empath-e
MAKING CRM MAKE SENSE

Standard Agreement
<customer>

Date: 02/10/12 | 02/07/13 | 30/01/14 | 24/08/15
Version: 3.0.x *(Revisions to combine with Infor)*
Author: Mike Spragg
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THIS AGREEMENT is dated <insert date> 201x and made between

PARTIES:

(1) **empath-e Limited** (company registration number 04745733) and jointly with **Empath-e Services Limited** (company registration number 07152484) whose registered offices are at Unit 1, Freemantle Business Centre, Millbrook Road East, Southampton, SO15 1JR and whose **address for correspondence** is International House, George Curl Way, Southampton, Hampshire, SO18 2RZ ('empath-e')

(2) of <customer> (company registration number <regno>) whose registered office is at <insert address> ('the Client')

RECITALS:

(1) The Client and Infor (United Kingdom) (company registration number 2766416) ('Infor') entered into a software licence and maintenance agreement ('the Infor Agreement') in relation to the Infor CRM software components listed in the First Schedule

(2) empath-e will be carrying-out the Maintenance and Support of the 'Infor CRM' software to be provided under the Infor Agreement as an agent for Infor and as described in Schedule Three

(3) In addition to the maintenance and support of the 'Infor CRM' software empath-e has agreed to provide Consulting Services as described in Schedule Two, to deliver to the Client certain additional computer programs and to grant to the Client a non-exclusive licence to use such programs and their associated documentation and to provide Maintenance and Support Services and other services upon the terms and conditions herein contained

NOW IT IS HEREBY AGREED as follows:

1. Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Consulting Services Charges'	means the charges for the Consulting Services specified in Part 2 of the Second Schedule as increased from time to time pursuant to Clause 3;
'Consulting Services'	means the Consulting Services to be provided by empath-e as specified in the Second Schedule;
'**Current Release**'	means the Release from time to time used by the Licensee under this Agreement or if no Release is used, the Licensed Programs;
'**Delivery Date**'	means the delivery date specified in the Third Schedule or such extended date as may be granted pursuant to **clause 23**;
'**Initial Period**'	means the initial period of this Agreement as specified in the Third Schedule.
'**Licence Fee**'	means the fee for the Licence and the services to be provided under this Agreement as specified in the Third Schedule;
'**Licence**'	means the licence granted by empath-e pursuant to **clause 7(1)**;
'**Licensed Program Materials**'	means the Licensed Programs the Program Documentation and the Media;
'**Licensed Programs**'	means the systems applications and computer programs of empath-e specified in the Third Schedule;
'**Maintenance Charge**'	means the periodic charge for the Maintenance Services specified in the Third Schedule as increased from time to time pursuant to **clause 3**;

'Maintenance Commencement Date'	means the date from which the Maintenance Services shall be provided as stated in the Third Schedule;
'**Maintenance Services**'	means the maintenance services to be provided by empath-e as detailed in the Third Schedule;
'**Media**'	means the media on which the Licensed Programs and the Program Documentation are recorded or printed as provided to the Client by empath-e;
'**Program Documentation**'	means the operating manual, user instructions, technical literature and all other related materials in eye-readable form supplied to the Client by empath-e for aiding the use and application of the Licensed Programs;
'**Proposal**'	Means the proposal document already supplied to the Client, a copy of which is annexed hereto;
'**Release**'	Means any improved version of the Licensed Programs made available to the Client by empath-e pursuant to **clause 9(2)**;
'**Support Charge**'	Means the periodic charge for the Support Services specified in the Third Schedule as increased from time to time pursuant to **clause 3;**
'**Support Services**'	Means the support services to be provided by empath-e as detailed in the Third Schedule;
'**Supported Releases**'	Means the Current Release and the Prior Release;
'**Tools**'	Means any method, process or technique used by empath-e in connection with providing the Consulting Services.

2. Products and Services to be Provided

empath-e hereby agrees to:

2.1   grant to the Client a non-exclusive licence to use the Licensed Program Materials;

2.2   deliver the Licensed Programs to the Client;

2.3   provide operating manuals on disk to the Client;

2.4   provide the Consulting Services for the Client;

2.5   provide the Maintenance Services for the Client;

2.6   provide the Support Services for the Client;

2.7   provide the other services hereinafter described upon the terms and conditions hereinafter contained.

3. Payment

3.1   The Licence Fee shall be paid by the Client at the time or times stated in the Third Schedule.

3.2   The Client shall pay the Maintenance Charge and the Support Charge in the manner specified in the Third Schedule. No Maintenance or Support Services shall be provided until payment has been received by empath-e.

3.3   Unless otherwise stated in Part 2 of the Second schedule, all Consulting Services provided in a calendar month shall be invoiced during that month. The Client shall pay the Consulting Services Charges within 14 days of the date of invoice.

3.4   The Licence Fee, Consulting Service Charges, Maintenance Charge and Support Charge and any additional charges payable under this Agreement are exclusive of VAT which shall be paid by the Client at the rate and in the same manner for the time being prescribed by law.

3.5   The Client shall reimburse empath-e for any and all expenses reasonably and properly incurred by empath-e in the proper performance of the Consulting Services provided that empath-e shall provide the Client with such evidence of such expense as the Client may require.

3.6   Any part of the Consulting Service Charge that has been agreed with the Client but subsequently cancelled or postponed by the Client within 5 Business Days of the agreed Delivery date shall be reimbursed to empath-e without deduction or setoff upon presentation of invoice as if the work had been carried out.

3.7   We require payment to terms. Payment must be made on time, in full, and without any deduction, set off or counterclaim. In the event that an account is outstanding, we may refer the matter to our debt collection agents, Daniels Silverman Limited, which will incur further costs of 20%+VAT. Any costs incurred to collect the debt will be added to the debt, plus VAT at the prevailing rate. You agree that you will be legally liable to pay us these fees, and that payment of the same can be enforced against you in court. You also agree to pay interest at the relevant reference rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998, which interest is payable both after and before any judgment of the court and continues to accrue.

3.8   empath-e shall be entitled at any time and from time to time after the expiry of the Initial Period to increase the Consulting Service Charges, the Maintenance Charge and the Support Charge to accord with any reasonable change in its standard scale of charges by giving to the client not less than 30 days prior written notice.

3.9   All payments to be made to the UK bank account of empath-e in Sterling and any/all fees of the transfer/conversion to be borne by the Client.

4. Delivery

On the Delivery Date empath-e shall deliver the Licensed Programs to the Client but time shall not be of the essence in relation to such obligations. The Licensed Programs so delivered shall consist of one copy of the object code of the Licensed Programs in machine-readable form only, on the storage Media specified in the Second Schedule.

5. Risk

Risk in the Media shall pass to the Client on delivery. If any part of the Media shall thereafter be lost, destroyed or damaged empath-e shall promptly replace the same (embodying the relevant part of the Licensed Programs or Program Documentation) subject to the Client paying the cost of such replacement. empath-e shall not make any further or additional charge for such replacement.

6. Warranties

6.1

6.1.1   empath-e warrants that it has the right to grant the Licence and that the Media on which the Licensed Programs are furnished are free from defects in material and workmanship under normal and proper use for a period of six months from the Delivery Date. empath-e further warrants that the Licensed Programs conform to the technical specifications in the Program Documentation.

6.1.2   If empath-e receives written notice from the Client after the Delivery Date of any breach of the said warranty then it shall at its own expense and within a reasonable time after receiving such notice remedy the defect or error in question provided that it shall have no liability or obligations under the said warranty unless it has received written notice of the defect or error in question no later than the expiry of six months after the Delivery Date.

6.1.3   The said warranty shall be subject to the Client complying with its obligations hereunder and to there having been made no alterations to the Licensed Programs by any person other than empath-e. When notifying a defect or error the Client shall (so far as it is able) provide empath-e with a documented example of such defect or error.

6.1.4   empath-e shall have no liability or obligations under the said warranty other than to remedy breaches thereof by the provision of materials and services within a reasonable time to the Client. If empath-e shall fail to comply with such obligations its liability for such failure shall be limited to a sum equal to the Licence Fee. The foregoing states the entire liability of empath-e, whether in contract or tort, for the defects and errors in the Licensed Program Materials which are notified to it after the Delivery Date.

6.2   The Client shall provide hardware to the minimum specifications set-out in the Program Documentation

6.3   The Client acknowledges that software in general is not error free and agrees that the existence of such errors shall not constitute a breach of this Licence.

6.4   empath-e further warrants that it has the right to use the Tools.

6.5   Except as expressly provided in this Agreement no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability or fitness for purpose of the Licensed Program Materials or the Tools is given or assumed by empath-e and all such warranties, conditions, undertakings and terms are hereby excluded.

7. Licence

7.1 empath-e hereby grants to the Client a non-exclusive licence to use the Licensed Program Materials subject to the terms and conditions hereinafter contained.

7.2 The Client shall use the Licensed Program Materials for processing its own data for its own internal business purposes only. The Client shall not permit any third party to use the Licensed Program Materials nor use the Licensed Program Materials on behalf of or for the benefit of any third party (in any way whatsoever).

7.3 The Licence shall not be deemed to extend to any programs or materials of empath-e other than the Licensed Program Materials unless specifically agreed to in writing by empath-e.

7.4 The Client hereby acknowledges that it is licensed to use the Licensed Program Materials only in accordance with the express terms of this Agreement and not further or otherwise.

7.5 Infor will only allow reductions to the license count (for the purposes of Maintenance/Support annual renewals) upon written confirmation of their acceptance of such reduction. Empath-e can apply for this upon the Client's written instruction.

8. Duration of Licence Support Maintenance and Consulting Services

8.1 The Licence shall commence on the Delivery Date and shall continue until terminated in accordance with any of the provisions of **clause 21** or any other clause of this Agreement.

8.2 The Support and Maintenance shall commence on the dates specified in the Third Schedule and shall continue for the Initial Period and shall remain in force thereafter unless or until determined by any one of the parties giving notice to the other of not less than the notice specified in the Third Schedule in writing. The renewal period is One Year in advance recurring.

8.3 The Consulting Services shall be provided at the times stated in Part 1 of the Second Schedule.

8.4 Should the Client terminate this agreement then no setoff, credit or repayment for unused portions of Maintenance and Support will be provided.

8.5 The Support and Maintenance shall be treated as one for the purposes of renewal. However, should the client terminate the Support element then at our discretion we shall terminate the Maintenance element. Should the Client wish to retain the Support element only then they are able to do so.

8.6 If a Client is currently off Maintenance then determine they wish to re-instate the Maintenance element they are required to apply for re-instatement from Infor. Currently this requires a re-payment of back fees plus a multi-year commitment of two years (payable in advance) or three years (paid annually).

8.7 Empath-e shall provide notice of the annual renewal plus any annual uplift for Support and Maintenance as follows:

8.7.1 Based upon the licenses purchased by the Client Empath-e shall notify the Client approximately 90 days ahead of the Maintenance Expiry Date of the amount due for the annual renewal followed by an invoice approximately 15 days later.

8.7.2 All fees due to empath-e shall be paid at least 30 days prior to the renewal date.

8.7.3 If payment or cancellation is not received by empath-e on or before the renewal date then the renewal is considered lapsed. Infor at its discretion can apply a late fee of 20% calculated on the basis of the annual renewal. Empath-e will invoice that to the client separately should this occur. The Client shall agree that this amount will be recoverable.

8.7.4 Infor will only accept renewals based on an annual basis. Empath-e may allow staged payments at its discretion.

8.7.5 The Client shall observe Infor's policy on re-instatement of lapsed renewals as follows:

INFOR'S POLICY FOR RE-INSTATEMENT OF MAINTENANCE/SUPPORT:

If maintenance/support lapses for any period of time due to licensee's non-renewal of annual maintenance/support or failure to pay applicable fees when due it may only be re-instated upon Infor's written consent and licensee's payment of all fees that would have been due during such lapsed period plus a re-instatement charge. Fees for re-instatement are subject to change and in accordance with Infor's then current policies. Payment is required in advance prior to any entitlement being used.

9. Maintenance Services

During the continuance of this Agreement empath-e shall provide the Client with the following maintenance services:

(1) Error Correction

(a) If the Client shall discover that the Supported Releases fails to perform in accordance with the Program Documentation then the Client shall within 14 days after such discovery notify empath-e in writing of the defect or error in question and provide empath-e (so far as the Client is able) with a documented example of such defect or error.

(b) empath-e shall thereupon use its reasonable endeavours to correct promptly such defect or error. Forthwith upon such correction being completed empath-e shall deliver to the Client the corrected version of the object code of the Supported Releases in machine readable form together with the appropriate amendments (if any) to the Program Documentation specifying the nature of the correction and providing instructions for the proper use of the corrected version of the Supported Releases.

(c) The foregoing error correction service shall not include service in respect of:

(i) defects or errors resulting from any modifications of the Supported Releases made by any person other than empath-e;

(ii) any version of the Licensed Programs other than the Current Release or the immediately preceding Current Release;

(iii) incorrect use of the Supported Releases or operator error;

(iv) any fault caused by computer Viruses, Trojans or similar;

(v) any fault in the equipment on which the Licensed Programs are installed or in any programs used in conjunction with the Supported Releases;

(vi) defects or errors caused by the use of the Supported Releases with programs not supplied by or approved in writing by the Licensor provided that for this purpose 'Infor CRM' software shall be deemed to have the written approval of empath-e;

(d) empath-e shall make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by it;

(i) at the request of the Client but which do not qualify under the aforesaid error correction service by virtue of any of the exclusions referred to in paragraph (c) above; or

(ii) at the request of the Client but which it finds are not necessary.

For the avoidance of doubt nothing in this paragraph shall impose any obligation on empath-e to provide services in respect of any of the exclusions referred to in paragraph (c).

(2)   Releases

(a)   empath-e shall promptly notify the Client of any improved version of the Licensed Programs which it shall from time to time make.

(b)   Upon receipt of such notification empath-e shall deliver or enable for download to the Client as soon as reasonably practicable (having regard to the number of other users requiring the new Release) the object code of the new Release in machine-readable form together with the Program Documentation.

(c)   The Current release shall become the Prior Release; The new Release shall thereby become the Current Release and the provisions of this Agreement shall apply accordingly.

(3)   Advice

empath-e will provide the Client with such technical advice by telephone electronic mail or mail as shall be necessary to resolve the Client's difficulties and queries in using the Supported Releases.

(4)   Changes in Law

empath-e will from time to time make such modifications to the Current Release as shall ensure that the Current Release conforms to any change of legislation or new legal requirements which affect the application of any function or facility described in the Program Documentation. empath-e shall promptly notify the Client in writing of all such changes and new requirements and shall implement the modifications to the Current Release (and all consequential amendments to the Program Documentation which may be necessary to enable proper use of such modifications) as soon as reasonably practicable thereafter.

10. Support

Support Services shall (unless modified in the Third Schedule) include:

(a) **Hotline Support**. For an urgent problem, the Licensee can telephone the Licensor's Hotline which is available Monday to Friday from 09.00 to 17.00 (excluding National Holidays) (the standard hours of empath-e). An urgent problem is degradation or failure of the Licensed Programs.

Problems which do not delay or inhibit system operation will be handled by written or electronically mailed reports.

The Client must submit sufficient material and information to enable the support staff of empath-e to duplicate the problem.

The support staff of empath-e will attempt to solve a problem immediately, or as soon thereafter as possible. When appropriate, empath-e will endeavour to give an estimate of how long a problem may take to resolve. empath-e will keep the Client informed of the progress of problem resolution.

(b) **Out-of-hours** support shall, where specified in the Third Schedule, be provided at an additional charge by empath-e.

(c) Correction of critical errors or assistance to overcome specific problems with the Licensed Programs. empath-e may, in its sole discretion, correct errors by 'patch' or by new version.

(d) Information on availability of new versions of the Licensed Programs.

(e) Consultancy advice on developments, enhancements and modifications of the Licensed Programs, together with estimates for the same.

11. Client's Obligations

During the continuance of this Agreement the Client shall:

(1) use only the Supported Releases;

(2) ensure that the Supported Releases is used in a proper manner by competent trained employees only or by persons under their supervision;

(3) not to alter or modify the Supported Releases or the Program Documentation in any way whatever nor permit the Supported Releases to be combined with any other programs to form a combined work;

(4) not request, permit or authorise anyone other than empath-e to provide any maintenance services in respect of the Supported Releases or the Program Documentation;

(5) co-operate fully with the personnel of empath-e in the diagnosis of any error or defect in the Supported Releases or the Program Documentation;

(6) make available to empath-e free of charge all information facilities and services reasonably required by it to enable it to perform the Consulting Services and the Maintenance and Support Services including without limitation computers, computer runs, core dumps, data preparation, office accommodation, typing and photocopying, access to knowledgeable personnel and (unless specifically excluded in the Third Schedule) remote access & control;

(7) provide such telecommunication facilities as are reasonably required by the Licensor for testing and diagnostic purposes at the Client's expense;

(8) ensure in the interests of health and safety that the personnel of empath-e while on the Client's premises for the purposes of this Agreement are made familiar with the Client's premises and safety procedures; and

(9) maintain appropriate comprehensive insurance to ensure that the personnel of empath-e are covered whilst working at the Client's premises.

12. Proprietary Rights

12.1 The Licensed Program Materials and the copyright and other intellectual property rights of whatever nature in the Licensed Program Materials are and shall remain the property of empath-e which reserves the right to grant licences to use the Licensed Program Materials to any other party or parties.

12.2 The Client shall notify empath-e immediately if the Client becomes aware of any unauthorised use of the whole or any part of the Licensed Program Materials by any person.

12.3 The Client will permit empath-e to check the use of the Licensed Program Materials by the Client at all reasonable times and for that purpose empath-e shall be entitled to enter any of the Client's premises (and so that the Client hereby irrevocably licenses empath-e, its employees and agents to enter any such premises for such purpose).

12.4 The Supported Releases (and all corrected versions thereof and all other Releases) and the Program Documentation and all parts thereof and the copyright and all other intellectual property rights of whatever nature therein are and shall remain the property of empath-e.

12.5 The provisions of the Licence shall apply to the Supported Releases and the Program Documentation as such provisions are expressed to apply to the Licensed Program Materials referred to in the Licence mutatis mutandis and the parties hereby undertake to be bound by and comply with the terms of the Licence accordingly.

12.6 The Tools and any computer programs used by empath-e in performing the Consulting Services are and shall remain its sole property.

12.7 The copyright in any generic report, documentation, information, software or invention on whatever media, prepared or created by empath-e in providing the Consultancy Services shall be the property of empath-e; the copyright in any customisations developed specifically for Client shall be the property of the Client notwithstanding termination of this Agreement unless otherwise expressly agreed in writing between the parties.

13. Intellectual property rights indemnity

empath-e shall indemnify the Client against any claim that the normal use or possession of the Licensed Program Materials infringes the intellectual property rights of any third party provided that empath-e is given immediate and complete control of such claim, that the Client does not prejudice its defence of such claim and that the claim does not arise as a result of the use of the Licensed Program Materials in combination with any equipment (other than the Equipment) or programs not supplied or approved by empath-e. empath-e shall have the right to replace or change all or any part of the Licensed Program Materials in order to avoid any infringement. The foregoing states the entire liability of empath-e to the Client in respect of the infringement of the intellectual property rights of any third party.

14. Confidentiality of Licensed Program Materials

14.1 The Client undertakes to treat as confidential and keep secret all information contained or embodied in the Licensed Program Materials and the Proposal and all information conveyed to the Licensee by training, support and maintenance (hereinafter collectively referred to as 'the Information').

14.2 The Client shall not without the prior written consent of empath-e divulge any part of the Information to any person except:

14.2.1 the Client's own employees and then only to those employees who need to know the same;

14.2.2 the Client's auditors, HM Revenue & Customs and any other persons or bodies having a right, duty or obligation to know the business of the Client and then only in pursuance of such right, duty or obligation;

14.2.3 any person who is for the time being appointed by the Client to maintain any

equipment on which the Licensed Programs are for the time being used (in accordance with the terms of the Licence) and then only to the extent necessary to enable such person to properly maintain such equipment.

14.3 The Client undertakes to ensure that persons and bodies mentioned in paragraphs 14.2.1, 14.2.2 and 14.2.3 of **sub-clause 2** are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to empath-e. The Client shall indemnify empath-e against any loss or damage which the Licensor may sustain or incur as a result of the Client failing to comply with such undertaking.

14.4 The Client shall promptly notify empath-e if it becomes aware of any breach of confidence by any person to whom the Client divulges all or any part of the Information and shall give empath-e all reasonable assistance in connection with any proceedings which it may institute against such person for breach of confidence.

14.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Licence or this Agreement.

15. Copying

15.1 The Client may make only so many copies of the Licensed Programs as are reasonably necessary for operational security and use. Such copies and the media on which they are stored shall be the property of empath-e and the Client shall ensure that all such copies bear the proprietary notice of empath-e. The Licence shall apply to all such copies as it applies to the Licensed Programs.

15.2 No copies may be made of the Program Documentation (unless for the sole use of the Client) without the prior written consent of empath-e.

16. Security and control

The Client shall during the continuance of the Licence:

16.1 Effect and maintain adequate security measures to safeguard the Licensed Program Materials from access or use by any unauthorised person.

16.2 Retain the Licensed Program Materials and all copies thereof under the Client's effective control.

16.3 Maintain a full and accurate record of the Client's copying and disclosure of the Licensed Program Materials and shall produce such record to empath-e on request from time to time.

17. Alterations

Except as provided in the Program Documentation the Client hereby undertakes neither to alter or modify the whole or any part of the Licensed Program Materials in any way whatever nor to permit the whole or any part of the Licensed Programs to be combined with or become incorporated in any other programs.

18. Operating Manuals

empath-e shall provide the Client with one electronic copy of a set of operating manuals containing sufficient information to enable proper use of all the facilities and functions set out in the Specification.

19. Training and Implementation Services

19.1   empath-e undertakes to provide training in the use of the Licensed Programs for the staff of the Client as set out in the Third Schedule.

19.2   Any additional training or any implementation or customisation required by the Client shall be provided by empath-e in accordance with its standard scale of charges from time to time in force.

19.3   empath-e shall be entitled to charge the Client up to the full cost in the event of cancellation by the Client within 5 working days of any training session or of any agreed date for implementation.

20. Client's confidential information

empath-e shall treat as confidential all information supplied by the Client under this Agreement which is designated as confidential by the Client or which is by its nature clearly confidential provided that this clause shall not extend to any information which was rightfully in the possession of empath-e prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause). empath-e shall not divulge any confidential information to any person except to its own employees and then only to those employees who need to know the same. empath-e shall ensure that its employees are aware of and comply with the provisions of this clause. The foregoing obligations shall survive any termination of the Licence or this Agreement.

21. Termination

21.1   The Client may terminate the Licence at any time by giving at least 30 days' prior written notice to empath-e.

21.2   empath-e may terminate the Licence forthwith on giving notice in writing to the Licensee if:

21.2.1   the Client commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from empath-e so to do, to remedy the breach (such request to contain a warning of its intention to terminate); or

21.2.2   the Client permanently discontinues the use of the Licensed Program Materials.

21.3   Save as expressly provided in **clause 21.2.1** or elsewhere in this Agreement the Licence may not be terminated.

21.4   Forthwith upon the termination of the Licence the Client shall return to empath-e the Licensed Program Materials and all copies of the whole or any part thereof or, if requested by empath-e, shall destroy the same (in the case of the Licensed Programs by erasing them from the magnetic media on which they are stored) and certify in writing to it that they have been destroyed.

21.5   Any termination of the Licence or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it effect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

22. Assignment

The Client shall not be entitled to assign, sub-license or otherwise transfer the Licence whether in whole or in part PROVIDED THAT this restriction shall not apply to any transfer to a successor business of the Client or to any company within the Client's group.

23. Force Majeure

Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve the party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Agreement and by law):

23.1 any costs arising from such delay shall be borne by the party incurring the same;

23.2 either party may, if such delay continues for more than 10 weeks, terminate this Agreement forthwith giving notice in writing to the other by reason of such termination save that the Client shall pay empath-e a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose empath-e may deduct such sum from any amounts previously paid by the Licensee under this Agreement (the balance (if any) of which shall be refunded to the Client whether paid by way of deposit or otherwise).

24. Client's warranty

The Client warrants that it has not relied on any oral representation made by empath-e or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by it which are only intended to convey a general idea of the products and services mentioned therein.

25. Liability

25.1 empath-e shall indemnify the Client and keep the Client fully and effectively indemnified against any loss or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of empath-e, its employees, agents or sub-contractors or by any defect in the design or workmanship of the Equipment.

25.2 empath-e shall not be liable for any loss or damage sustained or incurred by the Client or any third party (including without limitation any loss of use of the Supported Releases or loss of or spoiling of the Client's data) resulting from any defect or error in the Supported Releases or the Program Documentation except to the extent that such loss or damage arises from any unreasonable delay by empath-e in providing the Maintenance Services or the Support Services.

25.3 empath-e shall not be responsible for the maintenance, accuracy or good running of any version of the Licensed Programs except the Supported Releases.

25.4 The Client shall indemnify empath-e and keep it fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors.

25.5 Except in respect of injury to or death of any person (for which no limit applies) the respective liability of empath-e and the Client under sub-clauses 1 and 2 in respect of each event or series of connected events shall not exceed **£1,000,000**.

26. Waiver of remedies

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

27. Entire agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

28. Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first-class pre-paid letter or electronic mail transmission and shall be deemed to have been served if by hand when delivered, if by first-class post 48 hours after posting and if by electronic mail transmission when despatched.

29. Headings

The headings to the clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

30. Severance

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the parties from any relevant competent authority then the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Licensor it may be severed from this Agreement and the remaining provision of this Agreement shall remain in full force and effect.

31. Law

This Agreement shall be governed by and construed in accordance with the laws of England.

32. Disputes

If any dispute shall be of a technical nature relating to the functions or capabilities of the Licensed Program Materials or any similar or related matter then such a dispute shall be referred for final settlement to an expert nominated jointly by the parties or, failing such nomination, within 14 days after either party's request to the other therefore nominated at the request of either party by the President for the time being of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees.

_____

EXECUTED under hand in two originals the day and year first before written.

SIGNED for and on behalf of empath-e   _____

Print Name: _____

SIGNED for and on behalf of the Client   _____

Print Name: _____

SCHEDULE 1

Infor CRM Software components

[insert the Excel table]

SCHEDULE 2

Part 1 (the Consulting Services) and Part 2 (the Consulting Service Charges)

[insert the Excel table]

SCHEDULE 3

LICENSED PROGRAMS AND LICENCE FEE: *Complete as required*

DELIVERY DATE: *Complete as required*

TRAINING: *Complete as required*

MAINTENANCE AND SUPPORT SERVICES AND CHARGES:

0 x Advanced Sales Client Licenses   **Current MRP: £0**
  Maintenance £0 : Support £0

MAINTENANCE AND SUPPORT COMMENCEMENT DATE: <mark>TBA</mark>

Maintenance & Support is provided annually and will auto-renew each year on the anniversary of the Maintenance & Support Commencement date and can only be terminated via written notice received 3 months prior to the anniversary date. Failure to notify will result in the entire charge for the period being levied from Infor and passed to the client for payment as if the agreement had renewed.

INITIAL PERIOD: **Two Years**

PAYMENT TERMS:

License Fees and First Year Support and Maintenance Charges 50% with contract; 50% on delivery or 60 days after contract whichever is sooner. Service Charges incurred in a specific month are invoiced for payment within 14 days.

REMOTE ACCESS:

Subject to the authority of the Client, such authority not to be unreasonably withheld, empath-e requires remote access to the server(s) that the Licensed Programs have been installed. Remote access is preferred to be implemented via Remote Desktop Protocol or via Citrix GotoAssist (included)