours plus travel	2 Hours plus travel	2 Hours plus travel
Hardware Support - Onsite, portal to portal:	\$200/hour	\$250/hour	\$300/hour
Minimum:	2 Hours plus travel	2 Hours plus travel	2 Hours plus travel
Consultant/DBA – Remote/Telephone:	\$250/hour	\$300/hour	\$350/hour
Minimum:	1 Hour	1 Hour	1 Hour
Consultant - Onsite, portal to portal:	\$250/hour	\$300/hour	\$350/hour
Minimum:	2 Hours plus travel	2 Hours plus travel	2 Hours plus travel

Some remote or onsite Projects require Abtech to use a partner. Projects using a partner are not subject to the same pricing and minimums and will be quoted individually.

All Projects are scheduled for commencement of work two (2) days after the receipt of an executed agreement. Uplifts to response level are available at \$750 for next business day or \$1,250 for same day service.

\*Abtech Observed Holidays schedule for current year available upon request.