EPACCSYS
ERP SOLUTIONS & SERVICES

Epaccsys Standard Terms

For

Supply of Software, Consultancy, Training and Support Services.

Agreement No: XXXXX

Date: **XXXX day of XXXXXXX XXXX**

Parties: **Epaccsys Limited (Company No: 04206722) whose principal place of business is Norwich House, 22-30 Horsefair Street, Leicester, LE1 5BD. ('the Company')**

and

XXXX, (Company No: XXXXXX) whose registered office address is XXXXX XXXXX, XXXXX, XXXXXX XXXXXX ('the Customer')

THIS AGREEMENT is made the XXXX day of XXXXXXXXX XXXX

BETWEEN:

Epaccsys Limited (Company No: 04206722) whose principal place of business is Norwich House, 22-30 Horsefair Street, Leicester, LE1 5BD. ('the Company')

and

XXXX, (Company No: XXXXXX) whose registered office address is XXXXX XXXXX, XXXXX, XXXXXX XXXXXX ('the Customer')

RECITAL

The Company is an authorised reseller of computer software programs and has agreed to supply such programs and/or related services to the Customer upon the terms and conditions of this agreement.

OPERATIVE PROVISIONS

1 Definitions

In this agreement unless the context otherwise requires:

1.1 "Agreement" means this agreement (including its Schedules).

1.2 "Charges" means any charges (including Support Charges) that may be invoiced by the Company to the Customer in connection with this Agreement (whether by virtue of a specific provision or otherwise) as specified in Schedules C and D, as varied from time to time in accordance with clause [4].

1.3 "Consultancy Charges" means the charges levied by the Company for the supply of Consultancy as set out in Schedule D

1.4 "Consultancy" means the consultancy work (if any) set out in Schedule D

1.5 "Commencement Date" means the date when the customer has authorised the project to progress by way of Agreement signature.

1.6 "Current Release" means that version of Software currently installed on the Equipment or as amended by any Update or Upgrade from time to time supplied by the Company and installed on the Equipment provided that the Customer need not incorporate any Update or Upgrade to the Software for a

	maximum period of six months from receipt of the same.
1.7	“Payment” is the value of any software and services [and the Support Charges for the first year from the date of the new Agreement.], or as per any other agreement as outlined in schedule C
1.8	"Development Work" means the software development work, or RFC’s, (if any) set out in the Schedule E
1.9	"Development Charges" means the charges levied by the Company for the supply of the Development Work as set out in Schedules D and E.
1.10	"Equipment" means the computer and operating system which will host the system
1.11	"Installation" means the installation work (if any) set out in the Schedule D
1.12	"Installation Charges" means the charges levied by the Company for Installation as set out in the Schedule D
1.13	"Licensor" means Epicor Software or one of its associated companies.
1.14	"Location" means the location of the Equipment and system
1.15	"Support Charges" means (subject to clause [6] hereof and paragraphs [1.3] of Schedule B) the charges levied by the Company for the supply of the Support Services during the Support Hours which for the first year from the anniversary of the current agreement shall be the amount specified in Schedules C and for each subsequent year during which the Company shall provide the Support Services at the same amount subject to any variation notified by the Company to the Customer in accordance with clause 4.5.
1.16	“Support Term” means the minimum duration for the provision of support services as detailed in clause 4.6
1.17	"Support Services" means the support services specified in Schedule B
1.18	"Support Hours" means the standard hours during which the Support Services are available as specified in Schedule B
1.19	"Project Management" means the project management work (if any) set out in Schedule D.
1.20	"Project Management Charges" means the charges levied by the Company for Project management as set out in Schedule

D

1.21 "Software" means the Epicor and any other software programs (if any) in object code form identified by title and reference number in Schedule C [as amended by any Update or Upgrade of the same supplied by the Company to be installed on the Equipment].

1.22 "Software Charge" means the charge levied by the Company for the supply of the Software as set out in Schedule C.

1.23 "Software Documentation" means the operating manuals, user instructions and other related materials supplied to the Customer (whether physically or by electronic means) for aiding the use of the Software, including any part or copy of them.

1.24 "Specification" means a design document for the Development Work undertaken by the Company for the Customer describing the facilities and functions thereof and signed by the Customer.

1.25 "Staff" means any individual provided by the Company to perform the Development Work, Consultancy, Training, Support Services or Extra Support Services.

1.26 “Live” date means the date when the customer commences to use the system for business use.

1.27 "Update" means a new release of a particular Software version which provides functional enhancements and error corrections.

1.28 "Upgrade" means a new release of the Software with a higher version number than the version of Software to be installed on the Equipment at the Commencement Date.

2 Scope of the Agreement

2.1 In consideration of the sums payable by the Customer to the Company as provided hereunder, the Company agrees to supply to the Customer the Software, Development Work, Project Management, Installation, Consultancy, Training, and Support Services upon and subject to the terms of this Agreement.

2.2 The Customer shall supply a purchase order and deposit payment to the Company on the date of this Agreement for the Software, Development Work, Project Management, Installation, Consultancy, Training and Support Services. Ongoing Support Services will be due on the anniversary of the original order date.

2.3 The Company will continue to support the Customer from the delivery of the Epicor software until its fifth anniversary, thereby honouring the current commitment.

2.4 The Company will deliver any additional Consultancy, if required, at the venue and at the times to be agreed

2.5 Any additional Consultancy Charges shall be invoiced immediately following supply of the Consultancy and will be due for payment within 30 days of the invoice date.

2.6 The Company will deliver any additional Training, if required, at the venue and at the times to be agreed

2.7 Any Training Charges shall be invoiced immediately following supply of the Training and will be due for payment within 30 days of the invoice date.

2.8 The Support Services shall be provided by the Company in the manner and for the period set out in Schedule B. The balance of the Support Charges in respect of the first year after the anniversary of the current agreement shall be invoiced and due for payment as specified in clauses 2.2. The Support Charges in respect of each subsequent year during which the Company shall provide the Support Services shall be invoiced at any time during the last month of the previous year and such invoice shall be payable within 30 days of the invoice date. Any time spent in providing any additional Support Services will be invoiced to the Customer at a charge to be agreed between the Company and the Customer from time to time. Such charges shall be invoiced immediately following the supply of such additional Support Services and will be due for payment within 30 days of the invoice date.

2.9 Any Software, Development Work, Project Management, Installation, Consultancy and/or Training not comprised in the Customer's purchase order supplied pursuant to clause 2.2 above shall only be supplied after the receipt by the Company of a valid purchase order issued by the Customer and agreement between the Company and the Customer in writing of the price to be paid by the Customer to the Company therefore and the terms of payment applicable thereto (save as may otherwise be agreed from time to time). For the avoidance of doubt, the Company shall in no way be obliged to provide any such services at the rates set out in Schedule D. Subject to the foregoing, and to any variations expressly agreed between the Company and the Customer, such Software, Development Work, Project Management, Installation, Consultancy, Training and Support Services shall be supplied on equivalent terms to the terms of this Agreement provided that if the Company provides the Customer with additional Software, the Customer shall be required to purchase additional Support Services in relation thereto.

3 Liaison and Staffing

3.1 The Customer will appoint a member of its staff ('the Customer Representative') to act as the principal point of contact between the parties for the purposes of this Agreement.

3.2 The Company will assign appropriately qualified Staff to supply the Development Work, Project Management, Installation, Consultancy, Training and Support Services or any part of it. The Company may at its discretion and at any time replace anyone allocated by it to supply the Development Work, Project Management, Installation, Consultancy, Training, and Support Services but the Company will endeavour to give prior notice of any replacement of Staff.

3.3 The Company is empowered to use sub-contractors for the provision of any part of the Development Work, Project Management, Installation, Consultancy, Training and Support

Services.

4 Charges and Additional Charges

4.1 All charges referred to in this Agreement are quoted exclusive of VAT. Where applicable, VAT and any other taxes duties or levies will be paid additionally by the Customer at the then prevailing rate.

4.2 The Development Work Charges, Project Management Charges, Installation Charges, Consultancy Charges, Training Charges and Support Charges are exclusive of any travel, subsistence and other out-of-pocket expenses incurred by the Company in respect of the provision of the services to which they relate. These expenses will be invoiced to the Customer as incurred and such invoices will be due for payment within 30 days of the invoice date.

4.3 With the exception of items in dispute by the Customer if any sum payable to the Company under this Agreement is in arrears for more than 10 days after the due date, the Company shall be entitled without prejudice to any other right or remedy to:

4.3.1 charge interest on such overdue sum on a day to day basis from the original due date until paid in full at a rate of 3% above The Royal Bank of Scotland plc base lending rate in force from time to time; and

4.3.2 suspend the supply of the Development Work, Project Management, Installation, Consultancy, Training and Support Services and any other goods or services agreed to be supplied by the Company to the Customer.

4.3.3 Items in dispute shall only relate to each line item and not the entirety of payments outstanding.

4.4 The Customer will notify the Company in writing within 10 days of receipt of an invoice if the Customer considers such invoice incorrect or invalid for any reason failing which the Customer will raise no objection to any such invoice and shall be deemed to have accepted the same and shall make full payment without any deduction or set off.

4.5 The Company reserves the right to increase the annual Support Charges (once in every 12 months) in line with the Retail Price Index percentage plus 2%.

4.6 The Company reserves the right to increase the charges for Development Work, Project Management, Installation, Consultancy and Training on the first anniversary of this Agreement in line with the Company's published rate card at that date.

4.7 The minimum duration for the provision of Support Services shall be no less than 5 years from the date of this Agreement and pursuant to clause 4.5 of this Agreement.

5 Customer's Responsibilities

5.1 Throughout the term of this Agreement the Customer shall:

5.1.1 comply at all times with the terms and conditions of the licence granted by the Licensor to the Customer direct for use by the Customer of the Software and Current Release

5.1.2 use only the Current Release unless agreed otherwise by the Company in writing.

5.1.3 ensure that the Current Release and the Development Work are used in a proper manner by competent trained employees only or by persons under their supervision;

5.1.4 notify the Company promptly if the Current Release or the Development Work are not operating correctly;

5.1.5 not alter, adapt or modify the Current Release or the Development Work in any way nor permit the Current Release or the Development Work to be combined with any other programs that update the Epicor database without the prior written consent of the Company, such request not to be unreasonably withheld;

5.1.6 not request or permit anyone other than the Company to provide any support services in respect of the Current Release or Development Work;

5.1.7 co-operate fully with the Staff in the diagnosis, investigation and correction of any fault in the Current Release or Development Work;

5.1.8 make available to the Company free of charge all information, facilities and services reasonably required by the Company to enable the Company to perform the Development Work, Consultancy, Training and Support Services including, without limitation, computer runs, core dumps, print-outs and data preparation;

5.1.9 provide at the Customer's expense such telecommunication facilities as are reasonably required by the Company for remote testing and diagnostic purposes provided that the Company shall be responsible for all call charges in connection therewith;

5.1.10 provide access for the Staff to the Current Release, the Development Work, the Equipment and the Location during the Support Hours and at such other times as the Company may require on reasonable prior notice;

5.1.11 keep full security copies of the Current Release and the Development Work and of the Customer's data bases and computer records regularly backed up in accordance with good computing practice.

5.2 If any Staff works on the Customer's premises, the Customer will ensure that such Staff are provided with suitable office accommodation and services, including telephone, facsimile and photocopying facilities without charge, other than as provided in clause 5.1.9. Such accommodation and services will be readily accessible to any relevant computing facilities including the Equipment.

5.3 The Customer will supply the Company without charge throughout the term of this Agreement with a complete copy of the latest issue of all documentation and other material notified by the Company from time to time as being necessary for the Company to perform its obligations under this Agreement including without limitation copies of the operating system manuals and documentation relating to third party software which interfaces with the Current Release ("Third Party Software") (collectively referred to as "the Documentation"). The Customer warrants that it has or will obtain at its own expense all necessary permissions required to allow the Company throughout the term of this Agreement to receive and use the Documentation and the Customer undertakes to indemnify the Company in full against any

claims, expenses, loss, damage or other liability arising from any breach of this warranty.

5.4 If the Customer is to provide any computing and ancillary facilities, the Customer will be responsible for the prompt and continuing availability to the Company of all such facilities in good working order throughout the term of this Agreement to the extent necessary for the Company to perform the services to be provided to the Customer hereunder.

6 Exclusions

6.1 The Support Charges do not include the provision of the Support Services in respect of any defect error or other problem:

6.1.1 resulting from any modifications or repair to the Software or the Current Release or merger of the Software or the Current Release (in whole or part) with any other software made by any person other than the Company or its nominated sub-contractors without the Company's or Licensor's prior written approval;

6.1.2 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Company;

6.1.3 in any version of the Software other than the Current Release save where the Customer is using such earlier version with the prior written approval of the Company;

6.1.4 resulting from improper or incorrect use or neglect of the Software or operator error;

6.1.5 in or attributable to the Equipment or other equipment and programs used in conjunction with the Software or the Current Release (including but without limitation any Third Party Software) or for any other reason external to the Software.

6.1.6 in any Development Work after the 60 day Development Work warranty period referred to in clause 7.5.

6.2 If at the request of the Customer the Company agrees to provide any Support services in respect of any of the exclusions referred to in clause 6.1 (but it is confirmed that the Company is under no obligation to do so) the Company will endeavour to undertake such additional Support Services as soon as reasonably practicable and the Company will be entitled to make an additional charge on a time and materials basis in accordance with its then current standard rates.

7 Warranty

7.1 The Company warrants that:

7.1.1 the Software when properly used will perform in accordance with the Software Documentation

7.1.2 the carrier media on which the Software is recorded and delivered to the Customer will be free from defects in materials and workmanship under normal use; and

7.1.3 the Development Work, Project Management, Installation, Consultancy, Training and Support Services and any other services to be provided by the Company to the Customer under the provisions of this Agreement (together "the Services") will be

performed by competent persons and will be carried out with reasonable care and skill.

7.2 The Company undertakes to use all reasonable endeavours to remedy free of charge to the Customer any fault arising from a breach of the warranty in clause 7.1 which is reported to the Company in writing within 90 days after the later of delivery, installation and registration of the Software to the Customer or performance by the Company of that part of the Services to which such fault relates (as the case may be). If the Company rectifies such fault by the provision at the Company's option of replacement or additional materials or services within a reasonable period of time, then the Company will have no other liability of any kind in respect of or arising from such fault. The Company will have no liability or obligation under warranty 7.1 in respect of any fault not so reported.

7.3 If a problem is found upon investigation not to be the Company's responsibility under the provision of clause 7.1 the Company may charge the Customer for all reasonable costs and expenses incurred by the Company in the course of or in consequence of such investigation.

7.4 The Company will not be liable under clause 7.1 to remedy any defect, error or other problem of the nature referred to in clauses 6.1.1 to 6.1.5 inclusive.

7.5 The Company warrants that any Development Work will perform in accordance with the Specification. The Company undertakes to use all reasonable endeavours to remedy free of charge to the Customer any fault arising from a breach of this warranty which is reported to the Company in writing within 60 days after the later of delivery or installation of the Development Work to the Customer after which the Company will have no liability or obligation under this warranty. If the Company rectifies such faulty work by the provision at the Company's option of replacement or additional materials or services within a reasonable period of time then the Company will have no other liability of any kind in respect of or arising from such fault.

7.6 If any fault in the Development Work is reported to the Company outside the 60 day warranty period as specified in Clause 7.5 the Company will be entitled to invoice the Customer for all reasonable costs and expenses incurred by the Company in investigating and endeavouring to remedy such fault calculated on a time and materials basis at the Company's then current rates.

7.7 The Company warrants that it has the right and authority to supply the Software and the Current Release on the terms of this Agreement.

7.8 The Licensor does not warrant that the operation of the Software or the Current Release or the Development Work will be uninterrupted or error free.

8 Limitation of Liability

8.1 The Customer acknowledges that the Company's obligations and liabilities in respect of the Software, Development Work, Project Management, Installation, Current Release, Consultancy, Training, and Support Services are exhaustively defined in this Agreement as the case may be. The Customer agrees that the express obligations and warranties made by the Company in this Agreement are in lieu of and to the exclusion of all warranties, conditions, terms, undertakings or representations of any kind, express or implied, statutory or otherwise relating to anything supplied or any services provided under or in connection with this Agreement including (without limitation) as to the condition, quality, performance,

merchantability or fitness for purpose of the Software, the Current Release, the Services or any part of them.

8.2 The Company will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however causes, whether arising under contract, tort (including negligence or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss or profits or of contracts, loss of operation time and loss of goodwill or anticipated savings, even if the Company has been advised of this possibility.

8.3 The Company accepts liability to the extent it results from the negligence of the Company for:

8.3.1 death or injury to the Customer without limit; and

8.3.2 physical damage to or loss of the Customer's tangible property up to the amount of £250,000 in respect of each incident or series of connected incidents.

8.4 In all other cases not falling within clause 8.3 the Company's total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with this Agreement or based on any claim for indemnity or contribution will not exceed:-

8.4.1 (in the case of any claim arising in respect of any defect in the Software) the Software Charges;

8.4.2 (in the case of any claim arising in respect of any defect in the Development Work) the Development Charges;

8.4.3 (in the case of any claim arising in respect of any defect in the Project Management) the Project Management Charges;

8.4.4 (in the case of any claim arising in respect of any defect in the Installation) the Installation Charges;

8.4.5 (in the case of any claim arising in respect of any defect in the Consultancy) the Consultancy Charges;

8.4.6 (in the case of any claim arising in respect of any defect in the Training) the Training Charges;

8.4.7 (in the case of any claim arising in respect of any defect in the Support Services) the aggregate sum of the Support Charges paid in the immediately preceding period of 12 months; or

8.4.8 (in the case of any claim arising in respect of any defect in any Software, Development Work, Project Management, Installation, Consultancy or Training not comprised in the Customer's purchase order supplied pursuant to clause 2.2 above or any defect in any additional Support Services) the charges levied by the Company for the supply of such Software, Development Work, Project Management, Installation, Consultancy, Training or Support Services.

8.5 The Customer agrees that, except as expressly provided in clause 7 and this clause 8, the Company will not be under any liability of any kind whatever and however caused arising directly or indirectly in connection with this Agreement.

8.6 The Customer agrees to allow the Company not less than 28 days (following notification thereof by the Customer) in which to remedy any default by the Company hereunder.

8.7 The Customer will indemnify the Company in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from the Customer's possession, operation, use, modification or supply to a third party of anything supplied under this Agreement or any part of it except and in so far as the Company is liable as expressly provided in this Agreement.

9 <u>Ownership and Permitted Use</u>

9.1 The copyright and all other proprietary rights whatever in all materials or services supplied or developed under this Agreement will remain vested in and the absolute property of the Company or the Licensor as the case may be. The Customer will do all such acts and things as the Company may reasonably require for the purpose of preserving or perfecting such vesting.

9.2 Conditional upon payment to the Company of all sums due to it under this Agreement, this Agreement will operate to grant to the Customer a non-exclusive and non-transferable licence to use at its own expense and for its own internal purposes only the Software, the Current Release and the Development Work.

9.3 The Customer will not copy or permit the Software, the Current Release and the Development to be copied except for reasonable security and backup purposes.

9.4 The Customer shall not adapt the Software or the Current Release or the Development Work for any purpose nor arrange or create derivative works based thereon without the Company's expressed written consent in each case.

9.5 The Customer shall not transfer or distribute (whether by licence, loan, rental, sale or otherwise) all or any part of the Software or the Current Release or the Development Work to any other person.

9.6 The Customer shall not make for any purpose including (without limitation) for error correction, any alterations, modification, additions or enhancements to the Software or the Current Release or the Development Work nor permit the whole or any part of the Software or the Current Release or the Development Work to be combined with or become incorporated in any other programme except to the extent permitted by clause 9.7 without the Company's prior written consent.

9.7 The Customer shall not, nor permit others to, de-compile, reverse-engineer or disassemble the Software or the Current Release or the Development Work or any part except that the Customer may de-compile the Software or the Current Release or the Development Work only to the extent permitted by law where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with the Software or the Current Release or the Development Work or with another program and such information is not readily available from the Company, the Licensor or elsewhere.

9.8 The Customer will ensure that all of its relevant employees are advised that the Software, the Current Release and the Development Work constitute confidential information and that all intellectual property rights in these are the property of the Company or the Licensor as the case may be.

9.9 The Customer will at all times comply with the Licensor's terms and conditions when using the Software and the Current Release a copy of which is annexed hereto.

10 Confidentiality

10.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Agreement save that which is:

10.1.1 trivial or obvious;

10.1.2 already in its possession other than as a result of a breach of this clause; or

10.1.3 in the public domain other than as a result of a breach of this clause;

10.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 10.1 above by its employees agents and sub-contractors

10.3 Each party will establish and maintain adequate security measures to safeguard information and data of the other party in its possession from unauthorised access use or copying.

10.4 If the Customer sells or disposes of the Equipment or any other Equipment to which the Software has been loaded, it will ensure that all copies of the Software, the Current Release and Development Works have previously been deleted.

11 Non-solicitation

The Customer will not during the term of this Agreement and for a period of 6 months after termination of this Agreement without the Company's prior written consent directly or indirectly solicit or offer employment or engagement to any Staff who at the time of such action or during a period of 12 months immediately preceding such action was directly involved in the provision of any of the Software, Development Work, Project Management, Installation, Consultancy, Training, and Support Services.

12 Termination

12.1 With the exception of clause 4.6 and subject to clause 12.2 this Agreement shall commence on the date hereof for a period of 1 year and continue thereafter until either party gives to the other 90 days written notice to expire at the end of an anniversary of this Agreement, save as may otherwise be agreed by the Company in writing.

12.2 Either party may terminate this Agreement by notice with immediate effect if the other materially breaches this Agreement and (if the breach is remediable) fails to remedy it within 30 days of receiving written notice requiring rectification of the breach from the injured party; or if the other ceases or disposes of its business, or threatens to do so; or if, the other being a partnership, an application is made for its dissolution or it is dissolved; or if the other, being a company, partnership or individual, begins, is party to, consents to or is otherwise subject to proceedings under the law relating to bankruptcy, distress, receivership, insolvency or the relief of creditors or enters into arrangements benefiting its creditors.

12.3 Termination will not prejudice any others rights or remedies of the injured party and will be without liability for any loss or damage suffered by the party in default.

12.4 On termination of this Agreement for whatever reason the Company shall be under no further obligation to provide the Customer with Support Services

13 Assignment

This Agreement is personal to the Customer and shall not be assigned or transferred by the Customer except with the prior written consent of the Company other than to a subsidiary or holding company of the Customer (as defined in section 1159 of the Companies Act 2006) provided that the Customer shall always be primarily liable to the Company for any breach of this Agreement.

14 Force Majeure

Neither party will be liable for any breach or delay in performing or failure to perform its obligations (other than a payment obligation) under this Agreement resulting from any cause outside its reasonable control, including but not limited to, fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies or raw materials requirements or regulations of any civil or military authority (an "Event of Force Majeure"). Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.

15 Notices

All notices which are required to be given under this Agreement will be in writing and will be sent to the address of the recipient set out on the front page of this Agreement or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:

15.1 by hand delivery-at the time of delivery;

15.2 by first class post-48 hours after the date of mailing;

15.3 by facsimile transmission-immediately on transmission provided a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next business day.

16 Severability

If any provision of this Agreement is found by a court of competent jurisdiction or administrative body of competent jurisdiction to be invalid or unenforceable then such provision will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

17 Waiver

No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

18 Change Control Procedure

18.1 The Customer may at any time request, and the Company may at any time recommend, a change in the provision of the Development Work, Project Management, Installation, Consultancy or Training Services.

18.2 Any such change request shall be made in writing by completing the Request for Change ("RFC") Form attached as Schedule H hereto that shall provide reasonable particulars of the proposed change sufficient to enable the Company to comply with its obligation to provide a Change Response under the following sub-clause.

18.3 Within 14 days of receiving an RFC the Company will advise the Customer of the technical feasibility; its impact on other parts of the system; the amount of effort and costs; and the elapsed time required to incorporate the change. This information is entered into the technical impact section of the RFC ("a Change Response").

18.4 If the Customer accepts the Change Response the Customer shall prepare a written note ("Change Order") of the changes to the Agreement affected by the RFC and the Change Response. No RFC shall be effective until an authorised representative of both parties has signed the Change Order and when the Change Order is so signed it shall constitute an amendment to the Development Work, Project Management, Installation, Consultancy or Training Services (as applicable). The Company shall not commence the provision of any software or services detailed in the Change Order until a purchase order from the Customer has been received by the Company.

19 Dispute Resolution

19.1 Without prejudice to Clause 19.4, any dispute arising out of or in connection with this Agreement (a "Dispute") shall be referred to the principal points of contact as detailed in Clause 3.1. If the Dispute cannot be resolved by them within 14 days after it has been referred to them, either party may give to the other party written notice that a Dispute has arisen and cannot be resolved by the principal points of contact (the "Escalation Notice"). Within 7 days after the date of the Escalation Notice, that Dispute shall be referred to a Director of each of the parties for resolution.

19.2 If the Dispute is not resolved by agreement in writing between the parties within 7 days after the date of the Escalation Notice, the parties shall attempt to resolve the Dispute by entering into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Effective Dispute Resolution.

19.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or the mediator they have agreed for the exchange of relevant information and for setting the date for negotiations to begin.

19.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be without prejudice to the rights of the parties in any future legal proceedings.

20 Whole Agreement

This Agreement and the documents referred to herein (including the Specification) are the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersede all previous communications, representations and other arrangements, oral or written. The Customer acknowledges that no reliance is placed on any representation made but not embodied in this Agreement. The printed terms and conditions of any purchase order or other correspondence and documents of the Customer issued in connection with this Agreement will not apply unless expressly accepted in writing by the Company.

Except as otherwise permitted by this Agreement no change to its terms will be effective unless it is in writing and signed by persons authorised for and on behalf of both parties.

21 Governing Law

This Agreement will be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales.

22 Order Of Precedence

In case of any conflict between the terms of this Agreement and the terms of a Schedule hereto, the terms of the Agreement shall prevail.

SIGNED for and on behalf of
EPACCSYS LIMITED

SIGNED for and on behalf of

Schedules

A. Epicor Software Licence Agreement

B. Epaccsys Software Support Agreement

C. Software

D. Implementation Services

E. Developments

F. Initial Project Plan

G. Payment Milestones

H. Request For Change (RFC) Form

I. Third Party Hardware

J. The Hardware

Schedule A – Epicor Software Licence Agreement

Enclosed.

Schedule B

EPACCSYS MAINTENANCE AND SUPPORT AGREEMENT

Epicor Business Solutions

The terms of this Schedule B ("Schedule B") form part of the Epaccsys Standard Terms For Supply Of Software, Consultancy, Training and Support Services between Epaccsys Limited and the Customer, dated XXXX XXXXX XXXX (the "Agreement"). All terms used within this Schedule B shall be those defined in the Agreement unless otherwise indicated below.

Upon payment of the Support Fees as specified in the Agreement, the Company will provide the following Support Services for the Software and Development Work:

1. <u>SOFTWARE AND DEVELOPMENT WORK SUPPORT.</u>

1.1. The Company will, from a centralised support desk for the handling of support calls via appropriately trained staff ("Supportdesk"), provide support to the Customer's designated contacts for the purpose of identifying and diagnosing Faults in the Software and Development Work , during the Company's normal business hours of 9am to 5.30pm UK time, Monday through Friday (excluding English public holidays).

1.2. The Support desk shall log, monitor and escalate support calls received from the Customer and shall be responsible for maintaining and updating call status and ensuring that support calls are resolved.

1.3. The Customer will email all support calls to Support@Epaccsys.com detailing the issue, and where ever possible attaching screen shots, report outputs and providing examples of the issue and how to replicate the problem, (Epaccsys can provide a detail call logging sheet to help the customer with logging calls).

Emails details to be logged will need to include the following information:

- Main contact name for the log
- Module of the software where the issue resides
- If the problem is occurring on all companies or just a single company
- If the problem is happening on all machines or for just a single user
- Any example or screen shots of the issue
- Steps to replicate the issue
- Priority of Issue

If a screen shot is attached, please save it in to a Word document and then attach that to the email rather than adding the screen shot to the email body text.

1.4. Upon receipt of a support call from the Customer the Supportdesk shall issue the Customer with a unique support reference number and shall attempt to resolve such Fault immediately. If the Supportdesk is unable to resolve the Fault immediately the Customer and the Company shall agree upon a Fault classification in accordance with the table below:

Cosmetic Fault	means a Fault which does not prevent the Software or Development Work from operating in accordance with its technical specification
Material Fault	means a Fault which is neither a Critical Fault nor a Cosmetic Fault including, without limitation, a Fault which causes the Software or Development Work not to operate in accordance with its technical specification and has a significant impact on the users of the Software or Development Work but which does not prevent the entire use of the Software or Development Work
Critical Fault	means a major Fault which prevents use of the Software or Development Work

The call shall then be passed to the Company's support analysts for analysis and resolution, where an action plan for the resolution of such Fault will be formulated. The Company will make reasonable endeavours to resolve the Fault within the following timescales:

Type Of Call	**Support call log number provided within a working hour of an e-mail or telephone call being received**	**Incident Analysis & Assignment within**	**Target time to resolution**	**Examples**
Cosmetic Fault (Low Priority)	*95%*	*1 days*	*5 days during Support Hours or as otherwise agreed between the parties*	*Minor database or application function unavailable*
Material Fault	*95%*	*2 hour*	*1 day during Support*	*Application failure requiring re-install*

(Significant Impact)			*Hours or as otherwise agreed*	
Critical Fault	*95%*	*1 hour*	*6 hours during Support Hours or as otherwise agreed between the parties*	*A critical component of the Software or Development Work is unavailable*

1.5. Correction of Faults may include providing a work around or correction for the Software and/or Development Work provided that the overall performance of the Software and Development Work is not compromised. Where applicable, the Company shall issue any corrections to the documentation for the Software and Development Work as soon as possible following resolution of a Fault.

1.6. The Customer may appoint up to 4 individuals to serve as the primary contacts between the Customer and the Company; and except in an emergency only those 4 contacts shall contact the Company for Support Services.

1.7. For the avoidance of doubt, any time during which a Fault has been referred back to the Customer or Supplier for further information shall not count towards the aimed resolution times detailed above.

1.8. For clarity, the support desk is not intended as a helpdesk for assisting users on training on the application i.e. How do we do this? or How do we set this up? etc. Should calls be raised for such items they will be circulated to your Account or Project Manager.

2. ESCALATION PROCESS

2.1. If the Customer wants to escalate a support call, then initially the Company's principal point of contact in Clause 3.1 of the Agreement shall be contacted. Such principal point of contact will escalate the matter within the following timescales:

2.2 If The Customer is unhappy with response times from support then they will contact the Epaccsys Support Manager. If The Customer is disappointed by response from the Support Manager then they must contact their Account Manager. If this does not prove satisfactory then The Customer will contact the Managing Director of Epaccsys.

Type Of Call	Incident Escalation time	Update frequency
Cosmetic Fault (Low Priority)	*After 8 hours*	*weekly or by agreement*
Material Fault (Significant Impact)	*After 6 hours*	*daily or by agreement*
Critical Fault	*After 3 hours*	*2 hours or by agreement*

3. REMOTE DIAGNOSTICS.

The Company may provide remote access software to the Customer to facilitate remote diagnostics and to assist in the analysis and resolution of Faults. The Customer shall install such remote access software, and provide the Company with remote access to the Customer's systems, at its sole discretion. In order to take advantage of remote diagnostics, the Customer may be required to purchase a compatible modem/communications device.

4. UPDATES/UPGRADES.

4.1. The Company shall provide to the Customer within the Support Charges, all Updates and Upgrades to the Software (including related documentation) commercially released by the Licensor during the term of this Agreement. "Updates" consist of new releases of a particular Software version that provide functional enhancements and/or error corrections (i.e., service packs). "Upgrades" consist of new version releases of the Software. Services may be provided by the Company to apply an Upgrades or Updates. These Services would be provided at the normal consultancy rate.

4.2. The Company shall promptly issue to the Customer all Updates and Upgrades to the Software and shall provide to the Customer with such Software:

4.2.1. a technical specification for the Current Release; and

4.2.2. any amendments to the Software documentation required for the use of the Current Release.

5. COSTINGS

5.1. Software Support and Maintenance is provided at an annual price which equates to 20% of the list price of the Epicor Software

5.2. Development Support and Maintenance is provided at an annual price which equates to 20% of the list price of the Development works payable upon sign off of the Development work.

Schedule C – Software

Schedule D

Epaccsys Implementation Services	No. Of Days
Project Management	
Scoping	
Installation	
Data Migration	
Report Building	
Testing	
Consultancy Training	
Total Estimated Implementation days	

The daily rate for all professional services is £990.00 plus VAT per day.

Project Management – A Epaccsys Project Manager will develop the project plan with the customer's project team and co-ordinate the delivery of the project with the Epaccsys and the customer project teams.

Set Up - This is the activity of a Epaccsys consultant to install, set up and test the Epicor software on the Customer server hardware.

Consultancy – whereby the Epaccsys Consultant reviews the requirements of the customer and solutions these within the application.

Reporting - This is the activity of training the customer staff to configure reports to meet the customers reporting requirements.

User Training – This is conducted on a train the trainer approach at the Customer premises whereby a Epaccsys consultant will train up to 6 of the Customer's trainers to enable them to complete end user training to meet the process requirements of the customer.

Data Loads – An Epaccsys consultant will review the available data loads and advise the data required to enable the customer to populate the required fields within each of these. The Epaccsys consultant will then train the customer on how to run these data loads themselves.

Integration- If integration with external systems is required then the Epaccsys consultant will work with the customer to outline the requirements.

Development – If any development work is identified during the course of the project a Request for Change (RFC) will be produced by an Epaccsys Consultant or Developer. Upon completion of each RFC this will require sign off by the Customer before a technical specification can be produced.

Testing - An Epaccsys consultant will provide assistance during User Acceptance Testing whereby they will review queries from the testing completed and assist with questions and answers

Go-Live An Epaccsys consultant will assist the customer at the go live stage and ensure prior to this all setups, training, documentation and reporting are in place. Go Live consultancy also extends to assistance at the first month's end.

Schedule E – Developments

As part of the implementation a Request for Change (RFC) may be requested by the Customer. This is a chargeable activity and In this instance the Epaccsys Professional Service team will provide the Customer with an estimate to produce the RFC. The estimate will require sign off by the Customer before work can proceed to produce the RFC.

Schedule F – Initial Project Plan

To be mutually agreed as an output of the project kick off.

Schedule G – Summary of Costs and Payment Milestones

Summary of costs

Epicor Software	
Implementation Services (as described in Schedule D)	
Total System Cost	
Ongoing Costs	
Annual Support for Software (payable from the Commencement Date)	

Payment Milestones

Amount (exclusive of VAT)	**Fee type**	**Payment due by the Customer on: (Date or Milestone)**
	Software Charge (70% Deposit)	Commencement Date
	Software Charge (30% upon delivery of licence key)	Upon delivery of licence key
	Support Charge	Commencement Date
	Implementation Charge	Monthly upon delivery of the relevant Professional Service
	Development Charge (if applicable)	Fixed price developments 70% on order, 15% on delivery and 15% two weeks after delivery
	Hardware if applicable (100%)	Invoiced immediately with order

The daily rate for all professional services is £990.00 plus VAT per day.

Any development work that may be identified will be charged at £990.00 plus VAT per day

All reasonable expenses incurred by Epaccsys staff whilst carrying out work will be invoiced and due on presentation. Mileage will be recharged at a rate of £0.45 pence per mile, this rate is subject to change by the Company.

Schedule H - Request for Change (RFC) Form

CUSTOMER NAME			
RFC Title:			
Change no:	**RFC**		
RFC Owner:		**Raised Date:**	
Application and Version			
Description of Change			
For the customers: explains how the change will work, should include screen shots where appropriate			
Business Case for Change			
Consultant completes this section if required by the customer			
Technical Info			
Info from Consultants for the developer			
Testing			
to include all area's of the system effected, with steps on how to test the application			
Quote			
Technical Spec			
Completed by Developer on completion of Code			
Customer Approval:			
Name:			
Signature:			
Date:			

Schedule I – Third Party Hardware

Schedule J – Hardware

Hardware & space requirements