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

IN RE:	§	
TODAY'S DESTINY, INC.	<b>§</b>	CASE NO. 05-90080-H1-7
DEBTOR	<b>\$</b> <b>\$</b> \$	(Chapter 7)
JOSEPH M. HILL, TRUSTEE,	§ § 8	
Plaintiff	\$ \$ 8	
v.	8 8 8	Adversary No. 06-3285
MICHAEL DAY ET AL.,	§ §	
Defendants	§ §	
	§	

# TRUSTEE'S THIRD AMENDED COMPLAINT EXHIBIT G

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Today's Destiny, Inc. Software License

CUSTOMER: Mamak Saffarpour

The Customer agrees to purchase and ToDey's Destiny, Inc. dba TNG Systems ("TNG Systems") by its acceptance of this agreement (the "Agreement"), agrees to grant to Customer and Customer agrees to accept from TNG Systems, in accordance with the following terms and conditions, a permanent non-exclusive single-sine license for use of Stratavoice software proprietary to Stratasoft, Inc. ("Stratasoft") listed below and more fully described in the attached Exhibits,

#### I. TNG Systems Supplied Products.

A Software Designation Stratavoico Software License - Single User Installation Date:

B TITLE, RISK OF LOSS AND SECURITY INTEREST - Ownership of the software and risk of loss or damage shall pass to the Customer upon delivery F.O.B. shipping point by TNG Systems; however, the Customer does hereby give to TNG Systems a security interest in the software as security for the performance by the Contomer of all its payment obligations becauseder, together with the right, without liability, to repossess the Software, 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 amount to any tax TNG Systems 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 Customer will obtain and pursus such certificate, document or proceeding prior to installation date.

D DELIVERY - Delivery will be number 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 Customer shall be at risk and expense of the Customer.

E DELAYS - TNG Systems 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 TNG Systems' reasonable control, including, but not limited to, delays in transportation and delay in delivery by TNG Systems' vendors.

#### IL CUSTOMER RESPONSIBILITIES

Customer shall be responsible for timely sits preparation including, but not limited to, adequate electrical power for computer operation and telephone services as required by the installation Customer shall be responsible for cabling except as specifically set forth berein.

TNG SYSTEMS AND/OR STRATASOFT, DO 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. TNG SYSTEMS MAKES NO REPRESENTATIONS AS TO THE EFFECT OF ANY SUCH STATUTES OR LAWS IN CONNECTION WITH THE GOODS OR CUSTOMER'S USE OR INTENDED USE. CUSTOMER ACKNOWLEDGES THAT CUSTOMER IS FREE TO CONSULT WITH 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 CUSTOMER'S 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. PROPRIETARY RIGHTS OF STRATASOFT AND/ OR TNG SYSTEMS.

A. The Nature of the Rights, and Title - Customer recognizes that the computer programs, system documentation manuals and other materials supplied by TNG Systems to Customer are subject to the proprietary right of Stratasoft and/or TNG

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Systems. Customer agrees with TNG Systems that the programs, documentation and all information or data supplied by TNG Systems in machine readable form and trade secrets of TNG Systems are protected by civil and criminal law, and by the law of copyright, are very valuable to TNG Systems and that their use and disclosure must be carefully and continuously controlled. Customer further understands that operator manuals, training aids and other written materials are subject to the Copyright Act of the United States.

- 1. Title: TNG Systems retains eitle to the programs, documentation, information or data furnished by TNG Systems in machine-readable form, and training materials. TNG Systems does not retain title to programs, operator manuals and other material bearing the Stratasoft copyright notice, but these items shall not be copied except as herein provided. Customer shall keep each and every item, to which TNG Systems retains title free and clear of all claims, liens and encumbrances except those of TNG Systems and any act of Customer; voluntary or involuntary, purporting to create a claim, lien or encombrance on such an item shall be void.
- B. Restrictions on Customer's Use The computer programs and other items supplied by TNG Systems hereunder are for the sole use of Customer at the named location. Competitive Uses: Customer agrees that while this License is in effect or while it has custody or possession of any property of TNG Systems it will not directly or indirectly lease, license, sell, offer or accordate or contract for any marketing, advertising or software similar to that supplied under this license, but this clause shall not be construed to prohibit Customer from acquiring for its own use advertising, marketing or software from third
  - 1. Copies: Customer agrees that while this License is in effect, or while it has custody or possession of any property of TNG Systems it will not (a) copy or duplicate, or petrait anyone else to copy or duplicate, any physical magnetic version of the programs, documentation or influentation furnished, in readable form, (b) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, the source programs or any part thereof from the object or executable program or from other information made available under this License or otherwise, (whether oral, written, tangible or intangible). Customer may copy for its own use and its own expense operator manuals, but shall advise TNO Systems of the number of copies made and their distribution.
  - 2. Use Restictions: The computer programs licerated hereunder shall be used only on a single central processing unit (referred to as the CPU and it's associated peripheral units at the same site. Use of a program shall consist either of copying any portion of the program from storage units or media into the CPU or processing of data with this program, or both. All programs, documentation, material in machine readable form supplied under this license shall be kept in a secure place, under access and use restrictions satisfactory to TNG Systems and not less strict than those applied to Customer's most valuable and sensitive programs. The programs licensed hereunder may be temporarily transferred to another CPU/while the specified CPU is undergoing repairs, but Customer shall notify TNG Systems of such transfer if it is for a period of more than 72 hours.
- 3. Backup Files: Customer shall furnish TNG Systems a written description of site file backup procedures insofar as those procedures may involve backup of the compains programs licensed hereunder. The written beckup procedures description shall include for each file backup copy of my of the programs licensed hareunder, media type and, for off site backup, where kept. TNG Systems shall promptly approve or disapprove backup procedures. Approval shall not be universomably withheld. Copies of the licensed programs made under TNG Systems' approved Customer backup procedures shall not be deemed to be copies under III.B. (2) above.
- 4. Unsuthorized Acts: Customer agrees to notify TNG Systems introdicately of the unsuthorized possession, use or knowledge of any item supplied under this license and of other information made available to Customer under this Agreement, by any person or organization not authorized by this Agreement to have such possession, ass or knowledge. Customer will promptly furnish full details of such possession, use or knowledge, and will cooperate with TNG Systems in any litigation against third parties deemed necessary by TNG Systems to protect its proprietary rights. Customer's compliance with this subparagraph shall not be construed in any way as a waiver of TNG Systems' right to recover damages or obtain other relief against Customer for its negligent or intentional harm to TNG Systems' proprietary right, or for breach on contractual rights.
- 5. Imspection: To assist TNG Systems in the protention of its proprietary rights, Customer shall permit representatives of TNO Systems to inspect at all reasonable times any location at which items supplied are being used or kept.
- C Transfer of License Rights The Customer's rights to use the programs, documentation, manuals and other susterials aupplied by TNG Systems hereunder shall not be assigned, licensed or transferred to a successor, affiliate or any other person, firm, corporation or organization voluntarily, by operation of law, or in any other manner without prior written
- D Remedies If Customer attempts to use, copy, licensee, or convey the stems supplied by TNO Systems hereunder in a manner contrary to the terms of this Agreement or in competition with TNG Systems or in derogation of TNG Systems proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, TNG Systems shall

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have, in addition to any other remedies available to it, the right of injunctive relief enjoining such action, the Customer bereby acknowledging that other remedies are inadequate.

E Binding Effect and Definitious - The Customer agrees that this Agreement binds the named Customer and each of its employees agents, representatives and persons associated with it. This Agreement further binds each affiliated and subsidiary firm, corporation or other organization with which the Customer may enter a joint venture or other cooperative

The term employee means an individual on whose behalf the Customer withholds income troces or makes contributions under the Federal Insurance Contributions Act or similar statutes in other nations.

The term Customer means only the following individual(s), corporations or organizations:

IV. ACCEPTANCE - Acceptance of the products under this Agreement will be performed at TNG Systems, or any location designated by TNG Systems or Customer site. You have unconditionally accepted these products and or services and acknowledge that it has not been accepted on a trial basis. The products will be deemed to be accepted when they have successfully satisfied the acceptance criteria in accordance with procedures defined in TNG Systems' Acceptance Test or as established by TNG Systems prior to testing or when delivered to customer and customer has signed this agreement. Any software or hardware, or any other information, or services reader, or product of TNO Systems will be deemed accepted once the customer has either signed the licensing Agreement or has opened any packaging of the products, which by doing so constitutes acceptance of the software and the criteria above, no refunds will be given for any scanon. Monthly rebetes to customer may be given only if customer has complied with the standard usage requirements. Customer agrees to hold TNG Systems bannless from any claims, due to the failure of the software when using hardware or computer system that does not meet the minimum criteria for use. TNG Systems has the option to specify abcruste equipment or marketing pieces at an alternate sits if Customer fails to fulfill responsibilities specified in Paragraph II, unless a mutually agreed upon alternate Installation Date has been determined subsequent to this Agrocusent.

#### V. WARRANTY/SUPPORT

products or services of TNO.

Software Warranty - Stratesoft or TNG Systems will design, code, check our, document and deliver promptly any amendments or alterations to the software that may be required to correct errors present at the time of acceptance of the system and which significantly affect performance in accordance with the specifications. This warranty is comingent upon Customer advising Stratmost in writing of such errors, in accordance with Stratmost's prescribed reporting procedures. During the term of this Agreement, Customer is estitled to receive upgrades that enhance performance and features of the product provided the customer is in good acceptable standing with Stratusoft and all maintenence fees are current. There is no charge for the software, however costs incurred for installation, documentation, hardware upgrades as needed, shipping and related expenses required to deliver the upgrade are the sole responsibility of the customer. Customer shall inform Stratasoft in writing of any modifications to the hardware and/or software on the system on which software provided under this Agreement depends for correct operation. Corrections for difficulties or defects traceable to Customer errors or system changes will be billed at standard Stratesoft time and materials rates. TNG will provide UNLIMITED technical support and merketing support, and honor the response guarantee, only if, and for as long as the customer has the equipment, providing the customer is in good standing with any financing institution that has financed the equipment, not more than 10 days late, and is in good standing with TNG, and has not done anything that may barm TNG or the reputation of TNG. (See Response Guarantee attached as "Exhibit A" of the "TNG Equipment Sales Agreement" and respectively, and incorporated herein by reference. Failure to comply with any of the Standard Usage Requirements, from the date of signing of this document, and continuously weekly thereafter voids the Response Guarantee permanently. TNG may at its discretion, continue to provide full rearketing, advertising, cosching and other support, however ING will met be obligated under the response agreement after any breach or failure to comply or other provisions within this agreement. ) In the event

A. No Other Warranties - Except for the express warranties stated in Section V. above, Stratasoft and TNG Systems disclaim all warranties with regard to the products of scrvices sold hereunder including all implied warranties of merchantability and fitness for a particular purpose and all obligations or liabilities on the part of TNG Systems for damages, including but not limited to, consequential damages arising out of or in connection with the use or performance of the system.

leased, financed, or cash paid for services or products fails to perform as expected or represented; customer agrees it will bonor the agreements with any financing institution, including TNG financed clients, they may have contracted with for

VI. GENERAL - Customer acknowledges that the software programs have multiple uses and was designed to provide general office computer functions as found on Microsoft Windows, which is needed for the software. Customer agrees that they must scrub any list given to them from TNG with any state or national do not call list, if customer wants to use the list provided from TNG, for mail, to call residential numbers, and that there may be other state and local requirements they need to considered prior to using this requested function. These functions can be integrated or used separately within the Windows/Microsoft

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Compliance With Laws: You agree to use the Software and other TNO Systems products in accordance with local, state, and federal laws, and you acknowledge that compliance with such laws may limit your use of the product for certain applications, including, but not limited to direct marketing and telemarketing applications. Federal and state law may impose restrictions on the ability to solicit by telephone or faceimile. Laws vary from jurisdiction to jurisdiction; a violation of such laws may result in significant penalties and other sanctions. Any person intending to use the Software or other TNG Systems' products for solicitation purposes should comput with their own counsel to determine the extent, if any, of pecmiscible solicitation activities. State boards may also have restrictions on what may or may not be used for advertising and or marketing campaigns within a given practice field, and should be verified and determined prior to use of any system or program provided by TNG. A live operator may be required in your state, to ask for consent from the called party, prior to delivering an automated message with an automated dialing device. You agree that all of these potential restrictions were explained to you fully, prior to purchasing, verbally and in writing. You agree that you were also informed that the TNG system computer can be used with a live operator. If it is found that this is a requirement necessary for operation within the area you choose to operate it, the TNG System has the capabilities to perform these functions.

Use of ADAD's in the State of California: The use of Automatic Dialing - Automating Devices (ADAD's) is restricted by the Public Utilities Code of the State of California, USA. ADAD's must be used in accordance with Article 2 commencing with Section 2871 of Chapter 10 of Part 2 of Division 1 of the Public Utilities Code of the State of California. As a requirement of the Law, all companies selling ADAD Devices must make this Article available to potential purchasers of this type of equipment. A full copy of the Article will be included as part of the Instruction Manual shipped with all ADAD's to the State of California. This Article is available upon request to potential purchasers of ADAD equipment from California.

VII. This Agreement is not assignable without prior written cornect of TNG Systems. Any attempt by Customer to assign any of the rights, duties or obligations of this Agreement without such consent is void. This Agreement can only be medified by written Agreement duly signed by persons authorized to sign agreements on behalf of Customer and TNG Systems and variance from the terms and conditions of this Agraement in any manner or other written notification from the Customer will be of no effect. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unembreeable, the validity, legality and enforceability of the remaining provisions shall not in any way be impaired thereby. No action, claim, arbitration, or suit atising out 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. Customer 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 continuersy 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 in section VIII incorporated herein for all purposes. The Customer acknowledges that he/she has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Further the Customer agrees that it is the complete and exclusive statement of the agreement between the parties, which supercedes all proposals or prior agreements, soal or written, and all other communications between parties relating the subject matter of this Agreement.

#### VIII. ARBITRATION

- 1. 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 Agreement. 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, free, attorneys' fees, and any other expenses related to the defense of such action. Any appropriate arbitrator or judge may award such expenses and fees.
- 2. 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.
- 3. 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 maned within 75 days after the demand for arbitration is made. Should either party fail to timely join in the appointment of the arbitrature, and then such party waives their right to appoint an arbitrator.

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- All the learnings consumed anner the terms of this Agreement, and all justices proceeding to enforce any of the provisions of this Agreement. I take place in Harris County, Texas. The hearing to the arbitrators of the matter to be arbitrated shall be at the tune and place within said County selected by the arbitrates, but in no event shall the hearing be held later than thins months after the demand for arbitrations to the region 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 finmal 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 excitified mail. The award shall be enforceable in any court of compensat 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 fall to render a decision within 10 days of the date of the bearing, 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 botne 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.

AGREED TO AND ACCEPTED ON THIS THE	DAY OF March 2005.
NAME (PRINT) X Mamak Suffarpair	ACCEPTED BY TODAY'S DESTINY, INC. TNG REP:
SIGNATURE: X 4 Seffagaur	BY:
TITLE: X	TITLE: