

COOPER SOFTWARE LIMITED

TERMS AND CONDITIONS FOR THE PROVISION OF SOFTWARE (SAAS) (VERSION 1: DECEMBER 2019)

1. Commencement and Duration

- 1.1 This Agreement shall commence on the Effective Date and shall, unless otherwise terminated as provided in Condition 14 (*Termination*), continue for the Initial Subscription Term and, thereafter, this Agreement shall, subject to the payment of the Subscription Fees in accordance with Condition 9 (*Charges and Payment*), be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:
- 1.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 1.1.2 otherwise terminated in accordance with the provisions of this Agreement;
- and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

2. Licence and User Subscriptions

- 2.1 Unless Condition 2.2 applies, subject to the Client purchasing the User Subscriptions in accordance with this Agreement and otherwise complying with the terms and conditions of this Agreement, the Supplier hereby grants to the Client a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Software and the Documentation during the Subscription Term solely for the Client's internal business operations.
- 2.2 Where the Letter of Engagement specifies that the Initial Subscription Term is perpetual, subject to the Client paying the Subscription Fee:
- 2.2.1 the Supplier hereby grants to the Client a perpetual, non-exclusive, non-transferable right, without the right to grant sub-licences, to use the Software and the Documentation solely for the Client's internal business operations; and
- 2.2.2 the provisions of Conditions 2.3 (*Authorised Users*), 3 (*Additional User Subscriptions*) and 15.1.1 (*Consequences of Termination*) shall not apply; and
- 2.2.3 references in this Agreement to Authorised Users shall be read as meaning all users of the Software.
- 2.3 In relation to the Authorised Users, the Client undertakes that:
- 2.3.1 the maximum number of Authorised Users that it authorises to access and use the Software and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- 2.3.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software and/or Documentation;
- 2.3.3 each Authorised User shall keep a secure password for his use of the Software and Documentation, that such password shall be changed no less frequently than 90 days and that each Authorised User shall keep his password confidential;
- 2.3.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- 2.3.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Software in order to establish the name and password of each Authorised User. Each such audit may be conducted no more than once per quarter, at the Supplier's expense,

and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business;

- 2.3.6 if any of the audits referred to in Condition 2.3.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Client shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
 - 2.3.7 if any of the audits referred to in Condition 2.3.5 reveal that the Client has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Client shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Letter of Engagement within 10 Business Days of the date of the relevant audit, together with late payment interest in accordance with Condition 9.4.2 (*Charges and Payment*) in respect of the period commencing on the date on which the underpaid Subscription Fees should have been paid to the date of payment.
- 2.4 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software that:
- 2.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically or otherwise offensive;
 - 2.4.2 facilitates illegal activity;
 - 2.4.3 depicts sexually explicit images;
 - 2.4.4 promotes unlawful violence;
 - 2.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.4.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material the it reasonably believes breaches the provisions of this Condition.
- 2.5 The Client shall not, and shall ensure that no third party shall,:
- 2.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 2.5.2 access all or any part of the Software and Documentation in order to build a product or service which competes with the Software and/or the Documentation; or
 - 2.5.3 use the Software and/or Documentation to provide services to third parties; or
 - 2.5.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or Documentation available to any third party except the Authorised Users, or
 - 2.5.5 attempt to obtain, or assist third parties in obtaining, access to the Software and/or Documentation, other than as provided under this Condition 2.
- 2.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

- 2.7 The rights provided under this Condition 2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.

3. Additional User Subscriptions

- 3.1 Subject to Condition 3.2 and Condition 3.3, the Client may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Letter of Engagement and the Supplier shall grant access to the Software and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 3.2 If the Client wishes to purchase additional User Subscriptions, the Client shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Client with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 working days of its approval of the Client's request.
- 3.3 If the Supplier approves the Client's request to purchase additional User Subscriptions, the Client shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Letter of Engagement and, if such additional User Subscriptions are purchased by the Client part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Software

- 4.1 The Supplier shall, subject to Condition 4.2, during the Subscription Term, make available the Software and the Documentation to the Client on and subject to the terms of this Agreement.
- 4.2 The Client acknowledges and agrees that its access to and use of the Software is dependent on the Client having and maintaining a licence to use the ERP Platform (including ERP Platform User Licences where applicable) or otherwise having rights to use the ERP Platform. For the avoidance of doubt, this Agreement does not grant the Client any rights in or to the ERP Platform.
- 4.3 The Supplier will, where indicated in the Letter of Engagement and in return for the payment of the Maintenance Fees, provide the Client with the Supplier's standard software maintenance and support services in accordance with the Maintenance Terms and Conditions. The Supplier may amend the Maintenance Terms and Conditions in its sole and absolute discretion from time to time.

5. Client Data

- 5.1 The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.
- 5.2 The Client acknowledges and agrees that the Software shall be hosted on the ERP Platform, and that the Supplier shall have no responsibility or liability for the storage, hosting or archiving of the Client Data.
- 5.3 Each party acknowledges and agrees that no personal data in respect of which it is the data controller (in terms of the Data Protection Act 2018) will be supplied by it to the other party. Notwithstanding the foregoing, in the event that any personal data is transferred or processed for the purposes of providing or receiving the Software and/or Maintenance Services (as applicable) in accordance with the terms of this Agreement, the parties shall comply at all times with the Data Protection Laws and shall notify the other party as soon as reasonably practicable of such processing. The parties shall thereafter, as soon as reasonably practicable, put in place a suitable data processing agreement which is compliant with all Data Protection Laws.

6. Third Party Providers

The Client acknowledges that the Software may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Supplier. The Supplier recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Software.

7. Supplier's Obligations

- 7.1 The Supplier undertakes that the Software will perform substantially in accordance with the Documentation for a period of 90 days from the Effective Date.
- 7.2 The undertaking at Condition 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to the Supplier's instructions, or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Software does not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in Condition 7.1.
- 7.3 The Supplier:
- 7.3.1 does not warrant that:
- (i) the Client's use of the Software will be uninterrupted or error-free; or
 - (ii) that the Software, Documentation and/or the information obtained by the Client through the Software will meet the Client's requirements; or
 - (iii) the Software will be free from Viruses.
- 7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage arising from the Client's use of the ERP Platform or resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities and the ERP Platform.
- 7.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

8. Client's Obligations

- 8.1 The Client shall:
- 8.1.1 provide the Supplier with:
- (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;
- in order to provide the Software, including but not limited to Client Data, security access information and configuration services;
- 8.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

- 8.1.3 carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 8.1.4 ensure that the Authorised Users use the Software and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Software;
- 8.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 8.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its use of the ERP Platform, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's use of or access to the ERP Platform and/or the Client's network connections or telecommunications links or caused by the internet.

9. Charges and Payment

- 9.1 The Client shall pay the Subscription Fees to the Supplier for the User Subscriptions and, where applicable, the Maintenance Fees, in accordance with this Condition 9 and the Letter of Engagement.
- 9.2 The Client shall on the Effective Date provide to the Supplier valid, up-to-date and complete approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and the Supplier shall invoice the Client:
 - 9.2.1 on the Effective Date for the Subscription Fees and, where applicable, the Maintenance Fees, payable in respect of the Initial Subscription Term; and
 - 9.2.2 subject to Condition 1 (Commencement and Duration), at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees and, where applicable, the Maintenance Fees, payable in respect of the next Renewal Period,
 and the Client shall pay each invoice within 30 days after the date of such invoice.
- 9.3 If the payment of any amount referred to in this Condition 9 is disputed then any undisputed element of that amount shall be paid and the disputed element may be withheld by the Client until the dispute has been resolved or agreement has been reached or if agreement cannot be reached within fifteen (15) Business Days, until the dispute has been resolved pursuant to Condition 18 (*Dispute Resolution*).
- 9.4 If the Supplier has not received payment of any undisputed sums within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
 - 9.4.1 the Supplier may, without liability to the Client, disable the Client's password, account and access to all or part of the Software and the Supplier shall be under no obligation to provide any or all of the Software while the invoice(s) concerned remain unpaid; and
 - 9.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of The Royal Bank of Scotland plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.5 All amounts and fees stated or referred to in this Agreement:
 - 9.5.1 shall be payable in pounds sterling;
 - 9.5.2 are non-cancellable and non-refundable;

- 9.5.3 are exclusive of value added tax or other sales tax, which, if applicable in the territory in which the Client operates and/or receives the Software and, if applicable, the Maintenance Services, under this Agreement, shall be added to the sum in question;
- 9.5.4 shall be paid in full without any deductions (including deductions in respect of items such as income, corporation, or other taxes, charges and/or duties). The Client hereby acknowledges responsibility for payment of all tax which might accrue or become payable by them as is required by the law applicable in the territory in which the Client operates and/or receives the Software and, if applicable, the Maintenance Services, under this Agreement, and agrees to indemnify (and keep indemnified) the Supplier against all and or any tax claims made in respect of sums payable to the Supplier. In the unlikely event of the Client being required by law, applicable only in the territory in which the Client operates and/or receives the Software and, if applicable, the Maintenance Services, under this Agreement, to deduct withholding tax from sums payable to the Supplier. If the Client is required by law to deduct withholding tax, then the Client and the Supplier shall co-operate in all respects and take all reasonable steps necessary to:
- (i) lawfully avoid making any such deductions; or
 - (ii) enable the Supplier to obtain a tax credit in respect of the amount withheld.
- 9.6 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to Condition 3.3 (*Additional User Subscriptions*) and/or the Maintenance Fees at the start of each Renewal Period upon 90 days' prior notice to the Client and the Letter of Engagement shall be deemed to have been amended accordingly.

10. Proprietary Rights

- 10.1 The Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Documentation. Except as expressly stated herein, this Agreement does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by Condition 11.2. A party's Confidential Information shall not be deemed to include information that:
- 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 11.1.2 was in the other party's lawful possession before the disclosure;
 - 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Each party may disclose the other party's Confidential Information:
- 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition 11; and

- 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12. Indemnity

- 12.1 The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Software and/or Documentation, provided that:
 - 12.1.1 the Client is given prompt notice of any such claim;
 - 12.1.2 the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
 - 12.1.3 the Client is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Software or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
 - 12.2.1 the Supplier is given prompt notice of any such claim;
 - 12.2.2 the Client provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 12.2.3 the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the Software, replace or modify the Software so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on [2] Business Days' notice to the Client without any additional liability or other additional costs to the Client.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
 - 12.4.1 a modification of the Software or Documentation by anyone other than the Supplier; or
 - 12.4.2 the Client's use of the Software or Documentation in a manner contrary to the instructions given to the Client by the Supplier; or
 - 12.4.3 the Client's use of the Software or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing states the Client's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right.

13. Limitation of Liability

- 13.1 Except as expressly and specifically provided in this Agreement:
 - 13.1.1 the Client assumes sole responsibility for results obtained from the use of the Software and the Documentation by the Client, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Software, or any actions taken by the Supplier at the Client's direction;
 - 13.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

- 13.1.3 the Software and the Documentation are provided to the Client on an "as is" basis.
- 13.2 Nothing in this Agreement shall limit or exclude the liability of either party for:
 - 13.2.1 death or personal injury caused by breach of duty of that party or its employees, agents or subcontractors (as applicable);
 - 13.2.2 fraud or fraudulent misrepresentation; or
 - 13.2.3 any matter in respect of which it would be unlawful to exclude or restrict liability
- 13.3 Subject to Condition 13.1 and Condition 13.2:
 - 13.3.1 the Supplier shall not be liable whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - 13.3.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at Condition 12.2 (*Indemnity*)), delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees and Maintenance Fees paid by the Client to the Supplier during the 12 months immediately preceding the date on which the claim arose.

14. Termination

- 14.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
 - 14.1.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - 14.1.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 14.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - 14.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 14.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 14.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 14.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 14.1.3 to Condition 14.1.9 (inclusive);
- 14.1.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15. Consequences of Termination

- 15.1 On termination of this Agreement for any reason:
 - 15.1.1 all licences granted under this Agreement shall immediately terminate and the Client shall immediately cease all use of the Software and/or the Documentation;
 - 15.1.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
 - 15.1.3 Conditions which expressly or by implication have effect after termination shall continue in full force and effect, including Condition 11 (*Confidentiality*), Condition 12 (*Indemnity*), Condition 13 (*Limitation of Liability*) and Conditions 15 (*Consequences of Termination*) to Condition 30 (*Definitions and Interpretation*) (inclusive).
- 15.2 On termination of this Agreement for any reason, all unpaid invoices shall become immediately due and payable. In addition, where this Agreement is terminated by the Client during the Initial Subscription Term or any subsequent [renewal] Subscription Term, the Client shall be liable to pay to the Supplier any unpaid or un-invoiced Subscription Fees which would have become due during the remainder of the Initial Subscription Term or any subsequent [renewal] Subscription Term.
- 15.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

16. Force Majeure

The Supplier shall have no liability to the Client under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration.

17. Announcements

Neither party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.

18. Dispute Resolution

- 18.1 All disputes between the parties arising out of or relating to this Agreement shall be referred for resolution, by each party, to the representative nominated by each party and intimated to the other party to resolve disputes that arise between the parties (the "**Nominated Representatives**").

- 18.2 If any dispute cannot be resolved by the Nominated Representatives within a maximum of ten days after it has been referred under Condition 18.1, that dispute shall be referred for resolution, by each party, to the senior representative nominated by each party and intimated to the other party as the senior representative (the "**Senior Representatives**").
- 18.3 If the dispute cannot be resolved by the parties' Senior Representatives nominated under Condition 18.2 within a maximum of ten days after it has been referred under Condition 18.2 then Condition 29 (*Governing Law and Jurisdiction*) shall apply.
- 18.4 Nothing in this Condition 18 shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right or other injunctive relief.

19. Conflict

If there is an inconsistency between any of the provisions of the Letter of Engagement, these Software Terms and Conditions and the Maintenance Terms and Conditions respectively, the provisions of the Letter of Engagement shall prevail in preference to these Software Terms and Conditions and the Maintenance Terms and Conditions, and the provisions of these Software Terms and Conditions shall prevail over the provisions of the Maintenance Terms and Conditions.

20. No partnership or agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise a party to make or enter into any commitments for or on behalf of the other party.

21. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, provided that nothing in this Condition 21 shall have effect to exclude liability of either party for fraud or fraudulent misrepresentation.

22. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

23. Assignment and other dealings

- 23.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 23.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

25. Severance

- 25.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

- 25.2 If any provision or part-provision of this Agreement is deemed deleted under Condition 25.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

27. Notices

- 27.1 Any notice, demand or communication in connection with this Agreement shall be in writing and delivered personally or sent by pre-paid first class post (or airmail if overseas) to the recipient's address as set out in the Letter of Engagement or to any other address which the recipient has notified in writing to the sender not less than 7 Business Days before the notice is despatched.
- 27.2 The notice, demand or communication is deemed given:
- 27.2.1 if delivered personally, at the time of delivery to the address provided for in this Agreement;
- 27.2.2 if sent by pre-paid first class post, on the second Business Day after posting it; or
- 27.2.3 if sent by airmail, on the fifth Business Day after posting it,
- provided that, if it is delivered personally on a day which is not a Business Day or after 4pm on any Business Day, it shall instead be deemed to have been given or made on the next Business Day.
- 27.3 This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Condition, "writing" shall not include e-mail.

28. Third party rights

No one other than a party to this Agreement shall have any right to enforce any of its terms.

29. Governing Law and Jurisdiction

- 29.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.
- 29.2 Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

30. Definitions and Interpretation

- 30.1 In these Software Terms and Conditions, unless the context requires otherwise, capitalised terms shall have the meanings given to them in the Letter of Engagement and/or the following words and phrases shall have the meanings set opposite them:

"Agreement"	means the Letter of Engagement and these Software Terms and Conditions and, where applicable, the Maintenance Terms and Conditions entered into by the parties;
"Authorised Users"	means those employees, agents and independent contractors of the Client who are authorised by the Client to use the Software Software and the Documentation, as further described in Condition 2 (<i>User Subscriptions</i>);
"Business Day"	means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business;

"Confidential Information"	means all information designated as such by a party in writing together with all other information which relates to the business, financial affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either party or information which may reasonably be regarded as the confidential information of the party disclosing it;
"Client Data"	means the data inputted by the Client, Authorised Users for the purpose of using the Software or facilitating the Client's use of the Software;
"Data Protection Laws"	means all applicable legislation and regulations relating to the processing of personal data and privacy including (without limitation) the Data Protection Act 2018 and any regulations or instruments enacted under that Act, the European Union General Data Protection Regulation, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Data Protection (Processing of Sensitive Personal Data) Order 2000 or any amendments and/or re-enactments of any of the foregoing and all other industry guidelines (whether statutory or non-statutory) or codes of practice issued in each case by the relevant supervisory authority for data protection in the United Kingdom from time to time relating to the processing of personal data or privacy, or any amendments and/or re-enactments thereof;
"Documentation"	means the document made available to the Client by the Supplier online via the Supplier's corporate website (www.coopersoftware.co.uk) or such other web address notified by the Supplier to the Client from time to time which sets out a description of the Software and the user instructions for the Software;
"Effective Date"	means the last date of signing of the Letter of Engagement;
"ERP Platform"	means, as applicable: <ul style="list-style-type: none"> (a) the Oracle NetSuite Platform; or (b) the IFS ERP solutions, or such other enterprise resource planning platform approved by the Supplier from time to time;
"Initial Subscription Term"	means the initial term of this Agreement as set out in the Letter of Engagement;
"Letter of Engagement"	means the letter signed by the parties setting out the details of the agreement between the parties in relation to the Software, including the details of the Subscription Fees and, if applicable, the Maintenance Fees;
"Maintenance Fee"	means the maintenance fees payable by the Client to the Supplier for the provision of Maintenance (as defined in the Maintenance Terms and Conditions), as set out in the Letter of Engagement;
"Maintenance Services"	means the support and maintenance services in respect of the Software which, where indicated in the Letter of Engagement, are to be provided to the Client by the Supplier, as detailed in the Maintenance Terms and Conditions;
"Maintenance Terms and Conditions"	means the terms and conditions applicable to the provision of Maintenance Services, as set out in the Schedule to these

	Software Terms and Conditions or as otherwise notified by the Supplier to the Client from time to time;
"Renewal Period"	means the period described in Condition 1 (<i>Commencement and Duration</i>);
"Software"	means the software product provided by the Supplier as defined in the Letter of Engagement which is to be accessed through or utilised by, the ERP Platform, as more particularly described in the Documentation and including any Updates (as defined in the Maintenance Terms and Conditions);
"Software Terms and Conditions"	means Conditions 1 (<i>Commencement and Duration</i>) to 30 (<i>Definitions and Interpretation</i>) of these terms and conditions;
"Subscription Fees"	means the subscription fees payable by the Client to the Supplier for the User Subscriptions, as set out in the Letter of Engagement;
"Subscription Term"	has the meaning given in Condition 1 (<i>Commencement and Duration</i>) (being the Initial Subscription Term together with any subsequent Renewal Periods);
"User Subscriptions"	means the user subscriptions purchased by the Client pursuant to Condition 9.1 (<i>Charges and Payment</i>) which entitle Authorised Users to access and use the Software and the Documentation in accordance with this Agreement; and
"Virus"	means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

30.2 In this Agreement:

- 30.2.1 the singular includes the plural and vice versa;
- 30.2.2 references to gender include references to all genders;
- 30.2.3 unless otherwise stated, references to sub-Conditions, Conditions and to the Schedules are to sub-Conditions, Conditions and the Schedules to this Agreement;
- 30.2.4 the Condition headings are for reference only and shall not affect the construction or interpretation of this Agreement;
- 30.2.5 the Schedule annexed hereto is incorporated into and forms part of this Agreement; and
- 30.2.6 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

30.3 In this Agreement, except where the context otherwise requires, any reference to:

- 30.3.1 another agreement or any deed or other instrument or document shall be construed as a reference to that other agreement, deed or other instrument or document as the same may have been, or may from time to time be, amended, varied, supplemented or novated;

- 30.3.2 a "day" means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight saving) ending at 12.00 midnight in the United Kingdom;
- 30.3.3 the words "include" or "including" are to be construed as meaning without limitation;
- 30.3.4 a "month" means a calendar month;
- 30.3.5 a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality; and
- 30.3.6 a "year" means a calendar year.

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING SOFTWARE TERMS
AND CONDITIONS BETWEEN THE SUPPLIER AND THE CUSTOMER**

SCHEDULE

MAINTENANCE TERMS AND CONDITIONS

1. Level of coverage

- 1.1 Provided always that the Maintenance Fees have been paid when due, the Supplier will provide Maintenance Services in accordance with the terms of these Maintenance Terms and Conditions.
- 1.2 Within Normal Working Hours, the Supplier shall provide off-site troubleshooting and other technical assistance and support concerning the operation of the Software, via a dedicated telephone number and email address. In addition, Support Cases may be reported to the Supplier by a Technical Contact via a dedicated telephone number and email address. The Supplier will respond to the Technical Contact by email or telephone. The Supplier will also provide the Client with Error Corrections for any Errors reported by the Client to be in the Software, as such Error Corrections become available through Updates. No Support Case shall be reported to the Supplier until it has been first been escalated through the Client's internal resolution procedures.

2. Response times and escalation

- 2.1 All service requests made by Authorised Users will be managed through the Supplier's service desk. The Client can, via a Technical Contact, report an incident by using one of the following:
- 2.1.1 E-Mail to the dedicated email address: ServiceDesk@Coopersoftware.co.uk
- 2.1.2 Telephone call to the helpdesk (exceptional): +44 (0)1383 840700
- 2.2 It is critical that all necessary information is supplied by the Client when raising a ticket with the Supplier. The minimum amount of information required on tickets to enable investigations is:
- 2.2.1 Name (of affected Authorised User);
- 2.2.2 Contact Details;
- 2.2.3 Short Description (succinct summary of issue/error message);
- 2.2.4 Business Impact;
- 2.2.5 Authorised User's Business Area/Site;
- 2.2.6 Operation being undertaken when error encountered;
- 2.2.7 Reason for Request;
- 2.2.8 Long Description (extended details of issue, including any record numbers in error); and
- 2.2.9 Where possible, a screen shot of the screen.
- 2.3 The Supplier shall use all reasonable endeavours to respond, within the initial response times set forth in Table 1 below, to any Support Case reported by a Technical Contact in accordance with paragraph 2.1. The Supplier, at its absolute discretion, will determine the severity level of any Support Case reported to.

Table 1: Severity level response times

Severity level	Initial response time
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Critical Support Case	1 Normal Working Hour
High Support Case	3 Normal Working Hours
Low Support Case	1 Business Day

- 2.4 The Client may escalate a Support Case to various internal resources, depending on its severity level and the length of time the Support Case remains unresolved following the Supplier's initial response to the Technical Contact, in accordance with Table 2 set forth below.

Table 2: Severity level support timetable

Severity level	Notification to Project Manager	Notification to Director
Critical Support Case	4 Normal Working Hours	Same Business Day
High Support Case	1 Business Day	1 Business Day
Low Support Case	3 Business Days	2 Business Days

- 2.5 A Support Case will be deemed to be resolved upon the occurrence of the earliest of the following:
- 2.5.1 the issue or problem is resolved as agreed by the Technical Contact;
 - 2.5.2 if the issue or problem is the result of an Error, at the time of the provision of a Fix or Error Correction;
 - 2.5.3 when the Supplier provides a reasonable and mutually acceptable solution to the Support Case as agreed by the Technical Contact;
 - 2.5.4 when the Supplier confirms that the issue or problem is not due to any Error or deficiency in the Software;
 - 2.5.5 when the Supplier confirms that the issue or problem arises wholly or partly due to an error or other issue in software supplied to the Client by and/or maintained by a party other than the Supplier (including the ERP Platform);
 - 2.5.6 when the Technical Contact requests that the Supplier close the Support Case; or
 - 2.5.7 when the Support Case has been left open for ten (10) consecutive Business Days, during which period the Supplier has not received a response from, or information requested from, a Technical Contact.
- 2.6 Notwithstanding anything herein to the contrary, as long as the Supplier has provided the Client with documentation on the relevant systems, the Supplier will have no obligation to carry out Maintenance Services where the Error is caused by:
- 2.6.1 the use of the Software with software or hardware not designed for use with the operating systems approved by the Supplier in the Documentation;
 - 2.6.2 the use of the Software with hardware that does not satisfy the minimum system requirements specified by the Supplier in the Documentation;
 - 2.6.3 changes, modifications, or alterations to the Software not approved in writing by the Supplier or its authorised representatives;
 - 2.6.4 use of the Software other than in accordance with the Agreement and the Documentation;
 - 2.6.5 the failure of the Client to install Updates;
 - 2.6.6 the negligence or misconduct of the Client or its employees or agents or any third party (not being associated with the Supplier); or
 - 2.6.7 any fault in the hardware upon which the Software is used or in any programs used in conjunction with the Software.

- 2.7 The Supplier may make an additional charge (in addition to the Maintenance Fees) in accordance with its then-current standard scale of charges, in respect of any services provided by the Supplier:
- 2.7.1 at the request of the Client, but which do not qualify as Maintenance Services by virtue of any of the exceptions set out in paragraph 2.6;
 - 2.7.2 at the request of the Client, but which the Supplier reasonably considers are not necessary for the efficient operation of the Software,
- but always provided that the Client has reported a Support Case in writing and the Supplier has obtained Client's prior approval of the additional charge in writing.
- 2.8 The Supplier may make an additional charge (in addition to the Maintenance Fees) in accordance with its then-current standard scale of charges, in respect of any services provided or time incurred by the Supplier in determining that an Error is caused by one of the exceptions set out in paragraph 2.6.
- 2.9 Nothing in this paragraph shall oblige the Supplier to provide any service or Maintenance Services in respect of the exceptions listed in paragraph 2.6.

3. Updates

The Supplier may from time to time (subject to due and punctual payment of all accrued Maintenance Fees) make Updates available to the Client. Updates will be available, at the Supplier's discretion, in the form of an installation program on CD-ROM, on other digital medium, or via the internet, together with documentation in printed or electronic form written in English or a language officially supported by the Supplier. Unless otherwise agreed in writing by the Supplier, the Client shall be responsible for installation of all Updates.

4. Prior versions

- 4.1 The Supplier's obligations with respect to Maintenance Services are expressly conditional upon the installation and use by the Client of either:
- 4.1.1 the most current version of the Software; or
 - 4.1.2 the immediately preceding version of the Software.
- 4.2 For the avoidance of doubt, if the Client shall fail to install any Update or otherwise fail to act in accordance with the reasonable directions of the Supplier with regard to any Software, the Supplier shall (without prejudice to the continuing obligation of the Company to make payment of the Maintenance Fees) be entitled to suspend its obligation to provide Maintenance Services.

5. The Client's obligations

- 5.1 The Client shall:
- 5.1.1 install and use all Updates of the Software made available by the Supplier;
 - 5.1.2 co-operate fully with the Supplier's personnel in the diagnosis of any Error or other issue or problem with the Software or Documentation.
- 5.2 The Supplier shall have no liability to the Client, nor any obligation to deal with a Support Case where:
- 5.2.1 Software is used other than in accordance with any Documentation or advice provided by the Supplier;
 - 5.2.2 Software or Documentation is altered or modified in any way or integrated with any other software except to the extent expressly permitted in the Documentation;
 - 5.2.3 any party other than the Supplier has provided, or purported to provide, support services in respect of the Software or the Documentation.

- 5.3 The Client's contact with the Supplier for the purposes of Maintenance Services and reports of Support Cases shall only be through the Technical Contacts unless the parties agree to other contacts. The Technical Contacts (or other authorised individual) shall:
- 5.3.1 serve as the Supplier's contacts for Authorised Users;
 - 5.3.2 be responsible for initiating all requests by and maintaining all records of the Client relating to Maintenance Services;
 - 5.3.3 serve as the contacts with the Supplier on all matters relating to Maintenance Services; and
 - 5.3.4 be responsible for providing all information and support requested by the Supplier to assist in the diagnosis, analysis, and resolution of Support Cases. The maximum number of Technical Contacts shall be three, regardless of the number of User Subscriptions.
- 5.4 When reporting Support Cases, the Company shall provide the Supplier with a detailed description of its IT systems within which the Software operates, together with the basic structure of that system, any operational disruptions experienced by the Company, and the effect of the disruptions on the Company's operations. In addition, the Client shall cooperate with the Supplier and provide the Supplier with all assistance necessary for the Supplier to diagnose, reproduce and assess any reported Support Case. Details of information required is set out in paragraph 2.2.
- 5.5 If the Client desires the Supplier to provide support via remote access, the Client shall ensure that a functioning system enabling the Supplier to have remote access to the Client's technical equipment is installed (subject to the Client's reasonable security measures and policies) and that satisfactory communication between the parties' computer systems is possible.
- 5.6 The Client acknowledges that all copyright and other intellectual property rights in any Update and any intellectual property rights arising from the provision of Maintenance Services are and shall remain the property of the Supplier.

6. Definitions

- 6.1 In these Maintenance Terms and Conditions the definitions and interpretation set out in Condition 30 (*Definitions and Interpretation*) of the Software Terms and Conditions shall apply and, unless the context requires otherwise, the following words and phrases shall have the meanings set opposite them:
- | | |
|-------------------------|---|
| "Error" | any reproducible failure of the Software to conform to the Documentation in a material respect. |
| "Error Correction" | any modification or addition to the Software, delivered within an Update that brings the Software into conformity with the Documentation in all material respects. |
| "Fix" | a fix designed to correct an Error, or a temporary work-around, bypass, or patch supplied by the Supplier, or implementation of an operational procedure or routine by the Client to diminish or avoid the practical adverse effect of an Error. |
| "Response Time" | the period commencing when a Support Case is reported by the Technical Contact in the manner provided for in paragraph 3.1 and ending when a member of the Supplier's technical support team logs the report and responds to the Technical Contact by telephone or email. |
| "Critical Support Case" | a Support Case that renders the Software completely inoperative. |

"High Support Case"	<p>a Support Case that:-</p> <ul style="list-style-type: none"> (a) materially degrades the overall performance of the Software; or (b) materially impairs substantial functions of the Software published in the Documentation, but is not a Critical Support Case.
"Low Support Case"	a Support Case that impairs the performance of the Software, but is not a Critical Support Case or a High Support Case.
"Normal Working Hours"	9.00 am to 5.00 pm local UK time, each Business Day.
"Support Case"	an incident reported in accordance with paragraph 3, being an Error, a series of Errors, or other Software usability problem.
"Technical Contact"	the Client personnel that have been identified by the Client and notified to the Supplier as the technical contact or contacts for the Client.
"Update"	any updated version of the Software in object code form which the Supplier shall from time to time make available.