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# Epicor Master Customer Agreement

## Master Terms and Conditions

(Updated January 30, 2020)

The following terms and conditions (“**Master Terms**”) in combination with one or more Product Supplements (collectively, the “**Agreement**”) govern Customer’s acquisition and use of Products ordered from Epicor Software Corporation or its Affiliate specified in the Order. By executing and submitting the Order that references these Master Terms, Customer acknowledges that it has had the opportunity to view the Master Agreement and any applicable Product Supplement and hereby agrees to the terms and conditions contained herein and in each applicable Product Supplement. The individual(s) executing the Order represent that they have the authority to bind Customer to the Agreement.

### 1. Certain Definitions

- 1.1. “**Affiliate**” means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with the applicable entity.
- 1.2. “**Control**” or “**Controlled**”, for purposes of the Affiliate definition, means direct or indirect ownership or control of more than 50% of the voting interest in the applicable entity.
- 1.3. “**Customer**” means the entity named on the Order.
- 1.4. “**Customer Data**” means all electronic information submitted by Customer to and stored as part of those Software as a Service (SaaS), hosting, application management and/or other managed services Products performed by Epicor or its suppliers to process such information.
- 1.5. “**Deliverables**” means the Products and supporting Documentation and deliverables developed, created or produced by Epicor hereunder; but excluding hardware and Third-Party Applications and supporting Documentation.
- 1.6. “**Documentation**” means Epicor’s standard read-me and online help materials, user documentation and training materials normally made available in connection with a specific Product.
- 1.7. “**Epicor**” means **Epicor Software Corporation** or the Affiliate of Epicor Software Corporation specified in an Order.
- 1.8. “**Incident**” means any actual or reasonably suspected compromise to the security of the Customer Data.
- 1.9. “**Losses**” means damages, liabilities, costs and expenses (including but not limited to reasonable attorney fees and costs).
- 1.10. “**Order**” means a quotation or order form documentation for ordering certain Products. An Order may include a statement of work, work authorization, change order or similar document.
- 1.11. “**Personally Identifiable Information**” means Customer Data that may be used to readily identify, locate or contact a natural person.
- 1.12. “**Product**” means any product or service offered by Epicor to Customer under an Order therefor.
- 1.13. “**Product Notes**” means additional or alternative terms and conditions applicable to a Product supplied by Epicor hereunder as specified or referenced in an Order.
- 1.14. “**Product Supplement**” means a supplement to these Master Terms specific to a Product acquired by Customer.
- 1.15. “**Third-Party Applications**” means any web-based, mobile, on premises or other software application not developed or owned by Epicor or its Affiliates.
- 1.16. “**Third-Party Applications Addendum**” means additional or alternative terms and conditions applicable to certain Third-Party Applications supplied by Epicor hereunder as specified or referenced in an Order.

### 2. Payments

- 2.1. **Payment Terms.** Except as otherwise set forth in an Order or Product Supplement all payments are due within 30 days following the date invoiced without any setoff or reduction.
- 2.2. **Taxes.** All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes (“**Taxes**”). Customer is responsible for all Taxes however designated or levied, against the sale, licensing, delivery, or use of the Products (other than Taxes based upon Epicor’s net income). Customer may not withhold or retain Taxes except as required by law. If Customer withholds or retains Taxes, it will increase the amount payable as necessary so that after making all required withholdings or retentions Epicor receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such withholdings or retentions been made.
- 2.3. **Resale Transactions.** If Customer acquires Products directly from an Epicor authorized reseller or distributor (“**Reseller**”) pursuant to an Order between Customer and the Reseller (i.e., not an Order between Customer and Epicor), and Reseller is responsible to invoice the same, then Customer’s payment arrangements with the Reseller govern, notwithstanding Sections 2.1 and 2.2 of these Master Terms or any payment terms included in a Product Supplement.

### 3. Confidentiality

- 3.1. **Confidential Information.** As used herein “**Confidential Information**” means all information disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) in connection with the Agreement, whether orally or in writing, designated as confidential or that reasonably should be understood to be confidential given the nature of the information and circumstances of

disclosure. Confidential Information includes, without limitation, the Agreement and any associated Orders (including any pricing contained therein), the results of any testing related to the Deliverables, and any commercial, financial, marketing, business, technical or other data, know-how or other information disclosed by or on behalf of the Disclosing Party. Confidential Information does not include any information that (i) is already known to the Receiving Party or received by the Receiving Party from a third party, free of any obligation to keep it confidential, (ii) becomes publicly known through no wrongful act of the Receiving Party, (iii) is independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information, or (iv) is approved for release by written authorization of the Disclosing Party. Customer's Confidential Information includes the Customer Data.

**3.2. Confidentiality.** The Receiving Party will not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement without the Disclosing Party's prior written permission.

**3.3. Protection.** The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the Disclosing Party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of its own, but in any event with no less than reasonable care.

**3.4. Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it will provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to seek a protective order or otherwise contest the disclosure.

**3.5. Return.** The Receiving Party will return all originals, copies and summaries of the Confidential Information upon termination or expiration of the Agreement or upon the Disclosing Party's request, or in the alternative, destroy the same and certify in writing to the Disclosing Party that all such Confidential Information has been destroyed. Nothing herein requires a party to erase any Confidential Information that is in an archived computer backup system in accordance with its respective security and/or disaster recovery procedures and each party may each retain copies of the Confidential Information to the extent required to comply with legal or regulatory requirements (all of which remains strictly subject to the restrictions in this Agreement).

**3.6. Duration.** The obligations regarding Confidential Information will continue until such time it ceases to meet the definition for Confidential Information.

**3.7. Ownership.** Each party retains sole and exclusive ownership in its Confidential Information.

#### **4. Proprietary Rights; Certain Third-Party Applications**

**4.1. Deliverables.** Epicor retains sole and exclusive ownership in the Deliverables (excluding any Customer Data or Customer Confidential Information included therein) and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by Epicor under the Agreement. All rights owned by Epicor and its suppliers not expressly granted in the Agreement are reserved by Epicor and its suppliers.

**4.2. Trademark and Copyright Notices.** Customer will not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within any Product or other Deliverable. Customer does not and will not acquire any rights of any kind in or to any trademark, trade name, logo or product designation under which a Product or other Deliverable was or is marketed and, except as contemplated herein incidental to Customer's use of the Products and or other Deliverable, may not make any use of the same for any purposes without Epicor's prior written consent.

**4.3. Third-Party Applications.** Customer may use Third-Party Applications supplied by Epicor hereunder only in conjunction with Epicor's proprietary Products unless otherwise specified in an Order, the Product Notes and/or the Third-Party Applications Addendum. If an Order or Third-Party Applications Addendum specifies that a Third-Party Application furnished by Epicor is subject to separate or additional terms and conditions provided by the supplier thereof, then, notwithstanding anything to the contrary otherwise specified herein, Epicor makes no warranties of any kind, express or implied, nor offers any indemnification with respect to such Third-Party Application (each, an "Excluded Third-Party Application").

#### **5. Customer Data and Data Security**

**5.1. Customer Data Ownership and License.** Customer retains sole and exclusive ownership to the Customer Data and is responsible therefor, and for the means by which Customer acquires the Customer Data. Where Epicor processes Customer Data under the Agreement on Customer's behalf, Customer grants to Epicor and its Affiliates and subcontractors a nonexclusive right to process Customer Data solely to fulfill their obligations under the Agreement. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of the Customer Data, and for obtaining all rights necessary to allow Epicor to perform its obligations under the Agreement.

**5.2. Sensitive Data.** Unless expressly permitted under the applicable Documentation, Customer may not include any payment card data or other data consisting of racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation or similarly sensitive data that imposes specific data security or data protection obligations on the processing of such data by Epicor or its Affiliates or subcontractors in fields not designed specifically therefor.

**5.3. Compliance and Data Protection Laws.** Customer will collect and maintain all Personally Identifiable Information contained in the Customer Data in compliance with applicable data privacy laws and protections; and will retain reasonable security standards for its Users' use of the Products that process Customer Data.

**5.4. Data Security.** Epicor will (i) process and secure Customer Data in accordance with documented, reasonable instructions provided by Customer, where such instructions are consistent with the terms of the Agreement, and (ii) maintain reasonable administrative, technical and physical measures designed for the protection of the security, confidentiality and integrity of the Customer Data processed by it. Epicor may not use or disclose Customer Data other than for purposes of meeting its obligations under the Agreement or as required by law or a governmental authority. Epicor will require that any subcontractor who processes Customer Data on its behalf agrees to abide

by the information security measures in these Master Terms (or other applicable measures that are at least as protective of the Customer Data).

**5.5. Incidents.** Epicor will promptly, and in the case of Personally Identifiable Information, no more than five business days after its discovery, notify Customer in writing of any Incident. Epicor will reasonably investigate such Incident and cooperate with Customer's efforts to determine the nature and extent of the Incident. Epicor's obligations under this Section remain in effect for so long as the Customer Data remains under Epicor's possession, custody or control.

**5.6. Government Access Requests.** If Epicor or its subcontractor receives a request for Customer Data directly from a law enforcement agency, then Epicor will redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, Epicor will promptly notify the Customer and provide a copy of the demand, unless legally prohibited from doing so. If required by law, Customer will notify individuals that are data subjects within the Customer Data that their data may be disclosed to law enforcement or other governmental authorities and obtain the individuals' consent to the same.

**5.7. European General Data Protection (GDPR).** If and to the extent Epicor processes "Personal Data" as defined under the EU General Data Protection Regulation, Epicor agrees to comply with the EU Data Processing Addendum available at <https://www.epicor.com/company/customer-agreements.aspx>, or such other website designated by Epicor, which is hereby incorporated by reference with respect to such Personal Data. If there is a conflict between the Master Terms and the EU Data Processing Addendum, the EU Data Processing Addendum controls.

**5.8. California Consumer Protection Act (CCPA).** If and to the extent Epicor processes "Personal Information of a Consumer" as defined under the CCPA for Customer, Epicor agrees to comply with the CCPA Data Processing Addendum available at [www.epicor.com/company/customer-agreements.aspx](http://www.epicor.com/company/customer-agreements.aspx), which is hereby incorporated by reference, with respect to such Personal Information. In the event of any conflict between this Agreement and the CCPA Data Processing Addendum, the CCPA Data Processing Addendum shall control.

## 6. General Disclaimer

EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN A PRODUCT SUPPLEMENT, NEITHER EPICOR, NOR ITS SUPPLIERS, SUBCONTRACTORS OR AGENTS MAKE ANY REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, SATISFACTORY QUALITY, REASONABLE SKILL AND CARE, MERCHANTABILITY, SUITABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THAT THE PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL BE SECURE, UNINTERRUPTED OR ERROR FREE OR MEET CUSTOMER'S REQUIREMENTS OR NEEDS, EXCEPT TO THE EXTENT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

## 7. Indemnification

### 7.1. By Epicor

**7.1.1.** Subject to the terms and conditions in the Agreement, Epicor will, at its own expense, defend Customer and its Affiliates, and their directors, officers and employees (each, an "Indemnified Party" and "Customer Indemnified Party") against any claim, demand, suit, proceeding or action (each, a "Claim"), and will indemnify Customer Indemnified Parties for Losses finally awarded against them or amounts agreed to in a monetary settlement arising out of or in connection with such Claim to the extent the Claim is made or brought by or on behalf of an unaffiliated third party alleging that any Products furnished by Epicor hereunder infringe any copyright or patent, or misappropriate any trade secret, of such third party issued, honored or enforceable under U.S. laws or the laws of any other country where Epicor or its Affiliates have business operations (a "Customer Claim").

**7.1.2.** Epicor has no obligation under the preceding Section or otherwise to the extent a Customer Claim is based on (i) use of the Products not in accordance with the Agreement or the applicable Documentation, (ii) use of the Products in combination with products or services not supplied by Epicor if infringement is caused by such combination, (iii) modification to the Products other than by or at Epicor's direction or with Epicor's written approval, (iv) Excluded Third-Party Applications, or (v) any other reason enumerated in a Product Supplement.

**7.1.3.** If a Customer Claim occurs, or if Epicor reasonably believes a Customer Claim may occur, Epicor may at its sole discretion and at no cost to Customer (i) modify the affected Product so that it no longer infringes or misappropriates, (ii) secure for Customer the right to continue using the affected Product in accordance with the Agreement, or (iii) if (i) and (ii) are not commercially and reasonably feasible, terminate the Agreement and/or Order with respect to the Product(s) that are or may be subject to the Customer Claim and in the case of (x) software Products furnished on a non-limited term (e.g., subscription) basis or hardware Products, refund the license or hardware fees paid therefor, and (y) Products other than those identified in clause (x) of this Section, refund any then prepaid fees therefor measured from the date of termination.

**7.1.4.** This Section 7.1 provides Epicor's entire liability and Customer's sole and exclusive remedy for infringement and misappropriation Claims.

**7.2. By Customer.** Subject to the terms and conditions of the Agreement, Customer will, at its own expense, defend Epicor and its Affiliates, and their directors, officers and employees (each, an "Indemnified Party" and "Epicor Indemnified Party") against any Claim, and will indemnify Epicor Indemnified Parties against any Losses finally awarded against them or amounts agreed to in a monetary settlement arising out of or in connection with such Claim to the extent the Claim is made or brought by or on behalf of a third party in connection with (i) any Customer-supplied intellectual property, materials or information, (ii) any Customer Data, or (iii) Customer's use of the Products not in accordance with, or as contemplated by, the Agreement or applicable Documentation, or in violation of any law, rule or regulation.

**7.3. Indemnification Procedures.** A party's indemnification obligations under this Section 7 are conditioned on the Indemnified Party providing the indemnifying party the following: (i) prompt written notice of any Claim for which indemnification is sought, (ii) sole control of the defense and settlement of such Claims or the appeal of any award, and (iii) reasonable assistance and cooperation at the

indemnifying party's expense; but the indemnifying party may not enter into any settlement imposing any liability or obligation on the Indemnified Party's written consent, not to be unreasonably withheld, conditioned or delayed.

## 8. Exclusion and Limitation of Liability

**8.1. Exclusion of Certain Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

**8.2. Limitation of Liability.** The parties agree that the total liability of a party to the other arising out of or related to the Agreement are limited to the direct damages applicable to the Product directly giving rise to such liability, but not to exceed (i) in the case of software furnished on a perpetual (i.e., not a limited term or subscription) basis or hardware Products, the license or hardware fees paid therefor, or (ii) in the case of any Product other than those described in clause (i) of this Section, the fees paid therefor during the then preceding 12-month period.

**8.3. Limitations.** The exclusions and limitations set forth in this Section 8 do not apply to (i) Epicor's right to collect unpaid fees, taxes and expenses hereunder, (ii) claims arising out of death or bodily injury or damage to tangible property, caused by a party's negligence, or (iii) a party's indemnification obligations under the Agreement, or (iv) such other conditions specified in a Product Supplement.

**8.4. Liability for Incidents.** Notwithstanding anything to the contrary contained in the Agreement, or any other agreement with Epicor or its Affiliates, Epicor's and its Affiliates' aggregate liability to Customer or its Affiliates for Losses from third party claims arising out of or related to an Incident will not exceed the greater of (i) the amount of fees paid to Epicor and its Affiliates during the 12-month period preceding the Incident, and (ii) USD\$500,000.

**8.5. Third-Party Products.** Notwithstanding the exclusions and limitations set forth herein, Epicor's total liability for damages relating to Third-Party Applications and third-party sourced hardware supplied by Epicor hereunder is limited to the amount of fees paid by Customer to Epicor therefor.

**8.6. Exceptions.** The provisions of any local law that implies terms to the Agreement will not apply to the extent that local law permits the parties to contract out of that law. However, the limitations and exclusions in the Agreement do not change Customer's rights if the laws of its state, province or country do not allow.

## 9. Non-Solicitation

To the extent permissible under applicable law, neither party will knowingly solicit or hire as a result of such solicitation (including as an independent contractor) any employee or contractor of the other party or its Affiliates or subcontractors who have been engaged in the supply or use of Products hereunder for six months thereafter without the express written consent of the other party. This provision does not restrict the right of a party to conduct non-targeted job searches or recruitment generally in the media or online, or to hire an employee or independent contractor who, as conclusively demonstrated in writing by the hiring party, (i) responds to such searches, (ii) voluntarily applied for hire or engagement without having been initially personally solicited by or on behalf of the party, or (iii) has not been an employee or subcontractor of the other party or its Affiliates or subcontractors for six or more months. If a party solicits or hires a person in contravention of this Section, then such party will pay to the other party an amount equal to the salary or fees paid to the hired individual over the last 12 months of their engagement with the other party or its Affiliate or subcontractor, such amount being a genuine pre-estimate by the parties of liquidated damages and not a penalty.

## 10. Term; Termination

**10.1. Term.** Except as otherwise specified in a Product Supplement, the Agreement begins once Epicor accepts an Order issued pursuant to these Master Terms and continues in conjunction therewith and continues in effect thereafter unless terminated upon the earlier to occur of the following:

**10.1.1. Termination for Cause.** Either party may terminate the Agreement, a Product Supplement and/or the Order for cause (i) 30 days following written notice of a material breach by the other party of its obligations under the Agreement, Product Supplement and/or the Order if such breach is not cured within such 30-day period, (ii) immediately upon written notice if the other party materially breaches Sections 3 (Confidentiality) or 13 (Assignment) of these Master Terms, or (iii) immediately upon written notice if the other party should become insolvent or should make any assignment for the benefit of creditors, or should be adjudged bankrupt, or should file a petition in bankruptcy, or is named as debtor in an involuntary bankruptcy proceeding, or if a receiver or trustee of the property of the other party is appointed.

**10.1.2. Termination as set forth in a Product Supplement.** The Agreement, Product Supplement and/or Order may also be terminated as specified in the applicable Product Supplement and/or Order.

**10.1.3. Termination Incidental to Indemnification.** The Agreement and the associated Order may terminate as set forth in Section 7.1.3 of these Master Terms.

**10.1.4. Orders for Multiple Products.** If an Order includes more than one Product type, as evidenced by the applicability of more than one Product Supplement, then a party may terminate that portion of the Order that applies to the Product(s) giving rise to the termination right under this Section 10 in lieu of terminating the entire Order.

**10.2. Effects of Termination.** Upon termination of the Agreement, Product Supplement and/or Order for any reason (i) all rights and obligations of the parties under the Agreement, Product Supplement and/or associated Order will automatically terminate except for rights of action accruing prior to termination, and (ii) all amounts due thereunder will become immediately due and payable.

**10.3. Surviving Provisions.** Sections 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14 and 15 and of these Master Terms will survive expiration or termination of the Agreement.

## **11. Other Agreements**

**11.1. Export.** Most Products offered by Epicor hereunder are governed by U.S. export regulations and may not be exported to or by embargoed countries or individuals. Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports.

**11.2. Anti-Corruption.** Customer has not, and upon each submission of an Order will have not, received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Epicor's employees or agents (including its authorized reseller) in connection with the Agreement.

**12. Dispute Resolution.** Except for legal actions commenced as debt recovery purposes for amounts due hereunder, or actions for infringement or violation of a party's intellectual property rights ("**Excluded Disputes**"), in the event of any dispute, claim, or controversy arising out of, relating to, or in connection with the Agreement (whether based in contract, in tort, upon a statutory provision, or otherwise), including, without limitation, the formation, performance, breach, termination, enforcement, interpretation or validity thereof (a "**Dispute**"):

**12.1. Negotiation/Mediation.** Customer and Epicor will first attempt to resolve any Dispute through confidential negotiation by one or more meetings with designated executives with authority to resolve the Dispute, or if agreed, by mediation with a mutually agreeable mediator.

**12.2. Arbitration.** If Customer and Epicor are unable to resolve the Dispute in accordance with the preceding Section, the parties will fully and finally settle the Dispute through arbitration. Except as otherwise agreed by the parties the arbitration will be administered by a single arbitrator in the jurisdiction applicable to Epicor's principal place of business and in accordance with the following terms and conditions:

**12.2.1. Arbitrations if Epicor Software Corporation or its Affiliate domiciled in the United States is a Party.** If Epicor Software Corporation (or its successor or assign) is party to the Agreement, arbitration will be held in the United States and administered by AAA pursuant to its Commercial Arbitration Rules and Mediations Procedures in a location selected by the party initiating the arbitration. The parties acknowledge that the Agreement evidences a transaction involving interstate commerce. Notwithstanding any provisions herein with respect to applicable substantive law governing the Agreement, the agreement to arbitrate and any arbitration conducted pursuant thereto will be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*

**12.2.2. Arbitrations if an Epicor Affiliate domiciled outside the United States is a Party.** If an Affiliate of Epicor Software Corporation (or its successor or assign) is party to the Agreement, then arbitration will be administered by the International Court of Arbitration of the International Chamber of Commerce in accordance with the ICC Rules ("**ICC Rules**"), or such other recognized arbitral tribunal and/or arbitration rules as the parties agree, located in the country (or subdivision thereof) of the principal place of business of such Epicor Affiliate. The Emergency Arbitrator Provisions will not apply to an arbitration conducted under the ICC Rules.

**12.2.3. Additional Provisions.** To the extent permitted by law: (i) each party to the arbitration will pay its own costs and expenses (including attorney's fees) in connection with the arbitration; (ii) the arbitrator's fees and the administrative expenses of the arbitration will be paid equally by the parties thereto; and (iii) the arbitrator will not have the power to award punitive damages. The language of any arbitration conducted hereunder will be English unless otherwise agreed by the parties in writing.

**12.2.4. Confidentiality.** Except as required by law, no party may disclose to an unaffiliated third party the existence, contents, or results of an arbitration brought in accordance with the Agreement, or the documents presented, and evidence produced by its opposing parties, or any analysis or summaries derived from such evidence. Notwithstanding the foregoing, a party may share such information with its representatives and legal and financial advisors that have a need to know and who are bound by obligations of confidentiality.

**12.2.5. Enforcement.** The award rendered by the arbitrator may be recognized and enforced by any court having jurisdiction, and any necessary applications may be made to such courts for judicial acceptance of the award and an order of enforcement. Such court proceedings will disclose only the minimum amount of information concerning the arbitration as is required to obtain such recognition, enforcement, acceptance or order.

**12.3. Excluded Disputes.** The provisions of Sections 12.1 through 12.2 will apply to Excluded Disputes upon mutual written agreement of the parties. In the absence of such agreement, claims in connection with Excluded Disputes may be instituted in any court of competent jurisdiction.

**12.4. Equitable Relief; Right to Termination.** Notwithstanding the terms of this Section 12, a party may seek immediate injunctive or other provisional relief in any court of competent jurisdiction, against or from any ongoing or impending injury or damage, which mediation or arbitration would not in the party's reasonable opinion avoid and each party will at all times have the right to exercise any contractual right it may have to withhold the performance of its obligations and/or terminate the Agreement or an Order as permitted hereunder.

**12.5. UN Convention on Contracts Not Applicable.** The Agreement is not to be governed by the United Nations Convention on Contracts for the International Sales of Goods.

**12.6. Governing Law; Jurisdiction; Jury Trial Waiver.** (A) Except as otherwise provided herein, if Epicor Software Corporation (or its successor or assign) is a party to the Agreement, the internal laws of the State of Texas, USA, govern the Agreement, and each party to the Agreement on behalf of itself and its Indemnified Parties submits to the non-exclusive jurisdiction and venue of the state or federal courts located in Travis County, Texas, for determination of Excluded Disputes and purposes of permitted applications of injunction or other provisional relief, and for any litigation ancillary to arbitration, including without limitation, litigation or to compel arbitration or enforce an arbitral award. (B) Except as otherwise provided herein, if an Affiliate of Epicor Software Corporation (or their respective successors and assigns) is party to the Agreement, then the laws applicable to the country (or subdivision thereof) of Affiliate's principal

place of business will govern the Agreement, and each party on behalf of itself and its Indemnified Parties hereto submits to the non-exclusive jurisdiction of the courts located in the metropolitan region applicable to such Affiliate's principal place of business for purposes of permitted applications of injunction or other provisional relief, and for any litigation ancillary to arbitration, including without limitation, litigation or to compel arbitration or enforce an arbitral award. The parties hereby waive any rights to a trial by jury.

**12.7. Third Party Rights.** Customer acknowledges that Epicor's third-party suppliers are intended third-party beneficiaries to the Agreement and may benefit from and enforce the terms of the Agreement with respect to their Third-Party Applications or hardware Products. Notwithstanding this right, the parties may, by agreement, rescind, amend, terminate or vary any term of the Agreement (and any documents entered into pursuant to or in connection with it) without the consent of a third-party beneficiary even if the third-party beneficiary has relied on, or indicated assent to, any term of the Agreement. Except as otherwise provided in this Section, a person who is not a party to the Agreement (including under the Contracts Rights of Third Parties Act 1999) has no right to enforce any of its terms.

### 13. Assignment

Customer may not assign, license, sublicense, pledge or otherwise transfer the Agreement or any rights under the Agreement, whether voluntarily or by operation of law, without Epicor's prior written consent. Without limiting the scope of the previous sentence any sale or transfer of assets, stock or any interest in Customer, or any merger, consolidation restructuring, or other business reorganization is to be considered a transfer covered by the previous sentence and prohibited hereby. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Epicor may assign the Agreement upon written notice to Customer if the assignee agrees to be bound in writing by Epicor's obligations hereunder.

### 14. General

**14.1. Headings.** Headings contained in the Agreement are for convenience only and are not part of the Agreement and do not in any way interpret, limit or amplify the scope, extent or intent of the Agreement or any of the provisions hereof.

**14.2. Complete Agreement.** The Agreement including any Order issued in connection herewith, and where applicable the Data Processing Addendum, constitutes the entire agreement between the parties on the subject hereof and supersedes all other prior or contemporaneous agreements, negotiations, representations and proposals, written or oral. Epicor and Customer are each relying upon their own judgement and have not relied upon and agree they will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. The Agreement does not operate as an acceptance of any conflicting terms and conditions and will prevail over any conflicting provision of any purchase order or any other instrument of Customer, it being understood that any purchase order issued by Customer will be for Customer's convenience only and any terms and conditions therein are of no force or effect hereunder. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Epicor regarding future functionality or features.

**14.3. Severability.** If any provision of the Agreement is deemed to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will promptly amend the Agreement or the Agreement will be deemed to be amended to give effect to the stricken provision to the maximum extent possible.

**14.4. Modifications and Waiver.** No modification of, or amendment or addition to the Agreement is valid or binding unless set forth in writing signed by an authorized representative of each party; provided that an Order becomes valid and binding against Customer once signed and submitted by Customer. The waiver or failure of either party to exercise in any respect any right or remedy provided herein will not be deemed a waiver of any future right or remedy hereunder.

**14.5. Notices.** All notices and other communications between the parties must be in writing and given by (i) courier, (ii) first-class (or similar) registered or certified mail, postage prepaid, or (iii) email, the party's address or email address specified in the Order or such other address or email address that a party has notified to be that party's address or email address or for the purposes of this Section. A notice given in accordance with this Section will be effective upon receipt by the party to which it is given or, if mailed, upon the earlier of receipt and the fifth business day following mailing.

**14.6. Force Majeure.** Neither party will be responsible or liable for its failure to timely perform under the Agreement when its failure results from any cause beyond its reasonable control ("**Force Majeure Event**"). The time for performance will be extended for a period equal to the duration of the conditions that prevent performance.

**14.7. Relationship.** The parties are independent contractors. The Agreement does not create a joint venture or partnership between the parties; and no party is by virtue of the Agreement authorized as an agent, employee or representative of the other party.

**14.8. Business Contact Information.** Customer will provide accurate and complete information on Customer's legal business name, address, email address and phone number, and maintain and promptly update this information if it should change. Customer agrees to allow, and is authorized to allow, Epicor and its Affiliates and service providers to store and use Customer's business contact information, including names, business phone numbers, and business email addresses of Customer employees and contractors, anywhere they do business. Such information will be processed and used solely in connection with the parties' business relationship.

**14.9. Publicity/References.** In consideration for the rights and interests provided Customer herein, and subject to Customer's prior approval which may not be unreasonably withheld, Customer agrees that (i) Epicor may, at its own expense, issue a press release including quotes attributable to the Customer announcing that the Customer has acquired the Products, and (ii) it will provide reasonable assistance to Epicor in Epicor's production and publication of a written and/or video case study describing both the business benefits to the Customer and the technical aspects of Customer's use of the Products following the Customer going live thereon (if applicable).

### 15. Additional Terms

**15.1. Language.** If the form of the Agreement is presented in multiple languages, the English language version controls.

**15.2. U.S. Government Rights.** Software and SaaS-based services furnished under the Agreement are “commercial items” as defined in FAR 2.101. If Customer (or a User) is United States federal government agency then Epicor provides the software or software as a service (SaaS)-based services, including any related software, technology and services, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If Customer (or a User) has a need for rights not granted under those terms, it must negotiate with Epicor to determine if there are agreeable terms for granting those rights, in which case a mutually agreeable written addendum specifically granting those rights must be included as part of the Agreement.

**15.3. Australia** (applicable only if Customer’s principle place of business is in Australia).

**15.3.1. Related Entity.** For purposes of the Agreement, the term “Affiliate” means a Related Entity as defined in Corporations Act 2001 (Cth).

**15.3.2. ACL.** Epicor is required by law to include the following statement: Although Epicor may not be supplying goods to Customer under the Agreement for purposes of schedule 2 of the Competition and Consumer Act 2010 (Cth) or any equivalent or territory legislation (“ACL”), Epicor’s goods come with guarantees that cannot be excluded under the ACL. If required under the ACL, Customer is entitled to replacement or refund for major failure and for compensation for any other reasonably foreseeable loss or damage. Epicor’s liability in respect of any material breach of or failure to comply with any right or guarantee Customer may have under the ACL or other rights (“Consumer Guarantee”) in relation to the supply of goods or services that cannot lawfully be excluded is limited to the following: (i) in the case of goods, to (a) the replacement of the goods or the supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (d) the payment of the cost of having the goods repaired; and (ii) in the case of services, to (a) the supplying of the services again; or (b) the payment of the cost of having the services supplied again. Notwithstanding anything to the contrary contained herein, Epicor’s liability in respect of a breach of or failure to comply with a Consumer Guaranty will not be limited as set forth in the Agreement if (aa) the goods or services supplied are goods or services ‘of a kind ordinarily acquired for personal, domestic or household use or consumption’, as the expression is used in section 64A of the ACL, (bb) it’s not ‘fair or reasonable’ for Epicor to rely on such limitation in accordance with section 64A(3) of the ACL, or (cc) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the ACL.

**15.3.3. Notifiable Data Breach Scheme.** If and to the extent the Privacy Act applies to the Agreement, to the extent that Epicor considers that a Potential Data Breach exists in respect of the Agreement, Epicor agrees that it will consult with Customer as to the proper management of that Potential Data Breach. In particular, Epicor must:

- (a) promptly notify Customer of the Potential Data Breach;
- (b) provide reasonable assistance, at its cost, as reasonably requested by Customer (including its advisers and consultants) for the purposes of assessing the Potential Data Breach;
- (c) have regard to Customer’s assessment of whether an Eligible Data Breach is suspected of having occurred or is believed to have occurred;
- (d) unless otherwise directed in writing by Customer, defer (in accordance with section 26WJ of the Privacy Act) to Customer’s assessment of whether it is believed that an Eligible Data Breach has occurred; and
- (e) in relation to any notification, unless otherwise directed in writing by Customer, defer (in accordance with section 26WM of the Privacy Act) to Customer’s notification in respect of any Eligible Data Breach that is believed to have occurred.
- (f) for the purposes of this clause 15.3.3:
  - (i) “Potential Data Breach” means an event or series of events which a party considers is or could reasonably become an Eligible Data Breach.
  - (ii) “Eligible Data Breach” has the meaning given by the Privacy Act.
  - (iii) “Privacy Act” means the *Privacy Act 1998 (Cth)*, as amended or replaced from time to time.

**15.4. Canada** (applicable only if Customer’s principle place of business is in Canada). It is the express wish of both parties that the Agreement, and any associated documentation, be written in English. Cest la volonté expresse des parties que la pré convention ainsi que les documents qui s’y rattachent soient rédigés en anglais.

**15.5. New Zealand** (applicable only if Customer’s principle place of business is in New Zealand).

**15.5.1. Related Companies.** For purposes of the Agreement, the term “Affiliate” means a Related Company as defined in section 2(3) of the Companies Act 1993 (read as if the expression “Company” in that subsection includes any body corporate and companies incorporated under the laws of any other jurisdiction).

**15.5.2. Fair Trading Act.** Despite anything contained in the Agreement, (i) the parties agree and acknowledge that the goods and services supplied under the Agreement and acquired in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply to the Agreement, and that it is fair and reasonable to exclude their application, (ii) the parties agree and acknowledge that they are both in trade, that the goods and services supplied under the Agreement are supplied and acquired in trade, that the provisions of the Consumer Guarantees Act 1993 will not apply to the Agreement, and that it is fair and reasonable to exclude their application, (iii) unless the Agreement expressly provides otherwise, to the fullest extent permissible by law, all warranties, conditions or other terms implied by law (including under the Sale of Goods Act 1908) are excluded, and (iv) for purposes of this Section, Customer acknowledges that it had a reasonable opportunity to review the Agreement, discuss its terms with Epicor, and receive advice from its legal advisor if it wished to do so.