

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
TODAY'S DESTINY, INC.	§	CASE NO. 05-90080-H1-7
	§	(Chapter 7)
DEBTOR	§	
_____	§	
	§	
JOSEPH M. HILL, TRUSTEE,	§	
	§	
Plaintiff	§	
	§	
v.	§	Adversary No. 06-3285
	§	
MICHAEL DAY ET AL.,	§	
	§	
Defendants	§	
_____	§	

TRUSTEE'S THIRD AMENDED COMPLAINT

EXHIBIT F

TODAY'S DESTINY, Inc.
Marketing Program and Equipment Agreement

CLIENT NAME: Mamak Saffarpour

The Client agrees to purchase and TODAY'S DESTINY, Inc. d/b/a TNG Systems ("TODAY'S DESTINY") by its acceptance of this agreement (the "Agreement"), agree to provide and sell, in accordance with the following terms and conditions, the hardware listed below and TODAY'S DESTINY'S Marketing Program.

I. HARDWARE:

The TNG System

II. MARKETING PROGRAM:

See marketing program described in Exhibit "A" attached hereto and incorporated herein by reference.

- A. PAYMENT TERMS - Payment shall be made in accordance with leasing documents, (if applicable or a cash payment of 5995 ⁰⁰ certified funds. All payments shall be made in U.S. Dollars within ten days of the date of the invoice. TODAY'S DESTINY reserves the right to add an interest charge not to exceed 1.5% per month or the maximum rate allowed by law, whichever is less, for failure to make payment within 30 days of the invoice date, if financed through TODAY'S DESTINY, Inc.
- B. TITLE, RISK OF LOSS AND SECURITY INTEREST - Ownership of the hardware and risk of loss or damage shall pass to Client upon delivery F.O.B. shipping point by TODAY'S DESTINY; however, the Client does hereby give to TODAY'S DESTINY a security interest in the hardware as security for the performance by the Client of all its payment obligations hereunder, together with the right, without liability, to repossess the hardware, with or without notice, in the event of default of any such obligations.
- C. TAXES - Prices and fees are exclusive of all federal, state, municipal, or other government, excise, sales, use, occupational, or like taxes now in force or enacted in the future and, therefore, prices are subject to an increase equal in the amount to any tax TODAY'S DESTINY may be required to collect or pay upon the sale or delivery of items purchased or licensed. If a certificate of exemption or similar document or proceeding is to be made in order to exempt the sale from sales or use tax liability, the Client will obtain and procure such certificate, document or proceeding prior to installation date.
- D. DELIVERY - Delivery will be made F.O.B. shipping point. The time of delivery is the time when items to be delivered are ready for pickup by the carrier. Items held or stored for the Client shall be at the risk and expense of the Client. TODAY'S DESTINY will ship collect which indicates freight invoices go directly to Client for payment of shipping charges, or at TODAY'S DESTINY's discretion, TODAY'S DESTINY will repay shipping charges and invoice Client for actual said shipping charges.
- E. DELAYS - TODAY'S DESTINY shall not be liable for any damages or penalty for delay in delivery or for failure to give notice of delay when such delay is due to factors beyond TODAY'S DESTINY's reasonable control, including, but not limited to, delays in transportation and delay in delivery by TODAY'S DESTINY vendors.
- F. CLIENT RESPONSIBILITIES - Client shall be responsible for timely preparation including, but not limited to, adequate electrical power for computer operation and telephone services as required by the installation. Client shall be responsible for cabling except as specifically set forth herein.

TODAY'S DESTINY, DOES HEREBY DISCLAIM ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH ANY GOODS OR MERCHANDISE TRANSFERRED OR SOLD. CUSTOMER HEREBY ACKNOWLEDGES THAT CUSTOMER HAS BEEN NOTIFIED THE GOODS OR MERCHANDISE AND THE USE THEREOF BY CUSTOMER MAY BE SUBJECT TO THE LAWS OF THE UNITED STATES, ANY STATE, OR ANY OTHER SOVEREIGNTY WHICH MIGHT PROHIBIT, PREVENT, OR EFFECT THE USE OR PROPOSED USE OF THE GOODS IN SUCH A MANNER BY CUSTOMER, EITHER UNDER THE CIVIL OR CRIMINAL STATUTES OR LAWS OF ANY SUCH JURISDICTION SELLER MAKES NO REPRESENTATIONS AS TO THE EFFECT OF ANY SUCH STATUTES OR LAWS IN CONNECTION WITH THE GOODS OR CUSTOMERS USE OR INTENDED USE. CUSTOMER ACKNOWLEDGES THAT CUSTOMER IS FREE TO CONSULT WITH

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LEGAL COUNSEL OF ITS OWN CHOOSING PRIOR TO THE PURCHASE OF ANY GOODS AND THEREAFTER WITH RESPECT TO THE EFFECT OF SUCH STATUTES AND LAWS AND CUSTOMERS USE OR INTENDED USE. FEDERAL AND STATE STATUTES, INCLUDING THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. 227(b)(1)(A)-(B), CALIFORNIA CIVIL CODE 1770(a)(22)(A), CALIFORNIA BUSINESS & PROFESSIONS CODE 17500.3, AND CALIFORNIA PUBLIC UTILITIES CODE 2874 RESTRICT THE ABILITY OF PERSONS TO SEND PRERECORDED MESSAGES TO RESIDENTIAL TELEPHONE LINES. PRODUCTS MAY ONLY BE USED IN COMPLIANCE WITH THE ABOVE-REFERENCED STATUTES AND CUSTOMER IS HEREBY ADVISED TO CONSULT AN ATTORNEY REGARDING COMPLIANCE WITH THESE AND OTHER STATUTES THAT MAY RESTRICT TELEMARKETING.

III. ACCEPTANCE - Acceptance of the TODAY'S DESTINY products will be performed at TODAY'S DESTINY, or any location designated by TODAY'S DESTINY or Client site. The TODAY'S DESTINY products will be deemed to be accepted when they have successfully satisfied the acceptance criteria in accordance with procedures defined in TODAY'S DESTINY's Acceptance Test or as established by TODAY'S DESTINY prior to testing. Once Client has received and accepted according to the criteria above, no refunds will be given for any reason.

IV. QUICK REFERENCE MANUAL AND SCRIPT AGREEMENT - This is an agreement of understanding between TNG Systems all agents of TNG Systems regarding writing of custom scripts and/or availability of generic scripts for your existing patients and for businesses. LIVE ATTENDED TELEMARKETING SCRIPTS / Every TNG system is pre-loaded with example generic scripts. These have been recorded by male and female voice over talent and are for training your live staff what to say and are used for training and example purposes only. While in compliance with the terms of your financing agreements and TNG Systems agreements, you may receive unlimited existing or generic written scripts and four (4) custom written scripts. TNG will provide these scripts in a pre-recorded file so that you may hear what they sound like, prior to having your live staff use them. This is in addition to the several versions of scripts before mentioned. Script requests may be fixed in to the script department with the understanding that three-(3) business days notice be given on existing scripts and seven (7) business days on a custom script. If you choose, TNG Systems will provide scripts at a charge of \$100.00 per additional custom script after the first 4 custom scripts have been obtained. The owner always has the option of writing his or her own scripts. We recommend that the owner use our scripts as models for style and format. Scripting assistance is available by appointment. (281) 497-6720

V. WARRANTY

A. HARDWARE

1. All TODAY'S DESTINY supplied equipment is warranted against defects in workmanship and materials, under normal use and service for (24) months from date of delivery.

a. The above warranty is contingent upon proper use in the application for which the hardware was intended and is not applicable to hardware which has been modified without TODAY'S DESTINY approval, or which has been subjected to unusual physical or electrical stress, or on which the original identification marks have been removed or altered this warranty will not apply if adjustment, repair or parts replacement is required because of accident, neglect, misuse, failure of electrical power, air conditioning, humidity control, transportation or causes other than ordinary use. This warranty is intended only for hardware supplied by TODAY'S DESTINY and will only be serviced upon the delivery of system to the location designated by TODAY'S DESTINY at the expense of Client. TODAY'S DESTINY will provide UNLIMITED technical support and marketing support for as long as the Client has the equipment, providing the Client is in good standing with any financing institution that has financed the equipment, and is in good standing with TODAY'S DESTINY, and has not done anything that may harm TODAY'S DESTINY or the reputation of TODAY'S DESTINY.

b. See Exhibit "A" attached hereto and incorporated herein by reference. Failure to comply with any of the Standard Usage Requirements voids any rebate guarantee.

B. NO OTHER WARRANTIES

1. MODIFIED AGREEMENT - Except for the express warranties stated in Section V. A. above, TODAY'S DESTINY disclaims all warranties with regard to the TODAY'S DESTINY products sold hereunder including all implied warranties of merchantability and fitness for a particular purpose and any other liabilities, obligations or damages on the part of TODAY'S DESTINY, including but not limited to, consequential damages arising out of or in connection with the use or performance of the system.

2. GENERAL - Customer acknowledges that the hardware has multiple uses and was designated to provide general

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office computer functions as found on Microsoft Windows. Customer agrees to obey all applicable laws with regard to the use of the hardware. The database (s) provided to Customer is the property of TNG and may not be used outside this license. These databases are for one-time rental purposes only and TNG reserves the right to demand the return of all databases upon faxed request. Customer agrees to return these databases, not duplicates them, or use them for any purpose. Once demand for return has been made, customer agrees to return these databases within seven working days, or pay two dollars per record (name) they keep after seven days.

3. **ASSIGNMENT AGREEMENT** - This Agreement is not assignable without prior written consent of TODAY'S DESTINY. Any attempt by Client to assign any of the rights, duties or obligations of this Agreement without such consent is void. TODAY'S DESTINY cannot prevent you from selling your equipment, but TODAY'S DESTINY will only provide continued support for Equipment transferred to another person under the following circumstances:
- You must submit a written request for the transfer with detailed location and contact information on the transferee, and all zip codes the transferee desires to dial in. TODAY'S DESTINY will respond to the request and either accept or deny the transfer at its sole discretion.
 - If TODAY'S DESTINY accepts the transfer, then you must send in a \$500.00m administrative fee.
 - The transferee must submit executed current contract documents with TODAY'S DESTINY.
 - If the transferee desires a new or updated database, the transferee will be charged at \$.02 per record. A new or updated database is not required.
 - The Response Guarantee cannot be transferred unless the transferee signs up and pays for TODAY'S DESTINY's Coaching program, currently billed at \$12,000 for a one-year subscription.

This only related to a transfer of technical support and other support services from TODAY'S DESTINY. TODAY'S DESTINY does not own the equipment and cannot transfer it. TODAY'S DESTINY does not warrant that Client or Transferee owns the equipment. TODAY'S DESTINY does not act for or approve the sale or transfer of the equipment for any leasing company or other party who may have an ownership interest in the equipment. Client warrants and represents that it is not violating any lease, finance or security agreement by transferring the equipment.

This Agreement can only be modified by written Agreement duly signed by persons authorized to sign agreements on behalf of Client and TODAY'S DESTINY and variance from the terms and conditions of this Agreement in any manner or other written notification from the Client will be of no effect.

If any provision or provisions of this Agreement may be brought by either party more than one year after the cause of action has arisen, or, in the case of non-payment, more than one year from the date of last payment. Client agrees and understands that any statute of limitations to the contrary is hereby waived.

This Agreement shall be governed by the laws of the State of Texas without regard to its choice of law provisions. All parties submit and agree to exclusive jurisdiction and venue in Houston, Harris County, Texas.

Any other provision of this Agreement notwithstanding the provisions in the Agreement concerning Arbitration, trade secrets, confidentiality, and limitations shall survive the termination of this Agreement.

Any claim or controversy arising out of or relating to this Agreement shall be arbitrated according to the Federal Arbitration Act as modified by the arbitration provisions of this Agreement described below in section VI and incorporated herein for all purposes.

VI. ARBITRATION

- The parties agree that all questions, rights or controversies arising out of or relating to the foregoing Agreement shall be settled through binding arbitration under the provisions of the Federal Arbitration Act and the provisions of this section "VI". Any party who, in contravention of the arbitration or jurisdiction provisions of the Agreement brings an action in state or federal court will pay all the other parties costs, fees, attorneys' fees, and any other expenses related to the defense of such action. Any appropriate arbitrator or judge may award such expenses and fees.
- If any dispute should arise under this Agreement, either party may within 180 days after the date on which the dispute arises make a demand for arbitration by filing a demand in writing with the other party.
- The parties may agree on one arbitrator, but in the event that they cannot so agree within 30 days, there shall be three arbitrators, one named in writing by each of the parties within 45 days after demand for arbitration is made, and a third to be chosen by the two so named within 75 days after the demand for arbitration is made. Should either party fail to timely join in the appointment of the arbitrators, then such party waives their right to appoint an arbitrator.

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4. All arbitration hearings conducted under the terms of this agreement, and all judicial proceeding to enforce any of the provisions of this Agreement, shall take place in Harris County, Texas. The hearing before the arbitrators of the matter to be arbitrated shall be at the time and place within said County selected by the arbitrators, but in no event shall the hearing be held later than nine months after the demand for arbitration. Notice of hearing shall be given and the hearing conducted within ten days of such notice. At the hearing, either party may present any relevant evidence, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the arbitrators. The arbitrators shall hear and determine the matter and shall execute and acknowledge their award in writing and deliver a copy thereof to each of the parties by registered or certified mail. The award shall be enforceable in any court of competent jurisdiction.
5. If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties. If there are three arbitrators, the decision of any two shall be binding and conclusive.
6. If the arbitrators selected pursuant to Paragraph 3, above, shall fail to render a decision within 10 days of the date of the hearing, they shall be discharged, and three new arbitrators shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected.
7. The costs, attorneys' fees and expenses of arbitration, excluding the fees of the arbitrators, shall be borne by the party who incurs such expenses. The fees of the arbitrator (s) shall be split equally between the parties.
8. Each party may notice no more than two depositions total. Each party may serve no more than thirty requests for admissions due within 30 days of service. Each party may serve no more than thirty interrogatories. No interrogatory shall contain sub-parts, or concern more than one topic or subject of inquiry. Interrogatories may not be phrased so as to circumvent the purpose of this clause. No interrogatories may be served within 30 days of the date of hearing. All interrogatories shall be responded to within 30 days of service. Each party may serve no more than 30 requests for production of documents on the other party. Requests for productions of documents may not be served within 30 days of the date of hearing and shall be responded to within 30 days of service.
9. If any party contends that the other party has served discovery requests in a manner not permitted by this section, or that the other party's response to a discovery request is unsatisfactory, the party may request the arbitrator(s) to resolve such discovery disputes. A majority of the arbitrator(s) shall prescribe the procedure by which such disputes are resolved.

The Client acknowledges that he has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Further the Client agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between parties relating the subject matter of this Agreement.

AGREED TO AND ACCEPTED ON THIS 10 DAY OF March, 2005.

CUSTOMER

ACCEPTED BY TODAY'S DESTINY, INC.

NAME (PRINT) X Mamak Saffarpour TNG REP: _____

SIGNATURE: X M. Saffarpour BY: _____

TITLE: X Owner TITLE: _____

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March 9, 2005

Mamak Saffarpour, D.D.S.
Dr. Mamak Saffarpour
3535 Ross Avenue, Suite 200
San Jose, CA 95124

Re: Marketing/Training Program /Exhibit "B"

Dear Dr. Saffarpour,

If after 60 days of working with TNG's Marketing/Training program and according to our standard usage requirements listed below, you have not generated 10 patients per month from procedures of TNG's Marketing/Training program (i.e.; billing, coding, collecting, reactivation, referral, direct mail, internet marketing, etc.), TNG will rebate you up to one thousand dollars per month, on a pro-rated basis. (Examples: 1. If TNG generates six new patients, TNG will send the client a rebate of four hundred dollars. 2. If TNG generates zero new patients, TNG will rebate the client one thousand dollars. 3. If TNG has generated five new patients and four reactivated patients, TNG will rebate the client one hundred dollars.)

TNG will no longer be obligated under this rebate offer after 60 months (length of warranty) from the date of initial training or TNG has provided enough revenue to return double the purchase price, in long term value. TNG will continue to provide free customer support and marketing support for as long as you are in good standing with TNG and / or your finance company. Failure to comply with any of the standard usage requirements voids the Marketing/Training agreement.

If TNG has to activate a buy out procedure for the system, the buyout will reflect the pro-rated amount from the date of purchase. Equipment to be paid off no more than 30 days from received written notice. Example: 39,950.00 - 5000.00 (install and install training cost) if client had equipment for 4 months and payment was \$1000.00. Total sent to finance company or to person, whom original payment was made from, would be \$30,950.00.

If you or TNG decides this is not beneficial for any reason, TNG will buy you out of our Marketing/Training program, providing you have followed the standard usage requirements below.

Standard Usage Requirements:

1. You agree to use the TNG patient tracking software to track where all patients came from. Example: Direct Mail, re-activation, newsletters, and other mediums, etc. If there is a problem for any reason, to include: technical, coaching, advertising, case presentation or any other portion of the TNG Marketing/Training program, you must notify TNG in writing immediately. If the desired results are not being produced call the marketing department at 1-800-932-6382 and send appropriate reports. You will notify TNG if you plan to market yourself or company outside of the recommendations of TNG, so to avoid market saturation or duplication.
2. You will fax your coaching (revenue) and marketing reports weekly, to Attn: Customer Service @ 832-448-1407.
3. You will fax a request once a week and get verbal verification from the technician who received it, so a TNG technical support representative can log into your system via PC Anywhere. This will allow TNG to verify that the programs are being used for patient tracking and are functioning properly. You will need to specify a time Monday thru Friday between 9am and 4pm CST. Your TNG server must be running with PC Anywhere in standby or ready mode during that time. If you have questions you may call technical support at our toll free number 1-866-470-2277.

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13. Our coaches will train you and your staff on our 14 Step Referral Plan. TNG will provide the live campaign follow-up and handouts for this 14 Step Referral Plan. (Starts around 9 month mark).

14. TNG will provide ongoing service by continuing to update all of it's media concepts designed for you, including yellow page ads, newspaper ads, direct mail ads, TV & Radio spots. Additionally, TNG will provide ongoing marketing/consulting, coaching, technical support, practice management, continued education and updates, on a as needed basis, provided the client is in good standing with TNG and other related companies (finance co.'s, etc.).

If there are any further questions or comments, please feel free to contact me at 800-932-6382.

Customer Signature: M. Saffarian

TNG Systems Signature: _____

Print Name: Mamuk Saffarian

Print Name: _____

Title: Owner

Title: _____