

Cloud View – Invoicing Process & Fee Adjustment Guidelines

Octopus Cloud has developed its Octopus Cloud View (as further defined below), which currently consists of a report generator solution, which can be subscribed to for a pre-defined term and used in either (i) a software edition, that is to be installed on end clients' premises; or (ii) a cloud based edition. This document contains the general description of the invoicing process during Customer's Subscription and how Subscription Fees may be adjusted over time if Customer's consumption of Cloud View is subject to change or if the official price list of Octopus Cloud, which is the reference point for any fee calculation, is subject to change. This document is an integral part of Customer's Subscription to Cloud View. Unless specified otherwise, terms defined in Customer's Subscription shall have the same meaning in this document.

Customer hereby acknowledges and agrees that due to the constant and on-going development and enhancement of Cloud View and other products and service offerings provided by Octopus Cloud now or in the future, Octopus Cloud may at its sole discretion at any point in time change, update and modify this Invoicing Process & Fee Adjustment Guidelines in accordance with the terms of the subscription arrangements between Customer and Octopus Cloud.

1. Definitions

- 1.1. **Assets** means, for the purpose of the license grant to Cloud View and for invoicing, all of Customer's hosts which are 'on' (even if operated under Linux) and/or all of Customer's Windows VMS which are 'on'. Please note that all of Customer's active hosts and/or all of Customer's active Windows VMS qualify as relevant 'Assets' even if such hosts or VMS are not included in Customer's SPLA reporting. If Customer has more than one workspace, Octopus Cloud will summarize the number of Assets in different workspaces.
- 1.2. **Cloud View** (formerly SPLA Manager) shall mean the software-solution developed and offered for subscription by Octopus Cloud for customers to conduct a software and hardware scan, to enter service platforms, applications, virtual entities, terminal server and virtual desktops, to get an automatic match with corresponding products and licenses as well as maintenance of license contract or support and a tool based support regarding Software Asset Management audits. Cloud View currently provided to customers consists of a Reporter Module, an Intelligence Module and a Scanner Module. The Reporter Module can be subscribed to for a pre-defined term and used in either (i) a software edition, that is to be installed on end clients' premises; or (ii) a cloud based edition, the Scanner Module may only be subscribed to in a software edition and the Intelligence Module is only made available in a cloud-based online edition (it being understood though that with each query in the central database the logic is on a per-request basis transferred to Customer's systems). For the purpose of Customer's Subscription, "Cloud View" shall mean the software edition(s) Customer wishes to subscribe to, which edition(s) is/are identified in Customer's Subscription Order and all and any updates, upgrades and other later versions thereof which Customer is eligible to receive either under Customer's Subscription and/or any other agreement with Octopus Cloud.
- 1.3. **Customer's Subscription** means the individual contract between the Parties regarding Customer's subscription to Cloud View and related Technical Support, which contract does consist of (i) Customer's Subscription Order in written or online form (if any); and (ii) the General Terms and Conditions (GTC) or the applicable End User License Agreement (EULA), as modified during the Subscription Term in accordance with the GTC/the EULA; and (iii) all other documents which as per the GTCs/the EULA form an integral part of Customer's Subscription.
- 1.4. **Official Price List** means the then-current list of per asset and other prices for Cloud View and related services that Octopus Cloud does officially communicate and publish. The Official Price List are an integral part of Customer's Subscription.
- 1.5. **Subscription Fee** means the fees the Customer will pay to Octopus Cloud or, as the case may be an Octopus Cloud Distribution Partner for using Cloud View during the Subscription Term plus receiving Technical Support (as specified in the Support Terms for Cloud View), which fee is identified in the Subscription Order and based on the number of Assets Customer is managing with Cloud View.
- 1.6. **Subscription Term** means the total period of time Customer's Subscription to Cloud View and Technical Support remain effective. The Subscription Term is specified in the Subscription Order.
- 1.7. **Technical Support** means the support services specified in Octopus Cloud's Cloud View Support Terms, which services are included in Customer's Subscription and covered by the Subscription Fee.

2. Calculation Basis

- 2.1. The Subscription Fee Customer will need to pay for using Cloud View and Technical Support is calculated on the basis of the number of Assets Customer wishes to process with Cloud View and the per item prices identified in Octopus Cloud's Official Price List. This applies to the initial calculation of the Subscription Fees and the re-calculation of such fees as specified in section 5 below.
- 2.2. The Customer is eligible to (i) choose for upfront payment based on a pre-defined fixed number of Assets for the entire Subscription Term; (ii) choose for upfront payment based on a pre-defined fixed number of Assets for each month; or (iii) choose to pay in arrears for each month the actual number of Assets managed in such month (in which case the minimal Subscription Term is twelve (12) months). Depending on the option selected, the per item price as per Octopus Cloud's Official Price List may vary.
- 2.3. The number of Assets Customer is eligible to process as per Customer's Subscription and the number of Assets the Customer does actually process with Cloud View are both indicated in Customer's management console in the frontend of Cloud View (i.e. the number of Assets displayed in the frontend does include all relevant servers under Windows OS and all physical servers irrespective of the operating system they use). The number of Assets so displayed shall serve the basis for any re-calculation as specified in section 5 below.
- 2.4. During the Subscription Term, Subscription Fees may be subject to adjustment because (i) Octopus Cloud's Official Price List as the basis for the calculation may be adjusted (see section 4); and/or (ii) Customer does or wishes to process a higher number of Assets (see section 5).

3. Invoicing & Payment

- 3.1. The Subscription Fees for the edition of Cloud View chosen by Customer plus all other recurring fees shall be invoiced to Customer as specified in section 2.2, i.e. either (i) in advance for the entire Subscription Term; (ii) in advance for every month; or (iii) monthly in arrears. Invoices will normally be submitted as per the first day of a month.

4. Adjustment of Octopus Cloud's Official Price List

- 4.1. Customer acknowledges and agrees that Octopus Cloud may, at its sole discretion and at any point in time, generally change the applicable Official Price List, which serves as the basis for the initial and recurring calculation of Customer's Subscription Fees identified in Customer's Subscription. Any such modification may be communicated by Octopus Cloud and made effective at any point in time.
- 4.2. As from the date the modifications become effective as per Octopus Cloud's communication, the so revised Official Price List will generally operate as the basis for any calculations or recalculations of the Subscription Fees, however with the following exceptions:
 - (i) if the Subscription Term is equal to or less than twelve (12) months, the calculation basis for the Subscription Fee for the remainder of the Subscription Term shall remain unaltered, i.e. the previously applicable Official Price List shall serve as the calculation basis for the remainder of the Subscription Term. The revised Octopus Cloud's Official Price List shall only become relevant for the calculation of the Subscription Fees if Customer wishes to renew its Subscription Order by issuing a new Subscription Order for a subsequent term.
 - (ii) If the Subscription Term is more than twelve (12) months, the calculation basis for the Subscription Fee shall remain unaltered until the next anniversary of Customer's Subscription, i.e. the previously applicable Official Price List shall serve as the calculation basis until the next anniversary of Customer's Subscription. The revised Octopus Cloud's Official Price List shall only become relevant for the recalculation of the Subscription Fees beyond the next anniversary of Customer's Subscription and until further revisions of Octopus Cloud's Official Price List may become effective.

5. Changing number of Assets & Adjustment of Fees

- 5.1. As per the 25th day of each month, Octopus Cloud will determine if the number of Assets Customer is permitted to manage by using Cloud View as per Customer's Subscription does correspond to the number of Assets actually managed by Customer according to the display in Customer's Cloud View front end console/Octopus Cloud's back end console. If Customer should not be able to derive the updated information from the front end console, Customer may need to install the most recent updates.

Octopus Cloud will communicate the relevant number of Assets as per the 25th of the month to Customer for verification. If Customer should not agree to the number of Assets so reported, Customer shall notify Octopus Cloud until the last day of the month at the latest. In the absence of any such notification, the number of Assets reported by Octopus Cloud shall be deemed accepted by Customer.

Depending on the invoicing option chosen by Customer, Octopus Cloud shall be entitled to, based on the number of Assets communicated to Customer (as derived from the display in Customer's Cloud View front end console/Octopus Cloud's back end console), re-calculate and adjust the then-applicable Subscription Fee as specified below, i.e. Octopus Cloud will determine if the number of Assets Customer is permitted to manage by using Cloud View as per Customer's Subscription does correspond to the number of Assets actually managed by Customer. Please note that in the course of 2020, such reporting & verification will be conducted automatically, and Customer will in Cloud View's console be made aware of the need to upgrade its use rights regarding Cloud View.

- 5.2. If Customer has elected monthly payment in arrears, the number of Assets calculated as per section 5.1 shall serve as the basis for the Subscription Fee that will be invoiced for the current month. Though existing support cases do generally not relieve Customer from paying Subscription Fees in a timely manner, Octopus Cloud and Customer shall jointly determine how reporting and invoicing will be handled if hindered by existing and not yet solved support cases, i.e. reporting and invoicing may need to be suspended until the relevant support case is closed or the Parties have agreed to a work-around solution.
- 5.3. If Customer has elected the upfront payment option and if the monthly review as per section 5.1 reveals that the Customer is, by using Cloud View, managing a number of Assets that exceeds the then-current Assets permitted by Customer's Subscription by more than 5%, Octopus Cloud shall be entitled to recalculate the Subscription Fee, based on the number of Assets actually managed by Customer. The increased number of Assets will from this point on be added to Customer's Subscription and Customer's use rights be adjusted accordingly and will be the new fixed number of Assets applicable for the remainder of the Subscription Term, unless Customer again is exceeding this new fixed number of Assets, which again would lead to a recalculation and additional payments.

Customers who have opted for monthly upfront billing will for the following months receive an invoice based on the updated Subscription Fee (under the reservation of any future recalculation of the Subscription Fee). Customers who have opted for upfront billing for the entire Subscription Term will be notified accordingly and will receive for the remainder of the annual period an invoice equal to the pro rata delta between the Subscription Fee already pre-paid by Customer and the recalculated Subscription Fee. Further payment may apply though if the Subscription Fee is being recalculated at a future point in time.

Please note that Customer who have opted to use any of the upfront payment options shall not be eligible to an adjustment of Subscription Fees if Customer is, by using Cloud View, managing a number of Assets lower than the then-current Assets permitted as per Customer's Subscription. The initially fixed number of Assets or any recalculated number of Assets shall operate as Customer's minimum commitment.