



## Channel Partner General Terms and Conditions

(Updated October 1, 2017)

### 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. “Control” or “Controlled”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest in the applicable entity.
- 1.2. “Agreement”** means the Partner Authorization Letter issued to Partner and these General Terms and Conditions.
- 1.3. “Cloud Services”** means Epicor’s online business application suite furnished to a Customer.
- 1.4. “Confidential Information”** means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”) in connection with this 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, this Agreement, the Program Guide(s) and Product pricing made available by Epicor, the results of any benchmark and/or uptime testing related to the Products, and any commercial, financial, marketing, business, technical or other data, know-how or other information disclosed by or on behalf of 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.
- 1.5. “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.
- 1.6. “Customer”** means anyone who acquires Products from Epicor or Partner for its internal use.
- 1.7. “Customer Agreement”** means the Epicor and/or third party supplier agreement that is used to grant a right to the applicable Products to a Customer under this Agreement. Partner may not revise a Customer Agreement.
- 1.8. “Documentation”** means the standard user documentation accompanying to the Products (such as a read-me or help file or other electronic, online or printed user guide).
- 1.9. “Effective Date”** means the date Epicor first issues a Partner Authorization Letter to Partner.
- 1.10. “Epicor”** means Epicor Software Corporation or its Affiliate specified on the Partner Authorization Letter
- 1.11. “Margin Schedule”** means an Epicor margin or discount rate table specified in the applicable Program Guide or in the Partner Authorization Letter.

- 1.12. “Marks”** means the current and future company names, product names, marks, trademarks, logos, designs, trade dress and other designations or brands used by a party or its Affiliates.
- 1.13. “Order”** means Epicor’s order form used by Partner to order Products.
- 1.14. “Partner”** means the company specified in the Partner Authorization Letter.
- 1.15. “Partner Authorization Letter”** means Epicor’s letter issued to Partner that identifies Partner’s partner-level designation, Territory and the Products and Services that Partner is authorized to furnish to Customers.
- 1.16. “Products”** means any of the Cloud Services, Software and Support.
- 1.17. “Product Line”** means an Epicor Cloud Services or Software product line.
- 1.18. “Program Guide”** means the Partner program information located on Epicor’s partner-related portal website(s) or as otherwise communicated by Epicor from time to time. Epicor reserves the right to modify the contents and terms of the Program Guide from time to time; but Epicor will provide at least 90 days’ advance notice of any material update.
- 1.19. “Referral Margin”** means the margin payable by Epicor to Partner for approved referrals made by Partner hereunder.
- 1.20. “Services”** means implementation, customization, consulting and other professional services.
- 1.21. “Software”** means the software product suites, modules and/or users offered by Epicor or its Affiliates and includes any Documentation furnished therewith.
- 1.22. “Support”** means maintenance and support services for the Products.
- 1.23. “Territory”** means the geographic area(s) specified in the Partner Authorization Letter.
- 1.24. “Third Party Application”** means any web-based, mobile, on-premise or other software application not developed by Epicor or its Affiliates.

### 2. Authorization

- 2.1. General Authorization.** Epicor hereby grants to Partner, to the extent authorized under the Partner Authorization Letter, a personal, non-transferable and non-exclusive right to market and resell Products to and/or perform Services (as an authorized partner) for Customers and prospective Customer in the Territory. Partner may not collect orders or receive payments for Products or Services from any Customer located outside the Territory. Epicor reserves the right to discontinue developing, producing, manufacturing, licensing or distributing any of the Products and to modify, replace or add to the Products in its discretion at any time. Partner has no right to receive, review or otherwise use or have access to Product source code.
- 2.2. Promotion.** Partner will use its best efforts to market and promote the Products to actual and prospective Customers in the Territory.

- 23. Program Guide.** Partner must adhere to the Program Guide(s) applicable to it by reason of its partner status and authorized Territory and Product Line(s).
- 24. Certification Requirements.** Partner agrees to meet and maintain the certification requirements specified by Epicor from time to time in the Partner Authorization Letter and/or applicable Program Guide(s).
- 25. Representations to Customers.** Partner will not make any representations, warranties or guarantees to Customers regarding the Products that are inconsistent with or in addition to those made in this Agreement, in the Documentation, in a Customer Agreement, or in Epicor's published marketing materials.
- 26. No Sub-distributors/Subcontractors.** Partner may not authorize any other entity or other person to market and resell the Products and/or perform Services without Epicor's prior written consent, which may be withheld by Epicor in its sole discretion.
- 27. Marks.**
- 27.1. Partner Marks.** During the term of this Agreement, Partner grants Epicor the limited right to publish Partner's Marks with regard to Partner's participation in Epicor's channel partner program for purposes reasonably related to this Agreement.
- 27.2. Epicor Marks.** During the term of this Agreement, Partner may refer to itself as an "Epicor Reseller Partner," "Epicor Solution Partner", "Epicor Services Partner" or "Epicor Consulting Partner" as the case may be, and reference any applicable premium tier (e.g., "Epicor Gold Reseller Partner"). Epicor grants to Partner the limited right to use Epicor's and its Affiliates' Marks (including any applicable partner-type or level logos) solely for the purpose of marketing the Products and Services to existing and prospective Customers hereunder and to identify it as an authorized Epicor partner. Partner shall comply at all times with Epicor's trademark usage guidelines.
- 27.3. Ownership.** Except as provided above, this Agreement does not grant a party any right, title, interest or license in or to the other party's (or such party's Affiliates' or licensors') Marks. Each party agrees not to register, adopt or use any Mark, domain name or other designation that includes any part of the other party's (or such party's Affiliates' or licensors') Marks or any term that is confusingly similar to the other party's (or such party's Affiliates' or licensors') Marks.
- 27.4. Unsolicited Commercial Email.** Neither party may use the other party's Marks in connection with the transmission or distribution of unsolicited commercial email. Neither party may use the other party's Marks in a manner that would violate applicable law or local custom or conflict with Epicor's policies.
- 28. Branding Elements; Co-Branding.** Except as otherwise authorized by Epicor in writing, Partner may not (i) alter any Epicor or Epicor supplier branding elements in the Products or marketing materials, (ii) co-brand the Products, or (iii) distribute any marketing or other materials containing Epicor or Epicor supplier branding elements, other than materials produced by Epicor or its suppliers.
- 29. Support.** Except as otherwise agreed, Epicor will be primarily responsible for performing Support and will invoice all annual Support renewal fees. If Partner receives Support renewal fees from a Customer it will promptly forward the fees in their entirety to Epicor.
- 210. Professional Services.** If Partner provides Services to a Customer, it must provide the Services in a timely and professional manner and in accordance with the highest professional standards and any certification or other requirements specified by Epicor from time to time. Partner must also ensure that its personnel and contractors performing Services have the experience, skills and knowledge necessary to successfully perform the Services. Partner may request to subcontract some or all Services to Epicor or its Affiliates, in which case the parties will negotiate a statement of work or similar document. If Partner subcontracts Epicor or its Affiliates for Services, then Partner will, in addition to agreed Services rates, reimburse Epicor or its Affiliates for all reasonable out-of-pocket travel and related expenses (i.e., air, lodging and meals) incurred to perform the Services.
- 211. Customer Agreement Acceptance.** Partner will distribute Products with the Customer Agreements included with and/or supplied by Epicor and/or its suppliers. Partner must include in its Customer sales agreement(s) language that causes each Customer to accept the Customer Agreement(s) applicable to the Products. If Epicor updated the Customer Agreement then Customer must accept the new Customer Agreement at or before renewal of a Cloud Services subscription. Partner will be liable to Epicor for all costs or damages incurred by Epicor if Partner fails to comply with this Section.
- 212. High Risk Use.** Partner may not resell Products to Customers for any high-risk use, where failure or fault of the Products could lead to death or serious bodily injury of any person, or to severe physical or environmental damage.
- 213. Partner Representations.** Partner represents, warrants and covenants that during the term of the Agreement:
- 213.1.** Partner will maintain the facilities, resources and experienced personnel necessary to market and resell the Products and/or to perform the Services and to otherwise fulfill its obligations under the Agreement;
- 213.2.** Partner will comply with the terms and conditions contained in the applicable Program Guide(s) and in the Partner Authorization Letter;
- 213.3.** Partner is not precluded by any existing arrangement, contractual or otherwise, from entering into the Agreement;
- 213.4.** if Partner becomes aware of any actual or suspected unauthorized user, copying or disclosure of the Products, Partner will promptly notify Epicor and will assist Epicor, at Epicor's expense and request, in the investigation and prosecution of such unauthorized user, copying or disclosure; and
- 213.5.** Partner has the full right, power and authority to enter into the Agreement and to carry out its obligations thereunder, and there are no impediments known to Partner that would prevent Partner's compliance with all the terms of the Agreement.
- 214. Non-exclusivity.** Partner acknowledges that (i) Epicor and its Affiliates may market, sell and service Products in the Territory, (ii) Epicor's suppliers (and their resellers) may market, sell and services Third Party Applications in the Territory, and (iii) Epicor may authorize other companies to market, sell and services Products in the Territory.
- 3. Additional Licensing**
- 3.1.** Epicor may provide Partner a limited, personal, non-transferable, non-exclusive, not-for-resale (NFR) license to the following

("Ancillary Licenses") as determined by Epicor in its sole discretion:

**3.1.1. Demonstration Image.** If authorized, Partner may obtain a "demonstration image" for Products specific to the Product Line(s) it is authorized to market and resell hereunder. Partner may only use the demonstration image for Product demonstrations to existing or prospective Customers and for internal training purposes.

**3.1.2. Cloud Services Demonstration Access.** Epicor may make available online access to a Cloud Services database, which may only be used by Partner for demonstrations to existing or prospective Customers.

**3.1.3. Consulting Image.** If authorized, Partner may obtain a "consulting image" for the Products specific to the Product Line(s) it is authorized to perform Services in connection with. Partner may only use the consulting image for training and testing purposes.

**3.1.4. Internal Use License.** If authorized, Partner may obtain a limited license to use certain Software solely for its internal data processing and data management needs ("Internal Use License"). Partner acknowledges that the Internal Use License does not permit Partner to use the Software for a timesharing, outsourcing or service bureau application.

**3.1.5. SDK License.** If authorized, Partner may obtain a Software Developer's Kit (SDK) for use with certain Software, which allows Partner to create new tables, business objects and UI forms in accordance with the SDK Documentation.

**3.1.6. Partner Relationship Management (PRM) License.** Epicor may grant Partner a limited access to Epicor's customer relationship management (CRM) Software to facilitate communications hereunder.

**32. Copies.** The Ancillary Licenses licensed to Partner hereunder may only be copied, in whole or in part (with the proper inclusion of Epicor's or its Affiliates' or licensors' copyright notices and any other proprietary notices and/or Marks on such Software or Documentation), as may be necessary and incidental for archival purposes or to replace a worn or defective copy.

**33. Additional Restrictions.** The Ancillary Licenses are subject to the terms and conditions of any Customer Agreement furnished therewith or otherwise made available to Partner by Epicor. Except as expressly permitted herein or as otherwise agreed by Epicor in writing, Partner may not (i) sublicense, encumber or otherwise make any of the Products available to a third party or (ii) benchmark or otherwise compare and/or contrast, favorably or unfavorably, the Products to other third party software products with features and functions similar or comparable to such Products.

#### 4. Ordering and Fulfillment

**41. Ordering.** When ordering Products for resale hereunder, Partner will submit Orders to Epicor in accordance with Epicor's standard order process then in effect. Each Order must include the following information: Customer name and contact information, country of sale, number of Product licenses/subscriptions sold, applicable subscription and/or Support period, and such other information as is reasonably necessary for Epicor to perform its registration and Support obligations hereunder. By placing an Order with Epicor, (i) Partner represents and warrants that it has included language in its Customer sales agreement(s) that cause

the applicable Customer to accept the Customer Agreement(s) applicable to the Products ordered, and (ii) Partner agrees to pay Epicor for the Products ordered thereunder. Epicor may accept or reject an Order at its sole discretion. Once submitted, Partner may not cancel an Order unless Epicor otherwise agrees in writing.

**42. Fulfillment.** Upon receipt and acceptance of a valid Order, Epicor will provision the Products for the benefit of the applicable Customer based on the Customer information supplied by Partner. Epicor may send direct communications to Customers for any reason. Partner will use commercially reasonable efforts to provide Customer-related information that is accurate and current.

**43. Customer Creditworthiness.** Partner will decide whether to extend to credit to Customers. A Customer's failure to pay Partner does not relieve Partner of its payment obligations to Epicor.

#### 5. Payments

**51. Annual Partner Fees.** Partner must pay Epicor the applicable annual partner fee specified in the applicable Program Guide. Renewal fees will be invoiced approximately 30 to 45 days prior to the renewal date and are due by the start of such renewal date.

**52. Product Resales.** Partner will pay Epicor the standard list price, net of the applicable reseller margin, for all Products its resells hereunder in accordance with the applicable Margin Schedule and Program Guide(s). Except as otherwise denoted in the Partner Authorization Letter or as otherwise approved in writing, payments are due in advance or on a C.O.D. basis until such time as Partner's credit is approved by Epicor, following which payments are due within 30 days following the invoice date (without offset). Payments due Epicor under this Section are not contingent upon Partner's receipt of any payments from Customers.

**53. Product Subscriptions/Renewals.** Except as otherwise agreed in writing, Epicor will invoice Customers for Support renewals and Cloud Services subscriptions and remit the applicable reseller margin to Partner in accordance with the Margin Schedule and applicable Program Guide(s). Epicor reserves the right to offset payments due Partner under this Section against amounts past due by Partner hereunder.

**54. Referral Margins.** Partner may be entitled to the payment of Referral Margins as set forth in the applicable Program Guide(s). Epicor reserves the right to offset Referral Margins due to Partner against amounts past due from Partner hereunder.

**55. Payment Terms.** Except as otherwise set forth herein or in a Program Guide, all payments are due within 30 days following the date invoiced without any setoff or reduction.

**56. Taxes.** All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes ("Taxes"). Partner 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). If Partner 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.

**57. Financial Information; Credit.** Partner will furnish Epicor with such financial and credit information as may be reasonably requested by Epicor from time to time. Epicor may extend credit

to Partner after review of such information and overall creditworthiness; provided that Epicor may revise or withdraw any credit extended to Partner upon written notice. Epicor will treat all financial information furnished by Partner hereunder as Partner's Confidential Information.

**58. Sales Forecasts.** As directed by Epicor (i) Partner will provide Epicor sales forecasts in accordance with Epicor's then standard format for forecasting and such other forecast information as is reasonably requested by Epicor, and (ii) participate in forecast calls or meetings and maintain Customer opportunity status through Epicor's CRM portal.

**59. Returns.** Epicor does not accept Product returns unless required by local law.

## 6. Confidentiality

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

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

**63. Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Any such disclosure will be to the minimum extent legally required.

**64. Return.** Receiving Party will return all originals, copies and summaries of the Confidential Information upon termination or expiration of this Agreement or upon Disclosing Party's request, or in the alternative, destroy the same and certify in writing to Disclosing Party that all such Confidential Information has been destroyed. Notwithstanding the foregoing, the Receiving Party may retain electronic copies of the Confidential Information solely for its archival records (including backup systems) that it keeps in the ordinary course of its business to the extent not readily accessible.

**65. Duration.** The obligations with respect to Confidential Information will continue until such time it ceases to be confidential under the Confidential Information definition.

## 7. Proprietary Rights

**7.1. Products.** Epicor (or its Affiliate or supplier, as applicable) retains sole and exclusive ownership in and to the Products and any other deliverables developed, created or furnished by Epicor hereunder and all intellectual property rights therein ("**Materials**"). Except as otherwise agreed in writing, Epicor (or its Affiliates or suppliers, as applicable), owns all modifications, improvements or enhancements to the Materials that (i) constitute derivative works thereof or an infringement of any intellectual property rights relating thereto under United States copyright law or the Berne Convention for the Protection of Literary or Artistic Works, or (ii) use all or any part of the source code or Confidential Information within such Materials. Epicor and its Affiliates and support reserve all rights not expressly granted herein.

**7.2. Software Restrictions.** Except to the extent permitted herein or by law without the possibility of contractual waiver, Partner may not copy, reverse engineer, modify, decrypt, extract, disassemble, or decompile the Software or any software delivered as part of the Subscription Services, or permit anyone else to do so (a "**Prohibited Action**"). Before Partner exercises any legal right to conduct a Prohibited Action it must provide Epicor with reasonable prior written notice and will not unreasonably refuse to accept any alternative course of action that Epicor proposes to satisfy Partner's legal rights in lieu of undertaking a Prohibited Action.

**7.3. Excluded Licenses.** Partner may not (a) create derivative works in any Product in any manner that would cause the Product in whole or in part to become subject to any of the terms of an Excluded License; or (b) distribute a Product (or derivative work thereof) in any manner that would cause the Product to become the subject to the terms of an Excluded License. An "**Excluded License**" is any license that requires as a condition of the use, modification and/or distribution of the software subject to the Excluded License, that such software or other software combined and/or provided with such software be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

## 8. Additional Express Warranties; Disclaimers

**8.1. Express Warranty.** Epicor hereby warrants that it is authorized to enter into this Agreement and supply the Products hereunder.

**8.2. General Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER EPICOR, NOR ITS AFFILIATES, SUPPLIERS, SUBCONTRACTORS OR AGENTS MAKE ANY REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND EPICOR, AND ITS SUPPLIERS, SUBCONTRACTORS AND AGENTS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, REASONABLE SKILL AND CARE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 9. Indemnity

### 9.1. By Epicor

**9.1.1.** Subject to the terms and conditions contained herein, Epicor will, at its own expense, defend Partner and its Affiliates and their directors, officers and employees (each, a "**Partner Indemnified Party**") and an "**Indemnified Party**") against any claim, demand, suit, proceeding or action (a "**Claim**"), and shall indemnify and hold harmless the Partner Indemnified Parties from and against any damages, costs (including but not limited to reasonable attorney fees and costs) 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 alleging that the Products or any Services furnished by Epicor or its Affiliates infringe any copyright or patent, or misappropriates any trade secret, of such third party ("**Partner Claim**"). Epicor has no obligation under this Section or otherwise to the extent a Partner Claim is based on (i) any use of the Products not in accordance with the Agreement or the applicable Documentation or Customer Agreement, (ii) any use of the Products or Services (furnished by Epicor or its Affiliates) in

combination with other products not supplied by Epicor hereunder if the infringement is caused by such combination, (iii) modification of the Products other than by or at Epicor's direction, or (iv) any marketing claims or other actions by Partner not in compliance with the terms of the Agreement. Epicor has no liability or obligation under this Section with respect to Partner Claims involving Third Party Applications.

**9.1.2.** If a Partner Claim occurs, or if Epicor reasonably believes a Partner Claim may occur, Epicor may at its sole discretion and at no cost to Partner (i) modify the Products subject to the Partner Claim so that they no longer infringe or misappropriate, (ii) secure for Partner the right to continue to resell the Products in accordance with this Agreement, or (iii) if (i) or (ii) are not commercially and reasonably feasible, terminate the Agreement with respect to the Products subject to the Partner Claim.

**9.1.3.** This Section 9.1 provides Epicor's sole liability and Partner's sole remedy against any intellectual property infringement Claim.

**9.2. By Partner.** Partner will, at its own expense, defend Epicor and its Affiliates and suppliers and their directors, officers and employees (each, an "Epicor Indemnified Party" or "Indemnified Party") against any Claim, and shall indemnify and hold harmless the Epicor Indemnified Parties from and against any damages, costs (including but not limited to reasonable attorney fees and costs) 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 as a result of (i) Partner's unauthorized use or distribution of the Products, (ii) Partner's performance of Services to Customers, (iii) any representation or warranty made by Partner to any third party that was not authorized by Epicor or otherwise not in compliance with Epicor's express warranties respecting the Products, or (iv) any failure by Partner to comply with Section 11 (Regulatory Agreements) or with any other law or regulation applicable to its obligations or activities under this Agreement.

**9.3. Mutual Obligations for Indemnification.** Each party's obligations under this Section 9 are conditioned on the Indemnified Party providing the following: (i) prompt notice of any claim for which indemnification is sought, (ii) sole control of the defense and settlement of such claims, and (iii) reasonable assistance and cooperation at the expense of the indemnifying party; provided, however, that the indemnifying party may not enter into any settlement imposing any liability or obligation on the Indemnified Party without the Indemnified Party's consent.

## **10. Exclusion and Limitation of Liability**

**10.1. Exclusion of Certain Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, OR DAMAGES FOR LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFITS OR REVENUE, OR LOSS OF BUSINESS INFORMATION (IN EACH CASE WHETHER DIRECT OR INDIRECT) ARISING IN CONNECTION WITH THIS AGREEMENT UNDER ANY THEORY OF LAW AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR WHETHER SUCH EXCLUSION CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSES.

### **10.2. Limitation of Liability.**

**10.2.1. Epicor Liability.** Except for amounts properly payable by Epicor to Partner hereunder, the total cumulative liability (if any)

of Epicor to Partner in relation to the Agreement, and Partner's exclusive remedy for any such liability, is limited to Partner's direct damages caused by Epicor up to an amount not to exceed 100% of the amount having actually been paid by Partner to Epicor hereunder during the then preceding 12-month period.

**10.2.2. Partner Liability.** Except for amounts properly payable by Partner to Epicor hereunder, the total cumulative liability (if any) of Partner to Epicor in relation to the Agreement, and Epicor's exclusive remedy for any such liability, shall be limited to Epicor's direct damages caused by Partner up to an amount not to exceed 100% of the amount having actually been paid by Epicor to Partner hereunder during the then preceding 12-month period.

**10.3. Limitations.** Sections 10.1 and 10.2 do not apply to (i) claims arising out of death or personal injury or damage to tangible property caused by a party's negligence or misconduct, or (ii) a party's breach of its obligations under Sections 6 (Confidentiality), 7 (Proprietary Rights), 9 (Indemnification), 11 (Regulatory Agreements), or 13 (Non-Solicitation).

## **11. Regulatory Agreements**

**11.1. Compliance with Law and Ethical and Brand Representation Standards.** Partner will comply with all applicable laws and regulations in its marketing activities and other obligations hereunder. Partner must (a) avoid deceptive, misleading and unethical practices, and (b) conduct business in a manner that reflects favorably on the Products and Epicor's and its Affiliates' and suppliers' goodwill and reputation.

### **11.2. Privacy; Customer Data**

**11.2.1. Privacy.** Partner will (i) comply with all legal requirements regarding privacy and data protection, and (ii) provide sufficient notice to, and obtain sufficient consent and authorization from Customers and any other party providing personal data to Partner and Epicor to permit the processing of the data by Partner, Epicor and this respective Affiliates, subsidiaries and service providers as contemplated under the Agreement. Epicor may collect, use, transfer, disclose and otherwise process each Customer's data, including personal data, as described in such Customer's Customer Agreement.

**11.2.2. Customer Data.** (a) The security, privacy and data protection commitments made by Epicor in any Customer Agreement only apply to the Products purchased from Epicor and not to any services or products provided by Partner. (b) Except as Partner and a Customer may otherwise agree, Partner may use Customer Data only to provide the Customer with the Products and to assist Customer in the proper administration of the Products. Additionally, Partner may only access and disclose to law enforcement or other governmental authorities to the extent required by law data from, about or related to a Customer, including the content of communications (or to provide law enforcement or other government entities access to such data). (c) If Partner receives a request for Customer Data either directly from a law enforcement agency or as redirected to Partner by Epicor, then Partner will redirect the law enforcement agency to request that data directly from the applicable Customer. If compelled to disclose Customer Data to law enforcement, Partner will promptly notify the Customer and provide a copy of the demand, unless legally prohibited from doing so. (d) Partner will require in its agreements with Customer that, as to the extent required by law, Customer will notify the individual users of the

Products that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Partner, and shall obtain the users' consent to the same.

**11.3. Export.** The Products are governed by U.S. export regulations, and may not be exported to or used by embargoed countries or individuals.

**11.4. Anti-Corruption**

**11.4.1.** Partner will comply with all applicable laws against bribery, corruption and money-laundering, including without limitation, the U.S. Foreign Corrupt Practices Act, and where applicable the U.K. Bribery Act (collectively, "**Anti-Corruption Laws**"), in its activities under this Agreement and shall promptly inform Epicor in writing upon becoming aware of any violations of any Anti-Corruption Laws in connection with the Agreement.

**11.4.2.** Partner will provide annual training to its employees who resell, distribute or market Products hereunder on compliance with Anti-Corruption Laws. Partner will certify in writing to Epicor that such training has taken place following Epicor's request. Partner's record-keeping obligations described in Section 12 below apply to Partner's certifications in this Section and its compliance with Anti-Corruption Laws.

**11.4.3.** Partner acknowledges that it is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on Epicor's behalf. Partner also acknowledges that it is prohibited from using any funds provided by Epicor, or any proceeds resulting from any Epicor business, to pay expenses for travel, lodging, hospitality or charitable contributions for government officials.

**11.4.4.** Partner will disclose all rebates, fees or other concessions to a government Customer as required by law, regulations or the terms of the government solicitation.

**12. Recordkeeping; Review; Surveys; Insurance**

**12.1.** During the term of the Agreement and for 3 years after it ends, Partner will maintain adequate books and records in connection with its activities hereunder. Such records include, without limitation, invoicing, payment and other financial records associated with each transaction and relevant to Partner's compliance with the Anti-Corruption Laws. Epicor may review the relevant books and records of Partner to ensure compliance with the terms of the Agreement.

**12.2.** Epicor may use the services of the Software Publisher's Association (SPA) or an independent accounting from a nationally recognized public accounting firm to perform the review, which will be subject to a confidentiality obligation. Any such review will be conducted during regular business hours at Partner's offices following reasonable notice and will not unreasonably interfere with Partner's business activities. If Epicor finds a reporting or payment shortage of 5% or more, Partner will reimburse Epicor for the expenses incurred by Epicor in conducting the review. Partner will pay Epicor 125% of the fees payable for Products that were not paid for. Epicor may not conduct a review more often than once per year unless Epicor finds a reporting or payment shortage of 5% or more. By exercising its rights under this Section, Epicor does not waive any other rights Epicor may have to enforce this Agreement

**12.3.** Epicor may conduct Customer reviews and/or audits from time to time to evaluate Customer satisfaction with Partner's

marketing and sales activities, and where applicable, Services, and to confirm order and renewal terms.

**12.4. Insurance.** Partner will maintain workers' compensation or similar insurance as prescribed by the law of the jurisdictions in which Partner does business, and comprehensive general liability ("CGL") insurance and other insurance customarily carried by dealers or distributors in the Territory in comparable lines of business during the term of the Agreement and for the 3 years following. To the extent applicable, all CGL and other insurance will designate Epicor as an additional insured. Partner will provide Epicor with certificates or adequate proof of the foregoing insurance promptly upon Epicor's request.

**13. Non-Solicitation.** Subject to applicable law, during the term of this Agreement and for 12 months thereafter, each party agrees that it and its Affiliates will not directly or indirectly solicit for employment (or as an independent contractor) or hire as a result of such solicitation any employee or independent contractor or subcontractor of the other party or its Affiliates for a period of 6 months after the date such person's employment or services contract was terminated, without the other party's consent. This Section will not restrict the right of a party or its Affiliates to: (i) solicit or recruit generally in the media or online, or (ii) hire or engage the other party's or its Affiliates' employees or independent contractors who answer any general advertisement or who otherwise voluntarily apply for hire or engagement without having been initially personally solicited or recruited by or on behalf of the other party. If a party or its Affiliate hires an employee or engages an independent contractor of the other party in contravention of this Section, then such party shall pay to the other party an amount equal to the compensation (inclusive of salary, commission and bonuses, or contractor fees, as applicable) paid to the employee or independent contractor or subcontractor over the previous 12 months of their employment or engagement with the other party, such amount being a genuine pre-estimate by the parties of liquidated damages and not a penalty.

**14. Term; Termination**

**14.1. Term of Agreement.** The term of the Agreement begins on the Effective Date and continues through December 31 of the same calendar year ("**Initial Term**") unless earlier terminated as set forth herein. Upon expiration of the Initial Term and each anniversary thereafter, the Agreement will automatically renew for successive 1-year terms (each, a "**Renewal Term**"), unless and until a party notifies the other in writing of its desire to terminate the Agreement within 30 days prior to such renewal. Partner's participation in Epicor's channel partner program is at Epicor's sole discretion. Epicor has no obligation to renew the Agreement or enter into another channel partner or similar agreement with Partner upon termination or expiration of the Agreement.

**14.2. Termination without Cause.** Either party may terminate the Agreement without cause at any time, effective upon 90 days' written notice to the other party.

**14.3. Termination for Cause.** Either party may terminate the Agreement upon 30 days' written notice if the other party breaches the Agreement and such breach remains uncured at the expiration of the notice period. Epicor may immediately terminate the Agreement upon giving notice to Partner if (i) Partner breaches Sections 11 (Regulatory and Other Agreements)

or 17 (Assignment), (ii) Partner's breach of the Agreement is not curable within 30 days, (iii) such termination is required by valid judicial or governmental order, (iv) Partner engages in the unauthorized manufacture, copying, distribution or use of the Products or Ancillary Licenses or otherwise infringes Epicor's or its Affiliates' or suppliers' intellectual property rights, or (v) Partner becomes insolvent, voluntarily or involuntarily enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, admits in writing its inability to pay its debts or makes attempts to make an assignment for the benefit of creditors.

**14.4. Effects of Termination.** Expiration or termination of this Agreement for any reason will not relieve the parties of any rights or obligations accruing prior to such expiration or termination. Upon expiration or termination:

**14.4.1.** All amounts due and payable by a party to the other hereunder will be paid within 15 days following the date of expiration or termination;

**14.4.2.** Partner's rights to resell and market the Products and perform Services (as an authorized Epicor partner) ceases;

**14.4.3.** Partner will immediately cease all representations that it is an Epicor partner and use of Epicor's Marks;

**14.4.4.** Each party will return to the other all Confidential Information of the other party in its possession or control;

**14.4.5.** Partner will provide Epicor with such information as is reasonably necessary for Epicor to assume primary responsibility for all active Product sales engagements; and

**14.4.6.** All non-refundable BDF Credits and On-Account Credits will expire.

**14.5. Ancillary License Termination.** The Ancillary Licenses terminate upon expiration or termination of the Agreement. Notwithstanding the foregoing, at Epicor's discretion, Partner may continue to use the Internal Use License if it: (i) notifies Epicor in writing of its desire to do so and (ii) pays Epicor the annual maintenance and support fees applicable thereto.

**14.6. Surviving Provisions.** Sections of the Agreement that by their terms require performance after the termination or expiration of the Agreement survive as permitted by applicable law.

**15. Dispute Resolution.** Except for debt recovery or collection actions 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**"):

**15.1. Negotiation/Mediation.** Partner 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.

**15.2. Arbitration.** If Partner 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 domicile and in accordance with the following terms and conditions:

**15.2.1. Arbitrations held in the United States.** Arbitrations held in the United States will be 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 this Agreement evidences a transaction involving interstate commerce. Notwithstanding any provisions herein with respect to applicable substantive law governing this Agreement, the agreement to arbitrate and any arbitration conducted pursuant thereto shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

**15.2.2. Arbitrations held Outside the United States.** Arbitrations held outside the United States 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. The Emergency Arbitrator Provisions will not apply to an arbitration conducted under the ICC Rules.

**15.2.3. 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 shall be English except as otherwise agreed.

**15.2.4. Confidentiality.** Except as required by law, no party may disclose the existence, contents, or results of an arbitration brought in accordance with this 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 that have a need to know and who are bound by obligations of confidentiality.

**15.2.5. 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.

**15.3. Excluded Disputes.** The provisions of Sections 15.1 through 15.2 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.

**15.4. Equitable Relief; Right to Termination.** Notwithstanding the terms of this Section 15, 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 shall at all times have the right to exercise any contractual right it may have to withhold the performance of its obligations and/or terminate this Agreement as permitted hereunder.

**15.5. 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.

**15.6. Governing Law; Jurisdiction**

- 15.6.1.** Except as otherwise provided herein, if Epicor Software Corporation (or its successor or assign) is a party to the Agreement, applicable United States law and the laws of the State of Texas USA govern the Agreement, and each party submits to the non-exclusive jurisdiction and venue of the state or federal courts located in Travis County, Texas, 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.
- 15.6.2.** Except as otherwise provided herein, if an Affiliate (or its successor or assign) of Epicor Software Corporation is party to the Agreement, then the laws applicable to the country (or subdivision thereof) of Affiliate's domicile governs the Agreement, and each party 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.
- 15.7. Jury Trial Waiver.** Where applicable, the parties waive the right of jury trial in connection with any Dispute.
- 15.8. Third Party Rights.** Partner 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 applicable Third Party Applications. 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 this Agreement has no right to enforce any of its terms.
- 16. Cooperation.** If during the term of this Agreement, Epicor or Partner performs Services for a Customer who was formerly or at that time remains an Epicor Customer for Services or Products, Epicor and Partner agree not to undertake any action or communication with the Customer which either reflects poorly upon or disparages the other, or in any way denigrates Customer's relationship with Epicor or Partner. The parties hereto further agree that in any situation where the Customer and Epicor or Customer and Partner are in any type of dispute over Services or payment of fees, Partner and Epicor shall wherever reasonably possible work together to assist in the resolution of such dispute and shall not undertake any action or communication which makes resolution more difficult.
- 17. Assignment.** Partner may not assign, license sub-license or otherwise transfer the Agreement or any rights under the Agreement, including without limitation the Internal Use License, 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 Partner, or any merger, consolidation restructuring, or other business reorganization is considered a transfer covered by the previous sentence. Epicor may, in its sole discretion, require that Partner pay an additional fee as a condition of obtaining Epicor's consent to any such transfer. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Epicor may assign this Agreement upon written notice to Partner if the assignee agrees to be bound by Epicor's obligations hereunder.
- 18. General**
- 18.1. 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 its provisions.
- 18.2. Complete Agreement.** The Agreement, including any supplement, amendment or other addendum hereto, constitutes the entire agreement between the parties on the subject hereof and supersedes all other or contemporaneous agreements, negotiations, representations and proposals, written or oral. Each party acknowledges and agrees that in entering into the Agreement it is not relying on, and has no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person other than as expressly set out in this Agreement. For the avoidance of doubt, the Agreement hereby supersedes any other Channel Partner, Inspired Partner Network, Partners for Growth, or similar agreement between the parties or their Affiliates. Notwithstanding the foregoing, the Agreement is not intended to replace or supersede any subcontract agreement between the parties respecting the provision of Services.
- 18.3. 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 amend the Agreement to give effect to the stricken provision to the maximum extent possible.
- 18.4. Modifications and Waiver.** No modification of, or amendment or addition to the Agreement is valid or binding unless set forth in writing by the party to be charged. Epicor may modify the Program Guide(s) from time to time without Partner's approval; but Epicor will provide at least 90 days' advance notice of any material update thereto.
- 18.5. Waiver.** All rights and remedies of the parties hereto are separate and cumulative. The waiver or failure of either party to exercise in any respect any right or remedy provided herein shall not be deemed a waiver of any future right or remedy hereunder
- 18.6. 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 to the party's address specified in the Partner Authorization Letter, or to the address that a party has notified to be that party's address 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.
- 18.7. Force Majeure.** Neither party will be responsible or liable for its failure to timely perform under this Agreement when its failure results from any cause beyond its reasonable control.
- 18.8. Relationship.** The parties are independent contractors. This Agreement does not create a joint venture or partnership between the parties; and no party is by virtue of the Agreement is authorized as an agent, employee or representative of the other party.
- 18.9. Business Contact Information.** Partner will provide accurate, complete and complete information on Partner's legal business



name, address, email address and phone number, and maintain and promptly update this information if it should change. Partner agrees to allow, and is authorized to allow, Partner and its Affiliates and service providers to store and use Partner's business contact information, including names, business phone numbers, and business e-mail addresses of Partner employees and contractors, anywhere they do business. Such information will be processed and used solely in connection with the parties' business relationship.

**18.10. Further Assurances.** Each party agrees to take all actions and execute all documents, and take all reasonable steps to cause its employees and agents to do all things and execute all documents, at the expense and reasonable request of the requesting party, which the requesting party deems necessary to vest in it any of the rights and interest transferred or licensed pursuant to the Agreement, and to assist the requesting party in obtaining, maintaining and enforcing such rights and interests.

**18.11. Language** The English language version of these General Terms and Conditions control.

**18.12. Order of Precedence.** In the event of any conflict between any of the following documents: (i) these General Terms and Conditions, (iii) the Partner Authorization Letter, and (iv) the Program Guide; such documents will prevail in the preceding order.

**19. Country Specific Terms**

**19.1. Canada.** If Partner is located in Canada, it is the express wish of both parties that these General Terms and Conditions, and any associated documentation, be written and signed in English. Cest la volonté expresse des parties que la pré convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

**19.2. Colombia.** If Partner is located in Colombia, Partner expressly accepts and states that it waives the right to withhold any payment to Epicor and the right to claim the payment of the commercial severance as provided in article 1324 of the Colombian Code of Commerce (or successor law). The parties express agree that the termination of the Agreement for any reason will not generate any commercial severance payment as referred in article 1324 of the Colombian Code of Commerce (or successor law).