



Hardware & Software Service Agreement

This Hardware & Software Service Agreement (the "Agreement") is made by and between Technology For Business Corporation ("TFB") and the Customer specified in Schedule A for the maintenance of the computer hardware and software described in Schedule B attached hereto and made a part hereof (the "System"), subject to the terms and conditions below.

1.0 TFB'S OBLIGATION

1.1 SCOPE OF SERVICES

As limited by the terms of this Agreement, TFB will perform the following services on the System:

- a. **Preventive Maintenance.** TFB will perform preventive maintenance services, as TFB deems necessary to maintain the System in standard operating condition.
- b. **Corrective Maintenance.** At the request of the Customer or Distributor, TFB will diagnose malfunctions of the System and restore the System to standard operating condition. Such action may include providing temporary procedures to be followed by Customer pending restoration of the System to standard operating condition.
- c. **Repair or Replacement of Parts.** TFB will provide all replacement parts which TFB deems necessary to maintain the System in standard operating condition. All replaced parts will become the property of TFB on an exchange basis. Replacement parts are warranted for a period of thirty (30) calendar days from the day of service or until the Termination Date of this Agreement, whichever is later, during which period defective parts will be replaced or repaired at no additional charge to Customer, notwithstanding any prior termination of this Agreement. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ON REPLACEMENT PARTS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- d. **Software Updates.** TFB will provide Customer with all applicable Software Updates as may be appropriate for the operation of the System. Such Software Updates may include feature set enhancements and bug fixes to the Customers Software Modules described in Attachment B.
- e. **Software Bugs.** At the request of the Customer or Distributor, TFB will diagnose and repair Software Bugs to restore the System to standard operating condition. Such action may include providing temporary procedures to be followed by Customer pending corrections to the Software. TFB shall only be responsible for Software Bugs in its Software Modules. Software Bugs in the Operating System Software, BIOS, etc. is the responsibility of the manufacturer or developer of such software, however, TFB will assist in the diagnosis of such Software Bugs.

1.2 PRINCIPAL PERIOD OF MAINTENANCE

The services covered by this Agreement will be provided, and TFB's personnel will be available to Customer, only during the Principal Period of Maintenance ("PPM"), which shall be 24 hours a day 7 days a week.

1.3 SYSTEM LOCATION

For the duration of this Agreement, subject to Section 2.2(c) hereto, the System shall be located at the Customer Site specified in Schedule A, attached hereto and made a part hereof.

1.4 RESPONSE TIME GOALS

TFB will use reasonable efforts to respond to Customer request for service as follows (expressed in number of hours elapsed during PPM):

- a. with a telephone response within two (2) PPM hours for critical conditions, and
- b. with a telephone response within four (4) PPM hours for serious conditions, and
- c. with a telephone or email response within twenty four (24) PPM hours for non-critical conditions, and
- d. if needed, with dispatch of a service technician to Customer's location, within four (4) PPM hours in response to critical conditions, and
- e. if needed, with dispatch of a service technician to Customer's location, within four (6) PPM hours in response to serious conditions, and
- f. if needed, with dispatch of a service technician to Customer's location, within twenty-four (24) PPM hours for non-critical conditions.

For purposes of this Agreement, a critical condition is one in which the System is operating at 50% or less of designed capacity, serious condition is one in which the System is operating at 51%-90% capacity, and non-critical conditions are all other conditions.

1.5 ADDITIONAL SERVICES

Additional services (not described above), services resulting from Customer's failure to perform any of its obligations under Section 2.2 hereof, and services provided outside of the PPM, are not included in the Agreement Price and will be performed only with Customer's approval. TFB will bill Customer at TFB's then prevailing rates for parts and labor at the time the services are provided. In addition, Customer will be responsible for all approved expenses including but not limited to travel and lodging.

1.6 SYSTEM EXCLUSIONS

This Agreement does not cover items not listed on Schedule B, and specifically excludes all telephone or electrical equipment, or accessories or attachments thereto, which are external to the System, such as but not limited to, PBX, Computer Networks, Battery Backup Devices, Network Hubs, Network Cabling, ACD's Configuration, and other devices which may support the System.

1.7 EXCLUSIONS FROM AGREEMENT

TFB will have no obligation under this Agreement to provide maintenance or replacement parts required because of accident, neglect, misuse, transportation, or causes other than ordinary use. TFB will not be required to provide maintenance or replacement parts if it would be impractical to do so because of alterations to the System.

2.0 CUSTOMER'S OBLIGATION

2.1 PAYMENT

Customer agrees to pay TFB the Agreement Price listed in Schedule A in full within 30 days of receipt of Invoice.

2.2 ONGOING CUSTOMER RESPONSIBILITIES

- a. Customer's trained Administrator will perform routine administrative maintenance in accordance with manufacturer's current operating manual(s) for the System.
- b. Telephone or other lines connected to the System shall comply with the manufacturers' specification and shall be installed and paid for by Customer. In addition, provision of adequate power to the System is solely the Customer's responsibility.
- c. Customer will notify TFB at least thirty (30) days prior to moving the System and will specify its plans for removal, transportation, and reinstallation of the System. TFB may terminate this Agreement following such a move unless it agrees in writing to continue its obligation hereunder at the new location. If Customer requires and requests the service of TFB in connection with the relocation of the System, such service will require a Purchase Order from Customer or Distributor.
- d. Customer will provide TFB with a direct (outside access) telephone line at Customer's expense for modem access to the System.
- e. Customer will allow TFB access to the System to enable TFB to promptly provide all maintenance services and replacement parts in accordance with this Agreement.
- f. Customer will promptly pay all invoices and bills relating to fees and expenses incurred in connection with additional services provided by TFB pursuant to Section 1.5 hereof.

3.0 GENERAL PROVISIONS

3.1 TERM

- a. The initial term of this Agreement is from the Commencement Date to the Termination Date specified in Schedule A, unless sooner terminated in accordance with the terms in Section 3.2.
- b. This Agreement may be renewed by the parties hereto at the Agreement Price as stated by TFB, upon a written agreement of both parties. TFB will notify Customer of the Termination of this Agreement and the new Agreement Price for which TFB will renew this Agreement at least thirty (30) days prior to the Termination Date of this Agreement. The notice shall be stated in TFB's invoice for the subsequent term, which invoice will be due and payable prior to the Termination Date, unless prior to that date Customer has notified TFB of its intent not to renew.

3.2 TERMINATION

TFB may terminate this Agreement at any time upon written notice to Customer, should Customer or Customer's Distributor, Agent, or Representative:

- a. fail to make any payment due hereunder within 30 days from receipt of invoice from TFB;
- b. fail to perform any obligation required to be performed by it under this Agreement for a period of thirty (30) days after receipt of notice by TFB of such failure;
- c. alter the System in a manner affecting the operation of the System or the compatibility or interchangeability of replacement parts for the System;
- d. connect another machine or device to the System which alters or affects the operation of the System;
- e. ceases to conduct business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer, or permit the appointment of a receiver of its business or assets, or avail itself of or become subject to any proceeding under any statute of any governing authority relating to insolvency or protection of rights to creditors.

TFB's rights under this paragraph 3.2 are in addition to all other rights and remedies of TFB provided by this Agreement or by law.

Customer may terminate this Agreement at any time upon written notice to TFB, should TFB:

- a. fail to perform any obligation required to be performed by it under this Agreement for a period of thirty (30) days after receipt of notice by Customer of such failure;
- b. ceases to conduct business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer, or permit the appointment of a receiver of its business or assets, or avail itself of or become subject to any proceeding under any statute of any governing authority relating to insolvency or protection of rights to creditors.

3.3 ASSUMPTION OF RISK AND LIMITATION OF LIABILITY

a. ASSUMPTION OF RISK. CUSTOMER RECOGNIZES THAT THE USE OF COMPUTER AND TELECOMMUNICATIONS EQUIPMENT ENTAILS A SUBSTANTIAL RISK OF LOSS OF MAGNETICALLY STORED DATA. CUSTOMER ASSUMES ALL RISK OF LOSS OF ITS MAGNETICALLY STORED DATA IN ANY WAY RELATED TO OR RESULTING FROM THE SALE OR SERVICE OF SYSTEM BY TFB FROM ANY AND ALL CAUSES, AND CUSTOMER HEREBY RELEASES TFB FROM LIABILITY FOR ANY LOSS OF CUSTOMER'S MAGNETICALLY STORED DATA.

b. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), SUCH AS, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BENEFITS RESULTING FROM THE USE OR SERVICING OF A SYSTEM OR ANY BREACH OF THIS AGREEMENT, EVEN IF TFB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT, OTHER THAN DIRECT DAMAGES FOR PERSONAL INJURY, WILL EITHER PARTY'S LIABILITY EXCEED THE PRICE PAID FOR THIS SERVICE.

3.4 NOTICES

Any notices required to be given hereunder will be given in writing and sent to the address indicated in Schedule A or to such other address as the Customer may have substituted by prior written notice. Notices by mail shall be by certified or registered mail or FedEx or an equal service and shall be deemed effective three (3) days after mailing.

3.5 FORCE MAJEURE

TFB shall not be liable for any delay or inability to perform under this Agreement due to unavailability of parts, labor, disputes, fire, unusually severe weather, embargoes, floods, acts of God, acts of any public authority or sovereign government, delays, or defaults caused by public carriers, problems, or failures related to the Year 2000, or any other causes beyond TFB's control. In the event of such a delay, the time for performance shall be extended for a period of time equal to the length of the delay encountered by TFB.

3.6 ASSIGNMENT

This Agreement is not assignable by either party without prior written permission from the other, which consent shall not be unreasonably withheld. Any attempt without such permission to assign or delegate any rights, duties, or obligations, which arise under this Agreement, will be void.

3.7 GOVERNING LAW

This Agreement shall be governed by and construed according to the laws of the State of California as such laws are applied to Agreements made and to be performed wholly in California, regardless of conflicts of law provisions. The parties submit to jurisdiction and venue in the courts of the State of California.

3.8 SITE RULES

When the Services are performed at Customer's facility, TFB'S employees will abide by all security and other applicable site rules established by Customer.

3.9 WAIVER, AMENDMENT, OR MODIFICATION

The waiver, amendment, or modification of any right, power, or remedy hereunder will not be effective unless in writing and signed by the party against whom enforcement of such waiver, amendment, or modification is sought. The terms of this Agreement may not be amended or changed by the terms of any purchase order or acknowledgement thereof.

3.10 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Customer and TFB with respect to the maintenance of the System. Customer has not entered into this Agreement in reliance upon any warranty or representation by any person or entity except for the warranties and representations specifically set forth herein.

Schedule A

1. This Schedule A dated _____ supersedes all prior dated Schedule A.
2. The Commencement Date of this Agreement is _____ and the Termination Date is _____.
3. The term Customer shall refer to the following site(s): *(List Site Name/Address/City/State/Zip/Country)*

4. The Customer's Contact Person is:
Name: _____ Contact Number: _____
5. Throughout the term of this Agreement, the System shall be located at the above address.
6. Customer's Distributor or Agent is _____
7. The Agreement Price is _____ and is due upon 30 days of receipt of Invoice. Customer Purchase Order Number to be referenced is _____ and Customer understands that in the event of failure to pay on time they will be required to pay a Reinstatement Fee in addition to paying the Agreement Price.
8. Any notices to Customer required under this Agreement is to be sent to:

9. Addendums:

We, the undersigned, agree with the terms of this Agreement.

For Customer: _____

Technology For Business Corporation

Name: _____

Name: _____

Signed: _____

Signed: _____

Title: _____ Date: _____

Title: _____ Date: _____

Schedule B

AGREEMENT HARDWARE/SOFTWARE LIST

This Schedule B dated _____ supersedes all prior Schedule B. Only the items specifically listed below are covered by this Agreement. If only Software items are mentioned then this is a Software only Agreement.

Hardware:

<u>ITEM</u>	<u>QUANTITY</u>	<u>LOCATION</u>

Software:

<u>ITEM</u>	<u>QUANTITY</u>	<u>LOCATION</u>