

TERMS AND CONDITIONS FOR THE DESIGN AND DEVELOPMENT OF SOFTWARE

Octavia Information Systems Ltd, ('Octavia') is a United Kingdom limited company (No. 03496224) whose registered office is at: WTG Building, 90 Union Street, London, SE1 0NW. Octavia is pleased to set out the Terms and Conditions which will apply to the work we do for you ('the Customer'). These Terms and Conditions together with the Booking Form (once signed by both parties) form the contract ('the Contract') between us. In the event of any term or condition in these Terms and Conditions conflicting with a term or condition in the Booking Form then the latter will prevail. Please note that any project proposal sent to the Customer does not form part of the Contract and shall not in any way supersede, alter or vary the Contract between Octavia and the Customer. If at any time the Customer has any questions in connection with any part of the Contract or Octavia's work please let Octavia know.

Octavia has agreed to design and write certain software to meet the Customer's requirements and to provide certain services upon the terms and conditions of these Terms and Conditions.

1 Definitions

1.1 In these Terms and Conditions unless the context otherwise requires:

'Acceptance Date' means the date that the Customer accepts (or is deemed to accept) the Software in accordance with clause 6 below

'Acceptance Tests' 'First Repeat Acceptance Tests' And 'Second Repeat Acceptance Tests' means the acceptance tests to be implemented by the Customer in accordance with clause 6 below

'Actual Delivery Date' means the actual date that the Software and Software Documentation are delivered and installed by Octavia in accordance with clause 5 below

'Charges' mean the Charges to be levied by Octavia in respect of the Contract Works in accordance with clause 7 below

'Completion Date' means the date specified in the Booking Form (as the same may be revised in accordance with these Terms and Conditions) by which Completion of the Contract Works is to be achieved

'Completion of the Contract Works' means the passing by the Software of the Acceptance Tests the First Repeat Acceptance Tests or the Second Repeat Acceptance Tests (as the case may be)

'Contract Works' means the works to be undertaken by Octavia pursuant to the Contract

'Customer Requirement' means the written statement prepared by or on behalf of the Customer and set out in the Booking Form indicating the business or other application(s) to be computerised and the functional and performance criteria that the Software must meet

'Detailed Specification' means the written specification of the Software containing, inter alia, the information set out in the Booking Form to be prepared in accordance with clause 3 below and as the same may be altered from time to time pursuant to clause 11.6 below

'Equipment' means the computer system(s) that the Customer specifies identified in the Booking Form

'Phases' means the numbered stages for the implementation of the Contract Works described in the Timetable

'Representative' means either of the representatives to be nominated respectively by Octavia and the Customer in accordance with clause 8 below

'Services' means the provision by Octavia of services in respect of delivery and installation in accordance with clause 5 below

'Site' means the address for the delivery and installation of the Software and Software Documentation specified by the Customer and set out in the Booking Form

'Software' means the programs to be designed and written by Octavia pursuant to the Contract whether a complete piece of Software or code to modify third party program

'Software Documentation' means the instruction manuals user guides and other documentation in respect of the Software identified in the Booking Form and as the same may be altered from time to time pursuant to clause 11.6 below

'Staff' means the persons identified in the Booking Form including any replacements made by Octavia pursuant to clause 9 below

'Timetable' means the timetable specifying the dates for the completion of each of the Phases of the Contract Works set out in the Booking Form as the same may be altered from time to time pursuant to either clause 3 or 11 below

"Working Documents" means any documents, computer files relating the Software including but not limited to source code files which may be used or created during the Contract Works.

2 Octavia's undertaking



- 2.1 In consideration of the payment by the Customer of the Charges to be levied by Octavia in accordance with clause 7 below and subject to the terms and conditions of the Contract Octavia hereby undertakes:
- 2.1.1 to design and write the Software for use with the Equipment;
 - 2.1.2 to design and write the Software Documentation for use in association with the Software;
 - 2.1.3 to provide the Services; and
 - 2.1.4 to use its best endeavours to achieve Completion of the Contract Works by the Completion Date.

3 Preparation and approval of the Detailed Specification

General

- 3.1 The procedure for the preparation and approval of the Detailed Specification will depend on whether the Charges are to be levied on a 'Man day' or a 'Fixed Price' basis (see clauses 3.3 and 3.4 respectively).
- 3.2 Unless specifically provided for in the Detailed Specification then any aspect of the Software or Software Documentation which is open to interpretation (including but without prejudice to the generality of the foregoing any aspect of the Software that is technical procedural practical mechanical visual aesthetic or design related) will be interpreted by Octavia as they see fit and the Customer agrees to accept Octavia's interpretation. Should the Customer then request any further modification of the Software, Software Documentation or Detailed Specification then they will use the procedure in clause 11.

Man day basis

- 3.3 If the Booking Form specifies that the Charges are to be levied on a Man day basis then the following procedure for the preparation and approval of the Detailed Specification shall apply:
- 3.3.1 Should the approved Detailed Specification not be contained within the Booking Form then forthwith upon execution of the Contract Octavia shall commence in collaboration with the Customer the preparation of the Detailed Specification on the basis of the Customer Requirement and the Customer shall provide to Octavia all information and other documents reasonably requested by Octavia for this purpose.
 - 3.3.2 Octavia shall use all reasonable endeavours to complete the preparation of the Detailed Specification by the date set out opposite Phase 1 in the Timetable or as soon thereafter as is possible.
 - 3.3.3 Forthwith upon completion of the Detailed Specification Octavia shall submit the same for approval by the Customer.
 - 3.3.4 The Customer shall within fourteen [14] days (or such time as may be agreed by the parties) of receipt of the Detailed Specification by notice served upon Octavia either approve the same or respond to Octavia with such comments and/or requests for amendment as it shall reasonably judge appropriate. If the Customer fails to approve the Detailed Specification or respond with comments and/or requests for amendment within the said period it shall be deemed to have approved the Detailed Specification.
 - 3.3.5 Octavia shall take account of all reasonable comments and/or requests for amendment received from the Customer pursuant to clause 3.3.4 above and shall incorporate the same in a revised version of the Detailed Specification to be prepared and delivered to the Customer as soon as is reasonably possible.
 - 3.3.6 The process described in clauses 3.3.4 and 3.3.5 above shall be repeated until such time as the Customer shall have approved (or shall be deemed to have approved) the Detailed Specification.
 - 3.3.7 If the Customer requires an amendment to the Detailed Specification to take account of any application function or performance criteria not specified in the Customer Requirement then Octavia shall be entitled to make such revision to the Timetable and the Completion Date as it shall in the circumstances reasonably judge necessary.
 - 3.3.8 The Customer agrees that when a delay in the Customer's input in the form of decisions or meetings takes place for whatever reason at any point during or prior to the Contract Works, a revision to the Time Table and therefore the delay of the Completion Date, whether or not it is of the essence, will be allowed on a pro rata basis and the Customer also agrees that at Octavia's reasonable discretion such revised time may be extended to incorporate any additional delays resulting from the said delay in the Customer's input.
 - 3.3.9 Octavia and the Customer agree to use all reasonable endeavours to complete the process of approval of the Detailed Specification by the date set out opposite Phase 2 in the Timetable or as soon thereafter as is possible.
 - 3.3.10 The Detailed Specification may be modified or altered in accordance with Cause 11.

Fixed Price basis

- 3.4 A Fixed Price can only be provided by Octavia when a Detailed Specification exists. If the Booking Form specifies that the Charges are to be levied on a Fixed Price basis then the following procedure for the preparation and approval of the Detailed Specification shall apply:



- 3.4.1 Should the approved Detailed Specification not be contained within the Booking Form the Customer may commission Octavia to prepare the Detailed Specification on a Consultancy basis using a separate Consultancy Agreement or the Customer shall prepare the Detailed Specification in accordance with the remainder of this clause 3.4.
- 3.4.2 Forthwith upon execution of the Contract the Customer shall commence the preparation of the Detailed Specification on the basis of the Customer Requirement and Octavia shall provide to the Customer all information reasonably requested by the Customer for this purpose.
- 3.4.3 The Customer shall use all reasonable endeavours to complete the preparation of the Detailed Specification by the date set out opposite Phase 1 in the Timetable or as soon thereafter as is possible.
- 3.4.4 Forthwith upon completion of the Detailed Specification the Customer shall submit the same for approval by Octavia.
- 3.4.5 Octavia shall within fourteen [14] days (or such time as may be agreed by the parties) of receipt of the Detailed Specification by notice served upon the Customer either approve the same or respond to the Customer with such comments and/or requests for amendment as it shall reasonably judge appropriate. If Octavia fails to approve the Detailed Specification or respond with comments and/or requests for amendment within the said period it shall be deemed to have approved the Detailed Specification.
- 3.4.6 The Customer shall take account of all reasonable comments and/or requests for amendment received from Octavia pursuant to clause 3.4.4 above and shall incorporate the same in a revised version of the Detailed Specification to be prepared and delivered to Octavia as soon as is reasonably possible.
- 3.4.7 The process described in clauses 3.4.5 and 3.4.6 above shall be repeated until such time as Octavia shall have approved (or shall be deemed to have approved) the Detailed Specification.
- 3.4.8 If the Customer requires an amendment to the Detailed Specification to take account of any application function or performance criteria not specified in the Customer Requirement then Octavia shall be entitled to make such revision to the Timetable and the Completion Date as it shall in the circumstances reasonably judge necessary.
- 3.4.9 The Customer agrees that when a delay in the Customer's input in the form of decisions or meetings takes place for whatever reason at any point during or prior to the Contract Works, a revision to the Time Table and therefore the delay of the Completion Date, whether or not it is of the essence, will be allowed on a pro rata basis and the Customer also agrees that at Octavia's reasonable discretion such revised time may be extended to incorporate any additional delays resulting from the said delay in the Customer's input.
- 3.4.10 Octavia and the Customer agree to use all reasonable endeavours to complete the process of approval of the Detailed Specification by the date set out opposite Phase 2 in the Timetable or as soon thereafter as is possible.
- 3.4.11 The Detailed Specification may be modified or altered in accordance with Cause 11.

4 Writing of the Software and Software Documentation

- 4.1 Forthwith upon the approval (deemed or express) by the Customer (or Octavia as is required) of the Detailed Specification pursuant to clause 3 Octavia shall commence the writing of the Software and the Software Documentation upon the basis of and in compliance with the Detailed Specification.
- 4.2 Octavia shall use all reasonable endeavours to complete the said writing by the date set out opposite Phase 3 in the Timetable or as soon thereafter as is possible.
- 4.3 Depending upon the type of Software Documentation specified, it may not be possible for its delivery to take place at the same time as the associated Software. Technical documentation will require the Software to have been in operation for some time before all aspects to be covered in the documentation can be assessed.

5 Delivery and installation

- 5.1 Octavia shall use all reasonable endeavours to deliver the Software and Software Documentation to the Site and install the Software on the Equipment by the date(s) set out opposite Phase 4 in the Timetable or as soon thereafter as is possible.

6 Testing, acceptance and sign-off

- 6.1 On or before the date(s) set opposite Phase 4 in the Timetable the Customer shall, if requested, submit to Octavia:
 - 6.1.1 test data suitable to assess whether the Software operates in accordance with the Detailed Specification; and
 - 6.1.2 the results it expects to obtain from the operation of the Software on such test data.
- 6.2 Octavia shall by notice upon the Customer within two [2] days (or such time as may be agreed by the parties) of receipt of the test data and results either approve or reject the same. Octavia shall only be entitled to reject the test data and/or expected results upon the basis that (and by detailing the manner in which) either or both of them require the



- Software to operate in a manner not provided for by the Detailed Specification. Octavia shall be deemed to have approved the test data and expected results if it neither approves nor rejects them within the said two [2] days (or such time as may be agreed by the parties).
- 6.3 The Customer shall forthwith upon receipt of a rejection by Octavia pursuant to clause 6.2 above make all such alterations to its test data and/or expected results as shall in the circumstances be necessary and shall resubmit the same for approval by Octavia. The provisions of clause 6.2 above and this clause shall apply mutatis mutandis until such time as Octavia shall approve (or be deemed to approve) the test data and expected results.
 - 6.4 The Customer shall implement the Acceptance Tests within two [2] days (or such time as may be agreed by the parties) of the approval (deemed or express) by Octavia of the test data and expected results pursuant to clause 6.2 above. If the Customer shall fail so to do then upon the expiry of such period the Software shall be deemed to have passed the Acceptance Tests.
 - 6.5 The Customer shall give Octavia not less than two [2] days (or such time as may be agreed by the parties) notice of the date and time at which it will implement the Acceptance Tests at the Site. The Representative of Octavia and the Staff shall be entitled to attend such tests.
 - 6.6 The Customer shall accept (and in default shall be deemed to accept) the Software upon the date that they pass (or pursuant to clause 6.4 above are deemed to have passed) the Acceptance Tests. The Customer shall then sign-off the Software pursuant to clause 6.10.
 - 6.7 Regardless of whether procured upon a Fixed Price or Man day basis; if the Software fails the Acceptance Tests due to problems inherent to the Software and not any other issue with the Equipment or Acceptance Tests procedure, then Octavia shall forthwith implement free of charge such alterations or modifications to the Software and the Software Documentation as it shall see fit in the circumstances reasonably judged necessary and in sufficient time to make possible the repetition of the Acceptance Tests by the Customer in the presence of Octavia's Representative and Staff within seven [7] days (or such time as may be agreed by the parties) of the date of failure (the 'First Repeat Acceptance Tests'). Octavia shall not be entitled to charge the Customer for the cost of attendance (by its Representative and Staff) at the First Repeat Acceptance Tests.
 - 6.8 If the Software fails the First Repeat Acceptance Tests then the Customer may at its discretion:
 - 6.8.1 require Octavia by written notice to forthwith implement such further alterations or modifications to the Software and Software Documentation free of charge as Octavia shall reasonably judge necessary to enable the Software to pass repeat Acceptance Tests (the 'Second Repeat Acceptance Tests'). The Second Repeat Acceptance Tests shall be carried out by the Customer in the presence of Octavia's Representative and Staff. Octavia shall not be entitled to charge the Customer for the cost of attendance (by its Representative and Staff) at the Second Repeat Acceptance Tests. If Octavia shall not have completed such alterations or modifications to the Software by the seventh day (or such time as may be agreed by the parties) after the First Repeat Acceptance Tests or if the Software shall fail the Second Repeat Acceptance Tests then the Customer shall be entitled to proceed at its discretion: under either 6.8.2 or 6.8.3 below; or
 - 6.8.2 accept the Software subject to such refund of the Charges levied by Octavia in respect of the Contract Works pursuant to clause 7 below as Octavia and the Customer shall agree. If the parties fail to agree such refund within two [2] days (or such time as may be agreed by the parties) of failure of the First Repeat Acceptance Tests or Second Repeat Acceptance Tests pursuant to clause 6.8.1 then the Customer at its discretion shall be entitled either to refer the matter for settlement in accordance with the disputes procedure set out in clause 29 below or to proceed under clause 6.8.3 below; or
 - 6.8.3 reject the Software and without prejudice to any other rights or remedies to which the Customer may be entitled to hereunder or at law terminate the Contract.
 - 6.9 Octavia (through its Representatives or its Staff) shall provide the Customer with all such assistance and advice as it shall from time to time reasonably require in the process of testing the Software pursuant to this clause 6.
 - 6.10 Forthwith upon the Software passing the Acceptance Test (or if Octavia does not request the documentation in clause 6.1 then forthwith upon being given the work acceptance sheet) the Customer shall sign the work acceptance sheet provided by Octavia. Until the Customer has signed a work acceptance sheet and returned the same to Octavia (receipt of which will be acknowledged) then:
 - 6.10.1 The copyright and all other intellectual property rights and confidential information in the Detailed Specification the Software and Software Documentation, to the extent that it has not already been assigned to the Customer pursuant to clause 14, shall remain vested in Octavia.
 - 6.10.2 The next Phase (or part of a Phase) shall not commence and the Timetable shall be suspended and altered pro rata as a result of such suspension.
 - 6.11 Where the Booking Form provides that there shall be Phases beyond Phase 4 then the procedures outlined in clauses 4, 5 and 6 shall be repeated for each Phase after Phase 4 as necessary.



7 Charges

General

- 7.1 Octavia shall levy Charges (by the submission of invoices in accordance with clause 7.4 below) in respect of the Contract Works. Such Charges shall be calculated upon a Man day basis or on a Fixed Price basis as specified in the Booking Form. Charges will be levied at the rates in respect of the Staff materials and equipment set out in the Booking Form or as agreed between the parties from time to time.
- 7.2 Octavia will levy a commencement fee as specified in the Booking Form – unless otherwise stated in the Booking Form this will be 25% of the Fixed Price or 25% of the estimated Charges due on a Man day basis. Upon payment of the commencement fee the Contract Works will begin.
- 7.3 Octavia shall during the currency of the Contract (and for a period of 6 months after the termination of the Contract) maintain accurate and up-to-date records of the time spent by the Staff upon the Contract Works and of all materials and equipment used in connection therewith (the 'Records'). The Representative of the Customer shall upon request be entitled (at such times as shall be agreed with the Representative of Octavia) to inspect and obtain copies of the Records.
- 7.4 Each stage invoice (as specified in the Booking Form) shall be sent to the Customer at the Site (or other place as may be agreed). The Customer shall pay Charges levied upon receipt of an invoice. The invoice will specify Charges in Pounds Sterling and invoices will be paid in that currency.
- 7.5 Octavia shall be entitled upon not less than thirty [30] days notice to the Customer and, without prejudice to Clause 7.6 below, not more than once in every twelve [12] months during the currency of the Contract to increase the rates specified in the Booking Form. Variations may include increases arising as a result of the promotion of the Staff assigned to work for the Customer. Any increases will be no greater than that levied on other customers of Octavia obtaining a comparable type of service at the time of the increase.
- 7.6 Charges quoted in the Booking Form relate to the provision of Services at the Site stated in the Booking Form and any change in Site may result in a change in the applicable fee rates. For the avoidance of doubt any variation of the Charges pursuant to this clause 7.5 will not affect Octavia's rights under Clause 7.4.
- 7.7 The Charges shall be exclusive of the travel accommodation and subsistence expenses incurred by Octavia's Representative and Staff in attending at the Site for the performance of the Contract Works which expenses shall be invoiced separately by Octavia and which shall be paid by the Customer within thirty [30] days of receipt of an invoice therefor. Octavia agrees that the payment of such expenses is subject to the limits and other conditions set out in the Booking Form or as may be agreed between the parties from time to time.
- 7.8 Octavia reserves the right to charge the Customer interest in respect of the late payment of any sums due under the Contract (as well after as before judgment) at the rate of 4 per cent [4%] above the Bank of England base rate from the due date thereof until payment.
- 7.9 In the event of late payment we reserve the right to suspend the provision of Services and the Contract Works.
- 7.10 Any estimate of Charges given by Octavia whether given for planning or any other purpose, including any figures given in any project proposal, are only an estimate and are not in any way contractually binding.

Man day basis

- 7.11 Should the Booking Form provide for the Charges to be levied on a Man day basis as opposed to a Fixed Price basis then the following provisions will apply:-
- 7.11.1 Charges will be calculated on the basis of 7.50 hour day worked on weekdays excluding 1 public holidays. If Staff is required to work away from home for extended period, Octavia will have flexibility in they divide their time between the Site sites and the homes of the Staff. Travel time, other than time spent travelling from a local residence to the normal place of work, will be chargeable as part of the above working hours. Hours worked in excess of 7.50 hours a day or outside weekdays may be charged on a pro rata basis.
- 7.11.2 Octavia shall levy Charges (by the submission of invoices in accordance with clause 7.4 above) in respect of the Contract Works as per the schedule in the Booking Form.
- 7.11.3 The invoice shall contain a breakdown in respect of the time spent by the Staff and the materials and equipment used and the amounts attributable thereto

Fixed Price Basis

- 7.12 Should the Booking Form provide for the Charges to be levied on a Fixed Price basis then the following provisions will apply:-
- 7.12.1 Octavia shall levy Charges (by the submission of invoices in accordance with clause 7.4 above) in respect of the Contract Works as per the schedule in the Booking Form.
- 7.12.2 Octavia reserves the right to review the Charges on each anniversary of the date of the Booking Form in accordance with the Fixed Price review procedure outlined in 7.12.4.



- 7.12.3 Any change in the Site, change in the Detailed Specification or change in the Timetable will entitle Octavia to review the Charges in accordance with the Fixed Price review procedure outlined in 7.11.4.
- 7.12.4 Any review of the Charge under a Fixed Price basis will be conducted under the following procedure:
- 7.12.4.1 Following an event specified in clauses 7.12.2 or 7.12.3 Octavia shall notify the Customer of the revised Fixed Price Charge and a revised schedule for payment. Such notice shall also explain how the revised Fixed Price Charge and timetable were calculated.
 - 7.12.4.2 Within three [3] working days (or such time as may be agreed by the parties) of receipt of the notice the Customer will notify Octavia as to whether it accepts or rejects the revised Fixed Price Charge and revised schedule for payment.
 - 7.12.4.3 If the Customer does not notify Octavia in accordance with clause 7.10.4.2 it will be deemed to accept the revised Fixed Price Charge and revised schedule for payment.
 - 7.12.4.4 Forthwith upon a rejection under clause 7.11.4.2 Octavia will either submit a further revised Fixed Price Charge and a revised schedule for payment (whereupon the provisions of clause 7.11.4 above shall apply mutatis mutandis) or notify the Customer that they nominate to use the dispute procedure in Clause 30.
 - 7.12.4.5 Notices in this clause will be served in accordance with Clause 23.
- 7.12.5 The Customer's attention is drawn to clause 3.4 that stipulates that under a Fixed Price the Customer is responsible for ensuring a Detailed Specification exists in order for, amongst other things, Octavia to determine a Fixed Price. The Detailed Specification can be produced by Octavia upon commission by the Customer, or produced by the Customer or another 3rd party and subsequently approved by Octavia.

8 Supervision of the Contract Works

- 8.1 With effect from the date of the Contract Octavia and the Customer shall each nominate a Representative who shall be authorised to make decisions relating to the Contract Works who shall be responsible for:
- 8.1.1 organising meetings at which they shall review the progress of the Contract Works; and
 - 8.1.2 providing (subject to the provisions in respect of confidentiality set out in clause 17 below) all information and documentation reasonably required by Octavia or the Customer (as the case may be) for the performance of its duties hereunder.
- 8.2 Each party shall inform the other of any change in the identity of its Representative during the course of the Contract.
- 8.3 If requested by the Customer, Octavia's Representative shall prepare a progress report on a regular basis (as may be agreed by the parties) of the Contract Works and shall deliver a copy to the Customer's Representative.

9 Staff

- 9.1 The Contract Works shall be performed by the Staff and overseen by the Project Leader who shall be identified in the Booking Form. Staff will be chosen and deployed depending on the requirements of the Contract Works.
- 9.2 Octavia undertakes to use all reasonable endeavours to avoid replacing all or any of the Staff during the currency of the Contract. Any replacement Staff shall be subject to the prior approval of the Customer (such approval not to be unreasonably withheld or delayed) unless such change is necessary for reasons beyond Octavia's control.

10 Customer's Responsibilities

- 10.1 The Customer shall make available to Octavia's Staff free of charge such use of the Equipment at the Site as shall be specified in the Booking Form. The Customer shall in addition make available to Octavia's Staff free of charge use of such other computing and office facilities at the Site as Octavia shall reasonably be required to perform the Contract Works including access to telephone and fax communications and secretarial support.
- 10.2 The Customer shall notify Octavia of all security and other office procedures implemented at the Site and Octavia shall ensure that the Staff complies with all such security and office procedures at all times during the Contract Works.
- 10.3 The Customer shall provide all information and materials reasonably required to enable us to provide the Services and perform the Contract Works. The Customer warrants that all information disclosed or to be disclosed to Octavia is true, accurate and not misleading in any material respect.
- 10.4 The Customer shall ensure that its staff are available to provide such assistance as Octavia reasonably require and that Octavia are given reasonable access to senior management, as well as the Customer Representative and any other staff from the Customer that may be required to enable Octavia to provide the Services and perform the Contract Works. The Customer will be responsible for ensuring that their staff has the appropriate skills and experience and if any staff fails to perform as required, the Customer will make suitable additional or alternative staff available.



- 10.5 Where the Customer uses third parties to provide information or support to the Customer Requirement, Detailed Specification, Services or the Contract Works including but not limited to where the Customer employs other suppliers whose work may affect Octavia's ability to provide the Services or perform the Contract Works the Customer will ensure that it has appropriate agreements in place with those third parties to enable Octavia to perform the Contract. Unless specifically agreed otherwise in writing the Customer will be responsible for the management of the third parties and the quality of their input and work.
- 10.6 The Customer agrees to pay the Charges as set out in clause 7 above.
- 10.7 The Customer agrees to attend meetings and reply to all general communications including but not limited to items specified on the timetable. The Customer acknowledges responsibility for the same that may be required from any 3rd parties their authority.
- 10.8 The Customer accepts responsibility for ensuring any text or image (either electronic or printed) provided to Octavia, does not infringe copyright or any other laws.
- 10.9 The Customer accepts that if the use of any text or images provided by the Customer results in Octavia infringing copyright or any other laws, the Customer will be legally liable to pay any fees, fines or other costs associated with their use and publication.

11 Variations

- 11.1 The Customer shall be entitled at any time up to four [4] weeks (or such time as may be agreed by the parties) prior to the Actual Delivery Date to request in writing Octavia to modify the design of the Software.
- 11.2 The Customer shall provide Octavia with full particulars of any requested modifications and such further information as Octavia shall reasonably require.
- 11.3 Within seven [7] days (or such time as may be agreed by the parties) of receipt of a request pursuant to clause 11.1 above Octavia shall inform the Customer in writing whether such modifications is technically feasible and shall inform the Customer of the alterations to the Timetable and the Completion Date that it shall reasonably judge necessary to make as a result of such request.
- 11.4 If the Customer elects to proceed with the modifications within two [2] days (or such time as may be agreed by the parties) of receipt of the proposed alterations to the Timetable and Completion Date then the Timetable and Completion Date shall be amended in the manner indicated by Octavia pursuant to clause 11.3 above.
- 11.5 Irrespective of whether Octavia is commissioned on a Fixed Price and whether the Customer elects to proceed with the modifications or not Octavia shall be entitled to levy Charges in respect of the request as if the same formed part of the Contract Works and where consideration of the request has caused a delay in the implementation of the Contract Works Octavia shall be entitled to make such extension to the Timetable and Completion Date as it shall reasonably judge necessary.
- 11.6 If Octavia modifies the whole or any part of the Software in accordance with this clause it shall make all appropriate related modifications to respectively the Detailed Specification and the Software Documentation.

12 Late completion

- 12.1 For the avoidance of doubt time shall not be of the essence and Octavia shall incur no liability to the Customer in respect of any failure to complete any of the Phases of the Contract Works by the date specified therefor in the Timetable.
- 12.2 Without prejudice to the provisions of clause 12.1 above if the Booking Form stipulates that time is of the essence regarding Completion of the Contract Works and Octavia shall fail to achieve Completion of the Contract Works by the Completion Date then save where such failure results from the default by the Customer of its obligations under the Contract or an Event of Force Majeure Octavia shall pay to the Customer by way of liquidated damages the sum of Two Hundred Pounds Sterling [£200] per day commencing on the day after the Completion Date and expiring on the Acceptance Date subject to a maximum of Three Thousand Pounds Sterling £[3,000] or alternatively 0.5% of the Charges accrued at the Completion Date per day commencing on the day after the Completion Date and expiring on the Acceptance Date subject to a maximum of 15% of the Charges accrued at the Completion Date whichever is the lesser amount. Such payment shall be without prejudice to Octavia's obligation to complete the Contract Works as soon after the Completion Date as shall be reasonably possible.
- 12.3 If Octavia shall fail to achieve Completion of the Contract Works by the 21st day after the Completion Date then the Customer (save where such failure results from the default by the Customer of its obligations under the Contract or an Event of Force Majeur) shall be entitled without prejudice to any other rights or remedies it may have hereunder or at law to terminate forthwith the Contract by written notice upon Octavia.
- 12.4 For the avoidance of doubt termination of the Contract under this clause 12 will still mean that any outstanding Charges shall remain due and payable in accordance with clause 7.

13 Technical support

- 13.1 Octavia will provide technical support free of charge when a breach in warranty as stated below in clause 15.



- 13.2 In no way unless expressly stated in the Booking Form shall the contract formed for the development and delivery of the Software include technical support beyond the period of warranty. Octavia will negotiate a separate contract under which technical support will be provided.
- 13.3 When technical support is provided and results in finding fault with the Equipment or something else other than the Software, Octavia reserves the right the charge for the time spent providing the technical support.

14 Intellectual property rights

- 14.1 The copyright and all other intellectual property rights and confidential information in the Detailed Specification the Software and Software Documentation shall vest in Octavia until clause 14.2 becomes active.
- 14.2 Forthwith upon Octavia acknowledging receipt of the Customer's signed work acceptance sheet for a Phase (or part of a Phase) of the Contract Works Octavia in consideration of the payment by the Customer of the Charges hereby assigns to the Customer the copyright and all other intellectual property rights and confidential information in the Detailed Specification, Software and Software Documentation relating to that Phase (or part of a Phase) excluding the Working Documents which includes the source code.
- 14.3 Upon the assignment provided in clause 14.2 Octavia shall within a reasonable time deliver to the Customer the Software together with all relevant supporting documentation.

15 Warranty

- 15.1 Subject to the limitations upon its liability set out in clause 16 below Octavia warrants that:
 - 15.1.1 it will carry out the Contract Works and perform the Services with reasonable care and skill;
 - 15.1.2 its title to and property in the Software and Software Documentation is free and unencumbered and that it has the right power and authority to assign them;
 - 15.1.3 the media upon which the Software and Software Documentation are stored will for a period of ninety [90] days from the Acceptance Date be free from defects in materials design and workmanship;
 - 15.1.4 the Software and Software Documentation will for a period of sixty [60] days from the Acceptance Date be capable of performing its intended business purpose as stated in the Detailed Specification.
- 15.2 The Customer shall give notice to Octavia as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 15.3 Octavia shall forthwith upon receipt of a notice in respect of a breach of either of the warranties set out at clauses 15.1.3 and 15.1.4 above remedy the same by the provision of technical support free of charge.
- 15.4 The warranty will be invalid if any party other than Octavia have instigated changes to the solution that have intrinsically caused errors in its performance and /or operation. In such circumstances Octavia retain the right to charge for time that is spent fixing issues.
- 15.5 Without prejudice to the foregoing Octavia does not warrant that the operation of the Software will be uninterrupted or error free.
- 15.6 Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the implementation of the Contract Works or the performance of the Services the Software or the Software Documentation are hereby excluded.

16 Limitation of liability

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 16

- 16.1 The following provisions set out Octavia's entire liability (including any liability for the acts and omissions of its employees) to the Customer in respect of:
 - 16.1.1 any breach of its contractual obligations arising under the Contract; and
 - 16.1.2 any representation statement or tortious act or omission including negligence arising under or in connection with the Contract
- 16.2 Any act or omission on the part of Octavia falling within clause 16.1 above shall for the purposes of this clause 16 be known as an 'Event of Default'.
- 16.3 Octavia's liability to the Customer for:



- 16.3.1 death or injury resulting from its own or that of its employees' agents' or subcontractors' negligence; and
 16.3.2 all damage suffered by the Customer as a result of the implied statutory undertakings as to title quiet possession and freedom from encumbrances shall not be limited.
- 16.4 Subject to the limit set out in clause 16.5.1 below Octavia shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of Octavia or its employees.
- 16.5 Subject to the provisions of clause 16.3 above Octavia's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:
- 16.5.1 Two Hundred and Fifty Thousand Pounds Sterling [£250,000] in the case of an Event of Default falling within clause 16.4 above; and
 16.5.2 in the case of any other Event of Default the aggregate of the Charges paid by the Customer hereunder.
- 16.6 Subject to clause 16.3 above Octavia shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Octavia had been advised of the possibility of the Customer incurring the same.
- 16.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.
- 16.8 The Customer hereby agrees to afford Octavia not less than fourteen [14] days in which to remedy any Event of Default hereunder.
- 16.9 Except in the case of an Event of Default arising under clause 16.3 above Octavia shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon Octavia within [2] years of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 16.10 Nothing in this clause 16 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 17 Confidentiality and non-competition**
- 17.1 Each of Octavia and the Customer hereby undertakes to the other to:
- 17.1.1 keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of the Contract (the 'Information');
- 17.1.2 not without the other's written consent to disclose the Information in whole or in part to any other person save those of its employees and the Staff involved in the implementation of the Contract Works and who have a need to know the same; and
- 17.1.3 to use the Information solely in connection with the implementation of the Contract Works and not for its own or the benefit of any third party.
- 17.2 The provisions of clause 17.1 shall not apply to the whole or any part of the Information to the extent that it is:
- 17.2.1 trivial or obvious;
 17.2.2 already in the other's possession other than as a result of a breach of this clause; or
 17.2.3 in the public domain.
- 17.3 For the purposes of the Customer's undertaking under clause 17.1 above the Information shall be deemed to include all information (written or oral) concerning the Detailed Specification.
- 17.4 Each of Octavia and the Customer hereby undertakes to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of the Information and the provisions of this clause 16 and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause 17 including the Staff.
- 17.5 Subject to clause 17.6 below each of Octavia and the Customer hereby undertakes to the other that during the currency of the Contract and for the period of twelve [12] months following upon its termination or expiry it will not directly or by its agent or otherwise and whether for itself or for the benefit of any other person induce or endeavour to induce any officer or employee or of the other to leave his employment including any sub-contractors or the Staff.
- 17.6 The provisions of clause 17.5 above shall not apply to the Customer if the Contract is terminated by the Customer pursuant to any one of the events of insolvency set out in clause 20.1.3 below.



- 17.7 For the avoidance of doubt nothing in this clause 17 shall affect the Intellectual Property rights of either Octavia or the Customer.
- 17.8 Without prejudice to the balance of clause 17 above, Octavia may cite the performance of the Services to our clients and prospective clients as an indication of our experience, unless specifically agreed otherwise in writing between Octavia and the Customer and notwithstanding the above Octavia may disclose any information referred to in this Clause 14 to any other Octavia Information Systems Ltd entity or use it for internal quality reviews.

18 Intellectual property rights indemnity

- 18.1 Octavia shall indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Software and/or Software Documentation by the Customer during the currency of the Contract and prior to the assignment pursuant to clause 14 above infringes the patent copyright registered design or trade mark rights of said third party (an 'Intellectual Property Infringement') provided that the Customer:
- 18.1.1 gives notice to Octavia of any Intellectual Property Infringement forthwith upon becoming aware of the same;
 - 18.1.2 gives Octavia the sole conduct of the defence to any claim or action in respect of any Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of Octavia; and
 - 18.1.3 acts in accordance with the reasonable instructions of Octavia and gives to Octavia such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all statements of case and other court process and the provision of all relevant documents.
- 18.2 Octavia shall reimburse the Customer its reasonable costs incurred in complying with the provisions of clause 18.1 above.
- 18.3 Octavia shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any unauthorised alteration modification or adjustment to the Software or Software Documentation without the prior written consent of Octavia.
- 18.4 In the event of an Intellectual Property Infringement Octavia shall forthwith make without charge to the Customer such alterations modifications or adjustments to the Software and Software Documentation as shall be necessary to make them non-infringing.
- 18.5 The provisions of clause 16 above shall not apply to any liability of Octavia arising under or in connection with this clause 18.

19 Terms and Conditions and the Booking Form

- 19.1 In the event of any term or condition in these Terms and Conditions conflicting with a term or condition in the Booking Form then the latter will prevail.

20 Termination and Suspension

- 20.1 The Contract may be terminated:
- 20.1.1 forthwith by Octavia if the Customer fails to pay any sum due hereunder within thirty [30] days of the due date therefor;
 - 20.1.2 forthwith by either party if the other commits any material breach of any term of this Terms and Conditions (other than one falling within 20.1.1 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty [30] days of a written request to remedy the same;
 - 20.1.3 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).
- 20.2 If Octavia terminates the Contract under clauses 20.1.1, 20.1.2 or 20.1.3 the Customer will be liable to Octavia for the reasonable costs incurred by Octavia as a result of the termination including but not limited to costs relating to sub-contractors or relocation.
- 20.3 Any termination of the Contract pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the



coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

- 20.4 Upon termination of the Contract any outstanding Charges shall remain due and payable in accordance with clause 7.
- 20.5 Upon termination of the Contract each party will return to the other any property including the records and Working Documents of the other that it then has in its possession or control.
- 20.6 If the Booking Form provides that the Charges are to be levied on a Fixed Price basis then in the Contract being terminated pursuant to this Clause 20 or Clause 12 the Customer agrees to pay Octavia all sums due at the date of termination in accordance with the Booking Form together with fees on a Man day basis for services provided after the date of the last applicable payment under the Booking Form.
- 20.7 Octavia may suspend the Contract while circumstances exist which, in Octavia's reasonable opinion, materially adversely affect the basis on which the Contract was entered into or Octavia's performance of it. The following procedure will be used:-
- 20.7.1 Octavia shall notify the Customer in writing that it considers that circumstances exist which merits the suspension of the Contract. The notice shall be served in accordance with clause 23 and the date of deemed service shall be referred to as 'the Date of Suspension'.
 - 20.7.2 The Customer shall notify Octavia in writing whether or not it considers the suspension reasonable stating reasons and steps it is putting in place to alter the circumstances as appropriate.
 - 20.7.3 If the Customer has stated that it considers the suspension to be unreasonable both parties agree to follow the dispute procedure as provided in clause 30.
 - 20.7.4 At the conclusion of the dispute procedure if the suspension is found to be reasonable then time runs from the Date of Suspension. If such a period of suspension exceeds 30 days, the Contract may be terminated by Octavia with immediate effect by written notice to the Customer.
 - 20.7.5 Any period of suspension shall last as long as the circumstances giving rise to it last plus such further period as may reasonably be required by Octavia to prepare to resume the Contract Works or until termination of the agreement.
 - 20.7.6 If at the conclusion of the dispute procedure ('the Finding Date') the suspension is found to be unreasonable then Octavia agree to compensate the Customer for the period since the Date of Suspension to the Finding Date (inclusive) at a rate of £100 per day subject to a maximum of £3,000. If such a period exceeds 30 days, the Contract may be terminated by the Customer with immediate effect by written notice to Octavia.
 - 20.7.7 If both parties agree to resume performance of the Contract after the Date of Suspension the parties will first agree any changes to the Contract which may be necessary as a result of its suspension, including amendment to Charges, costs and the Timetable.

21 Force majeure

- 21.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires terrorist activity strikes (of its own or other employees) insurrection or riots embargoes container shortages wrecks or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an 'Event of Force Majeure').
- 21.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 21.3 If a default due to an Event of Force Majeure shall continue for more than [26] weeks then the party not in default shall be entitled to terminate the Contract. Neither party shall have any liability to the other in respect of the termination of the Contract as a result of an Event of Force Majeure.

22 Waiver

- 21.1 The waiver by either party of a breach or default of any of the provisions of the Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 22.2 No waiver of any term or condition of the Contract will be effective unless made in writing.

23 Notices

- 23.1 Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or by e-mail or facsimile transmission (such e-mail or facsimile transmission notice to be confirmed by letter posted within 12 hours) to the addresses or to the facsimile number of the other party set out in the Contract (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by e-mail or facsimile transmission) upon the expiration of 12 hours after dispatch.



Notices to Octavia:

Postal Address WTG Building, 90 Union Street, London SE1 0NW
 E-Mail Address info@octaviais.co.uk
 Facsimile Number +44 (0)20 7928 9226

24 Invalidity and severability

24.1 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

25 Entire Contract

25.1 Octavia shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of the Contract.

26 Successors

26.1 This Terms and Conditions shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

27 Assignment

27.1 Neither party shall be entitled to assign the Contract nor all or any of their rights and obligations hereunder without the prior written consent of the other.

28 Headings

28.1 Headings to clauses in these Terms and Conditions are for the purpose of information and identification only and shall not be construed as forming part of the Contract.

29 Sub-contracting

29.1 Octavia shall not be entitled to sub-contract the whole of its obligations hereunder without the prior written consent of the Customer.

29.2 Octavia reserves the right to employ agents and sub-contractors when providing any part of the Services or the Contract Works. Any reference to the Staff in the Contract includes agents and sub-contractor staff.

29.3 Where the Customer requests Octavia to contract the services of a sub-contractor specified by the Customer, the Customer accepts responsibility for the work to be performed by such sub-contractor. Octavia's agreement to programme and integrate the work to be performed by such sub-contractor for the purposes of the Contract is on the basis that Octavia will not be responsible or liable to the Customer or to any other person for the work performed by, and all acts, omissions, defaults and neglects of such sub-contractor. In the above circumstances the Customer will be responsible and liable for, and will indemnify Octavia against and from, any liability which Octavia may incur to any person and against all claims, demands, proceedings, damages, losses, costs and expenses made against, suffered or incurred by Octavia, directly or indirectly as a result of or in connection with the work performed by any such sub-contractor.

30 Disputes

30.1 All disputes or differences which shall at any time hereafter arise between Octavia and the Customer in respect of the construction or effect of the Contract or the rights duties and liabilities of the parties hereunder or any matter or event connected with or arising out of the Contract (a 'Relevant Event') shall be dealt with under the following procedure:-

30.1.1 As soon as a Relevant Event occurs or becomes apparent Octavia's Representative and the Customer's Representative shall arrange a meeting to take place within 5 working days ('the Meeting') in an attempt to resolve the dispute or difference. Octavia's Representative, the Customer's Representative and any other senior representative of the Customer or Octavia as deemed appropriate will attend the meeting.

30.1.2 If after the Meeting the dispute or difference is not resolved, or before by agreement in writing by the parties, the dispute shall be referred to mediation using the services of the Centre for Dispute Resolution to facilitate the mediation process.



30.1.3 If the dispute is not resolved through the Meeting or mediation the parties agree that the English Courts will have exclusive jurisdiction in connection with the resolution of the dispute.

31 VAT

31.1 Save in so far as otherwise expressly provided all amounts stated in the Contract are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefor.

32 Freedom to use ideas

32.1 Octavia and any other entity (whether or not incorporated) which carries on business under a name which includes all or part of the Octavia Information Systems Ltd name or is otherwise within (or associated or connected with an entity within) or is a correspondent firm of the worldwide network of Octavia Information Systems Ltd firms ("Octavia Information Systems Ltd Entity") will not be prevented or restricted by this Contract from developing and using any techniques, ideas, concepts, information or know-how relating to methods or processes of general application including those in the field of information technology and business processes.

33 Amendment

33.1 Any amendment to the Contract (excluding variations provided for in the Contract) will not be effective unless agreed in writing and signed by both parties.

34 Inspection of the Working Documents

34.1 The Customer may, at Octavia's sole discretion, be permitted to inspect the Working Documents.

34.2 Such inspection shall be at a location specified by Octavia in their sole discretion.

34.3 The Customer shall notify Octavia of their request to inspect the Working Documents in accordance with clause 23 and such notice shall specify the reason for the proposed inspection.

34.4 The Customer undertakes and warrants to :

34.4.1 keep confidential all information (written or oral) concerning the business and affairs of Octavia that it shall have obtained or received as a result of the inspection of the Working Documents;

34.4.1 not without Octavia's written consent to copy, replicate, duplicate, reproduce or record any of the Working Documents

35 Law

35.1 The Contract shall be governed by and construed in accordance with English law.

