

1. Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the words and expressions listed in Exhibit A attached hereto shall have the meanings assigned to them therein.
- 1.2 In this Agreement, unless the context otherwise requires:
- any reference to a recital, clause or schedule is to a recital, clause or schedule (as the case may be) of or to this Agreement;
 - the table of contents and the recitals and headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
 - use of the singular includes the plural and vice versa;
 - use of any gender includes the other genders;
 - any reference to a 'person' includes a natural person, firm, government, state, partnership, company, corporation, association, organisation, institution, foundation, trust or agency (in each case whether or not having separate legal personality);
 - any reference to a statute, statutory provision or subordinate legislation ('legislation') shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
 - any reference to a party is to a party to this Agreement or related MSA (as the case may be); and
 - any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. Scope of engagement

- 2.1 This Agreement sets out the basis on which Octopian shall supply the Services to the Customer.
- 2.2 Octopian agrees to supply the Services to the Customer at the Site(s) in accordance with these general terms of this Agreement
- The Parties hereby agree:
 - to work together in an open, co-operative manner to mutual benefit; and
 - to treat all Confidential Information provided by the Customer to Octopian or by Octopian to the Customer in strict confidence pursuant to clause 12 below.
- 2.3 The Customer understands and acknowledges that Octopian employs the service of independent third parties who are contracted to Octopian under a partner agreement to undertake certain elements of the Services. The Customer agrees it shall not in any way work independently of Octopian with the third party service provider locally, except by specific agreement made with Octopian in writing. The Customer further agrees that it shall not solicit or form any implicit or explicit agreement for the direct provision of services by the Service Partner to the Customer without the prior written consent of Octopian.
- 2.4 The Customer shall notify Octopian immediately in writing should the Service Partner attempt to work directly with it.

3. Commencement and term

This Agreement shall commence on the Commencement Date and continue in full force and effect unless otherwise terminated in accordance with clause 14 below.

4. Services

- 4.1 Octopian shall provide the Services at the Site(s) in accordance with the relevant MSA and shall meet or exceed the Service Levels for the duration specified in the MSA.
- 4.2 Octopian will be available to provide Services to the Customer at all times specified in the MSA, and be available for escalation from the Customer at all times.
- 4.3 Octopian shall at all times comply with the Customer's call handling procedure set out in the this Agreement.
- 4.4 Octopian shall manage the activities of its Service Partners transparently and seamlessly so as to provide the level of service specified in the relevant MSA.
- 4.5 The Customer shall have no right or authority, express or implied, to commit or otherwise obligate Octopian in any manner

whatsoever except to the extent specifically provided in this Agreement.

- 4.6 Save as provided in clause 21 below, the Customer shall not be entitled to make any amendments to the Services.

5. Octopian's obligations

- 5.1 Octopian agrees to make available to the Customer, free of charge, such Octopian proprietary documentation and information as used by Octopian in the execution of the Services as may be appropriate and is reasonably necessary for the performance of the Services. The Customer shall not use such information for any other purpose other than the execution of the Services.

6. The Customer's obligations

- 6.1 Subject to clause 19 below, the Customer shall use its best endeavours to assist Octopian to ensure the Octopian Personnel shall have sufficient access to the equipment at the Site(s) in order to provide the Services.
- 6.2 Where reasonably requested by Octopian, the Customer shall provide a rudimentary level of training to such of the Octopian Personnel as the Parties consider necessary to enable Octopian to perform its duties as defined in a MSA.

7. Payment and charges

- 7.1 The Customer will pay the fees set out in the Pricing Exhibit in the relevant MSA.
- 7.2 Unless otherwise specified in the MSA, Octopian shall submit invoices for reiterative and/or project fees monthly in advance; such invoice(s) to be paid by the Customer within 30 days of date thereof.
- 7.3 Unless otherwise specified in the MSA, Octopian shall submit invoices for incident or variable fees monthly in arrears and such fees shall be supported by a Charging Summary, to be calculated by the CMS based on the activities of the preceding period.
- 7.4 Octopian aims to issue the Charging Summary within 5 days of the end of the period. If the Customer approves the Charging Summary, Octopian will issue a matching invoice to the Customer; such invoice(s) to be paid within 30 days of date thereof.
- 7.5 In the absence of a Charging Summary Octopian shall:
- 7.6 provide clear invoices to the Customer after the end of the Month in which the Services were delivered, and
- 7.7 such invoices shall clearly set out the Customer's Incident and/or reference numbers and the associated charge by activity.
- 7.8 All invoices shall be in the English language.
- 7.9 All Fees and other sums payable in terms of the relevant MSA shall be exclusive of VAT and all other Taxes. Octopian shall add such VAT or other Taxes as may be relevant to the invoice(s).
- 7.10 All invoices shall be calculated in the currency specified in the relevant MSA.
- 7.11 In the event that the Customer requires Octopian to raise an invoice in a different currency, the Customer accepts responsibility for any exchange rate fluctuations and Octopian may raise such additional invoices as may be required to reconcile the amount received by Octopian as reflected in the currency specified in the MSA with the value of the invoice in that currency.
- 7.12 The Parties shall apply Service Credits/Debits as may be due in terms of the relevant MSA to any sums due on a monthly in arrears basis.

8. Warranties and Indemnity

- 8.1 Octopian warrants, represents and undertakes that it shall (and shall procure that its sub-contractors and their agents and employees shall also) at its own expense:
- provide the Services in a good and workmanlike manner in accordance with the current best industry practice (such as ITIL best practice documentation for IT Service Management) and at all times in accordance with the provisions of this Agreement and the relevant MSA and in particular in accordance with the Service Levels;
 - ensure that the Services comply in all respects with any applicable laws, statutes, regulations and codes of practice, wherever imposed in the world, relating to the provision of the Services which may be in force at the time when the Services are performed;

- (c) ensure that all of the Octopian Personnel are appropriately qualified and experienced to undertake their tasks in connection with the Services and that such tasks will be supplied in a professional and competent manner and under full supervision;
 - (d) devote such time as is necessary to the provision of the Services and give the Customer the full benefit of Octopian's knowledge, expertise and skills in the performance of the Services;
 - (e) ensure that at its own cost it has all necessary consents, permits, licences and authorisations to enable it to perform its obligations under this Agreement (and shall promptly supply the Customer copies of any such consents, permits, licences and authorisations on request);
 - (f) work and co-operate with the Customer's employees, agents and contractors and with any other personnel notified to it by the Customer (including, but not limited to, personnel of the Customer's other contractors);
 - (g) immediately inform the Customer of any changes in Octopian's method of doing business which might affect Octopian's performance duties under this Agreement;
 - (h) not infringe any Third Party IPR in providing the Services;
 - (i) use and keep updated Octopian's CMS
- 8.2 The Customer warrants, represents and undertakes that it shall (and shall procure that its sub-contractors and their agents and employees shall also) at its own expense:
- (a) provide all of the Octopian Personnel with such information as may be available to the Customer to assist the Octopian Personnel to provide the Services;
 - (b) devote such time as is necessary to the provision of the Services and give Octopian the full benefit of its knowledge, expertise and skills to assist Octopian in the performance of the Services;
 - (c) ensure that where it is required to do so explicitly or by implication by the terms of the relevant MSA, at its own cost, it has all necessary consents, permits, licences and authorisations to enable Octopian to perform its obligations under this Agreement (and shall promptly supply Octopian copies of any such consents, permits, licences and authorisations on request);
 - (d) procure that its employees, agents, contractors and any other relevant personnel work and co-operate with the Octopian Personnel;
 - (e) immediately inform Octopian of any changes in its method of doing business which might affect Octopian's performance duties under this Agreement;
 - (f) not infringe any Third Party IPR in connection with the Services;
- 8.3 The Customer shall indemnify and hold Octopian and its Service Partners harmless from and against all losses, claims, liabilities, costs, damages, fines or expenses (including all legal costs) incurred or suffered by Octopian or its Service Partners arising out of or in connection with:
- (a) any breach of warranty given by the Customer whether actual or alleged and whether or not proceedings are brought;
 - (b) any act or omission of the Customer, its sub-contractors, agents or any of its personnel; and
 - (c) any claim that the performance of the Services or receipt thereof by the Customer or in connection with the equipment infringes any contractual rights or Intellectual Property Rights of any other person.
- 8.4 Octopian shall have the right to defend any Third Party IPR Claim if the Customer declines to conduct such a defence and in such event the Customer will:
- (a) keep Octopian fully informed of any details available to the Customer pursuant to the conduct of the defence;
 - (b) comply with all of Octopian's reasonable requests in relation to the conduct of the defence; and
 - (c) not settle the Third Party Claim without the agreement of Octopian, which may be granted or withheld in Octopian's absolute discretion.
- 8.5 The warranties and remedies provided for in this clause 8 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding the acceptance by Octopian of payment in full or in part of invoices in respect of which such warranties and remedies are applicable.
- 8.6 Neither party will actively seek to employ, directly or indirectly, any personnel of the other party or their sub-contractors who has been engaged in connection with the Services during the term of the Agreement or for six months following termination of the Agreement. This clause does not restrict either party from recruiting through the normal process of advertising, interview and acceptance. If either party does employ staff in breach of this clause that party shall pay to the other party by way of liquidated damages for such breach an amount equal to 25% of the starting salary of the person recruited.
- 8.7 The Parties shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the other Party, their employees, agents or subcontractors and any other Confidential Information concerning the business or products of either Party which the other Party may obtain. The Parties shall restrict disclosure of such Confidential Information material to such of their employees, agents or subcontractors as need to know the same for the purpose of discharging their obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Parties under this Agreement.
- 8.8 All materials, equipment and tools, drawings, specifications and data supplied by one Party to the other shall, at all times, be and remain the exclusive property of the first Party, but may be held by the second Party in safe custody at its own risk and maintained and kept in good condition by the second Party until returned to the first Party, and shall not be disposed of or used other than in accordance with first Party's written instructions or authorisation.
- 8.9 This clause 8 shall survive expiry or termination of this Agreement, however arising.
- 9. Employment issues (TUPE) and indemnity**
- 9.1 This Agreement shall not be construed as constituting either party as partner of the other or creating an employer-employee relationship, a partnership or a joint venture between the Parties, or creating any other form of legal association that would impose liability upon one party for the act or failure to act of the other.
- 9.2 Each party shall be responsible for the management, direction and control of its employees and such employees shall not be employees of the other party. It is the mutual intent and understanding of the Parties that each party, in performing its obligations under this Agreement, shall be an independent contractor engaged in the business of providing services.
- 9.3 Unless otherwise specifically agreed in the relevant MSA, the Customer shall indemnify Octopian and keep Octopian fully indemnified at all times in respect of all claims, actions, costs, expenses, damages, awards, compensation, fines, court and/or tribunal awards and all other liabilities howsoever and whenever arising (including all legal costs on an indemnity basis) arising out of or in connection with any claim by or on behalf of any person on the basis that he is or may be an employee of Octopian as a result of his work in connection with the provision of the Services or performance of any other obligation of the Customer pursuant to this Agreement or any related MSA on the basis that TUPE or any equivalent local legislation applies.
- 9.4 In the event that this Agreement shall terminate for whatever reason (other than by reason of default by Customer) including, but not limited to, the expiry of the Agreement in accordance with its terms, Octopian shall indemnify Customer and keep it fully indemnified at all times in respect of:
- (a) all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities (including, without limitation, any claim for a redundancy payment, unfair dismissal compensation or notice monies); and
 - (b) expenses (including legal expenses on an indemnity basis)

in connection with or as a result of any claim or demand by or on behalf of an Octopian Employee which is connected with the employment of the Octopian Employee with Octopian or a Service Partner (as the case may be) or from termination or expiry of this Agreement or from TUPE (or any equivalent local legislation applies) or otherwise.

The indemnity in this sub-clause 9.4 above shall not apply to any claim arising as a result of any act, fault or omission of the Octopian or any of its Service Partners which arises or is occasioned by any act, fault or omission by Customer or its successor contractor.

- 9.5 If any person, whether or not a Octopian Employee, makes a claim against either party, the Parties undertake that they shall give to each other as soon as reasonably practicable after any such request all information which may be reasonably relevant to such claim and shall render to each other such assistance and co-operation as either shall reasonably require in contesting, settling or dealing with such claim.
- 9.6 During the six months prior to the expiry of this Agreement or (if earlier) once Octopian has been notified in writing by Customer that this Agreement is to be terminated, Octopian shall, and shall use reasonable endeavours to procure that its Service Partners (if any), shall:
- (a) Not, without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed):
 - (b) materially vary, or purport or promise to vary, the terms and conditions of employment or non-contractual benefits of any Octopian Employee other than in the normal course of business; or
 - (c) make any of its other employees, Octopian Employees other than in the normal course of business;
 - (d) provide upon reasonable request and without charge to the Customer full and accurate details of the numbers, general terms and conditions of employment, salaries and other contractual benefits, job titles, lengths of service and ages of the Octopian Employees and any collective agreements and industrial disputes relating thereto, and keep Customer updated of any material changes to the Effected Personnel;
 - (e) provide, without charge, any additional relevant information relating to the Octopian Employees as may be reasonably required, whether to Customer or to a third party identified by the Customer;
- 9.7 for the avoidance of doubt, nothing in this sub-clause 9.6 above shall require a Octopian to provide information where it and/or any of its Service Partners would be in breach of any legal obligation by doing so (including, but not limited to, any breach of a confidentiality obligation or the Data Protection Act 1998 or equivalent local legislation).
- 9.8 In respect of any indemnity given under this clause 9:
- (a) The indemnified party shall give notice to the indemnifying party as soon as reasonably practicable of any matter covered by the relevant indemnity;
 - (b) The indemnifying party shall at its own expense have the right to defend, conduct and/or settle all claims and proceedings which may be brought by a third party and which are covered by the relevant indemnity, provided that the indemnifying party shall keep the indemnified party informed of all material matters;
 - (c) The indemnified party shall, at the indemnifying party's expense, provide all reasonable assistance and documentation required by the indemnifying party in connection with any such claims or proceedings; and
 - (d) The indemnified party shall not be entitled to rely upon the indemnity to the extent that the liability arises out of its own act or omission.
- 9.9 This clause 16 shall survive expiry or termination of this Agreement, however arising.

10. Non-Solicitation

- 10.1 The Customer agrees that for the duration of this Agreement and for a period of twelve (12) months following its expiration, the Customer shall not make any offer of employment (whether permanent, part-time or fixed contract) to any member of the Octopian Personnel without first obtaining written permission

from a director of Octopian, such permission to include such terms as may be appropriate compensation to Octopian or Octopian's partner in respect thereof.

- 10.2 Octopian agrees that for the duration of this Agreement and for a period of twelve (12) months following its expiration, Octopian shall not make any offer of employment (whether permanent, part-time or fixed contract) to any member of the Customer's Personnel without first obtaining written permission from a director of the Customer, such permission to include such terms as may be appropriate compensation to Octopian or Octopian's partner in respect thereof.

11. Limitation of liability

- 11.1 Neither party shall be liable to the other party or its affiliates for indirect, special and consequential loss (including, without limitation, whether direct or indirect, loss or corruption of data, loss of business, loss of profits or any other economic loss of any kind) howsoever arising.
- 11.2 Unless stated otherwise in a MSA as a pass-through condition and subject to sub-clause 11.3 below, each party's total liability in contract, tort or otherwise arising in connection with the performance or contemplated performance of this Agreement, shall be limited per contractual year to the lower of an amount equal to the total charges payable by the Customer in respect of the 12 Months immediately preceding the date of the event giving rise to the relevant claims or the amount of £5 million.
- 11.3 Neither party excludes or limits its liability to the other party for:
- (a) death or personal injury resulting from the negligence of that party; or
 - (b) fraudulent misrepresentation.
- 11.4 This clause 11 above shall survive expiry or termination of this Agreement, however arising.

12. Confidentiality

- 12.1 The Parties acknowledge that they will receive Confidential Information from each other in connection with this Agreement. The Confidential Information will be deemed to include all the information each party receives from the other, except anything designated as not confidential. The Parties agree to maintain the secrecy of the Confidential Information and agree neither to use it (except for purposes of performing hereunder) nor to disclose it to any person other than their employees, agents or sub-contractors who have a need to know in order to perform their obligations under this Agreement.
- 12.2 The Parties acknowledge and confirm that the contents of, and their performance under this Agreement constitute, for the purposes of this clause 12, Confidential Information.
- 12.3 Confidential Information will not include any information which is publicly available at the time of disclosure or subsequently becomes publicly available through no fault of the Party concerned, or is rightfully acquired from a third party who is not in breach of an agreement to keep such information confidential.
- 12.4 A party may disclose Confidential Information of the other party:
- 12.5 to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first mentioned party; or
- 12.6 if required in connection with legal proceedings relating to this Agreement.
- 12.7 These non-disclosure obligations shall be autonomous, distinct and independent from the rest of this Agreement and, as such, shall survive the termination of this Agreement.

13. Intellectual Property Rights

- 13.1 All Intellectual Property Rights in the equipment and any other materials provided by either Party pursuant to this Agreement are either licensed to or are the property of that Party and this Agreement does not convey to the other Party any right, title or interest in them. The Party's only right with respect to these Intellectual Property Rights is the right to use the Intellectual Property Rights in relation to the Services and in accordance with the provisions of this Agreement.
- 13.2 The Customer shall grant to Octopian a royalty free, non-exclusive, worldwide, irrevocable, unrestricted permanent licence on any Intellectual Property Rights created by it for the purpose of performing and delivering the Services under this Agreement.

- 13.3 If a Claim is made against a Party in connection with the equipment or provision of Services, then the Party shall:
- 13.4 promptly notify the other Party in writing of the Claim or potential Claim together with all relevant facts;
- 13.5 not make any admissions or settlement in respect of any Claim or potential Claim without the consent of the other Party;
- 13.6 allow the other Party to defend and have full conduct of any negotiations and settlement of any Claim;
- 13.7 provide the other Party with all information and assistance reasonably required by the other Party in respect of its defence of any Claim (at the other Party's reasonable cost); and
- 13.8 do all things reasonable to mitigate all losses arising from the Claim.
- 13.9 Provided the Party complies with sub-clause 13.3, the other Party shall indemnify the first Party against losses arising from the infringement of any Intellectual Property Rights of any third party unaffiliated to the first Party arising during either Party's use of the Services in accordance with this Agreement.
- 13.10 The indemnity at sub-clauses 13.9 to 13.10 shall terminate on termination or expiry of this Agreement, howsoever arising.
- 14. Termination**
- 14.1 Either party may terminate this Agreement forthwith by notice to the other party in writing with immediate effect if the other party:
- (a) commits a material breach of its obligations under this Agreement and does not remedy that breach within 20 Business Days of receiving a notice detailing the breach and requiring that it be rectified; or
- (b) an order is made or an effective resolution is passed for the dissolution or winding up of the other party except for the purposes of an amalgamation, reorganisation, bulk transfers of assets or merger; or
- (c) takes possession of or a receiver is appointed over the whole or any material part of the undertaking or assets of the other party; or
- (d) becomes insolvent or makes any special or general assignment for the benefit of its creditors or is the subject of a voluntary or involuntary filing under the bankruptcy laws of any jurisdiction.
- 15. Consequences of termination or expiration**
- 15.1 On termination or expiry of this Agreement or any MSA (and in the case of the termination of an MSA, pertaining only to that MSA):
- 15.2 the Parties shall immediately return to the other Party all materials and Documents belonging to the other Party including all Confidential Information, or if instructed will arrange for their immediate destruction;
- 15.3 the Parties shall co-operate with each other and/or any new provider of services similar to the Services provided by Octopian in ensuring the smooth handover and continued running of the Services during such handover;
- 15.4 Octopian shall within three Months of the expiry or termination of this Agreement or any MSA submit its final invoice to the Customer setting out the total amounts due by the Customer for the Services carried out by it but not paid to Octopian since the last invoice rendered by Octopian pursuant to this Agreement; and
- 15.5 each Party shall return to the other all property in its possession belonging to the other Party, including all Spares as detailed in the CMS.
- 15.6 Termination or expiry of this Agreement or any MSA will not affect the rights or liabilities of either party accrued prior to termination or expiry or any terms intended expressly or by implication to survive termination or expiry.
- 16. Insurance**
- 16.1 Unless otherwise provided for as a pass-through provision in the relevant MSA, Octopian agrees that it will obtain and maintain insurance with reputable insurers for the minimum liability cover of EUR 1 million (one million Euro) in respect of all liabilities, claims, costs and expenses which may occur to Octopian, the Customer (including their respective employees and agents) pursuant to this Agreement.
- 16.2 Octopian will on request supply copies of the insurance documents to the Customer to evidence the insurance obligations set out at sub-clause 16.1 above.
- 17. RoHS Directive and WEEE Directive**
- 17.1 Each Party warrants to the other that the supply of any equipment (whether used as a component or re-branded) in any market, will not violate any law or regulation in any jurisdiction world-wide on the use of hazardous substances, or the recycling or treatment of waste equipment, including, but not limited to, the laws implementing the RoHS Directive and the WEEE Directive (the 'Directives').
- 17.2 Each Party warrants to the other that it shall not supply any equipment or component containing any quantity of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, polybrominated diphenyl ethers or other substance, the use of which is banned or restricted by the Directives.
- 17.3 Prior to the delivery of any equipment or component, the relevant Party shall identify in writing to the other:
- (a) any and all components and materials contained in such equipment that may require recycling or other treatment under the directives, and
- (b) the location of any component or material that is hazardous within the meaning of the Directives or other applicable laws, and any such component or material that is required by the Directives to be marked, shall be so marked by the first Party.
- 17.4 Each party shall, upon request, provide the other with written confirmation of its compliance with the Directives, in the form, manner and within the timeframe reasonably directed by the other Party.
- 17.5 Each party shall have the right to audit the other's compliance with the Directives. Each party shall provide the other with all such information and documentation that it may reasonably require (including access to its staff and facilities) to enable the other Party to satisfy itself of the first Party's compliance with all Directives and that the warranty contained in sub-clause 17.1 remains true and accurate.
- 17.6 Each Party shall bear its own costs and expenses arising out of or related to compliance with the Directives, arising out of the placing of any equipment, material or component on, or their importation into, any jurisdiction world-wide by Party.
- 18. Health & Safety**
- 18.1 Octopian and Octopian's Service Partners shall provide a healthy and safe environment for their personnel and take all reasonable steps to ensure the avoidance of hazardous conditions at work. The personnel shall be responsible for taking reasonable care in carrying out their duties with due consideration for the health and safety of people in their vicinity.
- 18.2 Octopian undertakes to ensure the Octopian Personnel comply with the Health & Safety rules in force within the Customer and at the Sites including but not limited to the Location Authorities' Regulations.
- 18.3 The Customer shall not require Octopian Personnel to work in hazardous areas or under hazardous conditions. If any member of Octopian's Personnel identifies hazardous areas or conditions, no further work shall be undertaken until such hazard has been removed or an appropriate alternative acceptable to the Octopian Personnel is provided.
- 19. Security**
- 19.1 Octopian undertakes to ensure the Octopian Personnel comply with the security rules in force within the Customer and at the Sites including but not limited to the Location Authorities' Regulations. Octopian will manage the administrative steps at its own cost to obtain and cancel the passes and authorisations, which are necessary for the performance of this Agreement, with the appropriate authorities. The Customer will complete all necessary forms relating to its accreditation on the Site(s) as may be required to be completed by the Customer. The Customer shall provide all reasonable assistance to Octopian to enable Octopian and/or Octopian's Service Parties to comply with the relevant regulations at the Site(s)

- 19.2 At the Customer's and/or any relevant Site authority's request, Octopian shall apply such additional security measures as are requested including, but not limited to, a temporary suspension of the Services.
- 20. Data Protection**
- 20.1 The Parties jointly undertake to comply with all relevant data protection legislation in connection with the performance of the Services including, but not limited to, the Data Protection Act 1998 or equivalent local legislation.
- 21. Change Management**
- 21.1 At any time during the term of the Agreement either party may at any time request a modification or change to the Framework Agreement or a Master Services Agreement which shall be processed in accordance with the procedure set out in this clause 21.
- 21.2 The party requesting the change shall notify the other in writing of the proposed modification or change.
- 21.3 Octopian will investigate the suggested change and document the detail and impact of the change as a Change Control Note ("CCN").
- 21.4 The Parties will review the completed CCN and:
- agree to approve the change; or
 - agree amendments to the CCN to reach a mutually acceptable solution; or
 - agree that the change will not proceed; or
 - if such agreement is not achieved within a further fifteen (15) days, or such other period as agreed by the parties formally abandon the CCN or invoke the Dispute Resolution procedure as set out at clause 23
- 21.5 Neither party shall be obliged to agree to any request for change but neither party shall unreasonably refuse or delay its consent to any request for change.
- 21.6 If approved, Octopian will arrange for two (2) copies of the approved CCN to be signed by the Parties. The signing of the CCN will signify acceptance of a change by both Parties.
- 21.7 Until such time as any modification or change to the Services has been mutually agreed in writing the parties shall continue to perform their respective obligations under this Agreement excluding the requested or recommended change. Once signed by the Parties in accordance with clause 21.6, the change shall be effective immediately and the Parties shall perform their respective obligations on the basis of the agreed amendment.
- 22. Notices**
- 22.1 Unless otherwise specifically noted in this Agreement, any notice, approval, consent or other communication in connection with this Agreement or an MSA must be in writing, signed by the sender, addressed as provided on the Execution Page of this Agreement and be delivered by the sender to the address physically or digitally.
- 22.2 If the intended recipient has notified a changed address in the manner provided in clause 21, then the communication must be to such address or fax number.
- 23. Dispute Resolution**
- 23.1 If a Dispute arises the Parties undertake in good faith to use all reasonable endeavours to settle the Dispute expeditiously.
- 23.2 Unless a party has complied with sub-clauses 23.3 to 23.7, that party may not commence court proceedings or arbitration relating to the Dispute except where that party seeks urgent interim or interlocutory relief.
- 23.3 Any party claiming that a Dispute has arisen may give a Dispute Notice to the other party. The Dispute Notice must:
- identify the party's representative for negotiations relating to the Dispute, being a person with authority to settle the Dispute on behalf of that Party; and
 - set out succinctly the issues which constitute the subject of the Dispute and, with relevant particulars, a description of the circumstances giving rise to the Dispute and the relief sought including, to the extent possible, an amount claimed.
- 23.6 The recipient of the Dispute Notice must within 10 Business Days of receipt of the Dispute Notice reply in writing to the other party. The reply must:
- identify the recipient's representative for negotiations relating to the Dispute, being a person with authority to settle the Dispute on behalf of the recipient; and
 - set out succinctly the recipient's response to the matters set out in the Dispute Notice and any additional matters the recipient considers relevant.
- 23.7 The representatives designated under sub-clauses 23.3 and 23.6 will make whatever investigations each considers appropriate and, within 40 Business Days of receipt of the reply, use their reasonable endeavours to resolve the Dispute on a "without prejudice" basis.
- 23.8 If the Dispute is not resolved within the period of time specified in sub-clause 23.7, then the Parties must resolve the Dispute by binding arbitration in accordance with the rules of Arbitration of the International Chamber of Commerce in force. The arbitration will be conducted in Berlin, Germany, in the English language using one arbitrator.
- 24. Force Majeure**
- 24.1 Neither party shall be liable to the other for any default under this Agreement or any MSA as a consequence of Force Majeure provided that each Party must immediately inform the other of the existence of any Force Majeure Event and the other Party is entitled to terminate the Agreement, or the relevant MSA without liability and without prejudice to its other rights and obligations where the Force Majeure Event subsists for a period of 20 Business Days or more.
- 24.2 Where Octopian is affected by a Force Majeure Event and is unable to provide the Services or procure that one of its Service Partners is able to provide the Services, the Customer may put in place the means and resources necessary to ensure the continuity of Services and may call upon an alternative third parties to provide part or all of the Services for the duration of the Force Majeure Event.
- 25. General**
- 25.1 **Right to Audit**
Each Party shall grant to the other the right to audit the other Party's compliance with this Agreement, including all activities, charges, performance, security or other and whether the audit is conducted by the Party, a statutory auditor or their respective agents. The audited Party shall provide reasonable access and reasonable assistance for the duration of such audit at its own expense.
- 26. Assignment**
- Neither party may assign or otherwise deal with all or any of its right under this Agreement without the prior written approval of the other party, such approval not to be withheld unreasonably; provided that Octopian may assign for security its rights to payments due under this Agreement to its current bankers on the following basis:
- should the Customer receive a request from Octopian's bankers (or from Octopian, or any other third party acting on Octopian's bankers' behalf) to pay to Octopian's bankers any payment due to Octopian under this Agreement, then when the Customer makes such a payment to them, the Customer shall be deemed to have validly paid Octopian under this Agreement and shall be released from any liability to Octopian in respect of such payment; and
 - the Customer reserves the right to make against them any objection to making such payment (in part or full) and effect any other right with regards to such payment (including any right to set-off) which the Customer may be able to make or effect against Octopian under this Agreement.
- 27. Subcontracting**
- The Customer agrees that Octopian may subcontract all or part of its obligations under this Agreement or any MSA to one of its Service Partners. In such event, Octopian shall procure that its Service Partner shall fulfil the same obligations accepted by Octopian in this Agreement.

28. No waiver

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

29. Further assurance

Either party shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may from time to time reasonably be required for the purpose of giving the full benefit of the provisions of this Agreement.

29.1 Entire Agreement

This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the Parties and supersede any previous agreement between the Parties relating to the subject matter of this Agreement.

29.2 Severance

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or

unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

29.3 Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

29.4 Third Parties

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

29.5 Governing law

This Agreement is governed by and construed in accordance with the law of the Federal Republic of Germany.

Exhibit A – Definitions

In these Terms and Conditions the following words and phrases shall have the meaning given in the table below:

Word(s)	Meaning
'Agreement'	this framework agreement, its schedules, the Master Services Agreement(s) and associated exhibits relating to the Services and all other documents expressly incorporated or referenced herein as varied, amended, supplemented, extended, restated and/or replaced from time to time;
'Business Day'	any day other than a Saturday, or Sunday (or the equivalent local non-working day) or a public holiday in the country where the Site is located;
'Charging Summary'	a summary of incidents which is generated by Octopian at regular intervals to expedite the signing off and payment processes;
'Equipment Warranty'	the Warranty given by the manufacturer of any equipment from which Octopian or the Customer benefits;
'Call Management System' ('CMS')	the electronic tools used by the Parties to manage all activities in relation to this Agreement including, but not limited to, incidents, spares, IMACS, pricing, Charging Summaries, etc.;
'Client Contract'	An agreement entered into between the Customer and one of its customers specifying services to be delivered by the Customer and which the Customer wishes to sub-contract to Octopian;
'Commencement Date'	the date of last signature of this Agreement;
'Component'	one equipment part of something more complex. Components that need to be managed are Configuration Items;
'Confidential Information'	all confidential, non-public or proprietary information exchanged between the Parties relating to the business, trade secrets, technology or other affairs of the disclosing party (including any information relating to the contents of this Agreement or a related MSA);
'Consumables'	any Components or other elements of the equipment that are designed not to be fixed parts and therefore require replacing from time to time in normal operation and which comprise both Technical Consumables and Operational Consumables;
'Defect'	a design flaw or malfunction that causes a Failure of one or more Configuration Items or IT Services;
'Dispute Notice'	the written notice sent by either party to the other claiming that a Dispute has arisen;
'Dispute'	any dispute, disagreement or claim between the Parties as to the construction, interpretation, validity or existence of this Agreement or a related MSA;
'Document'	includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form, electronic or otherwise;
'Effected Personnel'	employees of one of the Parties who shall be or may be entitled to TUPE protection as a consequence of a change in service provider;
'Call Management System' ('CMS')	the electronic tools used by the Parties to manage all activities in relation to this Agreement including, but not limited to, incidents, spares, IMACS, pricing, Charging Summaries, etc.;
'Octopian Personnel'	the employees, agents, contractors or consultants to Octopian who shall provide all or part of the Services, whether employed by Octopian or by one of Octopian's Service Partners;

Word(s)	Meaning
'Failure'	loss of ability to operate to specification;
'Fees'	the fees for the Services as set out in the Pricing Schedule;
'Force Majeure'	an event caused by war, fire, riot, flood, drought, government action or natural disaster beyond the reasonable control of the Party concerned;
'Hardware'	includes, but is not limited to, desktop personal computers, notebook/laptop personal computers, monitors, laser and dot matrix printers, scanners, automated ticket and boarding pass printers ('ATBs'), network switches, network routers, and kiosks;
'IMAC'	any activity involving, but not limited to, installations, moves, additions, changes or deletions to Hardware or Software;
'Incident'	any unplanned interruption to an IT Service, reduction in the Quality of an IT Service or any event which could affect an IT Service in the future.
'Intellectual Property Rights'	means all patents, rights to inventions, utility models, copyright and related rights, trade- marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, design rights, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
'Inventory'	the detailed list of equipment as set out in Exhibit (C) to the MSA;
'IPR Claim'	any claim, demand or action for infringement or alleged infringement of Intellectual Property Rights;
'Location Authority Regulations'	all directives, rules and regulations promulgated by any authority having jurisdiction over all or part of an location pertaining to the Services and the equipment;
'MMC'	a monthly maintenance charge at a pre-agreed rate per equipment;
'Month'	a calendar month;
'OEM'	Original Equipment Manufacturer
'Operational Consumables'	those Components or elements which may be readily replaced by the Customer and require replacement or replenishment from time to time including, but not limited to, paper, stationery, ink and toner cartridges;
'Per Incident Pricing'	a pre-agreed total charge for the resolution of an incident;
'Portal, Customer Portal'	the web-based portal provided by Octopian for the Customer to access the CMS;
'Pricing Schedule'	the schedule of Fees payable to Octopian by the Customer in respect of the Services, as further set out in Exhibit (e) of the relevant MSA;
'Quality'	The ability of a product to produce the intended result;
'Requirement', 'Service Requirement'	the specific services to be provided by the Customer to the Customer pursuant to a MSA;
'RoHS Directive'	European Directive (2002/95/EC) on the Restriction on use of certain hazardous Substances in Electronic and Electrical equipment;
'Service Hours'	the period during which the Services shall be provided by the Customer at the Site(s) as defined in Exhibit (b) of the MSA;
'Service Incentive'	an agreed financial credit applied to the Charging Summary in respect of an element of the Service that does not meet the Service Level set out in the MSA;
'Service Level(s) / SL'	the target and measurement of the Service Provider's performance in the provision of the Services, specifically the agreed amount of time within which the Services are required to be completed as provided in Exhibit (B) to the relevant MSA;
'Service Partner'	a third party with whom Octopian has concluded a sub-contract agreement whereby the third party undertakes work in specific locations for and on behalf of Octopian;
'Services'	the services to be provided by Octopian to the Customer under this Agreement as further set out in the relevant MSA;
'Site'	the location(s) at which Octopian will provide the Services to the Customer(s) as specified in Exhibit (d) to the relevant MSA;
'Software'	includes operating systems and customer applications;

Word(s)	Meaning
'Spare Component'	any Component that is to be maintained ready for the purpose of replacing one in which a Defect occurs;
'Tax or Taxation'	all forms of taxation and statutory governmental, state, federal, provincial, local government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the use of any other jurisdiction, and any penalty, fine, surcharge, interest, charges or costs relating thereto;
'Technical Consumables'	those Components or elements subject to wear and tear and requiring replacement from time to time by a technician that are not covered by a manufacturer's warranty but subject to the manufacturer's recommendation for periodical replacement including, but not limited to, print heads, filters, light bulbs and fuses;
'Third Party IPR Claim'	Any claim that the performance of the Services or receipt thereof by the Octopian in connection with the equipment that infringes any contractual rights or Intellectual Property of any other person;
'TUPE'	means European Council Directive 2001/23/EC, the Transfer of Undertakings (Protection of Employment) Regulations 2006, and any other legislation in effect within any or each of the countries in which the services are provided, the effect of which would be to transfer by operation of law the employment contract of a member of the Customer Personnel to Octopian as a consequence of a change in service provider;
'VAT'	value added tax, or any other form of local sales tax;
'WEEE Directive'	European Directive (2002/96/E) on Waste Electrical and Electronic Equipment; and/or equivalent local legislation;