



12560 Fletcher Lane Suite 100 Rogers, MN 55374 Toll Free: 800.478.8644 Tel: 763.428.3170 Fax: 763.428.3166 [www.abetech.com](http://www.abetech.com)

**AbeTech desires to provide Client, and Client desires to obtain, the maintenance and support services for the Equipment, as defined below, all on the terms and conditions as set forth in this Agreement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:**

1. **CONTRACT SUMMARY.** Attached hereto as Exhibit A is a list of Client's equipment ("the Equipment"), the location thereof, and the type of service commitment to be provided for each piece of Equipment for which AbeTech will perform the maintenance and support services, as more particularly set forth herein (the "Services"). Exhibit A may be amended in accordance with this Agreement from time to time to add or remove Equipment of Client, which will be covered by the terms of this Agreement. AbeTech may discontinue providing service on any Equipment for which it cannot obtain an adequate supply of spare parts and supplies on a reasonable basis. In such event the Equipment shall be removed from Exhibit A and the costs to Client shall be adjusted to reflect such deletion. Prior to the effective date of the Agreement, AbeTech may elect to inspect the Equipment, and if necessary, restore it to good working order. Inspection and restoration service shall be charged separately on a time and materials basis. Inspection and restoration service does not apply to new Equipment sold by AbeTech. Existing equipment not inspected by AbeTech will be considered to have a pre-existing condition for a period of thirty (30) days from the contract start date and restoration charges will apply for this period of time.

## 2. TYPE OF SERVICES.

### DEPOT SERVICE:

AbeTech will provide repair and maintenance service at AbeTech maintenance facilities based upon the service option set forth in Exhibit A. The service options include a three-business day (average) turnaround and a hot swap program. Client shall be responsible for shipping the Equipment to be serviced to AbeTech maintenance facility, the address of which AbeTech shall supply to Client. Along with the Equipment, Client shall send a detailed description of the problems with the Equipment and shall identify that the Equipment is being serviced under this Agreement. AbeTech shall repair and return the Equipment within the timeframe as set forth herein. AbeTech will be responsible for the cost of shipping the Equipment back to Client to the address supplied to AbeTech by Client. The repair work shall be completed within the time frame indicated on Exhibit A and then the Equipment will be shipped to Client via UPS ground service.

### ON SITE SERVICE:

AbeTech will provide repair and maintenance service during the principle period of maintenance at the locations where the Equipment is located as set forth in Exhibit A. Client shall call AbeTech support hotline and place a request for service, which request shall include a description of the Equipment, its location and such other information as requested by the AbeTech support representative. AbeTech will dispatch a service technician to Client's site to perform the repair and maintenance services to be provided hereunder. Service calls will be performed within the time frame set forth in Exhibit A and include next business day (NBD) which is AbeTech's standard response time, or four (4) hour response and/or coverage options, when applicable. The principal period of maintenance is 8:00am to 5:00pm in the time zone where the Equipment is located and excludes AbeTech recognized holidays.

### TELEPHONE SUPPORT:

AbeTech shall provide Client with a telephone response during the principal period of maintenance within the time period set forth in Exhibit A following first notification of a problem. AbeTech shall provide Client with a reasonable amount of telephone support to assist Client in diagnosing errors and malfunctions that occur when Client uses the covered Equipment. AbeTech shall provide support service to Client to attempt to correct diagnosed errors and malfunctions and reasonable operator assistance. AbeTech may provide software patches that implement correction and/or suggest work-arounds that assist Client in using the Equipment in a way that can avoid diagnosed errors, malfunctions, and defects.

3. **TERM.** The term of the Agreement shall be as set forth in Exhibit A. Unless otherwise stated in Exhibit A, the term of this Agreement shall commence (a) for new Equipment, on the date the Equipment is shipped to Client, and (b) for existing equipment, on the date the Agreement is executed by both AbeTech and Client. In either such event the term of the Agreement shall continue for the period of time as set forth in Exhibit A (if no Term is set forth in Exhibit A, the Term shall be one (1) year), unless earlier terminated in accordance herewith (the "Initial Term"). After the Initial Term, the Agreement shall continue for successive one year Terms (each a "Renewal Term") unless terminated by either party in writing. Prior to the commencement of a Renewal Term, AbeTech may invoice Client for the cost of the Services to be provided hereunder for the Renewal Term. If Client does not pay such renewal invoice in the manner agreed upon for payment as set forth in paragraph 4, then the Agreement shall terminate at the end of the then-current Initial Term or Renewal Term. The Term for any Equipment added during the Initial Term or any Renewal Term shall commence upon the agreed modification of Exhibit A and be coterminous with



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the expiration of the Term of this Agreement. Client shall have the right to remove any Equipment for which Service is to be provided hereunder for a period of thirty days following the commencement of any Renewal Term. The Initial Term and any Renewal Term shall be referred to herein as the Term.

4. PAYMENT. Set forth next to each piece of Equipment listed in Exhibit A shall be the Term maintenance fee applicable to such Equipment (the "Term Service Fee(s)"). Certain Equipment may be subject to additional usage sensitive charges as set forth on Exhibit A. Client agrees to pay the Term Service Fees due hereunder. Client may elect to pay the Term Service Fee(s) in accordance with the method indicated herein. Unless otherwise indicated in Exhibit A, payment shall be due annually. Except for annual payments, which shall be paid in full upon the execution of this Agreement and within thirty days of invoice for any Renewal Term, all payment due hereunder shall be due in equal installments in accordance with the method of payment. AbeTech reserves the right to increase the Term Service Fees by the following percentages for payment received other than on an annual basis: 2.5 % semi-annual, 5% quarterly and 10% monthly. Client shall pay and all taxes due on goods and services rendered hereunder. Client shall pay for any Additional Services performed by AbeTech hereunder on a time and materials basis, at AbeTech's rates current as of the date of performance. AbeTech reserves the right to withhold Services if Client is on credit hold for any reason or has failed to pay when due any amounts hereunder or under any other agreement between the parties. Any amounts, which remain unpaid when due shall bear interest at the rate of 1.5% per month, until paid in full.

5. CLIENT RESPONSIBILITIES. Client shall provide, at its own cost, appropriate consumable supplies (such as paper and ribbons) and reasonable cooperation from Client's employees. In addition, for Telephone Support, Client shall provide, at its own cost, a modem, if required, by which AbeTech may access Client's system and shall appoint a system administrator (the "Administrator") to serve as the primary point of contact regarding the services to be provided hereunder. For On-Site Support, Client shall provide, at its own cost, electric power for portable electric tools, sufficient light where possible and safe access to the Equipment.

6. PARTS. Parts will be replaced on an exchange basis only. AbeTech reserves the right to use remanufactured or refurbished parts. Such parts will be equivalent to new when installed in the Equipment. All exchanged parts will become the property of AbeTech.

7. SERVICE EXCLUSIONS. The following services are not included in the Term Services Fee(s) and performance of such service (the "Additional Services") by AbeTech, shall be performed, if at all and billed separately, on time and material basis: (A) Site preparation and maintenance of proper environment, (B) Battery maintenance and replacement, (C) Set up and installation of the Equipment, (D) Moving Equipment, (E) Painting or refurbishing Equipment, (F) Adding, changing or removing features or options or making other functional changes to Equipment, (G) Providing consumable supplies (such as paper, ribbons, and printheads), even if consumed while providing maintenance service, (H) Systems engineering services, programming services and operational procedures of any sort, and (I) Maintenance, repair or replacement of parts or Equipment, when such services are required because of abuse, misuse, accident, neglect, usage in an improper environment, not in accordance with manufacturer's specifications for the Equipment, or in excess of an item's duty cycle or other loss of damage to Equipment due to insurable loss or any cause or causes external to the Equipment as determined by AbeTech.

#### 8. WARRANTIES AND DISCLAIMERS

A. Subject to the conditions and limitations on liability stated herein, AbeTech warrants to Client for a period of 30 days following the performance of any Services or Additional Services by AbeTech, the Services and/or Additional Services will be performed in a good and workman-like manner. AbeTech's obligations and liability under this warranty is conditioned upon the receipt of prompt notice of defects as to parts and/or workmanship from Client, and is limited to repairing or, at AbeTech's sole option, to replacing the Equipment. This warranty shall be void if the Equipment is damaged or rendered unusable by the willful act, negligence and/or tampering of persons other than those of AbeTech.

THE FOREGOING IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY BY ABETECH. ABETECH DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

B. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN ACTION IN CONTRACT OR TORT, ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SERVICES PROVIDED HEREUNDER EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF



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THE POSSIBILITY OF SUCH DAMAGES. ABETECH'S LIABILITY FOR DAMAGES HEREUNDER FOR ANY CAUSE WHATSOEVER SHALL FIRST BE LIMITED TO REPAIR OR REPLACEMENT OF THE DEFECTIVE PARTS AND IN NO EVENT SHALL EXCEED ONE HALF OF THE AMOUNTS RECEIVED BY ABETECH FROM THE CLIENT UNDER THIS AGREEMENT FOR THE PRESENT TERM.

9. DEFAULT. If Client on the one hand, or AbeTech on the other hand, is in material default of its obligations under this Agreement, the non-breaching party shall have the right to deliver to the breaching party written notice specifying that a breach has occurred and providing in detail the particulars of the alleged breach. The party in breach shall have thirty (30) days to cure the alleged breach (ten days if the alleged breach relates to the payment of any amounts due hereunder) or such other period as may be agreed to by the parties. If such breach is not cured within such period, then the non-breaching party shall be entitled to exercise all of its rights and remedies at law and in equity, including the right to terminate this Agreement if such non-performance constitutes a material breach of this Agreement.

10. "FORCE MAJEURE." Notwithstanding anything in this Agreement to the contrary, AbeTech shall not be liable for any delay or failure to maintain the Equipment or provide service hereunder, if the delay or failure is caused by war, riots, civil commotion, fire, flood, earth quake, or any act of God, or the failure of any third party subcontractor, or third party hardware, software, network system equipment, wiring, electrical systems or utilities, or other causes beyond AbeTech reasonable control. If any third party subcontractor providing service with respect to this Agreement, ceases to provide such service, and AbeTech cannot find a suitable replacement vendor then, AbeTech shall have the right to terminate the Agreement, by providing thirty (30) days prior written notice to Client.

11. ENTIRE AGREEMENT. This Agreement, together with the attached Exhibit A (as it may be amended from time to time), constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, arrangements, and understandings with respect thereto. No representation, promise, inducement, statement or intention has been made by any party hereto that is not embodied herein, and no party shall be bound by or liable for any alleged representation, promise, inducement, or statement not so set forth herein. By reference or otherwise, this Agreement does not constitute an acceptance by AbeTech of any inconsistent Terms contained in Client's proposal, counter offer or any purchase order. This Agreement expressly limits acceptance to the Terms stated in this Agreement. Any additional or differing terms, whether or not materially different, set forth in any communication from Client is hereby expressly rejected.

12. AMENDMENT. This Agreement may be modified, amended, superseded, or canceled, only by written instrument signed by each of the parties hereto and not by performance, and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by a written instrument executed by the party to be bound by any such waiver.

13. SEVERABILITY. Nothing contained herein shall be construed to require the commission of any act contrary to law. If a court of competent jurisdiction holds that there is a conflict between any provisions hereof and any present or future statute, law, ordinance, regulation, or other pronouncement having the force of the law, the latter shall prevail, but the provision of this Agreement affected thereby shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, and the remaining provisions of this Agreement shall remain in full force and effect.

14. NOTICES. All default notices, hereunder shall be in writing and shall be deemed given (a) if delivered personally, on the date given, (b) if delivered by a courier express delivery service, on the date of delivery, or (c) if by certified or registered mail, postage prepaid, return receipt requested, five (5) days after mailing, to the parties at the addresses listed beneath such party's signature to this Agreement, or at such other addresses as such party may designate by written notice in the manner aforesaid.

15. ATTORNEY'S FEES & COSTS. In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and costs incurred in litigating, arbitrating, or otherwise setting or resolving such dispute.

16. WAIVER. The waiver by any of the parties, express or implied, of any right under this Agreement or with respect to any failure to perform under breach of this Agreement by the other party, shall not constitute or be deemed a waiver of any other right under this Agreement or of any other failure to perform under or breach of this Agreement by the other party, whether of a similar or dissimilar nature.



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[SIGNATURE PAGE FOLLOWS]



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**ABRAHAM TECHNICAL SERVICES, INC.**  
d/b/a ABETECH

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CLIENT:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

