

1. [Definitions and Interpretation](#)

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the words and expressions shall have the meanings assigned to them in Exhibit A:
- 1.2 The Parties shall be:
- (a) Octopian Europe GmbH, hereinafter referred to as “Octopian”, and
 - (b) The Supplier with whom Octopian has concluded or proposes to conclude an agreement for the supply of goods and services, hereinafter referred to as “the Supplier”
- each “a Party” and collectively referred to as “the Parties”.
- 1.3 In these Terms and Conditions, unless the context otherwise requires:
- (a) Any reference to a recital, clause or schedule is to a recital, clause or schedule of or to these Terms and Conditions.
 - (b) The table of contents, recitals and headings in these Terms and Conditions are inserted for convenience only and shall not affect the construction or interpretation of these Terms and Conditions.
 - (c) Use of the singular includes the plural and vice versa.
 - (d) Use of any gender includes the other genders.
 - (e) Any reference to a ‘person’ includes a natural person, firm, government, state, partnership, company, corporation, association, organization, institution, foundation, trust or agency (in each case whether having separate legal personality).
 - (f) 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.
 - (g) Any reference to a party is to a party to these Terms and Conditions or related SOW (as the case may be); and
 - (h) 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 These Terms and Conditions set out the basis on which the Supplier shall supply the Services to Octopian.
- 2.2 The Supplier agrees to supply the Services to Octopian at the Site(s) in accordance with the general terms of these Terms and Conditions
- (a) The Parties hereby agree:
 - (b) To work together in an open, cooperative manner to mutual benefit; and
 - (c) To treat all Confidential Information provided by Octopian to the Supplier or by the Supplier to Octopian in strict confidence pursuant to clause 12 below.
- 2.3 Octopian understands and acknowledges that the Supplier employs the services of independent third parties who are contracted to the Supplier under a partner agreement to undertake certain elements of the Services. The Supplier agrees it shall not in any way work independently of Octopian with any third-party service provider locally, except by specific agreement made with Octopian in writing. The Supplier further agrees that it shall not solicit or form any implicit or explicit agreement for the direct provision of services by it to Octopian’s Customer without the prior written consent of Octopian.
- 2.4 The Supplier shall notify Octopian immediately in writing should the Customer attempt to work directly with it.

3. [Commencement and Term](#)

These Terms and Conditions 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 The Supplier shall provide the Services at the Site(s) in accordance with the relevant Statement of Work (“SOW”) and shall meet or exceed the Service Levels for the duration specified in the SOW.
- 4.2 The Supplier will always be available to provide Services to Octopian at all times specified in the SOW and be available for any service delivery escalation from Octopian.
- 4.3 The Supplier shall always comply with Octopian call handling procedure set out in these Terms and Conditions.
- 4.4 The Supplier shall manage the activities of its Service Partners transparently and seamlessly to provide the level of service specified in the relevant SOW.
- 4.5 The Supplier 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 these Terms and Conditions.
- 4.6 Save as provided in clause 21 below, the Supplier shall not be entitled to make any amendments to the Services specified in the SOW.

5. [The Supplier’s Obligations](#)

- 5.1 The Supplier agrees to provide Octopian, free of charge, with the proprietary documentation and information used by the Supplier in

executing the Services, as appropriate and reasonably necessary for the performance of the Services. Octopian shall not use such information for any purpose other than the execution of the Services.

6. [Octopian’s Obligations](#)

- 6.1 Subject to clause 19 below, Octopian shall use its best efforts to ensure that Supplier Personnel have sufficient access to the equipment at the Site(s) to provide the Services.
- 6.2 Where reasonably requested by the Supplier, Octopian shall provide a basic level of training to the Supplier Personnel as deemed necessary by both parties to enable the Supplier to perform its duties as defined in the SOW.

7. [Payment and Charges](#)

- 7.1 Octopian will pay the fees set out in the Pricing Exhibit in the relevant SOW. Unless otherwise specified in the SOW, the Supplier shall submit invoices for reiterative and/or project fees monthly in advance; Octopian shall pay such invoices within 60 days of receipt.
- 7.2 Unless otherwise specified in the SOW, the Supplier 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.
- 7.3 The Supplier aims to issue the Charging Summary within 5 days of the end of the period. If Octopian approves the Charging Summary, the Supplier will issue a matching invoice to Octopian; such invoice(s) to be paid within 60 days of receipt by Octopian thereof.
- 7.4 In the absence of a Charging Summary the Supplier shall:
- (a) Provide clear invoices to Octopian after the end of the month in which the Services were delivered, and
 - (b) Ensure invoices clearly set out Octopian’s incident and/or reference numbers and the associated charges by activity.
- 7.5 All invoices shall be in the English language.
- 7.6 All Fees and other sums payable in terms of the relevant SOW shall be exclusive of VAT and all other Taxes. The Supplier shall add such VAT or other Taxes as may be relevant to the invoice(s).
- 7.7 All invoices shall be calculated in the currency specified in the relevant SOW.
- 7.8 In the event that Octopian requires the Supplier to raise an invoice in a different currency, Octopian accepts responsibility for any exchange rate fluctuations and the Supplier may raise such additional invoices as may be required to reconcile the amount received by the Supplier as reflected in the currency specified in the SOW with the value of the invoice in that currency.
- 7.9 The Parties shall apply Service Credits/Debits as may be due in terms of the relevant SOW to any sums due on a monthly in arrears basis.

8. [Warranties and Indemnity](#)

- 8.1 The Supplier warrants, represents and undertakes that it shall (and shall ensure that its subcontractors and their agents and employees shall also) at its own expense:
- (a) Provide the Services in a good and workmanlike manner, adhering to the current best industry practices (such as ITIL best practice documentation for IT Service Management) and in strict accordance with the provisions of these Terms and Conditions, the relevant SOW, and, in particular, in accordance with the Service Levels.
 - (b) Ensure that the Services comply, in all respects, with all applicable laws, statutes, regulations and codes of practice, wherever imposed globally, relating to the provision of the Services which may be in force, at the time when the Services are performed.
 - (c) Ensure that all the Supplier Personnel are appropriately qualified and experienced to undertake their tasks related to the Services, and that such tasks are performed professionally and competently, and under full supervision.
 - (d) Dedicate the necessary time to the provision of the Services and offer Octopian the full benefit of the Supplier’s knowledge, expertise and skills in the performance of the Services.
 - (e) Ensure that at its own cost it has all necessary consents, permits, licenses and authorizations required to perform its obligations under these Terms and Conditions (and promptly supply Octopian copies of any such consents, permits, licenses and authorizations upon request).
 - (f) Collaborate and cooperate with Octopian’s employees, agents and contractors and with any other personnel designated by Octopian (including, but not limited to, personnel of Octopian’s other contractors).
 - (g) Notify Octopian immediately of any changes in the Supplier’s business methods that may affect the Supplier’s performance under these Terms and Conditions.
 - (h) Not infringe any Third Party IPR in providing the Services.
 - (i) Use Supplier’s CMS, ensuring it is kept up to date.

- 8.2 Octopian warrants, represents and undertakes that it shall (and shall ensure that its other sub-contractors, their agents and employees shall also) at its own expense:
- (a) Provide all the Supplier Personnel with any information available to Octopian to assist the Supplier Personnel in providing the Services.
 - (b) Dedicate the necessary time to the provision of the Services and provide the Supplier the full benefit of its knowledge, expertise and skills to assist the Supplier in the performance of the Services.
 - (c) Ensure that, where it is required to do so explicitly or implicitly by the terms of the relevant SOW, at its own cost, it has all necessary consents, permits, licenses and authorizations to enable the Supplier to perform its obligations under these Terms and Conditions (and shall promptly supply the Supplier copies of any such consents, permits, licenses and authorizations upon request).
 - (d) Procure that its employees, agents, contractors and any other relevant personnel work and cooperate with the Supplier Personnel.
 - (e) Immediately inform the Supplier of any changes in its method of doing business which might affect the Supplier's performance of its duties under these Terms and Conditions.
 - (f) Not infringe any Third Party IPR in connection with the Services.
- 8.3 The Supplier shall indemnify and hold Octopian and its other 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 other Service Partners arising out of or in connection with:
- (a) Any breach of warranty by the Supplier, whether actual or alleged and whether proceedings are brought;
 - (b) Any act or omission of the Supplier, its sub-contractors, agents or any of its personnel; and
 - (c) Any claim that the performance of the Services or receipt thereof by Octopian 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 Supplier declines to conduct such a defence. In such event the Supplier will:
- (a) Keep Octopian fully informed of any details available to the Supplier pursuant to the conduct of the defence.
 - (b) Comply with all the Octopian's reasonable requests in relation to the conduct of the defence; and
 - (c) Not settle any Third-Party Claim(s) without Octopian prior written agreement, which may be granted or withheld at 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 remain in force notwithstanding the Supplier's acceptance of full or partial payment 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 have 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 employs staff in breach of this clause, that Party shall, in the absence of any formal written agreement between the Parties, 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 knowledge, specifications, inventions, processes, initiatives and any other Confidential Information disclosed by the other Party, their employees, agents or subcontractors. Confidential Information concerning either Party's business or products that the other Party may obtain shall also be kept confidential. The Parties shall restrict disclosure of such Confidential Information to those of their employees, agents or subcontractors who need to know it for the purpose of fulfilling their obligations under the Agreement and shall ensure that such employees, agents, or subcontractors are subject to confidentiality obligations corresponding to those binding the Parties under these Terms and Conditions.
- 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 authorization.
- 8.9 This clause 8 shall survive expiry or termination of these Terms and Conditions, however arising.
- 9. Employment issues (TUPE) and indemnity**
- 9.1 These Terms and Conditions shall not be construed as constituting either Party as a partner of the other or creating an employer-employee relationship, a partnership or a joint venture between the Parties, nor shall it create any other form of legal association that would impose liability upon one party for the acts or failures to act of the other.
- 9.2 Each party shall be responsible for the management, direction and control of its own employees, and such employees shall not be considered employees of the other Party. It is the mutual intent and understanding of the Parties that each party, in performing its obligations under these Terms and Conditions, shall act as an independent contractor engaged in the business of providing services.
- 9.3 Unless otherwise specifically agreed in the relevant SOW, the Supplier 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 they are or may be an employee of Octopian as a result of their work in connection with the provision of the Services or performance of any other obligation of the Supplier pursuant to these Terms and Conditions or any related SOW, on the basis that TUPE or any equivalent local legislation applies.
- 9.4 In the event that any contract to which these Terms and Conditions apply terminates for whatever reason, including, but not limited to, the expiry of the Agreement in accordance with its terms, the Supplier hereby indemnifies and keeps Octopian fully indemnified in respect of:
- (a) all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities (including, without limitation, any claim for 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 any employee which is connected with the supply of the Services or who is engaged by the Supplier or by one of the Supplier's Service Partners and arising from TUPE or any similar equivalent local legislation that applies. The indemnity in this sub-clause 9.4 shall not apply to any claim arising as a result of any act, fault or omission by Octopian or is occasioned by any act, fault or omission by the Customer or by its successor contractor.
- 9.5 If any person, whether or not an employee of either Party, makes a claim against either Party, the Parties undertake to give each other, as soon as reasonably practicable after any such request, all information that may be reasonably relevant to such claim and shall render to each other such assistance and cooperation as either shall reasonably require in contesting, settling or dealing with such claim.
- 9.6 During the six months prior to the expiry of these Terms and Conditions or (if earlier) once the Supplier has been notified in writing that the contract(s) concluded under these Terms and Conditions is/are to be terminated, the Supplier shall, and shall use reasonable endeavours to procure that its Service Partners (if any), shall:
- (a) Not, without the prior consent of Octopian (such consent not to be unreasonably withheld or delayed):
 - (1) materially vary, or purport or promise to vary, the terms and conditions of employment or non-contractual benefits of any the Supplier Employee other than in the normal course of business; or
 - (2) make any of its other employees, the Supplier Employees other than in the normal course of business.
 - (b) Provide upon reasonable request and without charge to Octopian 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 Supplier's Employees and any collective agreements and industrial disputes relating thereto and keep Octopian updated of any material changes to the affected personnel.
 - (c) Provide, without charge, any additional relevant information relating to the Supplier's employees as may be reasonably required, whether to Octopian or to a third party identified by Octopian.
- 9.7 For the avoidance of doubt, nothing in sub-clause 9.6 shall require the Supplier 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 9 shall survive expiry or termination of these Terms and Conditions, however arising.
- 10. Non-Solicitation**
- 10.1 Octopian agrees that for the duration of these Terms and Conditions 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 Supplier's personnel or the Supplier's Service Partners' personnel without first obtaining written permission from a director of the Supplier. Such permission shall include terms for appropriate compensation to the Supplier or the Supplier's partner in respect thereof.
- 10.2 the Supplier agrees that for the duration of these Terms and Conditions and for a period of twelve (12) months following its expiration, the Supplier shall not make any offer of employment (whether permanent, part-time or fixed contract) to any member of Octopian's personnel without first obtaining written permission from a director of Octopian. Such permission to include terms for appropriate compensation to Octopian as applicable.
- 11. Limitation of Liability**
- 11.1 Neither Party shall be liable to the other party or its affiliates for any 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 SOW 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 a SOW to which these Terms and Conditions are attached, shall be limited per contractual year to the lower of an amount equal to the total charges payable by Octopian to the Supplier in respect of the 12 Months immediately preceding the date of the event giving rise to the relevant claims or the amount of £1 million.
- 11.3 Neither party excludes nor limits its liability to the other party for:
- death or personal injury resulting from the negligence of that party; or
 - fraudulent misrepresentation.
- 11.4 This clause 11 above shall survive expiry or termination of these Terms and Conditions, however arising.
- 12. Confidentiality**
- 12.1 The Parties acknowledge that they will receive Confidential Information from each other in connection with these Terms and Conditions. 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 subcontractors who have a need to know in order to perform their obligations under these Terms and Conditions.
- 12.2 The Parties acknowledge and confirm that the contents of, and their performance, under these Terms and Conditions 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:
- 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
 - if required in connection with legal proceedings relating to these Terms and Conditions.
- 12.5 These non-disclosure obligations shall be autonomous, distinct and independent from the rest of these Terms and Conditions and, as such, shall survive the termination of these Terms and Conditions.
- 13. Intellectual Property Rights**
- 13.1 All Intellectual Property Rights in the Services, the equipment and any other materials provided by either Party pursuant to these Terms and Conditions are either licensed to or are the property of that Party. These Terms and Conditions do 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 them in relation to the Services and in accordance with the provisions of these Terms and Conditions.
- 13.2 Octopian shall grant to the Supplier a royalty-free, non-exclusive, worldwide, irrevocable, unrestricted permanent license on any Intellectual Property Rights created by it for the purpose of performing and delivering the Services under these Terms and Conditions.
- 13.3 If a Claim is made against a Party in connection with the equipment or provision of Services, then the Party shall:
- promptly notify the other Party in writing of the Claim or potential Claim together with all relevant facts.
 - not make any admissions or settlement in respect of any Claim or potential Claim without the consent of the other Party.
 - allow the other Party to defend and have full conduct of any negotiations and settlement of any Claim.
 - 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
 - do all things reasonable to mitigate all losses arising from the Claim.
- 13.4 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 these Terms and Conditions.
- 13.5 The indemnity in sub-clauses 13.4 to 13.5 shall terminate upon termination or expiry of these Terms and Conditions, howsoever arising.
- 14. Termination**
- 14.1 Either party may terminate any SOW or other agreement concluded under these Terms and Conditions forthwith by written notice to the other Party with immediate effect if the other Party:
- commits a material breach of its obligations under these Terms and Conditions and does not remedy that breach within 20 Business Days of receiving a notice detailing the breach and requiring that it be rectified: or
 - 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, reorganization, bulk transfers of assets or merger; or
 - 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
 - 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 Upon termination or expiration of any SOW or other contract concluded under these Terms and Conditions (and in the case of the termination of an SOW, pertaining only to that SOW):
- the Parties shall immediately return to the other Party all materials and Documents belonging to the other Party, including all Confidential Information, or if so instructed, will arrange for their immediate destruction.
 - the Parties shall cooperate with each other and/or any new provider of the Services to ensure the smooth handover and continued running of the Services during such handover.
 - the Supplier shall, within three (3) Months of the expiry or termination of any SOW, submit its final invoice to Octopian, setting out the total amounts due for the Services carried out but not yet paid to the Supplier since the last invoice rendered pursuant to these Terms and Conditions; and
 - 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.
- 15.2 Termination or expiry of these Terms and Conditions or any SOW will not affect the rights or liabilities of either Party accrued prior to termination or expiry, nor 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 SOW, the Supplier agrees that it will obtain and maintain insurance with reputable insurers for the minimum liability cover of GBP 1 million (one million British Pounds) in respect of all liabilities, claims, costs and expenses which may arise for Octopian pursuant to these Terms and Conditions.
- 16.2 the Supplier will on request, supply copies of the insurance documents to Octopian to evidence the insurance obligations set out at sub-clause 16.1 above.
- 17. RoHS and WEEE Directives ("the Directives")**
- 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 worldwide 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 (hereinafter 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:
- 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. 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 worldwide by Party.
- 18. Health & Safety**
- 18.1 The Supplier and the Supplier's Service Partners shall provide a healthy and safe environment for their personnel and take all reasonable steps to avoid hazardous conditions at work. The personnel shall be responsible for taking reasonable care in carrying out their duties with consideration for the health and safety of people in their vicinity.
- 18.2 The Supplier undertakes to ensure the Supplier's personnel comply with the Health & Safety rules in force within Octopian and at the Sites, including but not limited to the Location Authorities' Regulations.
- 18.3 Octopian shall not require the Supplier's personnel to work in hazardous areas or under hazardous conditions. If any member of the Supplier'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 Supplier's personnel is provided.
- 19. Security**
- 19.1 The Supplier undertakes to ensure its personnel comply with the security rules in force within Octopian and at the Sites, including but not limited to the Location Authorities' Regulations. The Supplier will manage the administrative steps at its own cost to obtain and cancel the passes and authorizations, which are necessary for the performance of these Terms and Conditions, with the appropriate authorities. The Supplier will complete all necessary forms relating to its accreditation on the Site(s) as may be required by Octopian. Octopian shall provide all reasonable assistance to the Supplier to enable the Supplier and/or the Supplier's Service Parties to comply with the relevant regulations at the Site(s)
- 19.2 At Octopian's and/or any relevant Site authority's request, the Supplier shall apply such additional security measures as 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 request a modification or change to the SOW or these standard Terms and Conditions which shall be processed in accordance with the procedure set out in this clause.
- 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 details 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 to 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 in writing, the CCN will be abandoned or if the matter remains in dispute, either Party may 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, and 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 these Terms and Conditions, 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

Unless otherwise specifically noted in these Terms and Conditions, any notice, approval, consent or other communication in connection with these Terms and Conditions or an SOW must be in writing, signed by the sender, addressed to the email address provided on the Execution Page of these Terms and Conditions, and be delivered by the sender digitally.

23. Dispute Resolution

- 23.1 If a Dispute arises, the Parties undertake to use all reasonable endeavours in good faith to settle the Dispute expeditiously.
- 23.2 Unless a Party has complied with sub-clauses 23.3 to 23.5, that Party may not commence court proceedings or arbitration relating to the Dispute, except where urgent interim or interlocutory relief is sought.
- 23.3 A Party claiming that a Dispute has arisen may issue a Dispute Notice to the other party. The Dispute Notice must:
- identify the Party's representative for negotiations relating to the Dispute, and Party's representative must have authority to settle the Dispute on behalf of that Party; and
 - succinctly describe the issues constituting the Dispute, including relevant particulars, a description of the circumstances giving rise to the Dispute and the relief sought including, to the extent possible, an amount claimed.
- 23.4 The recipient of the Dispute Notice must, within 10 Business Days of receipt of Notice, reply in writing to the other Party. The reply must:
- identify the recipient's representative for negotiations relating to the Dispute, who must have the authority to settle the Dispute on behalf of the recipient; and
 - succinctly set out the recipient's response to the matters raised in the Dispute Notice and any additional matters the recipient considers relevant.
- 23.5 The representatives designated under sub-clauses 23.3 and 23.4 will make whatever investigations each considers appropriate and shall, within forty (40) Business Days of receipt of the reply, use their reasonable endeavours to resolve the Dispute on a "without prejudice" basis.
- 23.6 If the Dispute is not resolved within the period specified in sub-clause 23.5, the Parties must resolve the Dispute through binding arbitration in accordance with the rules of Arbitration of the International Chamber of Commerce in force. The arbitration will be conducted, in English and involve one arbitrator. The seat of the arbitration shall be agreed between the Parties, or if no agreement is reached, the seat shall be in London, England.
- 24. Force Majeure**
- 24.1 Neither Party shall be liable to the other for any default under these Terms and Conditions or any SOW as a result of a Force Majeure Event, provided that each Party must immediately notify the other of the occurrence of any Force Majeure Event.
- 24.2 The other Party is entitled to terminate the Agreement, or the relevant SOW without liability and without prejudice to its other rights and obligations where the Force Majeure Event persists for a period of twenty (20) Business Days or more.
- 24.3 Where the Supplier is affected by a Force Majeure Event and is unable to provide the Services or ensure that one of its Service Partners provide the Services, Octopian may arrange the necessary means and resources to ensure the continuity of Services and may engage 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 the other Party the right to audit its compliance with these Terms and Conditions, including all activities, charges, performance, security or other relevant aspects. The audit may be conducted by the Party itself, a statutory auditor or their respective agents. The audited Party shall provide reasonable access and assistance for the duration of such audit at its own expense.
- 26. Assignment**
- Neither Party may assign or otherwise transfer any of its rights or obligations under these Terms and Conditions without the prior written approval of the other Party, which will not be unreasonably withheld; however, the Supplier may assign its rights to payments due under these Terms and Conditions to its current bankers for security purposes under the following conditions:
- should Octopian receive a request from the Supplier's bankers (or from the Supplier, or any other third party acting on the Supplier's bankers' behalf) to pay to the Supplier's bankers any payment due to the Supplier under these Terms and Conditions, then when Octopian makes such a payment to them, Octopian shall be deemed to have validly paid the Supplier under these Terms and Conditions and shall be released from any liability to the Supplier in respect of such payment; and

(b) Octopian reserves the right to object to making such payment (in part or full) and execute any other right with regards to such payment (including any right to set-off) which Octopian may be able to make or effect against the Supplier under these Terms and Conditions.

27. Subcontracting

Octopian agrees that the Supplier may subcontract all or part of its obligations under these Terms and Conditions or any SOW to one of its Service Partners. In such cases, the Supplier shall ensure that its Service Partner fulfils the same obligations as those accepted by the Supplier under these Terms and Conditions.

28. No waiver

The failure or delay in exercising any right or remedy provided by these Terms and Conditions or by law does not constitute a waiver of the right or remedy, nor does it constitute a waiver of any other rights or remedies.

29. Further assurance

Both Parties shall use all reasonable endeavours to perform or procure the performance of all acts and things and execute or procure the execution of any further documents as may reasonably be required from time to time for the purpose of giving the full effect to the provisions of these Terms and Conditions.

29.1 Entire Agreement

These Terms and Conditions, together with any documents referred to herein, constitute the entire agreement and understanding between the

Parties and supersede any previous agreements between the Parties relating to the subject matter of these Terms and Conditions.

29.2 Severance

If any provision of these Terms and Conditions is found by a court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of these Terms and Conditions, which shall remain in full force and effect.

29.3 Counterparts

These Terms and Conditions may be executed in any number of counterparts, each of which, when executed and delivered, shall be considered an original, and all the counterparts together shall constitute the same instrument.

29.4 Third Parties

No term of these Terms and Conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to these Terms and Conditions.

29.5 Governing law

These Terms and Conditions are governed by and construed in accordance with 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'	A framework agreement, its schedules and/or a Master Services Agreement(s) and/or a Statement of Work each with the 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 weekend days) or an official public holiday in the country where the Site is located;
'Charging Summary'	A summary list of incidents or events which is generated by the Supplier at regular intervals to expedite the signing off and payment processes;
'Call Management System' ('CMS')	The electronic tools used by the Parties to manage all activities related to these Terms and Conditions including, but not limited to, incidents, spares, IMACS, pricing, Charging Summaries, etc.;
'Client(s)' or 'Customer(s)'	Octopian's customers;
'Client Contract'	An agreement between Octopian and one of its customers specifying the services to be delivered by Octopian, which Octopian wishes to subcontract in whole or in part to the Supplier;
'Commencement Date'	The date of last signature of these Terms and Conditions;
'Component'	A part of a more complex piece of Equipment. Components that need to be managed are Configuration Items ("CI");
'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 these Terms and Conditions or a related SOW);
'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 these Terms and Conditions or a related SOW;
'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;
'Equipment'	An item of IT hardware, its associated operating system/software and components, whether physical or virtual, whether used exclusively or shared with other third parties, whether owned or leased as a service;
'Equipment Warranty'	The Warranty given by the OEM in respect of any equipment supplied to Octopian and/or the Supplier and in respect of which Octopian's customer, the Supplier and Octopian is a beneficiary;
'Call Management System' ('CMS')	The electronic tools used by the Parties to manage all activities in relation to these Terms and Conditions, including but not limited to incidents, spares, IMACS, pricing, charging summaries, project events, etc.;
'the Supplier Personnel'	The employees, agents, contractors or consultants of the Supplier who shall provide all or part of the Services, whether employed by the Supplier or by one of the Supplier's Service Partners, whether engaged on a full-time or part-time basis;
'Failure'	Loss of ability to operate in accordance with the relevant specifications;
'Fees'	The amount to be paid for the Services as set out in a Pricing Schedule or catalogue of prices;
'Force Majeure'	An unplanned or unintended 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, WiFi equipment, kiosks etc.;

Word(s)	Meaning
'IMAC'	Any activity involving, but not limited to, installations, moves, additions, changes or deletions to Hardware or Software carried out at a site or remotely by an agent in a Network Operations Centre ("NOC") ;
'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'	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 the relevant SOW;
'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 a location pertaining to the Services and the equipment;
"Major Civil Works"	Work required to be done on site that requires specific or specialised personnel or equipment or specific health and safety requirements, such as (without limitation) brickwork, plasterwork, painting, welding, electrical installation, working at height, use of safety equipment, etc.
"Minor Civil Works"	Work required to be done on site that does not require specific or specialised personnel or equipment, such as, but not limited to arrangement of equipment & cables within a cabinet, adding cable to an existing duct, fastening fittings within a cabinet, etc.
'MMC'	a Monthly Maintenance Charge at a pre-agreed rate per month for each piece of equipment;
'Month'	a calendar month;
'OEM'	Original Equipment Manufacturer
'Operational Consumables'	Components or elements that do not require technical expertise and can be readily replaced by the Customer's or Octopian's personnel and which 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;
'Pricing Schedule'	the schedule of Fees payable by Octopian to the Supplier in respect of the Services, as further set out in an Exhibit of the relevant SOW;
'Quality'	The extent to which a product or service produces the intended/required result;
'Requirement', 'Service Requirement'	The specific services to be provided by the Supplier to Octopian pursuant to an SOW;
'RoHS Directive'	European Directive (2002/95/EC) on the Restriction on the use of certain hazardous Substances in Electronic and Electrical Equipment or its equivalent in the country where the Hardware is located;
'Service Hours'	The period during which the Services shall be provided by Octopian at the Site(s) as defined in an Exhibit appended to the SOW;
'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 SOW;
'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 the Exhibit to the relevant SOW;
'Service Partner'	A third party with whom the Supplier has concluded a subcontract agreement whereby the third party undertakes work in specific locations for and on behalf of the Supplier;
'Services'	The services to be provided by the Supplier to Octopian under these Terms and Conditions;
'Site(s)'	The location(s) at which the Supplier will provide the Services to Octopian (s) as specified in Exhibit (d) to the relevant SOW;
'Software'	The digital instructions ("Applications") installed on the Equipment that enables it to perform as intended and which includes, but is not limited to, the OEM's operating systems and the Customer's Applications;
'Spare Component'	Any Component or whole unit that is maintained in a ready state for the purpose of replacing a defective one;
'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'	The Components or elements of Equipment that are subject to wear and tear and require 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 periodic replacement including, but not limited to, print heads, filters, light bulbs and fuses, etc.;
'Third Party IPR Claim'	Any claim that the performance of the Services or receipt thereof by the Supplier in connection with the Equipment that infringes any contractual rights or Intellectual Property of any other person;
'TUPE'	European Council Directive 2001/23/EC, the Transfer of Undertakings (Protection of Employment) Regulations 2006, and any other relevant legislation implemented in any 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's or the existing contractor's Personnel
'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 its equivalent local legislation in the country where the Hardware is located;