

ABTECH MASTER SERVICE AGREEMENT

This MASTER SERVICE AGREEMENT ("Agreement") is between Abtech Technologies, Inc. and any of Abtech's subsidiaries, DBAs, agents, successors, or parent companies ("Abtech") and Client and its affiliates, subsidiaries, DBAs, divisions, branches, departments, agents, successors, or parent companies thereof ("Client") to establish the general terms and conditions that govern the service relationship between both parties.

Upon mutual acceptance, Client and Abtech may add Addenda, Amendments, Exhibits, additional Agreements, and Schedules (each an "Addendum" and collectively "Addenda") that define more specific services and additional terms and conditions as Client and Abtech agree to. Each Addendum once duly accepted by the parties shall automatically (whether or not explicitly stated) incorporate by reference, as if fully set forth therein as a full and binding part of the Addendum, all the terms and conditions of this Agreement.

1. DEFINITIONS

1.1 Bankruptcy Event means a party: (i) ceases conducting its business in the normal course; (ii) becomes insolvent or becomes unable to meet its obligations as they become due; (iii) makes a general assignment for the benefit of its creditors; (iv) petitions, applies for, or suffers or permits with or without its consent the appointment of a custodian, receiver, trustee in bankruptcy or similar officer for all or any substantial part of its business or assets; or (v) avails itself or becomes subject to any proceeding under the U.S. Bankruptcy Code or any similar state, federal or foreign law relating to bankruptcy, insolvency, reorganization, receivership, arrangement or adjustment of debts, dissolution or liquidation, if the proceeding is not dismissed within sixty (60) days after it commences.

1.2 Change of Control means a party sells more than fifty (50) percent of its voting stock or a substantial part of the operating assets relating to the activities contemplated in this Agreement in one transaction or a series of related transactions, other than to an Affiliate of that party. Change of Control excludes the transfer of Abtech or Client to heirs upon the death of the shareholder(s).

1.3 Documentation means help files, written instruction manuals, or reference materials supplied by either Abtech, Client, or another third party who owns the Intellectual Property Rights of such Documentation which is licensed to either Client or Abtech for use to assist in providing Service to Client.

1.4 Intellectual Property Rights means all rights of a person or entity in, to, or arising out of: (i) any patent or any application therefore and any and all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (ii) trademarks; (iii) trade secrets; (iv) copyrights, copyright registrations, mask works, mask work registrations, and applications therefore recognized by the United States or any country in the world.

1.5 Intellectual Property means any copyrighted material, including but not limited to any and all computer software and code, assemblers, compilers, operating environments, utilities, passcodes, fixes, diagnostics, firmware, tools, source code (but only if source code is specifically licensed under this Agreement), object code or other executable code including associated data files, data (including image and sound data), design tools, user interfaces, templates, menus, buttons and icons, and related Documentation.

2. NATURE OF OUR RELATIONSHIP

2.1 Except as detailed in section 4.5, the parties are acting herein and shall remain as independent contractors and nothing contained herein shall be construed to create a partnership, joint venture, or agency relationship between the parties. Neither party shall have the authority to bind, create, or assume any legal obligations for other party in any respect. Neither party is or will claim itself to be an agent, legal representative, partner, joint venture participant, franchisee or employee of the other party. Each party is responsible for the direction and control of its own employees. Each party will pay all applicable payroll taxes, employee benefits, insurance requirements or similar obligations relating to its own employees.

3. CONFIDENTIAL INFORMATION

Confidential Information includes, but is not limited to, the terms of this Agreement, all customer names, Documentation, strategies, pricing, information, data, drawings, benchmark tests, business practices, interfaces, specifications, trade secrets, source code (if any is provided) or any other proprietary information supplied by one party to the other and marked as "confidential information" on the documentation, accompanying transactional document, letters, or email at the time it is provided or within a reasonable time afterward.

3.1 Both parties acknowledge that the other party's Confidential Information constitutes valuable proprietary information and trade secrets and each party agrees that the other party shall use, commercialize or disclose the other's Confidential Information only as permitted by this Agreement. Each party will not allow the other party's Confidential Information to be disclosed, directly or indirectly, to any unauthorized third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the other's Confidential Information from unauthorized use and disclosure at least to the same extent it protects its own Confidential Information. The foregoing restrictions do not apply to Confidential Information that is: (i) at the time of disclosure is already in the public domain (ii) made publicly available through no fault of the receiving party, (iii) obtained by the receiving party from third parties without restrictions on disclosure, (iv) independently developed by the receiving party without reference to the other's Confidential Information. In the event a receiving party is required to disclose by order of a court or other governmental entity with competent jurisdiction the Confidential Information of the disclosing party, the receiving party will prior to any disclosure notify the disclosing party in writing of any such order in order to permit the disclosing party a meaningful opportunity to limit or prevent disclosure of its Confidential Information and any Confidential Information so disclosed shall be only to the extent minimally necessary to comply with such order and shall remain confidential.

3.2 Each party shall protect the other party's Confidential Information of a technical nature (including source code, if any) in perpetuity and each party shall protect business, financial and other non-technical Confidential Information during the term of this Agreement and for three (3) years thereafter.

3.3 In the event of actual or threatened breach of the provisions of this Section (including for these purposes, the use of the Internal Reference Copy or other Intellectual Property beyond its permitted use), in addition to any other remedies available at law or in equity, the aggrieved party will be entitled to immediate injunctive and other equitable relief, without necessity of posting bond or showing actual damage or irreparable harm.

4. INTELLECTUAL PROPERTY NON-INFRINGEMENT WARRANTY & INDEMNITY

4.1 Each party represents and warrants, to the best of its knowledge and belief and solely for the benefit of the other party, that any Intellectual Property or other Confidential Information provided to the other party will not infringe the Intellectual Property Rights of any third party in the United States or any country that is a member of the Berne Convention at the time of the alleged infringement. Client represents and warrants that they are the legal owner or lawful licensee of the Intellectual Property that Abtech performs services on or with and that all systems are legally configured and licensed. Client represents and warrants that they have the legal right to allow Abtech to use any Intellectual Property to perform the contracted services. Abtech shall not be held responsible or liable for omissions or errors in any Documentation or Intellectual Property produced by the Client or other parties.

4.2 Each party will defend, indemnify and hold harmless the other party from any claim arising from that party's material breach of the non-infringement warranty described in Section 4.1 above. If given prompt notice of such a claim and the ability to control its defense, the indemnifying party will pay any damages, costs, expenses (including reasonable legal fees) and settlements entered into with its approval in satisfaction of the claim. Each party will cooperate with the other party in any such proceedings. Neither party is obligated to indemnify the other with respect to claims resulting from any

modifications to Intellectual Property by employees and consultants of the party seeking indemnification. If indemnifying party does not defend the claim in a timely manner, the indemnified party shall have the full rights to defend, pay, or settle such claim on indemnifying party's behalf and indemnifying party shall pay any judgment or settlement of the claim and reimburse indemnified party for its costs and expenses (including, but not limited to reasonable attorneys' fees and other legal fees) in connection with the claim.

4.3 Under no circumstances will Abtech agree to supply, distribute, procure, download or otherwise obtain on behalf of Client any Intellectual Property owned by any third party. Client agrees, upon request, to provide proof of valid ownership of license for any Intellectual Property that any of Abtech's employees, agents or representatives are requested to load onto Client's computer system in the performance of service to Client. Abtech's employees, agents and representatives will not load or reload any unauthorized Intellectual Property. If Client has instructed Abtech to load Client licensed Intellectual Property of any third party, with the intent of parallel use of transferred Intellectual Property during the transition of one system to another, permission must be granted by the Original Equipment Manufacturer ("OEM") and all OEM Intellectual Property policies must be respected.

4.4 If service requires Intellectual Property that is not owned or licensed by Client, Client agrees to procure the right to use of said Intellectual Property prior to Abtech performing services either on or with it. If Client elects to not procure the use said Intellectual Property, then Client agrees that Abtech has fulfilled the service delivery obligation of this Agreement or Addendum to Client's satisfaction, regardless of the outcome of the service call.

4.5 In order to fulfill the Agreement with Client, Client agrees to allow Abtech, its employees, agents, and/or contractors, to act on Client's behalf and solely for Client's benefit, to use third party Intellectual Property that the Client has legal access to and is licensed to use. Client agrees to allow Abtech to use Client's third party Intellectual Property to perform service on Client owned or licensed equipment or Intellectual Property, including but not limited to downloading from a Licensor's electronic distribution facility for Intellectual Property with Client credentials, installing, executing, updating, patching, fixing, troubleshooting, or repairing equipment or Intellectual Property. Client agrees to indemnify Abtech and not hold Abtech liable in the event of any claim of Intellectual Property or license infringement made by the original manufacturer or other third party.

4.6 Client agrees to comply with any third party agreement, including but not limited to end user license agreements ("EULA"), service agreements, terms and conditions, etc. of any technology that Abtech performs services on. Such agreements are executed between Client and manufacturer and as such Abtech shall not be a party to those agreements. Client is solely responsible for any payments, fees, or renewals owed to the manufacturer. In the event that Abtech as a reseller of the manufacturer or Client is using Abtech infrastructure as a service which generate manufacturer fees, Abtech's sole responsibility will be to invoice those fees and pay the manufacturer.

5. GOOD FAITH AND WARRANTY

5.1 Abtech agrees to use good faith efforts based on industry standards and practices to complete a service or deliver goods to as close to Client's satisfaction as is technically reasonable and without undue delay.

5.2 Except for services delivered directly by Abtech employees, Client understands that Abtech is not the manufacturer of resold products and the only warranties offered are those of the manufacturer, not Abtech. Warranty remedies offered by manufacturer are Client's exclusive remedies. ABTECH HEREBY EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT ALLOWED BY LAW ALL WARRANTIES EXPRESSED OR IMPLIED, RELATED TO THIRD-PARTY VENDOR PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER WARRANTY.

5.3 Client understands and agrees that due to the inherently complicated nature of computing environments, limitations and compatibility of hardware and software, the shared nature of all service with other clients, or variables beyond the control of Abtech, that Abtech cannot warrant or guarantee availability or that Abtech's recommendations, solutions, efforts, availability, or any service may produce results desired by Client or achieve an intended goal and as such are provided on an "as is" basis. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, ABTECH HEREBY EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT ALLOWED BY LAW ALL WARRANTIES EXPRESSED OR IMPLIED, RELATED TO RECOMMENDATIONS, SOLUTIONS, EFFORTS, AVAILABILITY, ACCESS, OR SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, ABTECH DOES NOT WARRANT THE SERVICES, EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, EQUIPMENT OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.

6. LIMITATION OF LIABILITY

6.1 Except for Abtech's non-infringement indemnity described in this Agreement, Abtech's liability to Client for any losses or damages, direct or indirect, arising out of this Agreement, shall not in any event exceed the aggregate amounts paid by Client pursuant to this Agreement during the forty-five (45) day period preceding the month in which Client's loss or damage is incurred. Under no circumstances shall Abtech be liable for any losses relating to the services, products, or the actions of Abtech in connection with this Agreement that was not brought to its attention by you in writing within forty-five (45) days of Client's discovery of its occurrence. No claim for losses or other relief arising out of this may be filed by Client more than three (3) months following its occurrence. This limitation of liability shall not apply to the indemnity set forth in Section 7 ("Mutual Indemnification").

6.2 Except as otherwise provided for herein, Abtech and its shareholders, directors, officers, and employees shall not be liable to Client or any other person for any claim of damage arising, directly or indirectly from the furnishing of services or products pursuant to this Agreement or from interruption or loss of use thereof, or from any other cause. Under no circumstances shall Abtech and its shareholders, directors, officers, and employees be liable for any indirect, punitive, special, exemplary, consequential, or incidental damages, including but not limited to: loss of real or anticipated profits, loss of business use, loss of data, or other economic loss in connection with the services to be rendered hereunder, even if the parties acknowledge the possibility of such damages.

6.3 Abtech shall not be considered in default hereunder due to any failure in its performance of this Agreement should such failure arise out of causes beyond its control and without its fault or gross negligence. Such causes shall include but are not limited to as a result of Acts of God (including fire, flood, pandemic, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or degradation of electricity, communication lines or telephone service.

7. MUTUAL INDEMNIFICATION

7.1 Abtech shall indemnify and hold Client, and the respective employees and agents of any of them, harmless against any and all third party claims, liabilities, losses, damages and causes of action relating to personal injury, death or property damage arising out of the intentional or grossly negligent acts or omissions of Abtech in the performance or nonperformance by Abtech of this Agreement; provided, however, that Abtech shall not be responsible for injury attributable to the acts or omissions of Client, or its shareholders, directors, officers, and employees or of other subscription holders.

7.2 Client shall indemnify and hold Abtech, and Abtech's shareholders, directors, officers, and employees, harmless against any and all claims, liabilities, losses, damages, and causes of action relating to personal injury, death, or property damage arising out of the intentional or negligent acts or omissions of Client in the performance or nonperformance by Client of this Agreement; provided, however, that Client shall not be responsible for injury attributable to the acts or omissions of Abtech, its shareholders, directors, officers, and employees .

8. SECURITY AND DATA

8.1 Abtech shall make all good faith efforts to safeguard and protect equipment, programs, Documentation, and files from damage, loss, or corruption while performing all services but cannot warrant or guarantee complete security. It shall be the responsibility of Client to ensure the security of their systems, data, programs, and files including but not limited to the proper configuration and maintenance of physical, administrative, and technical safeguards as they relate to access. In no event will Abtech be responsible, nor will Abtech have any liability, for physical, administrative, or technical controls related to the products, systems, networks, devices, facilities, or information technology that Client partially or completely controls, including but not limited to network connectivity and internet connectivity. Abtech uses physical, technical and administrative safeguards designed to secure products, services, and content under Abtech's control against accidental or unauthorized loss, access, or disclosure. However, no password-protected system of data storage and retrieval can be made entirely impenetrable and Client acknowledges and agrees that despite the measures employed, Services are not guaranteed against all security threats or other vulnerabilities and Client uses Services at Client's own risk.

8.2 A reliable and verified system backup and disaster recovery procedure which restores data at the recovery point and within the recovery time acceptable to Client shall be the responsibility of Client. Client shall have at a minimum, two (2) verified current system backups available prior to Abtech performing any task on Client Environment or Intellectual Property, or the installation of any hardware or software provided to Client by Abtech, regardless if Abtech personnel are involved in the services to implement such hardware or software or not. Transfer of Client data may be across the public internet and encryption is highly recommended for security.

8.3 Abtech will not be responsible for loss, inaccessibility, or exposure of data under any circumstance, including but not limited to damage, total or partial loss, theft, exposure, ransom, corruption, or inaccuracy. If access to data is temporarily disrupted due to the gross negligence or willful misconduct of Abtech, Abtech shall, at its own expense and as Client's sole remedy, restore Client data from Client's verified current system backup.

9. TERM AND TERMINATION

9.1 When accepted by Abtech this Agreement will commence on the Service Start Date specified in the document that incorporates this Agreement by reference and will continue until terminated by either party in accordance with Sections 9.1 and 9.2. This Agreement will survive the termination of referring document but may be terminated only after the termination of all Addenda under the termination clauses specific to each individual Addendum. If all such Addenda have been terminated and no Addenda remain in force, then this Agreement may be terminated by either party with sixty (60) days' notice. Sections 3, 4, 5, 6, 7, 8, 11, 12, 13.1, and 13.4, and any section stating an explicit duration will survive the termination of this Agreement.

9.2 Notwithstanding the foregoing, either party may terminate this Agreement or Addenda if the other party: (i) experiences a Change of Control; (ii) experiences a Bankruptcy Event; or (iii) is in material breach of the Agreement and fails to correct the breach or to commence corrective action reasonably acceptable to the aggrieved party and proceed with due diligence to completion within thirty (30) days of written notification.

10. NON-ASSIGNMENT

10.1 This Agreement or any rights under this Agreement may not be assigned or otherwise transferred by Client, directly or indirectly, in whole or in part, whether de facto, voluntary or by operation of law, or otherwise, including by way of transfer or sale of a controlling interest in Client's stock or voting securities, sale of assets, transfer or expansion of Client's computer operations or beneficial use of Intellectual Property, or by merger, reorganization, consolidation or joint venture or the like, or to an affiliate or to any third party, without the prior written consent of Abtech. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective permitted successors and assigns. Abtech is at all times free to assign its obligations under this Agreement upon written notice. Abtech may assign without Client's consent any revenue stream derived from this Agreement.

11. NON-SOLICITATION AND NO HIRING

11.1 Each party acknowledges and agrees that the employees and key consultants of the other party are a valuable asset to such other party and are difficult and costly to replace. Accordingly, during the term of this Agreement and for two (2) years thereafter, neither party shall, either directly or indirectly, without the other party's prior written consent, hire, solicit or attempt to solicit the services as an employee or consultant of such other party with whom it became acquainted as a result of the relationship under this Agreement, with the express acknowledgment that enforcement will not restrain employees future ability to earn a living. The foregoing restriction on solicitation shall not preclude either party from placing advertisements for employment in publications of general circulation.

11.2 In the event of a violation of any of the provisions of this Section 11 by Client, the parties agree that it would be impractical or extremely difficult to ascertain the actual damages suffered by Abtech. The parties having made diligent but unsuccessful attempts to ascertain the actual damages Abtech would suffer in the event Client violated any of the provisions of this Section 11 agree that a reasonable estimate of actual damages shall be computed as follows:

11.3 Client shall pay to Abtech a sum equal to one and one-half (1 ½) times the annual salary or compensation that would have been paid to any person solicited or offered employment in violation of this Section 11.

11.4 Client shall pay to Abtech a sum equal to three (3) times the annual salary or compensation that would have been paid to any person solicited or offered employment in violation of this Section 11 where such person accepts said employment.

12. GOVERNING LAW & DISPUTE RESOLUTION

12.1 **Governing Law.** This Agreement shall be governed by the laws of the State of California, without giving effect to principles of conflicts of law thereof. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.2 **Jurisdiction and Arbitration.** Any dispute, controversy or claim arising out of or under this Agreement shall be submitted by the parties to conclusive and binding arbitration in San Diego, California in accordance with the rules of American Arbitration Association. The decision of such arbitration shall be final for all purposes and may be enforced in an appropriate court in accordance with California law. Such claims shall be submitted to final and binding arbitration within one (1) year after the claim arose or be barred. For these purposes, a claim for breach of confidentiality, infringement of a party's Intellectual Property Rights or violation of any Intellectual Property license restrictions imposed by this Agreement will be deemed to arise on the date that an executive officer of the aggrieved party discovers or should have reasonably discovered the events giving rise to the claim. Arbitration will be conducted according to American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures in effect at the time of filing for arbitration. The parties will cooperate with American Arbitration Association and each other in selecting a single arbitrator who shall be a former judge

with substantial experience in resolving business disputes with particular experience in resolving disputes involving computer services. The arbitrator shall not be empowered to award damages in excess of, or inconsistent with, the liability limitations contained in this Agreement. Both parties will share the costs and fees of the arbitrators equally. Each party will bear its own costs and expenses of the proceeding. Each party agrees to arbitrate any issue concerning the types of claims that are subject to arbitration. This Agreement involves interstate commerce subject to jurisdiction under the Arbitration Act. This Section may be enforced by any court of competent jurisdiction. This Section shall not preclude either party from seeking equitable and/or legal relief in any court of competent jurisdiction to enforce each party's Intellectual Property Rights (including confidentiality restrictions) or any Intellectual Property license "scope of use" provisions of this Agreement. Notwithstanding the foregoing, any dispute, controversy, or claim arising out of or under this Agreement under \$15,000 shall be submitted by the parties to a court of competent jurisdiction in San Diego County, California.

13. MISCELLANEOUS

13.1 Severability. If any term, condition, or provision in this Agreement is determined by a court or other tribunal of competent jurisdiction to be invalid, unlawful or unenforceable, it is both parties' intentions that the offending provision be conformed to the minimum requirements of the law while reasonably preserving both parties' original intent. In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be severed from this Agreement. The validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

13.2 Entire Agreement. When accepted by each party's authorized representative, this Agreement and each Addendum will form a separate and complete agreement between both parties. This Agreement and each Addendum will contain the entire and exclusive agreement and supersede all previous communications, representations, understandings and agreements, either oral or written, between both parties with respect to that subject matter. This Agreement supersedes, and cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind except for any Addenda executed pursuant and consistent with this Agreement. Any extraneous communications, including web site materials, are specifically excluded from this Agreement.

13.3 Standard Terms & Amendment. Client may issue transactional documents including but not limited to purchase orders, purchase agreements, or invoices however any terms or conditions contained in those documents will not supplement, waive, modify, or contradict any provision of this Agreement. Any amendment or modification of any provision of this Agreement must be in writing and executed by each party's authorized representative. Any attempt at modification that does not adhere strictly to that standard is null and void. Notwithstanding the foregoing, Abtech reserves the right to amend or replace its support policies, price lists, product release dates or other terms or conditions of this Agreement prospectively upon reasonable advance notice. If Client disagrees with any such amendment proposed by Abtech, Client may, as its exclusive remedy, terminate this Agreement upon written notice.

13.4 Waiver. Waiver of any provision of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Waiver of any provision hereof does not implicitly waive any other provision hereof. Failure, neglect or delay by a party to enforce any provision of this Agreement or its rights or remedies at any time, will not be construed or be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement. Waiver of any provision shall not preclude a party from enforcing the provision on future occasions.

13.5 Communications. Client agrees to allow Abtech to contact Client for reasons including but not limited quality control, surveys, promotions, specials, notification of service interruption, announcements, or general follow up either by telephone, fax, email, or onsite meetings. Abtech shall remove Client from any email list upon Client's request.

13.6 Public Announcements. Both parties must mutually agree on reasonable public announcements regarding this relationship

14. ACCEPTANCE

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

14.2 Client agrees that it has read this Agreement and any Addenda prior to acceptance and once all are accepted be bound hereto.

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