

## ***Abtech Terms and Conditions of Sale of Hardware, Software, and Non-Recurring Services***

The party purchasing goods or services based in whole or in part on this quotation or any third party acting on behalf of such party including but not limited to agents, contractors, lessors, partners, affiliates, or subsidiaries ("Client") hereby unconditionally agrees to, accepts, and will be bound by these Terms and Conditions of Sale for Hardware, Software, and Non-Recurring Services ("Agreement") by placing an order with Abtech Technologies, Inc. or any of its subsidiaries, DBAs, agents, successors, or parent companies ("Abtech").

### **1. OWNERSHIP AND RETURNS**

1.1 Abtech operates as an authorized reseller of hardware, software, and related products from some original equipment manufacturers ("OEMs") including Dell Technologies. Abtech's ability to fulfill Client orders is dependent on the availability, pricing, and terms imposed by OEM suppliers, which are outside of Abtech's control. The pricing, availability, and delivery terms in any Abtech quotation reflect OEM conditions at the time of quotation and are subject to change as described in these Terms and Conditions. Client acknowledges this supply chain dependency and agrees that Abtech's obligations to Client are correspondingly conditioned on Abtech's ability to procure ordered goods from its OEM suppliers.

1.2 Title, ownership, or right to license equipment or software sold, rented, or leased to Client transfers from Abtech to Client when invoice (or final invoice if Abtech lease buyout or other Abtech multi-payment plan) is paid in full by either Client or Client authorized third party (eg. parent company, private equity company, or leasing company). Price quoted based on a cash purchase and does not include shipping and handling charges.

1.3 Security Interest. Client hereby grants to Abtech a purchase-money security interest in all goods, equipment, and other personal property sold or delivered by Abtech to Client under these Terms and any related purchase orders (the 'Collateral'), together with all proceeds thereof, to secure payment and performance of all obligations of Client to Abtech arising now or hereafter under these Terms (including all invoices, interest, fees, and costs of collection). Client authorizes Abtech to file one or more financing statements, amendments, and continuations describing the Collateral, and agrees to execute any additional documents reasonably requested by Client to evidence, perfect, and maintain Abtech's security interest. Client shall keep the Collateral identifiable, in good condition, fully insured, and shall not sell, encumber, or transfer the Collateral outside the ordinary course of business until all amounts owed to Abtech with respect to such Collateral are paid in full.

1.4 Cancellations: All sales are final. Once a purchase order is accepted by Abtech, Client may not cancel, modify, or rescind the order for any reason, including but not limited to changes in Client's business circumstances, budget, or requirements. Abtech may choose not to accept an order, or may cancel an existing accepted order, in the following circumstances only: (a) Abtech's suppliers are unable to supply the ordered goods or services at any quantity, price, delivery schedule, or condition; (b) a pricing error material to the transaction was made by Abtech or supplier in preparing the quotation; or (c) Client requests a change to Abtech's planned delivery date that Abtech determines, in its sole discretion, materially affects Abtech's ability to procure or deliver the ordered products. In the event Abtech cancels an accepted order pursuant to this Section, Abtech's sole obligation to Client shall be a full refund of any amounts paid by Client for the cancelled order.

1.5 Replacements: Client may return defective products within 30 days of order with an approved RMA number. To meet the RMA requirements of our suppliers, returned equipment must be received by Abtech within seven (7) days after Client receives replacement equipment otherwise Client will be charged a 100% restocking fee. RMA for defective product with replacement: Replacement equipment will be shipped at the same level of delivery service priority as the original order. Faster delivery service may be available at an additional charge.

1.6 Notwithstanding the foregoing, any software or other "as a Service"-style subscription service provided by a third party and resold by Abtech will be assessed monthly by Abtech and charged to Client as used and as appropriate (including but not limited to per: user, MB/GB/TB, Mb/Gb, tier, transaction, license, bandwidth, increment of time, etc.). The resulting additional charges will be added to the next invoice(s) for as long as that level of use persists. Once deployed, subscription software or "as a Service"-style subscriptions may not be decreased or canceled until the longer of the end of the term or manufacturer policy. Non-renewal of any "as a Service" subscription will be subject to the termination policies of the OEM, including but not limited to loss of access to service or irreversible loss of data.

1.7 Price Adjustments Due to Supplier or Market Changes.

(a) Triggering Events. Notwithstanding the pricing stated in any accepted quotation or purchase order, Abtech reserves the right to adjust the price of ordered goods or services after order acceptance if Abtech's cost of goods or services increases due to factors outside of Abtech's reasonable control, including but not limited to: (i) tariffs, duties, sanctions, or other charges imposed or increased by any governmental authority after the date of quotation; (ii) increases in Abtech's supplier or

manufacturer pricing after order acceptance; (iii) supply chain disruptions, material or component shortages, or logistics cost increases; or (iv) currency fluctuation or force majeure events as described in Section 7.3.

(b) Notice. In the event of a price adjustment under this Section, Abtech will provide Client with written notice of the revised pricing as promptly as practicable after Abtech becomes aware of the triggering event.

(c) Client's Obligation. Client acknowledges and agrees that its purchase order, once accepted by Abtech, constitutes a binding obligation to purchase the ordered goods or services. In the event of a price adjustment under this Section, Client remains obligated to purchase the goods or services at the adjusted price stated in Abtech's written notice, subject only to Abtech's discretionary release provision in Section 1.7(d) below. Client shall have no right to cancel, rescind, or modify its purchase order on the basis of a price adjustment under this Section.

(d) Discretionary Release Subject to Supplier Approval. Client acknowledges that Abtech operates as an authorized reseller and that Abtech's ability to procure the ordered goods is dependent upon Abtech's obligations to its suppliers, including its primary supplier for Dell-branded products ("OEM Supplier"). In the event of a price adjustment under Section 1.7(a), any release of Client from its purchase obligation is subject to and conditioned upon Abtech first obtaining approval from the applicable OEM Supplier to cancel or modify Abtech's corresponding purchase obligation to that supplier ("OEM Release").

Upon Client's written request, Abtech will use commercially reasonable efforts to seek an OEM Release from the applicable OEM Supplier on Client's behalf. Abtech makes no representation or warranty that an OEM Release will be granted, and Client acknowledges that the decision to grant or deny an OEM Release rests solely with the OEM Supplier and is outside of Abtech's control. If an OEM Release is granted, Abtech will pass through the benefit of that release to Client and cancel Client's corresponding purchase obligation within five (5) business days, refunding any amounts paid by Client for the affected order. If an OEM Release is denied or not obtained within a commercially reasonable time, Client's purchase obligation shall remain in full force and effect at the adjusted price stated in Abtech's notice under Section 1.7(b), and Client shall have no right to cancel or rescind its order on that basis.

Abtech's obligation to seek an OEM Release is Client's sole remedy in the event Client objects to a price adjustment under Section 1.7(a). In no event shall Abtech be liable to Client for any damages, losses, or costs arising from an OEM Supplier's denial of an OEM Release or from Client's obligation to pay adjusted pricing under this Section.

(e) Taxes and Freight. Taxes and freight charges stated in any quotation are estimates only. Final amounts will be stated on the applicable invoice and Client agrees to pay such final amounts. Additional freight charges will apply for expedited shipping requested by Client after order placement.

## **2. RENTALS AND LEASES**

**2.1 Rental and Leases by Abtech:** The rental or lease period begins to accrue from the date of shipment and continues to accrue until the agreed upon term is fulfilled and all the returned products are physically received by Abtech. Rental and lease invoices will be issued every 30 days starting on the date of shipment and are to be paid in advance of each 30-day rental or lease period. Products that are shipped in partial increments will be deemed as independent and are invoiced as separate rentals or leases. As renting or leasing of equipment substantiates a rental or lease of product(s) and not a sale Abtech maintains title to all products under the Agreement, unless bought out at the end of the term. Client is responsible for all maintenance or repairs of the rented or leased products during the rental or lease period. All rental or lease equipment must be returned in the condition received, otherwise Client will be billed for all costs required to bring equipment back into like condition. For all rental or lease transactions, Client agrees to add Abtech to their insurance policy as an additional insured. Client agrees that Abtech may file protective UCC filings. The rented or leased equipment can be bought out by Client at any time during the rental or lease period at a price agreed upon by Client and Abtech.

**2.1.1** Client shall take any action reasonably requested by Abtech for the purpose of fully effectuating the intent and purposes of this Agreement. The parties intend for each lease to constitute a true lease under the UCC and all applicable laws; however, if any lease is determined to be other than a true lease, Client hereby grants to Abtech a first priority security interest in the Products and all proceeds thereof towards partial or full payment of the total debt owed. Client acknowledges that by executing this Agreement, Client has authorized Abtech to file any financing statements or related filings as Abtech may deem necessary or appropriate. Abtech may file a copy of this Agreement or any Schedule in lieu of a financing statement. If any lease is determined to be a lease intended as a security, in no event shall Client be obligated to pay any time price balance as differential in excess of the maximum amount permitted by applicable law (as specified herein or the state where the Products are located, whichever law permits the greater amount).

**2.2 Rentals, Leases, or Other Financing through Third Parties:** If Products and Services purchased are financed by a third-party company, Abtech will not transact the order until proof of financing through the third-party company is provided to Abtech and payment terms of the third-party company to Abtech is approved by Abtech. Until payment in full is received from third-

party finance company, Client hereby grants to Abtech a first priority security interest in the products and all proceeds thereof towards partial or full payment of the total debt owed. Abtech may file protective UCC filings.

### **3. SERVICES**

3.1 The total price for Services shown is an estimate based on information provided by the Client and for the tasks outlined in the Statement of Work ("SoW"). Any additional tasks provided to Client beyond those explicitly identified in the SoW shall be charged at Abtech's standard hourly rates for the type of Service and time of performance. Client will be invoiced for additional number of hours required to complete the job to as close to Client's satisfaction as is technically reasonable and subject to any minimum billing in the quotation plus travel and incidental expenses incurred. Additional charges may apply for auxiliary service, special equipment, weight increase, waiting time, extra labor, or any circumstance that Abtech has not been made aware of at the time of this estimate.

3.2 Hardware and software costs are not included in the services quotation unless explicitly quoted as part of the service engagement. Should Client request hardware or software be added or replaced during service Client agrees to pay for these items at the prices quoted prior to installation.

3.3 During a Time and Material or Depot Repair service engagement additional parts may be necessary to complete repairs and return the equipment to the OEM's operational specifications. Client agrees to pay Abtech for all parts used to troubleshoot a problem or are kept by the Client after the problem is fixed at prices quoted and the shipping of those parts. Client may request revised written quotation for additional parts required for repair. Client is responsible for shipping charges on all equipment to and from an Abtech repair facility.

3.4 Unless explicitly stated in quotation the hourly rate is based on scheduling the work during regular business hours (Monday — Friday, 8AM — 5PM).

3.5 Unless otherwise arranged in advance, Abtech's standard response for service is three (3) business days from receipt of signed Agreement. Should Client require expedited response, the following uplift fees apply: Next Business Day response - \$750, Same Day Response - \$1,250.

3.6 If during the course of Service additional work is required and is to be performed by another Abtech consultant (including by not limited to assisting in the reload of data, fixing or programming scripts, file system work, patching, or operating environment troubleshooting) then Client will be charged Abtech's standard rates for every hour that the consultant is engaged in addition to the hourly rate of the onsite technician. A Scope of Work will be generated and agreed to in writing by Client for an Abtech consultant or engineer to begin the work.

3.7 Cancellation of contracted services must be provided no less than three business days in advance of the scheduled project start time by Client to the sales person named on this quotation or the Consultant providing the work. If notice is not provided, Client agrees to pay 50% of the estimated purchase price and all out of pocket expenses as a cancellation fee.

3.8 All pre-paid Services must be redeemed within twelve (12) months from the date of purchase. At the end of the twelve (12) month term, any remaining pre-paid Services will expire and not be subject to refund or credit.

### **4. DAMAGE**

4.1 Unless explicitly stated otherwise, all costs to repair or replace any equipment due to damage and/or loss claims prior to the transfer of title or ownership to Client are the sole responsibility of the Client, including shipping damage regardless of whom arranged and paid for shipping. If damage occurs, Client agrees to notify Abtech within two business days. If such damage is alleged to have occurred during shipment, all packing materials must be retained until the carrier and/or inspector has had an opportunity to inspect the damage and prepare a report. Failure to comply with the above may result in claim being disallowed by the carrier, in which case the Client would be responsible for 100% of the invoice amount or in the case of a lease or rental, the replacement value of the equipment. If shipping is part of a relocation service Abtech's and its insurers covers only physical damage during the course of the relocation project; non-tangible items including but not limited to software, licensing, data, service, maintenance contracts, warranties, subscriptions, training, etc. are not covered. If during a relocation equipment is damaged prior to or after relocation and Abtech is asked to repair damaged equipment the policies and rates regarding repair by Abtech in this Agreement shall apply.

### **5. GOOD FAITH AND LIMITED 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 Equipment is tested and inspected for quality. Unless explicitly stated, equipment provided that is not in “New from manufacturer” condition is sold as-is, where-is, without warranty of any kind, either expressed or implied, and is not eligible for return for any reason.

5.3 Where an Abtech (non-manufacturer) warranty is explicitly stated, Abtech warrants that all products sold, rented, or leased to Client under this Agreement are free from defects in materials or workmanship under normal use during the stated warranty period. The warranty period starts from the date of the equipment shipping from Abtech or from any other fulfillment partner of Abtech. Client must notify Abtech in writing of the defect. Abtech, at its sole discretion will repair or replace any component that is new or used but equivalent to new in function and performance. All components replaced will become property of Abtech. Replacement component are warranted through the remainder of the original warranty term. THESE WARRANTIES ARE CLIENT’S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS. 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, SERVICES, SOLUTIONS, OR PRODUCTS 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 PRODUCTS WILL BE UNINTERRUPTED, ERROR-FREE, FREE OF LATENCY OR DELAY, OR THAT THE PRODUCTS WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.

5.3.1 This limited warranty does not extend to any equipment that has been damaged or rendered defective due to: a) accident, misuse, abuse, improper or inadequate maintenance, unsuitable physical or operating environment, or other external causes, b) modification of the hardware or software components of hardware including but not limited to machine code, firmware, or operating system by Client or agents of Client, c) operating the hardware outside of manufacturer parameters or intended use, d) incompatibility with other hardware or software, misconfiguration, or integration with other hardware or software that is not supported by the manufacturer, including integrating manufacturer’s own hardware or software in manner unsupported by the manufacturer.

5.4 Unless explicitly stated, Client understands that Abtech is not the manufacturer of resold products (including service products of a third party) 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.

5.5 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.

5.6 Client understands and agrees that Client is responsible for maintaining an environment that meets the manufacturer’s specifications and interoperability requirements, including but not limited to: appropriate and uninterrupted power, temperature, humidity, electrical infrastructure (eg. correct phase power, outlet type), interconnects and cabling, licensing, interoperability of software and hardware, and trained staff. ABTECH HEREBY EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT ALLOWED BY LAW ALL WARRANTIES OR RIGHTS TO RETURN MERCHANDISE OR SERVICES EXPRESSED OR IMPLIED, NOT COMPLIANT WITH THE REQUIREMENTS OF THIS SECTION 5.6.

## **6. INTELLECTUAL PROPERTY NON-INFRINGEMENT WARRANTY**

6.1 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.

*6.2 Intellectual Property during resale, rental, or lease.*

6.2.1 Abtech warrants that the goods being sold, rented, or leased to Client under this Agreement were obtained by Abtech in a legitimate manner and as a bona-fide purchaser in good faith. Abtech warrants that the equipment is legally configured and licensed, if applicable.

6.2.2 Abtech warrants to the best of its knowledge and belief and solely for the benefit of Client that any Intellectual Property provided to Client 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.

6.2.3 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 resells and provides as a product. 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 that are not resold by Abtech. 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. Notwithstanding the foregoing, any software created by Abtech will have its own EULA which will be in addition to these terms and conditions.

6.2.4 When Abtech sells products that requires the license transfer of third party intellectual property Client acknowledges that the completion of the license transfer is the responsibility of the Client.

6.2.5 If Client chooses to purchase hardware from Abtech without purchasing an associated operating system, Client agrees to purchase, transfer, or otherwise legally acquire an operating system consistent with licensing policies and usage guidelines of the OEM prior to the use of Abtech supplied hardware.

*6.3 Intellectual Property during service*

6.3.1 Client represents and warrants that they are the legal owner or 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.

6.3.2 Client agrees, upon request, to provide proof of valid ownership of license for any Intellectual Property that Abtech is requested to load onto Client’s computer system in the performance of service to Client. Abtech will not load or reload any unauthorized Intellectual Property. 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 unless Abtech may legally resell it. 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. Client to provide any media and codewords required to install any Intellectual Property.

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

6.3.4 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.

**7. LIMITATION OF LIABILITY**

7.1 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. This limitation of liability shall not apply to the indemnity set forth in Section 8 ("Mutual Indemnification").

7.2 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.

7.3 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, earthquake, storm, hurricane or other natural disaster), pandemic, 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.

## **8. MUTUAL INDEMNIFICATION**

8.1 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 6 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. Should this breach result from third party Intellectual Property resold by Abtech to Client then Client agrees that as per Section 5.4 Abtech cannot be reasonably in breach and therefore Client is bound by the terms of any agreement between Client and manufacturer regarding Intellectual Property indemnification and claims.

8.2 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, its parent, subsidiaries and affiliates, or the respective agents, shareholders, directors, officers, and employees of any of them or of other subscription holders.

8.3 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 parent, subsidiaries and affiliates, or the respective agents and employees of any of them or of other subscription holders.

## **9. SECURITY AND DATA**

9.1 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 sole responsibility of Client to ensure the security of their system, data, programs, and files. Transfer of Client data may be across the public internet and encryption is highly recommended for security. A reliable and verified system backup procedure 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 equipment or Intellectual Property, or the installation of any hardware provided to Client by Abtech, regardless if Abtech personnel are involved in the services to implement such hardware or not. Abtech will not be responsible for loss of data under any circumstance, including but not limited to damage, theft, total or partial loss, 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.

## **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 to one of its affiliates 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 Client agrees that the employees and key consultants of Abtech are a valuable asset to Abtech and are difficult and costly to replace. Accordingly, during the term of this Agreement and for two (2) years thereafter, Client shall not, 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 Abtech 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 Client 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:

11.2.1 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.

11.2.2 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 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. This Agreement and each purchase from the Client will form a separate, complete, and exclusive agreement between both parties and supersedes 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. In the event that Client requires their own Master Service Agreement or similar document, terms not defined in Client's Master Service Agreement but defined in this Agreement will be in addition to the terms of Client's Master Service Agreement. This Agreement explicitly overrides the terms of Client Master Service Agreement in matters where the two terms conflict.

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 signed 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 Invoices. If Client objects to any portion of the invoice, client shall notify Abtech within 48 hours from the date of invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. Price quoted based on a cash purchase. Client is liable for additional convenience fees for using a credit card instead of cash. Invoices that are paid late are subject to a late fee of 1.5% interest per month. Abtech will charge the maximum fees allowed by state law to Client for every returned check. Client agrees to pay invoices for partial shipment of goods or services or, if the original order was for both goods and services, separate invoices for the goods and separate invoices for the services. Client shall be responsible for the payment of any and all taxes assessed or levied by any governmental agency relating to the use and/or acquisition of the equipment or services, including but not limited to excise taxes, use, property, or sales tax. Client further agrees to indemnify and hold Abtech harmless from any such taxes or assessments. Even if quote does not include taxes as a line item, taxes will still be assessed.

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 Notices. All notices under this Agreement must be in writing and shall be effective if (a) delivered in person, (b) sent by registered mail return receipt requested, (c) sent by overnight air courier, (d) sent by certified mail, postage prepaid to the address below, or (e) email with confirmed receipt at the email address below:

Abtech Technologies, Inc.  
Attn: Dana Collins  
1235 Activity Road, #D  
Vista, CA 92081  
notices@abtechtechnologies.com

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

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