

## CONSULTING AGREEMENT

Dated \_\_\_\_\_ ("Effective Date")

This Consulting Agreement, including all Exhibits attached hereto ("Agreement") is made by and between \_\_\_\_\_ (hereinafter, "Client") of \_\_\_\_\_ [insert address] and Acsis, Inc. (hereinafter, "Consultant"), of 9 East Stow Road, Marlton, New Jersey, 08053.

Client wishes to engage Consultant to provide certain services ("Services") from time to time as may be described in one or more statements of work or other equivalent writings ("SOW"). The parties therefore agree as follows:

1. **SERVICES:** Consultant will initiate performance of Services at a date mutually agreed by both parties. Consultant represents that it and its personnel have the proper skill, training and background so as to be able to perform the Services in a competent and professional manner, with a reasonable standard of care in accordance with general industry standards and that all work will be so performed. Details of the Services expected to be performed shall be as set forth in the SOW in the form attached hereto as Exhibit A or an equivalent mutually agreed form, which is considered part of this Agreement.
2. **PAYMENT:** Client agrees to pay to Consultant all amounts contained in each invoice rendered under this Agreement net thirty (30) days from date of invoice. Exhibit B lists Consultant's currently published hourly bill rates. In case of conflict between Exhibit B and the applicable SOW, such rates listed in the applicable SOW will govern.
3. If Consultant provides Services on a Time and Material basis, estimated totals will be provided in the SOW for Client's planning purposes only, and do not represent a fixed-price commitment. Billing amounts may vary with the actual effort expended by Consultant. If Consultant expends less time than estimated to complete the Services, then Client will only be billed for actual efforts.

If additional services are requested, the parties agree to complete and execute a Project Change Request ("PCR") form. The PCR will describe the requested services, the amount, and the applicable billing milestones. The services performed for all PCR's will be provided in accordance with the terms and conditions of this agreement.

Client shall, in addition to other amounts payable under this Agreement, pay all sales, use or other taxes (but excluding taxes imposed on Consultant' income) levied or imposed by reason of the transactions contemplated under this Agreement. Client shall promptly pay to Consultant an amount equal to any such tax(es) actually paid or required to be collected or paid by Consultant upon receipt of any invoice therefore.

Consultant will submit in writing an invoice based on time/task or milestones as stated in the applicable SOW.

4. **EXPENSES:** Client will reimburse all reasonable expenses incurred by Consultant in performing the services. Invoices for expense reimbursement shall be sent from time to time as expenses are incurred and shall be payable within thirty- (30) days after receipt of the invoice and supporting documentation. Expenses are not included in the amount listed of Schedule "A".
5. **HARDWARE:** All data collection hardware devices and palmtops to be used with the customized transactions developed by Consultant shall be acquired from Consultant. Should \_\_\_\_\_ desire to use the any customized transactions at any owned facility in which existing hardware is compatible, (in the sole judgment of Consultant), without program and/or communication modification, \_\_\_\_\_ shall be permitted to use such hardware. \_\_\_\_\_ acknowledges that Consultant is obtaining the hardware devices from its Hardware Vendor ("Manufacturer") and that Consultant shall not be responsible for the unavailability of products or the inability to deliver products on or before the delivery date(s) set forth

in a purchase order. Consultant shall have no obligation to accept and shall not be deemed to have accepted any purchase order that contains any terms or conditions, which is inconsistent with this Agreement. Should there be any inconsistency between this Agreement and a Purchase Order, the terms of this Agreement shall prevail. Delivery of Products will be F.O.B. Manufacturer's site. The parties agree that delivery shall be complete when the hardware arrives at the location of Consultant or any site designated by the parties. \_\_\_\_\_ shall pay all shipping, insurance and special packing costs and \_\_\_\_\_ shall assume all risk of loss in respect of the hardware after shipment from Manufacturer's site. Payment for the hardware shall be made net thirty days (30) from the invoice date.

6. **TERM/TERMINATION:** This Agreement shall be effective upon the Effective Date for an initial period of two years or until the specific project is complete. If the specific project remains uncompleted at the end of the preceding period, this agreement will renew for an additional two year period. The Agreement may be sooner terminated by either party if the other party commits a material breach of this Agreement, which breach is not cured within fifteen days of notification of the breach by the non-breaching party.
7. **RELATIONSHIP OF THE PARTIES:** It is understood by the parties that Consultant is an independent contractor with respect to Client, and not an employee of Client. Client will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, to Consultant.
8. **WORKPLACE REQUIREMENTS:** Consultant agrees to conform to all reasonable workplace standards and policies applicable to Client's employees, which are communicated to the Consultant, for the protection and security of Client facilities, materials, equipment and personnel while on Client premises.
9. **ASSIGNMENT:** Consultant's obligations under this Agreement may be assigned or transferred to any other person, firm, or corporation with prior written notification to Client.
10. **CONFIDENTIALITY:** In the course of performance of this Agreement, either party may find it necessary to disclose or permit access to ("disclosing party") certain confidential information ("Confidential Information") to the other party ("receiving party"). Confidential Information shall include, but not be limited to, databases, materials, products, technology, computer programs and software, source codes, object codes, documentation and programmer commentary, analytical techniques and processes, specifications, manuals, ideas, innovations, discoveries, manufacturing plans, business plans, marketing plans, financial information, technical information, and correspondence and internal documents, disclosed in writing, or by any other media to receiving party or to which receiving party has access in the performance of Services, as well as any information discovered or developed by Consultant in provision of Services under this Agreement. Disclosure of or provision of access to Confidential Information to or by either party is solely for the purpose of the provision of Services hereunder. Both parties agree not to disclose Confidential Information to any third party, nor to use the Confidential Information for their own benefit, for the benefit of any third party, or for any purpose other than performance of Services. Neither party shall have any obligation under this Agreement with respect to information which: (i) is or becomes publicly available without breach of this Agreement; (ii) is rightfully received without obligations of confidentiality; (iii) is developed independently without access to Confidential Information or (iv) is lawfully required to be disclosed to any governmental agency; or (v) is lawfully required to be disclosed to a third party by subpoena or other requirement of law. These obligations shall survive termination of this Agreement for a period of 5 years.
11. **OWNERSHIP:**
  - A Prior to the date that Client executes a Software License Agreement with Consultant, Client shall retain all title, copyright and other proprietary rights to all materials prepared or developed by Consultant hereunder, including documents, flow charts, maps sketches, notes, reports, and data, including but not limited to deliverables created or developed by Consultant for the benefit of Client under this Agreement. Consultant agrees that each copyrightable element of each deliverables will be a

"work made for hire" within the meaning of the United States Copyright Act, made for the sole benefit of Client. In the event that any right, title or interest to any deliverable, a part thereof, or any other Intellectual Property may not, by operation of law, vest in Client, then Consultant hereby conveys, transfers and assigns to Client all right title and interest throughout the world and without further consideration, in and to such deliverables and Intellectual Property. For purposes of this provision, "Intellectual Property" shall be defined as all intellectual property including but not limited to patents, patent applications, trademarks, trademark registrations, trademark applications, copyrights, copyright registrations, copyright applications, computer programs and software, inventions, processes, algorithms, methods, trade secrets and other similar proprietary information. "Deliverables" shall be defined as all products, including but not limited to functional specifications, prototypes, programs in object and source code form and documentation and instructions necessary for a person reasonably familiar with the products to utilize them, that are developed by Consultant and/or provided to Client by Consultant specifically as part of the Services contracted under this Agreement.

Pre-Existing Materials In its performance hereunder, Consultant may use certain Consultant Pre-Existing Materials which as used herein, shall mean all products, devices, software, computer programs, documentation, manuals, techniques, processes, inventions, business methods, trade secrets, know-how, algorithms, source code, data procedures, other proprietary information and property and modifications, enhancements, updates and upgrades thereto, whether tangible or intangible, and all right title and interest in and to the intellectual property embodied in any of the foregoing, that have been created, or otherwise acquired by Consultant prior to the Effective Date. All Pre-Existing Materials are considered Consultant Confidential Information as between the Parties, and shall be and remain the exclusive property of Consultant. Client shall not disclose any such Consultant Confidential Information and may only use the same internally in connection with use of the Deliverables. To the extent any Pre-Existing Materials are embedded in any Deliverables or Work Product, or any Deliverable or Work Product is a modification or derivative of such Pre-Existing Materials, Consultant hereby grants Client a perpetual, non-exclusive, royalty free, irrevocable license to use, distribute, modify, copy and adapt the Pre-Existing Materials in connection with use of the Deliverables provided hereunder.

B. Notwithstanding anything contained in A above to the contrary, if Client licenses software from Consultant pursuant to a Software License Agreement, Consultant shall at all times continue to be the sole owner of (i) the software (as defined in the license agreement), (ii) all of Consultant's Pre Existing Materials (collectively, "Consultant Property) (iii) any enhancements, modifications, upgrades and updates, innovations and inventions in connection with Consultant Property created by Consultant during the course of performing its Services and (iv) any Deliverables not specifically designed and created for Client. ("Non Client-Specific Deliverables").

12. PUBLICITY: Consultant shall use the name of Client in any advertising, promotion, or publicity, and may include the name of Client in its published client lists.
13. NOTICES: All notices required or permitted under this Agreement shall be in writing and shall be in writing and shall be deemed delivered if delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Client

Consultant:  
Contract Administration Acsis, Inc.  
9 East Stow Road  
Marlton, NJ 08053

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

14. AMENDMENT: This Agreement may only be modified or amended if the amendment is made in writing and is signed by both parties.

15. SEVERABILITY: If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provisions shall be deemed to be written, construed and enforced as so limited.
16. WAIVER: The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
17. ENTIRE AGREEMENT: This Agreement, together with its exhibits and any non-disclosure agreement ("NDA") executed by the parties contains the entire agreement of the parties and there are no other promises or conditions in any other agreement, oral or written. Except for the above-referenced NDA, this Agreement supersedes any prior written or oral agreements between the parties.
18. APPLICABLE LAW: This Agreement shall be governed by the law of the State of New Jersey, without regard to conflicts of laws rules or principles.
19. WARRANTY: This Agreement is for the provision of services only by Consultant. It is understood that Consultant also license's proprietary software products and methodologies. No such license shall be created except upon signing of Consultant's Software License Agreement. Should Consultant provide any Services in connection with its software, the warranty provided in this Consulting Agreement in connection with all implementation and support Services relating to Consultant's software, shall be subject to all of the provisions of the Software License Agreement and Consultant's Support Agreement, including without limitation, warranty limits and disclaimers.

Consultant does not warrant that the functions contained in the transactions will meet any specific business requirements of Client or that the operation of the transactions will be uninterrupted or error free. Consultant is not responsible for problems caused or work required by changes in or modifications to the operating characteristics of any computer hardware or operating system for which the transactions are obtained, nor is Consultant responsible for problems which occur as a result of the use of the transactions in conjunction with software or with hardware which is incompatible with the operating system for which the transactions are obtained. Client acknowledges and understands that Consultant has no control over the conditions under which Client and/or its Authorized Users use the transactions and does not and cannot warrant the results obtained by such use. Warranty related to services-only engagement shall be limited to the version of SAP that was installed at Client's site(s) when the transactions are installed. If services are required for the proper performance of the transactions as a result of Client's installation of a different version of SAP, this Limited Warranty does not cover such services. Consultant will perform any Client requested services resulting from an SAP version change in accordance with a PCR.

20. EXCLUSION OF IMPLIED WARRANTIES. Consultant represents and warrants that (i) it has the requisite skill, knowledge and professional ability to meet the requirements of the applicable SOW and it will perform the Services in a workmanlike and professional manner and with a reasonable standard of care in accordance with standard industry practices; (ii) the Deliverables delivered by Consultant to Client hereunder shall substantially conform to the requirements and specifications set forth in the applicable SOW; and (iii) the Services and the Deliverables shall not infringe upon or misappropriate any copyright, patent, trademark, service mark, trade secret, or other intellectual property or proprietary right of a third party, or violate any contractual, employment, confidentiality, non-compete or similar obligation to which Consultant and/or its employees and subcontractors assigned to perform Services under this Agreement may be bound. Notwithstanding the foregoing, Consultant shall in no event be liable for claims resulting from the Consultant following the request or direction of Client or any Client third party services providers. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CONSULTANT HEREBY DISCLAIMS ALL WARRANTIES IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES AND DELIVERABLES PROVIDED UNDER

THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

21. INDEMNITY Consultant agrees to indemnify and hold harmless Client from and against losses, costs, expenses arising from (i) personal injury (including death) and property damage claims resulting from the negligent acts of Consultant in connection with the performance of its services (ii) Consultant's breach of confidentiality obligations and (iii) claims against Client that Consultant infringed a third party's intellectual property rights . The limitations and exclusions set forth in Section 21 shall not apply to any indemnity claims under this Section 19.
22. LIMITATION OF LIABILITY, The total, cumulative liability of the Consultant under this Agreement, whether in contract, tort or otherwise, shall be limited to the amounts paid by Client to Consultant in the aggregate during the term of this Agreement. In no event shall either party be liable for any indirect, special, incidental, consequential or punitive damages (including without limitation damages for business interruption, loss of business profits, loss of business information or any other monetary loss) howsoever caused arising out of or in connection with this agreement and whether or not the party has been advised of the possibility of such damages.
23. NON-SOLICITATION. During the term of this Agreement and for a period of one year thereafter, Client agrees that it shall not directly or indirectly solicit for hire or otherwise hire or engage (i) any Consultant current employee or contractor or (ii) any person who was an employee or contractor of Consultant within the one year period prior to the solicitation, hiring or engagement, whether or not such employee or contractor was assigned to perform Services under this Agreement.
24. LEGAL PROCEEDINGS. Should either party incur legal fees, experts' fees or other expense in enforcing its rights under this Agreement, the prevailing party in any legal proceedings shall be entitled to recover all such fees and expenses from the non-prevailing party. If it is determined that there is no "prevailing party" in such legal proceedings, then each party shall bear its own fees and expenses. All legal proceedings shall be commenced and maintained in the state and federal courts in New Jersey and each party waives any claim of lack of venue or inconvenience of the forum.
25. SURVIVAL. Sections 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 shall survive any termination of this Agreement.

26.

The Parties, being duly authorized by their respective organizations, do execute this agreement by signing below.

**ACSIS, INC.**

**CLIENT**

\_\_\_\_\_  
By: (Authorized Signature)

\_\_\_\_\_  
By: (Authorized Signature)

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Title (Printed or Typed)

\_\_\_\_\_  
Title (Printed or Typed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**10. Change Order Procedure**

(No change order will bind either party unless signed by both parties)

IN WITNESS WHEREOF, the parties, being duly authorized by their respective organizations, do execute this SOW by signing below.

**ACSIS, INC.**

**Insert Client**

By:

By:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_, 20\_\_\_\_\_  
Date

\_\_\_\_\_, 20\_\_\_\_\_  
Date

**EXHIBIT B**

**HOURLY BILL RATES**

<b>Resource</b>	<b>Hourly List Rate</b>
Technical Writer	
Implementation Specialist	
Developer (including QA, PLC Equipment Engineer)	
Project Manager	
SAP MII Resource	
SAP AII Resource	
SAP Functional Consultant	
SAP Technical Consultant	
RFID Specialist	
Senior Technical Consultant	
Database Analyst	

**EXHIBIT C**  
**Expense Policy**

## A c s i s

### SOFTWARE LICENSE AGREEMENT

This Software License Agreement is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between Acsis Inc. a Delaware corporation ("Licensor"), having its principal place of business at 9 East Stow Road, Marlton, N.J., 08053, and \_\_\_\_\_ ("Licensee"), having its principal place of business at \_\_\_\_\_.

#### **Background of Agreement**

For purposes of this Software License Agreement (the "Agreement"), the term "Software" means the series of computer programs listed on Schedule "A" to this Agreement, owned by Acsis, Inc., a Delaware corporation having its principal place of business at 9 east Stow Road, Marlton, New Jersey 08053, in object code only, including any and all corrections, fixes, or updates to the Software, and includes any and all tools and all user manuals or other supporting documentation furnished pursuant to this Agreement. Licensee desires to obtain a nonexclusive license to use the Software in the operation of its business, and Licensor hereby grants to Licensee a nonexclusive license to use the Software, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Licensor and Licensee, intending to be legally bound hereby, agree as follows:

1. **License.** Subject to the terms and conditions contained in this Agreement, Licensor grants to Licensee, and Licensee accepts from Licensor, a nonexclusive, nontransferable license (the "License") to use the Software for its internal purposes in non-printed, machine readable form only. The License shall become effective upon delivery and shall be perpetual, subject to termination and revocation as provided in this Agreement. The License includes all releases, enhancements, updates and modifications to the Software, all of which shall be subject to all of the terms of this Agreement, including terms related to use and copies.

2. **Site License/Restrictions on Use.** Licensee may only use the Software for its internal purposes within Licensee's Enterprise at the number of sites listed and defined on Schedule A. For purposes of this Agreement the term ("Enterprise") shall be defined as (i) Licensee, its wholly-owned subsidiaries, divisions and those affiliates in which it now owns more than a 50% equity interest; or (ii) any third party entity which Licensee retains to provide services to Licensee where it is essential that such entity utilize the Software to provide such services, in which case the third party entity's use of the Software will be strictly limited to use necessary to provide services to Licensee. Licensee shall advise Licensor of all such third party entities and require that each execute the Acknowledgement Letter referenced in Attachment "A" of this Agreement prior to gaining access to the Software. Licensee shall not (i) use the Software in the operation of a service bureau, (ii) alter or modify the Software except by use of tools provided by Licensor, (iii) allow any non-permitted entity or site not listed or described on Schedule "A" to use the Software, (iv) violate the restrictions of use limitations in this Section, (v) sell, assign, sublicense or otherwise transfer the Software or any rights in connection

therewith except as provided herein or, (vi) allow unauthorized access to the Software through any computer terminals located outside the Enterprise.

3. **License Fee.** Concurrently with Licensee's execution of this Agreement, Licensee shall pay to Licensor a one-time fee (the "License Fee") as set forth in Schedule "A".

4. **Support.** Licensor offers Licensee technical support pursuant to the executed Acsis Support Agreement (the "Support Agreement") in conjunction with the execution of this Agreement. If Licensee elects to execute a Support Agreement at a later date, said Support Agreement and the associated Support fee will be dated and retroactive to the original date of this Agreement. If at any time Licensee breaches its obligations under the Support Agreement or ceases to utilize Licensor for support, any and all support obligations of Licensor shall cease and be null and void and Licensor shall be under no obligation to provide Licensee with any future support, or any corrections, fixes or updates to the Software. Licensor does not provide Support on a per call/hourly basis.

5. **Software Updates & New Products.** An update shall mean changes which (i) relate to the operating performance of the Software but do not change the basic function of the Software, (ii) are intended for general internal use in connection with the Software; and (iii) are generally made available to Licensor's customers without separate charge, including updates which improve the performance or utility of a particular function found in the current version of the Software or correct "software bugs" existing in the Software. Updates do not include new software products offered by Licensor. New products shall mean additions to the Software that in Licensor's determination significantly improve or add significant new functionality to the Software.

6. **Copies of Software.**

(a) **Right to Copy; Notices.** Licensee shall have the right to make one archival copy of the Software for each server as permitted on Schedule "A" in magnetic, non-printed, machine readable form. In copying the Software, Licensee shall not obliterate or destroy the trade secret or copyright notice, or the name and address of Licensor, or any logo and any user number which shall be incorporated into the Software. Licensee agrees that each of its copies shall reproduce fully the trade secret or copyright notice and such names, addresses, logo and any user number in each permitted copy of the Software made by Licensee.

(b) **Restrictions.** Licensee shall be prohibited from distributing, transferring possession of, or otherwise making available the Software, or any permitted copies thereof, (i) to any person other than Licensee's employees authorized to use the Software (the "Authorized Users") or (ii) from reproducing and installing the Software for use on any computer or server where such reproduction or installation would violate Section 2 or Schedule A of this Agreement. Licensee shall advise all of its Authorized Users that they are prohibited from reproducing, distributing, transferring possession of, or otherwise making available the Software or any copies thereof to any person or entity and/or from installing the Software or any copies thereof to any unauthorized person or on any server.

7. **Ownership of Software.**

(a) Licensor represents and warrants that as of this date, and, on the date of delivery of the Software, the Software is and shall be the sole and exclusive property of Licensor; that it has, and on the date of the delivery of the Software will have, the full right and authority to grant this License, and that neither this License nor Licensor's performance under this Agreement shall conflict with any other agreement or obligation to which Licensor is a party or by which it is bound.

(b) In addition to the Software, Licensor may utilize computer programs owned by third parties. ("Third Party Software). Licensor represents and warrants that it has full right and authority to grant Licensee the right to utilize the Third Party Software, subject to the same restrictions and limitations in this Agreement that apply to the Software. Licensee agrees that all of the restrictions, covenants, agreements and remedies in this Agreement, including without limitation those contained in Sections 2, 7, 9, 10, 11 and 12, shall apply to all Third Party Software, and all of such restrictions, covenants, agreements and remedies shall inure to the benefit of and may be enforced by Licensor.

8. **Proprietary Rights; Confidential Information.**

(a) Intellectual Property. Licensee acknowledges that the Software constitutes proprietary trade secrets of Licensor, and shall remain the sole and exclusive property of Owner at all times. All applicable rights under United States federal and state laws and all laws of any other country and any and all statutory rights in the Software, including, but not limited to, rights in confidential and trade secret material, source code, object code, trademarks, service marks, patents, copyrights, and logos, including without limitation, any copyrights or trademarks in the name of the Software denoted on Schedule "A", or any likeness or logo utilized by Licensor (collectively, the "Intellectual Property"), shall be and will remain the sole and exclusive property of Licensor. Licensee acknowledges and agrees that nothing in this Agreement shall be construed to give Licensee any right, title, or interest in the Intellectual Property or any Third Party Software.

(b) Confidentiality. Licensee agrees that neither Licensee, nor any of its Authorized Users, agents, employees, contractors, officers, directors or shareholders shall in any manner use, copy, disclose or otherwise communicate any Proprietary Information (as defined below) with respect to the Software to any person or entity without the prior written consent of Licensor. Licensee agrees to take all necessary action to protect the Proprietary Information for the benefit of Licensor, including executing appropriate confidentiality agreements with all of the foregoing personnel of Licensee. Licensee agrees to retain any and all Proprietary Information in a fiduciary capacity for the benefit of Licensor, and its subsidiaries, affiliates and any successor corporations, forever; provided, however, that nothing shall prevent Licensee or its counsel from disclosing any Proprietary Information pursuant to court order or which is part of the public domain.

(c) Definition of "Proprietary Information". For purposes of this Agreement, "Proprietary Information" shall mean any information or material proprietary to Licensor or

designated as "Proprietary Information" by Licensor, and not generally known by non-Licensor personnel. Proprietary Information shall include, without limitation, (i) the business terms of this Agreement or any agreement attached hereto or referred to herein, pricing information for this License, data collection hardware devices or services or support, (ii) information or data relating to the Intellectual Property defined in subsection (a) above, and (iii) all other information of a similar nature (whether or not reduced to writing) including all documentation, manuals, and other tangible or intangible discoveries, ideas, concepts, software, designs, drawings, specifications, techniques, models, information, source code, object code, diagrams, flow charts, procedures and "know-how" comprising all or any portion of the Software and all related computer programs and documentation, or revealed to Licensee in connection with any evaluations or testing of the Software. The Proprietary Information shall also include all information and data relating to any Third Party Software or any other information as described above which Licensor obtains from another party, which Licensor treats as proprietary or designates as Proprietary Information, whether or not owned or developed by Licensor. Information publicly known and that is generally employed by the trade at the time that Licensee learns of such information or knowledge shall not be deemed part of the Proprietary Information.

(d) Instruments. To protect the Licensor's Proprietary Rights in the Software, Licensee shall, within ten (10) days of any request of Licensor, execute and assign any and all applications, including, but not limited to, copyright or trademark registration applications, any and all assignments, and any other instruments which Licensor deems necessary to protect or maintain Licensor's Intellectual Property rights in the Software. Licensee hereby irrevocably appoints Licensor as attorney-in-fact for Licensee with full power and authority to execute and deliver in the name of Licensee any such instrument or instruments.

(e) No Decompilation or Disassembly. Licensor represents and Licensee hereby acknowledges that the object code constituting the Software or any Third Party Software and any updates thereof (the "Object Code") which is embodied on magnetic storage media contains confidential and trade secret material which is not readily susceptible to reverse compilation or reverse assembly. Neither Licensee, nor any of its personnel shall decompile or disassemble, or attempt to decompile or disassemble, the Object Code for any reason whatsoever. Licensee further agrees that it will use its best efforts to prevent decompilation and disassembly of the Object Code by advising all of the foregoing personnel of the provisions of this Agreement and by immediately reporting to Licensor and terminating any reverse compilation or reverse assembly of the Software or updates thereof by any of such personnel of which Licensee has actual or constructive knowledge.

9. Breach of Confidentiality or Restrictions on Use. Licensee acknowledges that the provisions contained in Sections 2, 7 and 9 of this Agreement are of a unique nature and of extraordinary value and of such a character that a breach of these Sections by Licensee will result in irreparable damage and injury to Licensor for which Licensor will not have any adequate remedy at law. Licensee, therefore consents, in the event of any such breach of Sections 2, 7 or 9, to the granting of a temporary or permanent injunction against it by any court of competent jurisdiction prohibiting Licensee from violating the provisions contained in this section, as well as an equitable accounting for all earnings, profits and other benefits arising from such violations, which remedies shall be cumulative and in addition to any other rights or remedies, at law or in equity, to which Licensor may be entitled. In any proceeding for an injunction, and

upon any motion for a temporary or permanent injunction, Licensee agrees that its ability to answer in damages shall not be a bar or interposed as a defense to the granting of such injunction.

10. **Termination of License.** In the event that Licensee fails to adhere to any of the terms, conditions, and provisions of this Agreement including the payment and non-payment provisions of Schedule "A", the License granted hereunder shall be terminated whereby (a) Licensee shall no longer be permitted to use the Software and shall return all copies of the Software to Licensor or promptly certify that all such copies have been destroyed, (b) any and all warranty obligations of Licensor shall cease and be null and void and (c) Licensor shall be under no obligation to provide Licensee with any services, support or future correction, fixes or updates to the Software and Licensor may avail itself, in addition to any other remedies described in this Agreement, to any remedies otherwise available to it at law or in equity.

12. **Limited Warranty and Disclaimer of Liability.**

(a) **Limited Warranty.** Licensor warrants that for so long as the Support Agreement remains in effect, and Licensee has not breached any of its obligations in the Support Agreement and there exist no grounds for termination of this Agreement (i) the Software shall be substantially free from defects and shall operate in accordance with the detailed product specifications (ii) Licensor shall, without additional cost and expense under the Support Agreement, furnish necessary labor, services or software to cause the Software to perform substantially in accordance with the product specifications. Licensor's warranty obligations shall be subject to the foregoing:

(1) Licensee must notify Licensor of the defect with a detailed description.

(2) Licensor shall not be responsible to provide labor, services or software needed by Licensee as a result of work done to the Software by other than Licensor's employees or resulting from unauthorized testing and use or violations of Section 2 or Schedule A of this Agreement or any other cause not arising out of failure of the Software to perform without significant errors that make the Software unusable.

(3) In the event Licensee asserts any warranty claim for products or services hereunder or as part of a Support Agreement, and such claim relates to any matter that is determined not to be Licensor's responsibility hereunder, including any problem with Licensee's computer hardware or software that was not caused by any Software or Services performed or provided by Licensor, Licensee will be responsible to pay Licensor for all costs incurred for all evaluation, correction or other products or services performed or delivered by Licensor relating to such claim. All of Licensee's services shall be invoiced on a time and expense basis in accordance with the billing rates listed under the Services Agreement.

(4) Licensor's obligation to provide labor, services or software, without additional cost and expense, is limited to the failure of the Software to perform substantially in accordance with the product specifications after the Software has been in regular use in the live production environment.

(b) Further Limitations on Warranty. Licensor does not warrant that the functions contained in the Software or in any update will meet any specific business requirements of Licensee or that the operation of the Software will be uninterrupted or error free. The Limited Warranty granted under this Agreement does not cover any copy of the Software or any user manual, which has been altered or changed in any way by Licensee. Licensor is not responsible for problems caused or work required by changes in or modifications to the operating characteristics of any computer hardware or operating system for which the Software or an update is obtained, nor is Licensor responsible for problems which occur as a result of the use of the Software in conjunction with software or with hardware which is incompatible with the operating system for which the Software is being obtained. Licensee acknowledges and understands that Licensor has no control over the conditions under which Licensee and/or its Authorized Users use the Software and does not and cannot warrant the results obtained by such use.

Licensor's Warranty is limited to the version of SAP that was installed at Licensee's site(s) when the Software is installed. If services are required for the proper performance of the Software as a result of Licensee's installation of a different version of SAP, this Limited Warranty does not cover such services. Licensor will perform any Licensee requested services resulting from an SAP version change under the Services Agreement.

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Generally, to the extent Licensee utilizes the products or services of any third party, such third party provider shall not have the right to access or modify the Software.

(d) Exclusion of Implied or Other Warranties. ANY IMPLIED OR OTHER WARRANTIES (ORAL OR WRITTEN), INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.

(e) Damages Limitation. LICENSOR SHALL HAVE NO LIABILITY FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF REVENUE OR PROFIT, LOST USE, LOST SAVINGS, LOST DATA OR COSTS OF RECREATING DATA) ARISING OUT OF THIS AGREEMENT OR WITH RESPECT TO THE DEVELOPMENT, INSTALLATION, USE, OPERATION, OR SUPPORT OF THE SOFTWARE EVEN IF LICENSOR HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S LIABILITY FOR ANY REASON EXCEED THE AMOUNT PAID AS LICENSE FEE UNDER THIS AGREEMENT.

Licensor agrees to indemnify and hold harmless Licensee from and against losses, costs, expenses arising from (i) personal injury (including death) and property damage claims resulting from the negligent acts of Licensor in connection with the development, installation, use, operation, or support of the Software (ii) Licensor's breach of confidentiality obligations and (iii) claims against Licensee that Licensor infringed a third party's intellectual property rights Licensor's obligation of indemnity shall not be subject to the limitation in the last sentence of Section 12(e) above.

13. Relationship of the Parties. For purposes of this Agreement, Licensee shall not be deemed an agent, partner, or joint venturer of or with Licensor, and Licensee shall have no express or implied authority to act on behalf of or make any representations whatsoever on behalf of Licensor.

14. Taxes. Licensee shall, in addition to other amounts payable under this Agreement, pay all sales, use or other taxes (but excluding taxes imposed on Licensor's income) levied or imposed by reason of the transactions contemplated under this Agreement. Licensee shall promptly pay to Licensor an amount equal to any such tax(es) actually paid or required to be collected or paid by Licensor upon receipt of any invoice therefor.

15. Miscellaneous.

(a) Entire Agreement. This Agreement (together with any exhibits and any other documents attached hereto or referred to herein) sets forth all of the agreements and understandings between the parties hereto, with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and pertaining thereto, express or implied, oral or written. This Agreement may not be modified or altered except by written instrument executed by both parties.

(b) Notices. Any notice or communication required or permitted in this Agreement shall be in writing and shall be mailed by first class mail, registered or certified, postage prepaid, to the address set forth on the first page of this Agreement, or any successor address supplied in writing to the other party to this Agreement.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the federal laws of the United States and the laws of the State of New Jersey, USA.

(d) Severability. Every provision of this Agreement is intended to be severable, and if any term or provision hereof shall be invalid, illegal or unenforceable for any

reason, that provision shall be construed, limited, modified, or, if necessary, severed, to the extent necessary to eliminate its invalidity or unenforceability, and the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby, and any invalidity, illegality or unenforceability in any jurisdiction shall not affect the validity, legality or enforceability of any such term or provision in any other jurisdiction.

(e) Coverage/Assignment. Licensee may not assign or sublicense this Agreement, and/or the License, or its rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, without the Licensor's prior written consent. Any attempted assignment, not consented to by Licensor, shall be void and will confer no rights on the assignee. Licensor may assign this Agreement to any third party. Notwithstanding the foregoing, this Agreement shall be legally binding upon and inure to the benefit of the parties, their respective successors and permitted assigns. Nothing in this Agreement shall be construed to grant third party beneficiary status or rights to any person, firm, corporation or other entity, including the owners of any Third Party Software.

(f) Waiver. The waiver or failure of Licensor to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of the same right subsequently or of any other right under this Agreement.

(g) Publicity. Licensor may utilize the name of Licensee in its customer listings, brochures, and other sales and public relations materials if prior written permission is received from Licensee.

IN WITNESS WHEREOF, the parties hereto have executed this Software License Agreement on the day and year first written above.

LICENSOR: **ACSIS INC.**

By: \_\_\_\_\_  
Name:  
Title:

LICENSEE:

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE "A"

### **Software**

A Software License(s) granted under this Agreement shall be for the Software identified below:

- xDDI Government Edition

### **Site Definition / Number of Sites**

A site is any physical location in which Licensee has at least 51% ownership in the operations conducted at such physical location or any third party physical location as defined in Section 2. The number of sites Licensor elects to purchase at this time are \_\_\_\_\_, with unlimited users per a single site.

### **License Fees**

Licensee agrees to pay Licensor a license fee in accordance with the table below for the number of sites selected above. The license fee shall be paid thirty –(30) days from the invoice date.

**Number of Sites**

**Price Per Site**

**A c s i s Inc**  
**SUPPORT AGREEMENT**

This Support Agreement (the "Agreement"), made this \_\_th day of \_\_\_\_\_, by and between \_\_\_\_\_ ("Client"), having its principal place of business at \_\_\_\_\_ and Acsis Inc., ("Acsis"), having a principal place of business at 9 East Stow Road, Marlton, NJ 08053.

**BACKGROUND**

Client is a licensee of certain software developed by Acsis (the "Software") pursuant to a Software License Agreement, by and between Client and Acsis (the "License Agreement"). Client desires to utilize the professional support of Acsis in connection with the Software. Terms capitalized in this Agreement and not otherwise defined shall have the meanings ascribed to them in the License Agreement.

1. **Software Support.** Acsis agrees that authorized personnel of Client shall receive unlimited Customer Support telephone and E-mail support for the Software as per the level of coverage selected on Schedule "A".

2. **Hardware Troubleshooting.** Acsis agrees that any and all technical "trouble shooting" support and assistance and e-mail support and assistance for data collection hardware purchased directly from Acsis will also be available, if a manufacturers hardware maintenance plan is in place, current and was purchased directly from Acsis. Acsis agrees that Acsis' hardware support responsibility shall be limited to support services within the support parameters of the selected manufacturer's hardware maintenance plan. Acsis will not directly perform hardware maintenance or repair.

3. **Term of Agreement.** The term of this Agreement will be for an initial period of one (1) year. Subject to the "Early Termination" section set forth below, at the end of the initial one (1) year term, or any subsequent terms thereafter, this Agreement will automatically renew for one (1) year unless (a) a party provides written notice to the other party of its intent to terminate no less that thirty (30) calendar days prior to the end of the initial term or any renewal term, or (b) the software license granted pursuant to the License Agreement has been terminated.

4. **Support Fee.** The support fee has been calculated as part of Schedule "A" hereto ("Support Fee").

**Additional Terms and Conditions:**

**Payment:** The Support Fee is due net thirty- (30) days from the support fee invoice date. Acsis will provide Client with a Support Fee invoice on an annual basis or as detailed in Schedule "A".

**Location of Software:** The Software licensed to Client pursuant to the License Agreement is located at the location(s) listed on Attachment A hereto, which may be amended from time to time.

**Remote Access:** Dial up or VPN access to Client's system is necessary to support and respond in a timely fashion. Any phone expenses incurred by Acsis during dial up access are not covered under the Support fee and will be invoiced separately.

**Specialized Technical Service:** Specialized Technical Service is provided by Acsis' non-Tech Support personnel and is included in the Support Fee if the required work is within the warranty provided to Client in the License Agreement. Specialized Technical Service will be prioritized in accordance with Acsis' Escalation Procedures listed on Attachment "B" hereto and will be available during Acsis' normal business hours of Monday through Friday, 8:00 AM to 6:00 PM Eastern Standard Time excluding Acsis' recognized holidays. If Specialized Technical Service is provided and it is determined the cause of the reported problem is outside of the warranty(s) provided, the services provided shall be invoiced at the applicable hourly rate.

**Software Updates:** This Agreement includes the semi-annual distribution of all Software updates, if any, for the particular Software license(s) purchased. This Agreement does not cover the charge to install or modify custom transactions associated with a Software update.

**Expenses:** In the event an on-site visit is required to provide support services, all actual and reasonable expenses incurred by Acsis will be billed to Client, to the extent the support services are not covered under warranty and to the extent all supporting receipts and documentation have been provided to Client. Client shall reimburse Acsis for all actual and reasonable expenses within thirty-(30) days from the date of invoice.

**Early Termination:** This Support Agreement will terminate prior to the end of the initial year term or any extension term if Client's license to the Software is terminated pursuant to the License Agreement. Acsis does not provide Support on a per call/hourly basis.

**Incorporation:** The provisions of Sections 12 – 15 of the License Agreement are incorporated herein and made a part of this Agreement as if fully set forth in this Agreement.

**Acsis Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE “A”**

**SUPPORT OPTIONS / SUPPORT FEES**

**Coverage**

The Support Fee for each year is calculated based on the following formula:

The sum of cumulative undiscounted license fees for the Software.

7 x 24 –Coverage: Help Desk support shall be available twenty-four (24) hours per day three hundred sixty-five days per year. The percentage multiplier for this level of coverage is twenty percent (20%).

**Fee Calculation**

Cumulative License Fee:	\$
Option Percentage:	20%

**TOTAL SUPPORT FEE:** \$

If additional license fees are purchased during a current support term, the support fee shall immediately increase on a prorated basis from the date of the purchase of the additional licenses to the expiration date of the current support term. The prorated support fee shall be calculated in the following manner:

Sum of the Additional License Fees multiplied by the Support Coverage Option Percentage divided by 365 Days multiplied by the remaining number of days in the current support term.

Annual net increases in support fees, if they occur, will not exceed the percentage increase in the national cost of living index based upon the Consumer Price Index as published by the U.S. Department of Labor Statistics, or 5%, whichever is less, for the corresponding period.

**ATTACHMENT "A"**

The software licensed to Client under the License Agreement is currently installed at the following location(s):

Plant	City	State

**ATTACHMENT B**

**Support Escalation Procedures And Priorities**

Technical support personnel will answer the phone or email and communicate directly to Client so the problem is worked on immediately, and to determine the severity of the issue in accordance to the Severity Table listed below. E-mail contact should not be used in the event Client, in its sole discretion, perceives that an issue is critical.

When an inquiry is received during the term of this Agreement,, Acsis agrees that its Technical Support personnel will proceed as follows:

Acsis Customer Support will ask for information from Client detailing who is placing the call and the nature of the problem. Acsis Customer Support will begin working towards resolving the matter immediately.

In the event an Acsis technical support personnel is unable to resolve the issue, an appropriate Specialized Technical staff member within ACSIS will review the issue for additional support in accordance with the Specialized Technical Service section of this agreement The priority will be determined using the Severity Table listed below.

**Severity Categories & Targeted Response Time Table**

<b>Severity Level</b>	<b>Description</b>	<b>Targeted Response Time For Specialized Technical Service</b>
Severity 1 Severe	Barcode system down or not functioning Plant unable to ship or perform other functions that will result in loss of Production. May impact single or multiple sites.	Thirty-minutes from the time the Specialized Technical Service Resource is notified by Acsis Customer Support
Severity 2 Important	System running but not performing as expected. Plant is operational but issue must be resolved or issue will impact other parts of the plants operations.	One hour from the time the Specialized Technical Service Resource is notified by Acsis Customer Support
Severity 3 Normal	System running but showing symptoms of slowing down or having intermittent problems. Processes can continue until problem resolved.	Three hours from the time the Specialized Technical Service Resource is notified by Acsis Customer Support
Severity 4 Low	System running but non-critical event has Observed. Plant able to conduct activities normally.	Eight hours from the time the Specialized Technical Service Resource is notified by Acsis Customer Support