

Abtech Hosting Agreement

This ABTECH HOSTING AGREEMENT is made between Abtech Technologies, Inc. and any of Abtech's subsidiaries, DBAs, agents, successors, or parent companies ("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 Abtech Hosting Agreement and any Addenda (collectively "Hosting 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 Hosting Agreement, the Abtech Master Services Agreement ("MSA").

1. DEFINITIONS

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

- **Authorized Contract Administrator ("Administrator"):** Client designated administrator who may make changes to this Hosting Agreement or request, authorize, and commit Client to projects outside of the scope of this Hosting Agreement.
- **Client Environment:** Any unique intellectual property, including but not limited to operating systems, databases, applications, updates, tools, diagnostics, firmware, patches, fixes, and documentation thereof which is owned by Client or for which Client is the licensee and is accepted by Abtech to load on Hosted Environment to provide Hosting Services.
- **Hosting Services:** The provisioning of hardware and environmentals (space, power, and cooling in the Abtech datacenter) on which Client may operate Client owned applications, data, and computer processing for its own internal use.
- **Hosting Services Technology:** Technology such as software, hardware, appliances, operating systems, firmware, patches, fixes, documentation, databases, updates, tools, diagnostics, cloud services, or hosted hardware that is owned or licensed by either Abtech or Abtech technology partners that Client is granted a right to use for the duration of this Hosting Agreement.
- **Monthly Management Charge (MMC):** Monthly fee paid to Abtech by Client in consideration of Hosting Services and detailed in Schedule A.
- **Onboarding Document:** A detailed document produced by Abtech that itemizes hardware, software, schedules for service delivery (including but not limited to patch, downtime, and backup windows), site access data, escalation plan, etc. Once completed, the Onboarding Document will become part of this Hosting Agreement and will supersede the Schedule B to define the combined Client Environment and Hosting Services Technology.
- **Period of Maintenance:** The designated time during the day in which Authorized Users shall make Service Requests and within which Abtech shall deliver Hosting Services.
- **Project:** Any service beyond that detailed in Schedule A: including but not limited to backup validations and restoration of data. Projects are not part of the Hosting Services and are invoiced to Client separately.
- **Service Request:** A request made by an Authorized User to Abtech for the delivery of Hosting Services. Such Service Requests shall be made through the Abtech toll free service request telephone number, via email sent to the Abtech Helpdesk email account, or via the Abtech Client Portal.

2. SERVICE DESCRIPTION

2.1 In consideration of Client's payment of the Monthly Management Charge, Abtech shall provide and perform the Hosting Services on the Hosted Services Technology listed in Schedule B.

3. SUITABILITY OF HOSTED ENVIRONMENT

3.1 In order for Client Environment to qualify Hosting Services, some minimum standards may apply. Such standards shall be discussed before and during Onboarding. Items in the Client 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 Hosting Services on a good faith basis or not.

3.2 Should the Client Environment not meet the minimum standards, all Hosting 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 Hosting Services to any item of the Client Environment that does not meet the minimum standards. Abtech's may be required to, and without breach, delay in providing Hosting Services on any item in the Client Environment that does not meet these minimum standards until such minimum standards are met and after which Hosting Services on those items will resume.

3.3 Client shall provide Abtech full and free access to Client Environment both physically and remotely. Client agrees that any restrictions regarding full and free access to Client Environment or installation of managed service technology may hinder Abtech's ability to perform Hosting Services and that any Hosting Services provided to Client 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 Hosting Services on any part of the Client Environment with restricted access until such access is given and after which Hosting Service on those items will resume. Abtech shall make no guarantees regarding the ability of Abtech's engineers or technologies to back up any part of the Client Environment that is considered to be restricted.

4. EXCLUDED SERVICES

4.1 Service rendered under this Hosting 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 is the result of a change of the Client 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 Client 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) 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;
- d) Relocating, installing, or upgrading system(s) or equipment not owned or licensed by Abtech; installing, upgrading, configuring, or training for software packages or programs;
- e) 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 Hosting Agreement. Any breakage due to non-standard, non-OEM configurations, unless specifically listed in Schedule A, is not covered under this Hosting Agreement.
- f) Any programming, scripting, compiling, configuration, or consulting level work on software.
- g) System administration or day to day management of Client's environment
- h) 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 Hosting 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 Hosting Agreement. The MMC will become due and payable on the first day of each month in advance of Hosting 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 Services 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 any services to Client.

5.5 Client understands and agrees that the MMC to provide Hosting Services for the Client 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 Hosting Services Technology to accommodate Client Environment; and quantity and level of sophistication in terms of technical knowledge of Authorized Users..

5.6 As the MMC is a good faith estimate of the price Abtech will charge Client to provide Hosting Services for the Client 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 Client 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 Hosting 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 Hosting Services or other charges under this Hosting Agreement, or an invoice for other products or Hosting 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 Hosting 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 Hosting Agreement and is subject to the termination remedies in Section 6.

6. TERM AND TERMINATION

6.1 This Hosting Agreement shall commence on the Service Start Date when accepted by Abtech. Regardless of date of the execution of the Hosting Agreement, Hosting Services and payment for such Hosting Services will continue for a) the higher of twelve (12) months from Service Start Date or b) any minimum term stated in Schedule C, after which time the Hosting Agreement will automatically renew for an additional twelve (12) month term. Client must notify Abtech in writing of its intent not to renew this Hosting 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 Hosting 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 Hosting Agreement; (c) fails to fulfill in any material respect its obligations or breaches any material term or condition under this Hosting 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 Abtech to continue the Hosting Agreement or any Addendum.

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

6.3.1 Abtech shall permit the removal of all Client property, Client Environment, and supplies from Abtech within fifteen (15) days from date of termination. Failure to remove these items within the time allotted will result in further invoices until such time that the items are removed by Client. Client is responsible for any damage in transit from Abtech back to Client.

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 Hosting Services, including assisting Client in the timely transfer of Hosting 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-based 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 Hosting Services minus the charges to provide such Hosting Services to Client up to the last date that Abtech provides Hosting Services to Client.

6.6 Client may decrease the amount of Hosting Services needed to support Client Environment at any time after the initial term of the Hosting Agreement ends by providing a thirty (30) day written notice to Abtech prior to renewal Client may add Hosting Services at any time during the Hosting Agreement term by providing notice to Abtech and signing 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 Hosting Agreement.

7. PROVISION OF SERVICE AND TECHNOLOGY

7.1 Subject to this Hosting Agreement, Abtech agrees to provide Client limited access to Hosting Services Technology to facilitate the Hosting Services. Client acknowledges and agrees that Client has a non-exclusive, non-transferable license to use Hosting Services Technology during the term of this Agreement. Abtech and its technology partners shall retain all rights of ownership of the Hosting Services Technology, all copyrights and other intellectual property, and all modifications and changes to the technology. In no event shall title to all or any part of the Hosting Services Technology pass to the Client and all such Hosting Services Technology shall remain the exclusive property of Abtech and/or its technology partners. Any repair or replacement of Hosting Services Technology will be the responsibility of the Abtech.

7.2 Client is responsible for any communications costs associated with the connection between Client's site and Abtech's or Abtech's partner's facilities. Client shall implement reasonable, industry standard security and environmental precautions for the Client Environment and Hosting Services Technology to ensure a high level of availability, data protection, and recovery.

7.3 It shall be the primary responsibility of Client to ensure the security of their system, data, programs, and files. Client shall implement reasonable, industry standard security and environmental precautions for the Client Environment and Hosting Services Technology to ensure a high level of availability, data protection, and recovery. Transfer of Client data is across the public internet and encryption is highly recommended for security. Encryption, though not enabled by default, is available through the Hosting Service and may be purchased and installed during Onboarding as a Project. The implementation of encryption in Client's overall security strategy and its subsequent management is the responsibility of Client. The safeguarding of encryption keys are the responsibility of Client and Abtech cannot recover lost encryption keys. Due to the inherent nature of encryption technology, if Client loses encryption keys, data will not be recoverable. A reliable and verified system backup procedure shall be the responsibility of Client.

7.4 Client understands that Client Environment when hosted on Hosting Services Technology may perform or function differently than when hosted at Client site. It is the responsibility of Client to verify during a scheduled test that the functionality of the Client Environment provides the basic service needed for Client to perform basic day to day activities during a Disaster Event and reconfigure accordingly.

7.5 Hosting Services and Hosting Services Technology are for Client's sole internal business use under the terms of this Hosting Agreement. Client shall not and shall not let others modify, customize, reverse engineer, reverse assemble, or reverse compile Hosting Services Technology.

7.6 Client acknowledges and agrees that Client shall not place any data on Hosting Services Technology that a) infringes the intellectual property rights or privacy right of any third party, b) violates any law, statute, ordinance, or regulation, c) is defamatory, libelous, unlawfully threatening or harassing, d) is obscene, e) contains any malicious software, code, or programming routines including but not limited to: Trojan horses, malware, viruses, spyware, root kits, bots, spam, worms, or any other such technology that may damage, interfere, intercept, or expropriate any system, data, or personal information.

7.7 Abtech may disclose to third parties any Client data in which Abtech has a good faith belief that disclosure is necessary to (a) comply with a law, regulation, or compulsory legal request; (b) protect the safety of any person from death or serious bodily injury; (c) protect the property rights of Abtech or our Hosting Service Technology Partners; or (d) prevent fraud or abuse. Abtech shall notify Client of any such request prior to releasing Client information.

7.8 Client is responsible for notifying Abtech of any regulations regarding the data stored (HIPAA, PCI, Sarbanes-Oxley, etc).

7.9 The adherence of any application and operating environment license agreements, especially as they relate to the Hosting, replicated, or hosted environment provisions of the software OEM, including any fees owed to the OEM, are the responsibility of the Client. In the event that fees from the OEM are invoiced to Abtech by the OEM because of Abtech's ownership of Hosting Services Technology, these fees will be invoiced to Client at current OEM rates.

7.10 Client agrees that violation of this Section 7 is a material breach of the Hosting Agreement and subject to the termination remedies of Section 6. Client agrees to defend, indemnify and hold Abtech and its Hosting Service Technology partners harmless against any third party action or fines that arise from Client's violation of this Section 7. Section 7.10 shall survive termination of this Hosting Agreement.

8. ACCEPTANCE

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

8.2 Client acknowledges that it has read this Hosting Agreement, the MSA, and any Addenda prior to acceptance and once 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 Hosting Agreement may not be modified or altered except by mutual written agreement and signed by both parties.

8.3 Client agrees that this Hosting Agreement is accepted when (a) both parties physically or digitally sign an Abtech Service Order that references the Hosting Agreement; (b) both parties electronically sign via a purchasing portal or website an Abtech Service Order that references the Hosting 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, Hosting Agreement, and any Addenda.