Octopus Cloud – General Terms & Conditions Products

NOTICE

THIS IS AN AGREEMENT BETWEEN YOU ("THE CUSTOMER") AND OCTOPUS CLOUD AG, BAARERSTRASSE 145, CH-6300 ZUG, SWITZERLAND ("OCTOPUS CLOUD"). YOU AND OCTOPUS CLOUD EACH ARE A "PARTY" AND TOGETHER ARE REFERRED TO AS THE "PARTIES".

YOU MUST READ AND AGREE TO THE TERMS OF THESE GENERAL TERMS AND CONDITIONS ("THE GTCs") BEFORE THE RELEVANT OCTOPUS CLOUD PRODUCT ("THE OC PRODUCT") OR ANY MODULE THEREOF CAN BE DOWNLOADED, INSTALLED AND/OR ACCESSED AND USED. BY ACCEPTING AND SIGNING AN OFFER FROM OCTOPUS CLOUD, BY ISSUING A WRITTEN SUBSCRIPTION ORDER, BY CLICKING ON THE "ACCEPT" BUTTON OF THESE GTCs AND/OR OF THE ONLINE SUBSCRIPTION ORDER, OR DOWNLOADING, INSTALLING, UPDATING AND/OR ACCESSING AND USING AN OC PRODUCT, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THESE GTCs. IF YOU DO NOT AGREE TO THESE GTCs, THEN YOU SHOULD EXIT THIS PAGE AND/OR REFRAIN FROM ACCEPTING AN OCTOPUS CLOUD OFFER, ISSUING A WRITTEN OR ONLINE SUBSCRIPTION ORDER, DOWNLOADING, INSTALLING, UPDATING, COPYING, ACCESSING OR USING THE OC PRODUCT OR LICENSE KEYS.

IF YOU ARE ACCEPTING THESE GTCs ON BEHALF OF ANOTHER PERSON, COMPANY, OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE GTCs.

1. Subject Matter

These GTCs shall exclusively govern Customer's Subscription to the editions of the OC Product and related Support Services as identified in Customer's Subscription Order. No standard agreements, general terms or terms contained in similar documents provided by Customer (such as purchase orders) shall be applicable to Customer's Subscription to the OC Product.

2. Definitions

2.1. **Affiliate** means, with respect to an entity, any other entity that, directly or indirectly, Controls, is Controlled by, or is under common Control with such entity from time to time but only for so long as such Control exists. "Control" and its grammatical variants for the purpose of this definition means, (i) a general partnership interest in a partnership, (ii) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors, or (iii) the power to direct or cause the direction of the management and policies of such entity whether by contract or otherwise.

2.2. **Assets** means all of Customer's assets which Customer as per Customer's Subscription is entitled to manage by using the relevant OC Product. The term 'Asset' is with regard to the specific OC Product further specified in the relevant Invoicing Process & Fee Adjustment Guidelines.

2.3. **Confidential Information** means all information, documents, records and/or data which the disclosing Party at the time of disclosure has designated to be confidential or which, given its nature and circumstances of disclosure, ought to reasonably be considered confidential. Information is not considered Confidential Information in the event the information in question

  (i) is approved for public release by written agreement of the disclosing party;

  (ii) is already rightfully known to the recipient free of any restriction at the time it is obtained from the disclosing Party;

  (iii) is subsequently disclosed to the recipient lawfully by a third party without imposing any restrictions whatsoever;

  (iv) is or becomes public knowledge: or

  (v) is developed independently by one Party without referring to Confidential Information belonging to the other Party.

2.4. **Customer's Subscription** means the individual contract between the Parties regarding Customer's subscription to the OC Product and related Support Services, which contract does consist of (i) Customer's Subscription Order in written or online form (if any); and (ii) these GTCs, as modified during the Subscription Term in accordance with these GTCs; and (iii) all other documents which as per these GTCs form an integral part of Customer's Subscription.

2.5. **Customer's Use Rights** means the limited use rights Octopus Cloud grants to Customer with regard to the OC Product as specified in section 5.

2.6. **Documentation** means all published specification materials, technical documentation, software and/or service description related to the OC Product (which does include all such material published in the cloud-based editions of the OC Product), such as product descriptions, customer manuals, acceptable use policies (if any), and instructions together with any updates and/or revisions that Octopus Cloud might provide from time to time.

2.7. **Effective Date** means the date on which Customer's Subscription becomes effective, which date is specified in the relevant Subscription Order.

2.8. **Force Majeure** means causes that, as per applicable law, are not foreseeable, beyond a Party's reasonable control and without negligence of the Party with respect to whose obligations such delay and/or failure in performance has occurred ("Force Majeure"), which may include circumstances such as labor disputes from whatever cause arising, acts of war, riots, epidemic or pandemic, governmental orders under emergency or similar law, natural disasters such as floods, fires and earthquakes.

2.9. **Invoicing Process & Fee Adjustment Guidelines** means Octopus Cloud's standard guidelines that apply to the invoicing and, as the case may be, adjustment of the Subscription Fee and Support Fee, which guidelines are officially communicated and published by Octopus Cloud. The Invoicing Process & Fee Adjustment Guidelines are an integral part of Customer's Subscription and may or may not vary depending on the OC Product selected by Customer.

2.10. **Normal Business Hours** means the hours Octopus Cloud is open for business, which hours are from 8.00am until 5.00pm CET on official working days excluding public holidays at Octopus Cloud's offices in Zug, Switzerland.

2.11. **Octopus Cloud Distribution Partner** means a third party which is authorized by Octopus Cloud to distribute the OC Product and, as the case may be, provide certain services related to the OC Product directly to Customer.

2.12. **Octopus Cloud Support Terms** means the then-current support terms with regard to the OC Product that Octopus Cloud does officially communicate and publish. The Octopus Cloud Support Terms are an integral part of Customer's Subscription and may or may not vary depending on the product selected by Customer.

2.13. **Official Price List** means the then-current list of per asset and other prices for the OC Product and related services that Octopus Cloud does officially communicate and publish. The Official Price List are an integral part of Customer's Subscription.

2.14. **OC Product** shall mean the software-solution developed and offered for subscription by Octopus Cloud, which Customer elects to subscribe to. Depending on the type of product, the OC Product may be used in either (i) a software edition, that is to be installed on end clients' premises; and/or (ii) a cloud-based online edition (it being understood though that normally 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, "OC Product" 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.

2.15. **Subscription Fee** means the recurring fees the Customer will pay to Octopus Cloud or, as the case may be an Octopus Cloud Distribution Partner for using the OC Product during the Subscription Term plus (if so specified in the relevant Support Terms) receiving Support Services, which fee is identified in the Subscription Order and based on the number of Assets Customer is managing with the OC Product. Depending on the type of product, another calculation basis may apply, which is further described in the Official Price List and Octopus Cloud's Invoicing Process & Fee Adjustment Guidelines.

2.16. **Subscription Order** means an order based on Octopus Cloud's then current standard order template (in hardcopy or web-based form provided via Octopus Cloud's website or the access page of the cloud-based edition of OC Product) with which Customer orders and subscribes to OC Product and Support Services.

2.17. **Subscription Term** means the total period of time Customer's Subscription to the OC Product and, as the case may be, Support Services remain effective (see section 17.1). The Subscription Term is specified in the Subscription Order.

2.18. **Support Fee** means the recurring fee the Customer will pay to Octopus Cloud for receiving Support Services with regard to the OC Product, which are not included in and covered by the Subscription Fee. Such Support Fee may vary depending on the support option Customer has selected.

2.19. **Support Services** with regard to OC Products, are described in section 8 and Octopus Cloud's Support Terms applicable for the relevant OC Product. Various support options may be available. As per the Support Terms for the relevant OC Product, certain Support Services may be included in the Subscription Fee while other options are only available at an additional Support Fee.

3. The OC Product

3.1. The features and specifications of the various editions of the OC Product are documented and described in the Documentation.

3.2. Customer hereby acknowledges and agrees that due to the constant and on-going development and enhancement of the OC Product 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 the OC Product and its features and functionalities, change or modify the Octopus Cloud Support Terms, increase or decrease the number, type or documentation available in relation to the OC Product, and/or discontinue the distribution, subscription or availability of certain parts, modules, editions of or the entire OC Product.

4. Intellectual Property Rights

4.1. The Customer hereby acknowledges that the OC Product is subject to intellectual property rights which are and shall remain in their entirety with Octopus Cloud, its Affiliates and/or its suppliers (if and to the extent third party components are integrated). Unauthorized copying, use or modification of any portion of the OC Product, or violation of Customer's Subscription may be subject to legal prosecution.

4.2. Customer hereby acknowledges that parts of the OC Product may contain open source software and/or third party software. Customer agrees to review any documentation that accompanies the OC Product or is identified in the Documentation in order to determine which portions of the OC Product are open source software and/or third party software and are licensed under a specific open source software license and/or proprietary license.

To the extent any such license requires that Octopus Cloud provides Customer the rights to copy, modify, distribute or otherwise use any open source software that are inconsistent with the limited rights granted to Customer as per Customer's Subscription, then such rights in the applicable open source software license and/or proprietary third party license shall take precedence over the rights and restrictions granted in these Customer's Subscription, but solely with respect to such open source software and/or the relevant third party software. Customer does acknowledge that any open source software license and/or identified third party license is solely between Customer and the applicable licensor. Customer agrees to comply with the terms of all applicable open source software and/or third party licenses. Copyrights or other intellectual property rights to such open source software or third party software are held by the copyright holders indicated in the copyright notices in the corresponding source files and/or, as the case may be, an appendix to these GTCs.

4.3. All rights to trademarks, brand names, logos and other words and symbols that serve to identify either of the Parties and/or its products and/or services remain with such Party. Either Party shall only be entitled to use any such trademarks, brand names, logos and other words and symbols of the other Party if and to the extent permitted by these GTCs.

5. Customer's Use Rights

5.1. For the duration of the Subscription Term, Octopus Cloud grants to the Customer a worldwide non-exclusive right to use the OC Product solely for its and its Affiliates' business purposes and as specified in the Documentation. The Customer's Use Rights are limited to the number of Assets and/or are subject to other limitations specified in Customer's Subscription Order (which license metrics may be subject to adjustment during the Subscription Term) and are subject to further restrictions and Customer's obligations as specified in Customer's Subscription.

5.2. Customer's Use Rights with regard to the OC Product are non-transferable and may not be sublicensed or used for the benefit of third parties other than Customer's Affiliates and/or Customer's SPLA End Customers, always provided that Customer has subscribed to a sufficient number of Assets and/or any such other metric to fully cover such business.

6. License Compliance

6.1. During the Subscription Term, Octopus Cloud shall have the right to once per calendar year request from Customer a self- certification regarding Customer's use of the OC Product and compliance with the terms of these GTCs, which certification shall be delivered by Customer within a reasonable period of time upon Octopus Cloud's written request.

6.2. Upon receipt of a self-certification (as specified in section 6.1) or in the absence of a removal declaration (as per section 18.1 (iv)), Octopus Cloud shall have the right to upon reasonable prior written notice to Customer audit Customer's use of the OC Product and compliance with these GTCs if so deemed necessary in Octopus Cloud's sole discretion. Customer shall at its expense give reasonable assistance and access to the necessary information, Customer's premises and systems, it being provided that such audit procedure shall not

unreasonably interfere with Customer's business operations. Octopus Cloud reserves the right to carry out any such audit procedure by mandating an external audit firm which shall be subject to reasonable confidentiality arrangements.

6.3. If the self-certification or an audit procedure reveals that Customer is not sufficiently licensed, violating Octopus Cloud's intellectual property rights and/or materially breaches these GTCs, (i) Octopus Cloud shall be entitled to compensation of losses and damages as per the terms of these GTCs and any other rights or remedies Octopus Cloud may have hereunder; (ii) Customer shall bear Octopus Cloud's' reasonable internal and external costs related to such audit procedure.

6.4. If an audit procedure is initiated pursuant to section 18.1 (iv), Customer shall bear Octopus Cloud's reasonable costs related to an audit procedure irrespective of the actual findings revealed during such procedure. Any other claims Octopus Cloud may have remain reserved.

7. Customer's General Obligations

7.1. Customer

(i) will take all actions, preparations and/or precautions which can reasonably be expected from Customer in order to enable Octopus Cloud to meet its obligations related to Customer's Subscription – this will include (but not be limited to) the Customer being responsible for and preparing all information, data and necessary access to such information or data as may be required by Octopus Cloud;

(ii) will use the OC Product within the limits agreed and in accordance with Octopus Cloud's acceptable use policies or similar directives (if any);

(iii) will protect the collection, transmission and input of its data to Octopus Cloud via the internet being within the Customer's responsibility. Generally, no encryption is implemented for the transport of data;

(iv) consents that Customer's standard device information (including but not limited to technical information about Customer's device, system, application software and peripherals such as IP or MAC-address) is used by Octopus Cloud for authentication reasons as well as for optimization of the OC Product for the Customer's benefit;

(v) will not to rent, lease, license, lend, pledge, or directly or indirectly transfer or assign or distribute the OC Product or the access thereto to any third party or to access all or any part of the OC Product to build a competing product or service, unless otherwise agreed in writing between Octopus Cloud and Customer;

(vi) will not to use the access to Octopus Cloud's website and/or user account to the OC Product modify, copy, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the OC Product in any form or media or by any means, unless Octopus Cloud has in advance expressly agreed to any such action in writing and Customer has agreed to additional terms;

(vii) will not attempt to reverse compile or engineer, disassemble or otherwise reduce or extract to human-readable code for all or any part of the OC Product;

(viii) will ensure with all reasonable efforts that the OC Product is not used by its employees and/or its other authorized users for illegal purposes or that any of the data entered by such individuals on behalf of Customer contains illegal content or that users authorized by Customer do cause other damages to Octopus Cloud's OC Product;

(ix) will ensure that Customer's employees and/or its other authorized users safeguard and keep confidential all access credentials with regard to the cloud-based edition of the OC Product and generally comply with the obligations specified in this section 7.1.

7.2. Customer agrees that Octopus Cloud shall be entitled to, without incurring any liability, suspend Customer's access to the OC Product and/or Support Services in the event (i) Customer fails to pay any amounts owed to Octopus Cloud or, as the case may be, to an Octopus Cloud Distribution Partner in relation to Customer's Subscriptions and/or other services provided by Octopus Cloud (see section 10.6; (ii) Customer does not comply with any of the obligations specified in section 7.1. Octopus Cloud shall be entitled to charge Customer for each reactivation of Customer's account a fee of CHF 50 (or the equivalent amount in the lead currency specified in the Subscription Order).

8. Support Services

8.1. If Support Services are included in Customer's Subscription or Customer has elected to subscribe to certain Support Services which are not an integral part of Customer's Subscription to an OC Product, Octopus Cloud shall provide to Customer the services identified in the Octopus Cloud Support Terms. With regard to Support Services, various options may be available.

8.2. If and to the extent Customer has subscribed to a software based on-premises edition of the OC Product, Customer shall as part of Support Services be entitled to periodically receive or download from Octopus Cloud any new versions, updates, patches or fixes of such software-based edition of the OC Product once made officially available by Octopus Cloud to its entire client base.

8.3. If Customer has elected to receive Support Services which are not covered by the Subscription Fee for the relevant OC Product, Octopus Cloud shall be entitled to, in addition to the Subscription Fee, charge Customer a Support Fee as specified in the Official Price List and the Subscription Order. Such Support Fee for Support Services will be invoiced together with the recurring Subscription Fees.

9. Other Octopus Cloud Services

9.1. Installation Support

Upon Customer's request and if so specified in the Subscription Order, Customer may order from Octopus Cloud installation support with regard to the OC Product. If there's certain installation days indicated in the Subscription Order and unless specified otherwise, Customer shall be free to, at its discretion, call such installation support at any it being understood though that Octopus Cloud will need a reasonable lead time to dedicate appropriate resources to Customer.

9.2. Additional Services

Octopus Cloud may provide additional services to Customer in relation to the operation of the OC Product (such as consulting services), which services shall be subject to separate contractual arrangements between the Parties.

10. Subscription and other Fees

10.1. Customer shall pay to Octopus Cloud or, as the case may be, to an Octopus Cloud Distribution Partner the Subscription Fee and the Support Fee specified in the Subscription Order (as modified during the Subscription Term along the terms specified in section 10.7). The Subscription Fee and the Support Fee are calculated as specified in the Octopus Cloud's Invoicing Process & Fee Adjustment Guidelines.

10.2. Other Fees that may apply with regard to installation support or other add-on services are specified in the Subscription Order.

10.3. The fees specified in the Subscription Order do not include applicable VAT and other taxes.

10.4. The Subscription Fees and the Support Fees for the edition of OC Product chosen by Customer plus all other fees that may apply shall be invoiced to Customer as specified in Octopus Cloud's Invoicing Process & Fee Adjustment Guidelines.

10.5. All Octopus Cloud invoices shall become due for payment within fourteen (14) days as from the date of receipt of the invoice. If Customer fails to pay any amount invoiced and not subject to a good faith dispute within that period of time and/or if Customer fails to pay any invoices related to the OC Product as submitted by Octopus Cloud's Distribution Partner, Customer shall be considered in default without further payment reminder from Octopus Cloud.

10.6. Without due payment of the Subscription Fees and/or Support Fees to Octopus Cloud or, as the case may be, to an Octopus Cloud Distribution Partner, Octopus Cloud is not obliged to provide Customer with the OC Product and Octopus Cloud may, without liability, suspend access to the OC Product, Support Services and any related services in case of non-payment of any undisputed amount of the Subscription Fees and/or Support Fees. Octopus Cloud's termination rights as per section 17.3 remain reserved.

10.7. Customer acknowledges and agrees that during the Subscription Term, Subscription Fees and Support Fees may be subject to adjustment in accordance with Octopus Cloud's Invoicing Process & Fee Adjustment Guidelines because (i) Octopus Cloud's Official Price List as the basis for the calculation may be unilaterally adjusted by Octopus Cloud; and/or (ii) Customer does or wishes to process a higher number of Assets.

11. Service and Product Warranty

11.1. Octopus Cloud undertakes to perform all services related to the OC Product (such as Support Services) faithfully and with due care.

11.2. If Support Services are included and covered by the Subscription Fee or Customer has elected to subscribe to Support Services, Octopus Cloud warrants that during the Subscription Term the OC Product will perform in substantial conformance with the Documentation. However, Octopus Cloud shall not be liable under this warranty, (i) if its testing and examination disclose that the alleged defect in or malfunction of the OC Product

does not exist or was caused by Customer's or any third person's misuse, negligence, improper installation or testing, unauthorized attempts to support, unauthorized access to user accounts, inappropriate use of access credentials by Customer's employees or any other users Customer has authorized, of or any other cause beyond the range of the intended use and/or Octopus Cloud's reasonable control; (ii) if an alleged defect in or malfunction of the OC Product was not primarily caused by an error, bug, defect or failure of other software and/or hardware used in conjunction with the OC Product, or by its interaction or use in conjunction with products, technology, software, hardware, equipment or systems not expressly identified in the Documentation; (iii) for any defect in or malfunction of the OC Product which is caused by Customer's breach of any provision of these GTCs, or use of the OC Product contrary to the Documentation or other instructions issued or published by Octopus Cloud, and/or (iv) for any modification or alteration of the OC Product by any other party than Octopus Cloud or any of its subcontractors, agents or other authorized third parties; (v) for planned or unscheduled maintenance, and/or (vi) for a suspension due to Customer's non- or partial payment as per section 10.6.

11.3. If such Support Services are not covered by the Subscription Fee for the relevant OC Product and if Customer elects not to subscribe to Support Services, the warranty specified in section 11.2 shall not apply and Octopus Cloud does provide the OC Product only on an "as is" basis and Octopus Cloud, its Affiliates and/or suppliers make and Customer receives no warranties, express or implied, statutory or otherwise, and Octopus Cloud, its Affiliates and/or its suppliers specifically disclaim any implied warranty of merchantability, satisfactory quality, compatibility with other software and/or devices, fitness for a particular purpose, freedom from errors and/or non-infringement and their equivalents.

11.4. The output of the OC Product to a certain degree depends on the input provided by the Customer and even though Octopus Cloud uses reasonable efforts to keep the OC Product up to date to the development on the market and known initiatives of the market participants, Octopus Cloud cannot warrant or guarantee that the output, results and/or recommendations generated by and derived from the OC Product will meet Customer's requirements and/or fully correspond with Customer's suppliers review points, license compliance reviews and/or audit results. Hence, all output, results and/or recommendations generated by and derived from the OC Product are delivered "as is" and Octopus Cloud does not accept any additional warranty with regard to the OC Product or for correctness, completeness or accuracy of any of its output.

11.5. Furthermore, Octopus Cloud does not warrant that the OC Product (be it in the cloud-based or the software based on-premises edition) will be uninterrupted or error-free. Octopus Cloud shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

11.6. Octopus Cloud shall accept a warranty under this section 11 only to the extent (i) it has received a written warranty claim describing in sufficient detail the nature of the defect; and (ii) such defect can reasonably be reproduced and investigated upon.

11.7. Octopus Cloud's sole obligation hereunder shall be, in Octopus Cloud's discretion, to replace or otherwise circumvent any defective portion of the OC Product with any such portion which substantially conforms to Octopus Cloud's applicable Documentation or to repay to Customer an amount equal to the price paid by Customer to Octopus Cloud for the defective portion of the OC Product during the last month.

11.8. This section 11 states Customer's sole and exclusive rights and remedies, and Octopus Cloud's (including Octopus Cloud's Affiliates', Distribution Partners', employees', subcontractors', resellers', agents' and/or other authorized third parties') entire obligations and liability, for any breach of warranty. Other than specified herein, Customer receives no warranties, express or implied, statutory or otherwise, and Octopus Cloud, its Affiliates and/or its suppliers specifically disclaim any implied warranty of merchantability, satisfactory quality, compatibility with other software and/or devices, fitness for a particular purpose, freedom from errors and/or their equivalents.

12. Availability

Unless specified otherwise in the relevant Support Terms for the relevant OC Product, Octopus Cloud shall use commercially reasonable endeavors to make the cloud-based editions of the OC Product available to Customer at least during Normal Business Hours, except for (i) unscheduled maintenance performed during Normal Business Hours; and (ii) upgrading to new versions. Octopus Cloud will give Customer as much advance notice regarding scheduled maintenance windows and other circumstances that may have an impact on the availability of the OC Product (even if scheduled outside of Normal Business Hours) as is reasonably practicable (e-mail notification shall suffice).

13. Legal Warranty

13.1. Octopus Cloud represents and warrants that it has all necessary rights and full authority to enter into Customer's Subscription and to perform its obligations under such arrangements without violating or infringing any third party intellectual property rights.

13.2. Should a third party claim that its intellectual property rights are infringed through the OC Product, Octopus Cloud shall, at its own expense, defend or settle any suit or proceeding that is instituted against Customer shall pay all reasonable costs awarded therein against Customer or agreed upon in settlement by Octopus Cloud; provided that Customer (i) gives Octopus Cloud immediate notice in writing of any such suit, proceeding or threat thereof, (ii) permits Octopus Cloud sole control, through counsel of Octopus Cloud's choice, to defend and/or settle such suit and (iii) gives Octopus Cloud all the needed information, assistance and authority, at Octopus Cloud's expense, to enable Octopus Cloud to defend or settle such suit.

13.3. The above provision shall not apply to and Octopus Cloud shall have no liability or obligation for any infringement arising from: (i) any modification, servicing or addition made to the OC Product by anyone other than Octopus Cloud or any of its Affiliates, Distribution Partners, employees, subcontractors, resellers, agents and/or other authorized third parties, (ii) the use of the OC Product as a part of or in combination with any devices, parts or software not provided by Octopus Cloud in its Documentation, (iii) the use of such OC Product to practice any method or process which does not occur wholly within the OC Product; (iv) the use of other releases than the most current version of the OC Product; and (v) any use of the OC Product outside the limited scope of Customer's Subscription. The above exclusions apply to the extent that the infringement would have been avoided if Customer would not have acted in any manner as specified in subsections (i) to (v) above.

13.4. In the event that the use of the OC Product subscribed to by the Customer becomes enjoined or, in Octopus Cloud's reasonable opinion is likely to become, the subject of a claim that it infringes the intellectual property rights of any third party, or in the event Octopus Cloud wishes to minimize its potential liability hereunder, Octopus Cloud may at its sole option and expense, either: (i) procure the right for the Customer to continue using the OC Product, (ii) replace or modify the OC Product or any part thereof such that it becomes non-infringing, or (iii) terminate Customer's rights and obligations with respect to the allegedly infringing part of the OC Product and refund to Customer the amount which Customer has paid for such part of the solution.

13.5. This section 13 states Octopus Cloud's (including Octopus Cloud's Affiliates', Distribution Partners', employees', subcontractors', resellers', agents' and/or other authorized third parties') total responsibility and liability, and the Customer's sole remedy, for any actual or alleged infringement of any intellectual property right for the OC Product delivered hereunder or any part thereof and is in lieu of and replaces any and all other express, implied or statutory warranties or conditions regarding infringement.

13.6. Customer shall indemnify, protect, defend and hold harmless Octopus Cloud, (including Octopus Cloud's Affiliates, Distribution Partners, employees, subcontractors, resellers, agents and/or other authorized third parties) from and against any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments and expenses, including without limitation, reasonable attorneys' fees, court costs and other legal expenses, arising from or in connection with Customer's breach of its obligations under Customer's Subscription.

14. Customer Data and Data Protection

14.1. Customer owns all rights, title and interest in and to all of its data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such data provided by Customer. All data based in the OC Product as provided by Octopus Cloud remains the property of Octopus Cloud.

14.2. Unless otherwise agreed in writing, Octopus Cloud shall be entitled to rely on all data, information and materials provided by Customer without verifying the same, and Customer warrants and represents the accuracy, completeness and quality for any such item.

14.3. In the context of providing the OC Product and related services to the Customer, Octopus Cloud may collect personal data and especially Customer data provided by the Customer itself, obtain such data from third parties, store, process and pass it on to third parties, while continuously observing the applicable data protection legislation. Personal data may be used by Octopus Cloud, its subcontractors, agents and/or other authorized third parties especially in order to (i) to fulfill Octopus Cloud's contractual obligations related to Customer's Subscription and to provide Support Services to Customer; (ii) to foster and administer the business relationship between Octopus Cloud and Customer; (iii) to prevent unlawful use of the OC Product or any such use that is in noncompliance with this Customer's Subscription; (iv) for the purpose of determination of the applicable level of the Subscription Fees, billing and/or collection purposes and/or (v) for non-personal statistical purposes (such as pages visited, time spent on a specific website or all websites, number of visits, date and time of visit) and for the general improvement of Octopus Cloud's OC Product, websites and/or services.

14.4. Octopus Cloud may share aggregate information derived from Customer's use of the OC Product with its trusted affiliates, partners and advertisers for statistical and analyzing purposes, however such information shall be anonymized in such manner that the information can no longer be attributed or related back to Customer or a specific data subject without the use of additional information.

14.5. Octopus Cloud shall with reasonable efforts maintain, in accordance with applicable law and industry standards, appropriate administrative, organizational, physical and technical safeguards to ensure the protection of the security, confidentiality and integrity of Customer's data and shall perform a daily back-up, but Octopus Cloud does not provide or warrant archiving or storage of Customer's data. Customer must safeguard its own back-up of any data Customer wishes to store.

14.6. For further information regarding protection of personal data please consult Octopus Cloud's Privacy Policy. Upon request, Octopus Cloud shall enter into a Data Processing Addendum based on its standard templates.

15. Liability

15.1. Irrespective of the legal grounds for such claim, neither Octopus Cloud nor its Affiliates shall, except as provided below, be liable to the Customer and/or its Affiliates for (i) for damages caused to the other Party as a result of slight negligence; (ii) any acts or omission and/or any act or omission by its auxiliary persons and/or subcontractors, agents or other authorized third parties; and (iii) any indirect or consequential, exemplary, punitive or special damages or other damages or losses of profit etc. of any kind whatsoever or for loss of or recovery of data, or any damages caused by corrupt or inadequate data, defects, viruses, poor data quality, omissions or inaccuracies in data arising out of or in connection with the OC Product.

15.2. The exclusions and limitations set forth above shall not apply:

(i)   to claims and/or losses based on death and/or personal injury;

(ii)   to claims and/or losses based on Octopus Cloud's gross negligence and/or willful misconduct;

(iii)   to claims and/or losses based on fraudulent misrepresentation;

(iv)   if and to the extent such limitation or exclusion is not permitted by applicable law.

15.3. Neither Party shall be liable nor be deemed in default for any delay and/or failure in performance of its obligations under Customer's Subscription to the extent such failure and/or delay is the result of (i) the other Party or any third party (with the exception of subcontractors); (ii) an event of Force Majeure , provided that the non-performing and/or delayed Party could not have prevented the failure or delay in performance of its obligations by using reasonable precautions.

The Party affected by an event of Force Majeure, upon giving prompt notice to the other Party, shall be excused from performance of its obligations related to Customer's Subscription on a day-today basis only to the extent of such prevention, restriction or interference and provided that the Party so affected shall use its commercially reasonable efforts to avoid or remove such cause of non- or late performance and to minimize the consequences thereof and both Parties shall resume performance hereunder forthwith upon removal of such cause.

16. Confidentiality

16.1. Each Party shall keep Confidential Information of the disclosing Party in strict confidence and shall safeguard such Confidential Information from unauthorized disclosure, reproduction or use no less rigorously than the stricter of the standards that would apply to its own Confidential Information of similar nature and the standards required by applicable law and regulatory requirements.

16.2. Both Parties agree not to disclose Confidential Information to any third parties without either Party's prior written consent. However, both Parties shall be entitled to on a "need-to-know" basis share Confidential Information with its employees, subcontractors, agents and/or other authorized third parties to the extent such entities or individuals need to know such information in connection with Customer's Subscription.

16.3. Notwithstanding section 16.2, each Party may make available Confidential Information to a third party, provided such third party is subject to confidentiality obligations at least as stringent as those applicable to the Parties hereunder and for the purpose and to the extent necessary (i) for the performance of the receiving Party's rights and obligations under Customer's Subscription; or (ii) to permit a third party to perform legal, accounting or audit services for or in relation to a Party in assessing its business operations.

16.4. A Party may disclose the Confidential Information of the other Party to the extent, but only to the extent, required by law, regulation, rule, act, order, or request of any court, governmental authority or agency, self-regulatory organization or exchange, including but not limited to any subpoena, civil investigative demand, or discovery request or demand, provided such Party gives the other Party (to the extent not prohibited from doing so) prompt written notice and cooperation in seeking to limit the disclosure to the greatest extent possible, consistent with the legal obligations of the Party required to disclose the Confidential Information, and in obtaining confidential treatment for such information, if available.

16.5. Each Party shall immediately notify the other Party if it becomes aware of

(i) any potential disclosure, access to or use of any Confidential Information in breach of these GTCs;

(ii) any unauthorized intrusion into systems containing Confidential Information; and

(iii) any disclosure of any Confidential Information where the purpose of such disclosure does not have any apparent correlation with Customer's Subscription.

Both Parties will give reasonable assistance to the other in order to prevent such breach of confidentiality and/or limit the consequences thereof.

16.6. The confidentiality obligations specified in this section 16 will continue to apply even after termination or expiration of Customer's Subscription.

17. Term and Termination

17.1. Subscription Term

Customer's Subscription enters into force at the Effective Date (as set out in the Subscription Order) and will continue in effect until the expiry of the Subscription Term specified in the Subscription Order or until terminated as specified below in section 17.3.

17.2. No Automatic Renewal

Customer's Subscription is not subject to automatic renewal as per the end of the Subscription Term. If Customer wishes to renew its Subscription, a new Subscription Order must be placed with Octopus Cloud.

17.3. Termination for Cause

Notwithstanding any of the provisions of these GTCs, Customer's Subscription may be terminated by either Party at any time and with immediate effect by issuing a written notice to the other Party

(i) upon any material and persistent breach of Customer's Subscription in such manner, that the terminating Party may not reasonably be expected to continue to be bound to Customer's Subscription, provided however that the Party in breach has failed to remedy such breach within a reasonable period of time after receipt of a written notice specifying the nature of the breach. A Party may refrain from granting a reasonable period of time for remedy if and to the extent such breach from an objective point of view is not reasonably to be considered capable of remedy;

(ii) in the event of insolvency of the other Party as well as the initiation of bankruptcy proceedings, a moratorium on debt enforcement or similar proceedings (including rejection thereof due to lack of assets) against the other Party;

(iii) if Octopus Cloud has unilaterally altered or modified either its Official Price List (as specified in sections 10.7 and 20.7), the Octopus Cloud Support Terms, the Invoicing Process & Fee Adjustment Guidelines, Octopus Cloud Privacy Policy and/or the OC Product or any portion thereof (as specified in section 3.2) in disfavor of the Customer and in such manner, that Customer may not reasonably be expected to continue to be bound to Customer's Subscription.

The following events shall, for the purpose of this section, be considered non-exhaustive examples for a „material breach" of Customer's Subscription:

(i) Customer or any of Customer's Affiliates, directly or indirectly, violate Octopus Cloud's intellectual property rights related to the OC Product or attempt to register in any way any of the trademarks, alone or in combination with other marks, names or symbols, or in any way challenge or attack the Octopus Cloud's use, registration or ownership of any of the Octopus Cloud trademarks or intellectual property rights; and/or

(ii) if the other Party breaches any applicable laws, regulations, governmental, quasi-governmental or regulatory rules, orders, decrees, guidelines, codes of best practice or technical, safety or other standards which are related to the fulfilment of Customer's Subscription.

18. Consequences of Termination/Expiry of Customer's Subscription

18.1. Upon expiry or termination of Customer's Subscription

(i) Customer's Use Rights cease to exist and Customer shall no longer make use and benefit from the OC Product;

(ii) the Customer shall pay all amounts due as well as all open amounts provided for the Subscription Order, plus related taxes and expenses within 30 days following the date of receipt of Octopus Cloud's final invoice;

(iii) Customer's access to all relevant user accounts shall be deactivated;

(iv) Customer shall uninstall or delete all copies of such software and any and all intellectual property provided by Octopus Cloud to Customer (if and to the extent Customer has subscribed to the on-premises software edition of the OC Product) and shall issue a self-declaration of removal duly signed by any of Customer's authorized representatives within thirty (30) days as from the receipt of Octopus Cloud's standard declaration form. If Customer should fail to issue such declaration in a timely manner, Octopus Cloud shall be entitled to request a license audit as specified in section 6.2, the cost of which shall be borne by Customer irrespective of the actual findings revealed during such procedure. Any other claims Octopus Cloud may have remain reserved ;

(v) Octopus Cloud shall, in the event of a termination for cause by Customer prior to the end of the Subscription Term, refund to Customer the unused portion of any prepaid Subscription Fees and/or Support Fees.

18.2. Expiry or termination of Customer's Subscription shall

(i) not prejudice or affect any right of action, remedy, or liability which shall have accrued prior to or as a consequence of such termination or expiry; and

(ii) not affect the provisions of these GTCs which, given their nature, shall survive such termination or expiry (such as the provisions in sections 4.1 and 16).

19. Marketing

19.1. Octopus Cloud shall, upon prior consent from Customer, be entitled to (i) use Customer's name as a reference, be it orally or in any written publication no matter in what form or media (such as Octopus Cloud's customer reference lists on its website and sales presentations); (ii) upon prior consultation with Customer use Customer to elaborate and publish a customer success story, customer interview or similar marketing vehicle.

19.2. For the sole purpose of the marketing initiatives described above, Octopus Cloud shall hereby be authorized to, during the Subscription Term, use Customer's trademarks, brand names, logos and other words and symbols, it being understood that any such use shall be in compliance with Customer's branding and similar guidelines communicated to Octopus Cloud in writing.

20. Miscellaneous

20.1. Customer's Subscription shall not constitute or be deemed to constitute between the Parties a joint venture, partnership, employment relationship or staff loaning.

20.2. Customer shall not assign Customer's Subscription or delegate any of its rights, duties or obligations thereunder without the prior written consent of Octopus Cloud. Octopus Cloud may assign Customer's Subscription or its rights, interests and obligations thereunder to (i) Affiliates; and/or (ii) another party in connection with a merger with or acquisition by or sale of all of its assets. Customer's Subscription shall be binding upon any successor in interest or title of the Parties.

20.3. Octopus Cloud is entitled to with regard to the fulfillment of its obligations related to Customer's Subscription contract with and use subcontractors, agents and other authorized third parties. In particular, in certain cases (SAM and/or SPLA Business), certain services such as Tier 1 Support may be provided by an Octopus Cloud Distribution Partner.

20.4. If Customer contracts with independent agents, Octopus Cloud does not make any representation or accepts no commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party service or product purchased or otherwise subscribed to by Customer. Octopus Cloud does not endorse or approve any third-party website nor the content of any of the third-party website made available via the OC Product.

20.5. Regardless of any disclosure made by Customer to Octopus Cloud of an ultimate destination of the OC Product and, notwithstanding anything contained in Customer's Subscription to the contrary, Customer agrees to comply with all applicable local laws, regulations, and export requirements in connection with Customer's use of the OC Product as permitted by Customer's Subscription.

20.6. Additions, modifications, supplements and/or amendments to Customer's Subscription (including this section 20.6) cannot be made except if made in writing and if authorized by both Parties.

20.7. Notwithstanding section 20.6, Octopus Cloud shall be entitled to, upon prior notification to Customer but at its sole discretion unilaterally modify (i) the Octopus Cloud Support Terms; (ii) the Invoicing Process & Fee Adjustment Guidelines; (iii) the Octopus Cloud Privacy Policy; (iv) its Official Price List (see section 10.7); and/or (v) the OC Product and related information or documentation (see section 3.2).

20.8. At no time shall any failure or delay by either Party in enforcing any provisions, exercising any option, or requiring performance of any provisions, be construed to be a waiver of same.

20.9. All notifications of termination, adjustments, amendments and supplements regarding Customer's Subscription must be sent to the addresses for notifications specified below:

If to Octopus Cloud:

Octopus Cloud AG
Baarerstrasse 145
P.O. Box
CH-6300 Zug
SWITZERLAND

If to Customer:

as specified in the Subscription Order

Notifications sent to the proper addressee(s) shall be deemed to have been made as of the date of delivery as evidenced by a return receipt.

20.10. If any provision of Customer's Subscription is for any reason held to be invalid, illegal or unenforceable, the remaining provisions shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a valid, legal and enforceable provision that to the highest extent reasonably possible achieves the original intention of the Parties. This section shall apply accordingly if Customer's Subscription is silent on an issue to be resolved.

20.11. The Octopus Cloud Support Terms, the Invoicing Process & Fee Adjustment Guidelines, Octopus Cloud's Privacy Policy and Octopus Cloud's Official Price List in their then-applicable version are an integral part of these GTCs and Customer's Subscription.

21. Governing Law and Forum

21.1. Customer's Subscription shall exclusively be governed and construed in accordance with the substantive **laws of Switzerland**, whereby (i) international conventions, including the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) and/or (ii) standard conflict of law rules are hereby excluded from application to Customer's Subscription.

21.2. The ordinary courts of the Canton of Zug shall have exclusive jurisdiction with regard to all disputes arising from or in connection with Customer's Subscription. **The place of jurisdiction is Zug/Switzerland**.