

**Terms and Conditions for Flexisupport**

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**1.0 Flexisupport Definitions**

- 1.1 Octavia: means Octavia Information Systems Limited of WTG Building, 90 Union Street, London, SE1 0NW.
- 1.2 The Customer: means the organisation that enters into the Agreement for the delivery of Flexisupport. This will be the organisation to whom services will be delivered and/or Support Invoices will be addressed to.
- 1.3 Account: means the confidential file where the details of the balance of the number of Credits purchased / used by the Customer are held.
- 1.4 Agreement: means a contract for the provision of Flexisupport services signed by both parties (Octavia and the Customer). The Agreement declares that the Customer accepts the Flexisupport Terms and Conditions.
- 1.5 Agreed Credit Balance: means the number of Credits purchased at the outset of the Flexisupport Agreement that will be maintained by the payment of the monthly Support Invoice.
- 1.6 Authorised Caller(s): means representatives of the Customer named in the Agreement that are able to log Flexisupport Incidents. There is no restriction on changes to, or the number of Authorised Callers the Customer can name in the Agreement.
- 1.7 Change: means a modification that materially alters the System as defined in the Agreement.
- 1.8 Consultant(s): means any technical staff that Octavia assign to provide Support to the Customer.
- 1.9 Credits: means pre paid Flexisupport Credits that are used in return for Incident Support from Octavia.
- 1.10 Customer Site(s): means the Site(s) at which the Customer operates the System defined in the Agreement.
- 1.11 Developer Support: means any time spent by a member of the Octavia Software Development Team performing work covered by a Flexisupport Agreement.
- 1.12 Option Package: means a range of service packages that can be purchased in addition to Incident Support to minimise the risk of business interruption caused by IT issues or to enhance the service delivered by Octavia.
- 1.13 Incident: means the request for Support and all the actions associated with it.
- 1.14 Incident Support: means Support relating specifically to Incident requests as opposed to Support via Flexisupport Options packages and other general assistance relating to the System.



- 1.15 On Site Support: means the provision of Support services by Octavia at the Customer Site(s).
- 1.16 Overdraft: means the facility provided by Octavia to the Customer to receive Support beyond the value of the Credits purchased to date which are held in the Customer's Account.
- 1.17 Overdrawn: means that the Customer has received Support of a greater value to that of the Credits purchased to date, hence the Customer's Account is Overdrawn.
- 1.18 Out of Hours Period: means the periods beyond Octavia's standard working hours Remote Support is available to the Customer.
- 1.19 Principal Contact: means the person nominated by the Customer to act as its main representative. The Principal Contact is named in the Agreement and will receive official notices and important information and formal notices regarding Flexisupport from Octavia.
- 1.20 Remote Support: means the provision of Support services by Octavia at a site that is remote from the Customer's Site(s). Primarily this will be from Octavia's offices.
- 1.21 Response Time: means the time requested by the Customer for Octavia to respond to an Incident. The Customer is responsible for choosing the Response Time as this will relate directly to the number of Credits required per hour.
- 1.22 Server Instance: means a network, email or other server, whether physical or virtual.
- 1.23 Support: means any time spent by a Consultant performing work covered by a Flexisupport Agreement.
- 1.24 Support Application: means the software application used by Octavia to setup and administer the Customer's Flexisupport Account and record all actions and time in relation to Incidents.
- 1.25 Support Invoice: means the invoice raised by Octavia for the provision of Support as set out in section 9 below.
- 1.26 Support Web Interface: means the secure area of the Flexisupport website available for Customers to view their Account details, Consultants notes and charges in relation to Incidents.
- 1.27 System: means the network, software, Server Instances, or any other item being maintained under the Agreement as defined in the System Definition in the Agreement.
- 1.28 System Audit: means an assessment of the System by a Consultant in order to gain the necessary understanding of the System for Octavia to be able to supply the required Support and other Option Packages.
- 1.29 System Definition: means the description included in the Agreement to define the Customer's System that is to be Supported.

## **2.0 Flexisupport Services**

- 2.1 Octavia design IT network infrastructure as well as building bespoke software for customers. Support for both types of solution may be provided by Flexisupport. The scope of service required by the Customer will be defined in the System Definition in the Agreement.
- 2.2 Flexisupport provides the following services either as Support or Developer Support via Option Packages:



- |       |  |        |                                   |
|-------|--|--------|-----------------------------------|
| 2.2.1 | Corrective action                      | 2.2.8  | Proactive System Monitoring       |
| 2.2.2 | System fault analysis                  | 2.2.9  | Real Time Remote Monitoring       |
| 2.2.3 | Status reporting                       | 2.2.10 | Online backup solutions           |
| 2.2.4 | Application monitoring                 | 2.2.11 | Out of Hours (24/7) Support cover |
| 2.2.5 | System administration                  | 2.2.12 | Software Bug fixes*               |
| 2.2.6 | Evaluation of new hardware or software | 2.2.13 | Software patch development*       |
| 2.2.7 | Performance testing                    |        |                                   |

\*Services delivered Developer Support only.

2.3 Specific services NOT covered by the Agreement:

- 2.3.1 Procurement of new hardware, software
- 2.3.2 Fixed price project work

2.4 At the discretion of Octavia, work for items and issues beyond the scope of the System Definition in the Agreement will be performed upon request from the Customer. If deemed appropriate, such work will be performed by Octavia under these Terms and Conditions. If not appropriate Octavia retain the right to perform / charge for the work under different Terms and Conditions.

2.5 Octavia retain the right to install 3<sup>rd</sup> party software on the Customer's System to facilitate the remote connection and delivery of Support to the Customer. In accordance with this right:

- 2.5.1 If at any stage following the commencement of the Agreement the Customer refuses Octavia the right to install / use 3<sup>rd</sup> party software for the purposes stated in clause 2.5, upon their System, Octavia retain the right to impose additional charges in order to facilitate the delivery of services under the Agreement.
- 2.5.2 Octavia warrant to the Customer that all 3<sup>rd</sup> party software installed upon the Customer's System for the purpose stated in clause 2.5 above will be licensed accordingly by Octavia.
- 2.5.3 The ownership of 3<sup>rd</sup> party software installed upon the Customer's System for the purpose stated in clause 2.5 above will remain vested in Octavia.
- 2.5.4 The Customer can request Octavia to demonstrate and explain what 3rd party software it intends to install on the Customer's System and for what purpose it is intended.

**3.0 Getting Started**

3.1 The Customer accepts responsibility for the status of their System prior to the involvement of Octavia. Any System deficiencies resulting from poor management prior to the commencement of the Flexisupport Agreement may lead to increased costs which are beyond the control and responsibility of Octavia.

3.2 Prior to the commencement of a Flexisupport Agreement a System Audit will be performed. Any deficiencies found in the System Audit can be corrected for a fixed price. Alternatively they will be noted in the System Definition of the Agreement. The client is under no obligation to resolve the issues raised by the System Audit.



- 3.3 The results of the System Audit presented in a report will allow Octavia to recommend a number of Credits which upon acceptance by the Customer will form the Agreed Credit Balance.
- 3.4 The report issued by Octavia following the System Audit will also state any recommended Option Packages.
- 3.5 Once payment is received for the Agreed Credit Balance, the Credits will be deposited into the Customer's Flexisupport Account. The Credits may then be exchanged for Incident Support as required.
- 3.6 Octavia retain the right to set a minimum Agreed Credit Balance depending upon the number of users within a Customer's organisation.
- 3.7 Any Option Packages required by the Customer will be performed as scheduled in the Agreement and will be billed in arrears via Support Invoices as stated in section 9 below.

#### **4.0 Requesting Support**

- 4.1 All requests for Support from the Customer must be made by Authorised Callers via telephone on 0207 940 6100 or e-mail on support@octaviais.co.uk. or via the Flexisupport web logging system.
- 4.2 If named as an Authorised Caller, there is no restriction on the amount of Support an individual may request, unless Octavia have placed general restrictions upon the Customer's Account as per clause 9.11 below.
- 4.3 By naming individuals as Authorised Callers the Customer agrees to incur costs for Incidents raised by those Authorised Callers and that the said individuals will have been made aware of the cost implications of raising Incidents under the Response Times stated below in clause 4.4.
- 4.4 When logging an Incident the Authorised Caller representing the Customer MUST provide a description and state the required Response Time for the Incident. The Response Time stated must be in accordance with those listed below: The Response Times listed below only apply to Octavia's standard working hours as stated in section 5.0 below.
  - 4.4.1 Within 30 minutes (Immediate Response for Remote Support only)
  - 4.4.2 Within 2 hours
  - 4.4.3 Within 4 hours
  - 4.4.4 Within 1 working day
  - 4.4.5 Within 3 working days
  - 4.4.6 Within 5 working days
  - 4.4.7 Within 10 working days
  - 4.4.8 Developer Support Response (within 5 working days)
- 4.5 Upon receiving notification from an Authorised Caller regarding an issue with the Customer's System, the issue will be logged as an Incident with an allocated Incident reference number. The Incident reference number along with details of the Incident will be stated to the Authorised Caller in the form of an email or web page confirmation page.



- 4.6 In circumstances when the Customer is not able to send or receive emails or web confirmations and therefore verbally notifies Octavia of an issue, the Authorised Caller will be verbally informed by the Octavia representative who logs the Incident as to the Incident reference number.
- 4.7 In the event of the Customer wishing to query the progress of an Incident, the Customer must be able to state the specific Incident reference number to enable Octavia to identify the Incident in question.
- 4.8 Support delivered in respect of all Incidents (Incident Support) will be logged under the specific Incident reference number.
- 4.9 Octavia retain the right to perform Incident Support at any point within the requested Response Time. If the Customer cancels an Incident when work has already commenced, the time spent up to that point will remain chargeable.
- 4.10 The Response Time specifies the time within which Octavia will begin work on the Incident and not the time for a fix for the Incident to be implemented.
- 4.11 When an Octavia Consultant begins work on an Incident a further automatic email will be sent to the Customer stating that work has commenced on the Incident.
- 4.12 Whilst working on Incidents, Consultants will keep a record of the time they spend and the actions taken. This information will be logged in the Support Application.
- 4.13 No guarantees or commitments will be given regarding the length of time required for resolving Incidents.
- 4.14 Due to the nature of the service provided via Flexisupport, Consultants regularly refer to colleagues for help and advice with specific issues in order to resolve Incidents as quickly as possible.
- 4.15 To ensure that Incidents are resolved as quickly as possible and to reduce the reliance on individual Consultants, Octavia retain the right to allocate Consultants to Incidents and actions within Incidents as they see fit, depending on the skills, experience and availability of Consultants.
- 4.16 The Consultant may need to refer an Incident to a member of the Octavia Software Development Team. This is usually only required for bespoke software applications developed by Octavia; however it could also apply in other circumstances where the specific skills and knowledge of the Software Development Team are required to help resolve an issue. When the Software Development Team provide Support, it is known as Developer Support
- 4.17 In cases where Developer Support is required, Incidents or tasks within Incidents will be logged and dealt with under the Developer Support response rate only.
- 4.18 Developer Support will be provided remotely by default.
- 4.19 For all types of Support, once the issue in question is resolved the Consultant will close the Incident in the Support Application. A final automatic email will be sent to the Authorised Caller stating all times, notes and Credits used.
- 4.20 Upon closure of an Incident by a Consultant the appropriate number of Credits will be debited from the Customer's Account. The number of Credits debited for an Incident will be determined by the Response Time requested by the Customer and the number of minutes logged by the Consultant for that Incident in the Support Application.



- 4.21 In circumstances when the Consultant is unable to access the Support Application or when the Customer is unable to receive email, automatically generated e-mails may not be sent at all OR will be sent later than the times specified within. Therefore email notifications are for information purposes only.
- 4.22 All Consultant notes and logged times are available to the Customer via [www.octaviais.co.uk](http://www.octaviais.co.uk) . Details on how to access the Customer area of the Flexisupport Web site are provided when the Customer's Account is first setup.
- 4.23 The times logged in the Support Application which are available for the Customer to view via the Support Web Interface directly relate to the Credits used and costs incurred by the Customer via their monthly Support Invoice.
- 4.24 If Octavia fail to meet a Response Time for an Incident all Incident Support for the specific Incident in question will be performed free of charge but this does not include the supply of hardware, software, or the services of third parties. For the avoidance of doubt, only time spent by an Octavia Consultant related to the Incident is free of charge.
- 4.25 If Incident Support is delivered later than a requested Response Time due to a specific request from the Customer, all time spent on the Incident will remain chargeable.
- 4.26 Remote Support will be delivered when possible. Consultants will gain remote access to the System to investigate faults and implement the necessary fix. When the Customer seeks Support in the form of advice/instruction it will be provided via telephone or email.
- 4.27 The Customer accepts that in certain circumstances a Consultant will have to make an On Site visit in order to implement the required fix or to fully diagnose the Incident in question.
- 4.28 When On Site Support following Remote Support isn't necessary or possible immediately (e.g. delivery of a vital piece of equipment is being awaited); the On Site Support will be charged at the subsequent slower Response Time according to the time agreed with the Customer for the On Site visit.
- 4.29 If the Customers specifically requests On Site Support for any Incident as opposed to Remote Support, Octavia will oblige. The Customer accepts that this may lead to higher costs as a result of the pricing structure detailed in clause 8.3 below.
- 4.30 If as a consequence of Support being provided, software is installed, configured or in any way utilised on the Customer's IT system the Customer is responsible for having the appropriate license for the intended use of that software.
- 4.31 The Customer accepts that other than that installed by Octavia for the purpose of facilitating remote connection and the delivery of Support as stated in clause 2.5, the Customer will be legally liable for maintaining, acquiring and proving that appropriate licensing agreements for all software in use on their IT system exists.
- 4.32 The Customer accepts that other than that installed by Octavia for the purpose of facilitating remote connection and delivery of Support as stated in clause 2.5, the Customer will be solely legally liable to pay any fees, fines or other costs associated with software licensing.

## 5.0 Availability of Support



- 5.1 Octavia’s standard working Hours for the provision of full Support services outlined herein and including planned maintenance remote helpdesk Support and onsite Support and are 8.00 AM – 6.30 PM Monday to Friday (EXCLUDING PUBLIC HOLIDAYS) unless expressly stated otherwise in the Agreement.
- 5.2 Consultants will work on varying shift patterns within the hours stated above. This means that individual Consultants do not work from 8.00 AM to 6.30 PM on a daily basis.
- 5.3 Octavia do not commit to individual Consultants being available for any longer than 8.5 hrs (including 1 hr for lunch) during the period from 8.00AM to 6.30PM on a daily basis.

**6.0 Out of Hours Helpdesk Support.**

6.1 Octavia provide Remote Support during Out of Hours Periods which are the times beyond Octavia’s standard working hours as outlined in clause 5.1 above.

6.2 During normal weeks not containing Public Holidays, Support will be available as follows during Out of Hours Periods:

	Mon / Tues	Tues / Weds	Weds / Thurs	Thurs / Fri	Fri / Sat	Sat/ Sun/ Mon
Out of Hrs Support period	6.30PM to 8.00AM	6.30PM to 8.00AM	6.30PM to 8.00AM	6.30PM to 8.00AM	6.30PM to 8.00AM	8.00AM to 8.00AM Monday

6.3 During Public Holidays, Out of Hours Support will be available as follows:

	All Public Holidays except Xmas day and New Years Day	Xmas Day	New Years Day
Out of Hrs Support period	8.00AM to 8.00AM to following day	Service not available from 6.30PM on Xmas eve to 8.00AM on Boxing day	Service not available from 6.30PM on New Years Eve until 8.00AM on January 2 <sup>nd</sup>

- 6.4 All Out of Hours Support Incidents logged must be in respect of the Customer’s System as defined in the System Definition in the main body of the Customer’s Support Agreement.
- 6.5 All PCs and laptops used by Authorised Callers must have remote connection software installed in accordance with the instructions provided by Octavia.
- 6.6 The Customer is responsible for giving Octavia the authority to deal with 3<sup>rd</sup> party suppliers on behalf of the Customer. When such authority has not been provided, the Support that can be offered by Octavia may be limited.
- 6.7 No On Site Support will be available during Out of Hours Periods.
- 6.8 During Out of Hours Periods Octavia’s on duty Consultants will not be located at Octavia’s offices and therefore cannot take receipt of any physical items or perform work on physical items on behalf of the Customer.
- 6.9 The Customer accepts that the on duty Consultant will from time to time need to liaise with the Authorised Caller that logged the Support Incident in order to make progress with a Support Incident.



- 6.10 If the on duty Consultant is unable to contact the Authorised Caller in question, the on duty Consultant may have no choice other than to suspend the provision of Support.
- 6.11 Octavia cannot guarantee that on duty Consultants during Out of Hours Periods will be from the Customer Focus Team that the Customer in question is usually serviced by during standard Support hours.
- 6.12 The full breadth and depth of Octavia's technical skills and expertise will not be available during Out of Hours Periods. Consequently there may be instances when the on duty Consultant reaches the boundary of their experience causing Support to be suspended until other technical members of staff are available.
- 6.13 When other technical expertise and experience is required in relation to an Incident logged during an Out of Hours Period there is no guarantee that this will be available before the start of the next normal working day
- 6.14 Planned maintenance (e.g. Server reboots) cannot be scheduled for Out of Hours Periods because if problems occur as a result of such work no On Site Support or the ability to escalate technical problems will be available.
- 6.15 If on duty Consultants are otherwise engaged when the Authorised Caller attempts to log an Incident, a message must be left for the on duty Consultant.
- 6.16 An on duty Consultant will be notified of the message once they are available and they will respond accordingly.
- 6.17 The on duty Consultant will log the Incident as soon as possible upon receiving a call from an Authorised Caller or upon receiving a message from an Authorised Caller.
- 6.18 There is no limit to the number of Support calls that can be logged by a Customer during an Out of Hours Period.
- 6.19 As well as providing Support via the telephone during Out of Hours Periods, on duty Consultants will have access to a PC with the ability to remotely connect to the Customer's System. The Consultant will attempt to connect remotely when appropriate / required.
- 6.20 Octavia cannot guarantee that the remote connection to the Customer's System will always be available during Out of Hours Periods due to issues with the Customer's System or other external factors beyond the control of Octavia (e.g. Internet Service Provider problems).
- 6.21 There may be occasions when due to matters beyond the control of the on duty Consultant, the on duty Consultant is unable to respond to requests for Support. (Force Majeure).
- 6.22 When Remote Support cannot resolve the Incident and On Site Support is required during Out of Hours periods, the On Site visit will be arranged for the soonest available point in time during Octavia's standard Support Hours 08.00 AM – 6.30 PM Monday to Friday.
- 6.23 When an Onsite visit is required, it will take place in accordance with the Response Times available within the Customer's standard Support Agreement. Consequently there is no guarantee that an on site Support visit will commence immediately at the start of the next standard hours period (8.00AM)
- 6.24 When a Customer has an Incident that is being worked upon during normal business hours that remains unresolved at 6.30PM Support will not continue in the Out of Hours Period by default.



- 6.25 In order for Support on an Incident that remains unresolved at 6.30PM to continue and be passed on to the on duty Consultant beyond 6.30PM, the Customer will be required to specifically request an immediate Out of Hours task to be logged within the Incident in question.
- 6.26 When Out of Hours Support is being delivered in the time immediately prior to Octavia's standard hours of Support commencing (IE up to 8.00AM on a business day), the on duty Consultant will hand over to the Consultant(s) available at Octavia's offices accordingly at 8.00AM.
- 6.27 If Out of Hours Support is being provided during non business days, the Customer must accept that from time to time the on duty Consultant will change in accordance with pre defined shift patterns. In such circumstances the on duty Consultant coming off shift will hand over to the on duty Consultant coming on shift and the provision of Support will continue.
- 6.28 The Customer can opt to pay for Support during Out of Hours Periods either by:
- 6.28.1 Agreeing to a fixed fee as part of the Agreement in order to be able to log unlimited Out of Hours Support. The fixed fee will be stated in the Agreement.
  - 6.28.2 OR
  - 6.28.3 Agreeing to pay for Out of Hours Support on a pay as you go basis at an agreed hourly rate stated in the Agreement.
  - 6.28.4 Minimum billing periods will apply when Support has been delivered for part thereof the billing period in question. (IE: Up to 30 minutes of Support provision will result in a charge of 30 minutes of time. Between 30 and 60 minutes of Support will result in a charge of 1 hour of time etc...)
  - 6.28.5 The Customer accepts that contacting the on duty Consultant or by leaving a message for the on duty Consultant to contact them, a Support call will be logged and charges will be levied accordingly.
  - 6.28.6 When Out of Hours Support is requested on a pay as you go basis, the fees for Out of Hours Support will be invoiced in arrears as/when applicable as a separate line item in Octavia's Support invoices.
  - 6.28.7 All Out of Hours Support Incidents logged will be subject to a minimum billing period of 30 minutes, followed by subsequent billing periods of 30 minutes.
  - 6.28.8 Chargeable time will commence from the point when the on duty Consultant speaks to the Authorised Caller logging an Incident or from the point when the on duty Consultant starts to provide Support in accordance with requests left in message(s) from the Authorised Caller, if the provision of Support occurs prior to the on duty Consultant speaking to the Authorised Caller.
- 6.29 Octavia retain the right to revise the fees for Out of Hours Support from time to time and will notify Customers in advance of such a revision in accordance with the guidelines stated herein.

## 7.0 Option Packages



- 7.1 Option Packages are a range of services that are supplied in addition to Incident Support. Option Packages will be agreed with the Customer prior to being included within their Flexisupport Agreement.
- 7.2 Any Option Package may be added to the Agreement upon request from the Customer with immediate effect. The signing of an Agreement Annex in addition to the main Agreement may be required for the Option Package to be added to the Flexisupport Agreement.
- 7.3 Full Terms and Conditions for Option Packages, if/when applicable are included as Annexes to these main Terms and Conditions.
- 7.4 The terms of termination for each Option Package will be stated in the relevant Agreement Annex.
- 7.5 In such circumstances when an Option Package requires a 3<sup>rd</sup> party licence agreement or a minimum contract period with specific termination requirements, the Option Package will continue for the minimum period regardless of whether any other items of the Flexisupport Agreement are cancelled or terminated.
- 7.6 When a Flexisupport Agreement is cancelled but an Option Package remains in place, the full fees and charges relating to the Option Package will remain payable by the Customer up to the end of the contractual period.
- 7.7 If the necessary termination notice, as stated in the relevant Annex of these Terms and Conditions has not been provided, the Option Package may continue with all charges applicable for a further minimum contract period.
- 7.8 The price of each Option Package will be determined by the needs of the Customer and the size of the System.
- 7.9 When applicable the agreed fees for Option Packages will be billed in arrears via Support Invoices as per that stated in section 9 below.
- 7.10 Octavia retain the right to add new Option Packages to its range of services at any time.
- 7.11 The Terms and Conditions for new Option Packages may be added to these main Terms and Conditions as Annexes on an as required basis. The addition of such Annexes will NOT be deemed as a change to these Terms and Conditions that warrants formal notification as stated in sections 20 and 21 below.

## **8.0 Changes to your IT System**

- 8.1 The Customer retains overall responsibility for their IT System. Any Changes made to the System by the Customer or a third party will only be covered by the Agreement once approved by Octavia.
- 8.2 For such Changes as set out above to be approved, Octavia must receive appropriate details from the Customer in a timely fashion.
- 8.3 If accepted the Changes will be noted in Appendix 1 of the Agreement.
- 8.4 Any changes performed by Octavia to the System will automatically be covered by the Agreement once any bedding down or warranty periods have expired if applicable. Bedding down periods and Warranties apply to fixed price project work only and as such are covered by separate Terms and Conditions.



8.5 If Support is required for an unapproved System Change or another System, Octavia will endeavour to provide Support under these Terms and Conditions. However Octavia retain the right to refuse Support or impose additional charges as necessary.

## 9.0 Account Information and Invoicing

9.1 Support Invoices will be raised on the 1st working day of each month and will consist of:

9.1.1 The fee for the number of Credits required to return the Customer's Account back to the Agreed Credit Balance; i.e. the total number of Credits that apply to all Incidents closed during the previous month.

9.1.2 The agreed fee for any Option Packages delivered during or relating to the previous month.

9.2 The applicable price of Flexisupport Credits will be stated in the Proposal for Flexisupport that is issued to the Customer prior to the commencement of the Agreement.

9.3 As per section 20 below, Octavia retain the right to revise the price of Credits or the number of Credits charged per hour from time to time. In the event of a change in pricing, formal notice will be provided to the Customer by Octavia as stated herein.

9.4 For Incident Support, time segments will be billed in full if only part of the time segment has been spent by a Consultant providing Incident Support.

9.4.1 Remote Support is billed in 5-minute time segments. The minimum billing period for Remote Support is 5 minutes.

9.4.2 On Site Support is billed in 1 hr time segments. The minimum billing period for On Site Support is 1 hr.

9.4.3 Developer Support is billed in 1 hour time segments. The minimum billing period for Developer Support is 1 hour.

9.5 The Customer will be invoiced for Flexisupport on a monthly basis. All Support Invoices must be paid by the Customer within 14 days of the invoice date.

9.6 A 5% discount will be given for all Credits purchased when the Support Invoice in question is paid via Direct Debit.

9.7 When Customers choose to pay for Flexisupport using Direct Debit, monies will be taken for Support Invoices by Octavia on or around the 15th of each month.

9.8 When Support Invoices are paid on time, the requested level of Support for future Incidents will be delivered regardless of the number of Credits in the Customer's Account. (i.e. the Customer may become Overdrawn without any penalties or restriction to service.)

9.9 When the Customer's Account becomes Overdrawn, the necessary number of Credits to return the Account to the Agreed Credit Balance will be invoiced via the next monthly Support Invoice.

9.10 If the Customer is continually Overdrawn Octavia retains the right to increase the Agreed Credit Balance. The Credit increase will be equivalent to the average of the Customer's Overdraft over the past 3 months.

9.11 If Support Invoices remain unpaid:



- 9.11.1 Octavia retain the right to limit the level of Support on an ongoing basis to reflect the positive number of Credits available in the Customer's Account (i.e. the Overdraft facility will be removed or capped).
- 9.11.2 A Consultant, upon instruction from Octavia, may not be able to conclude the Support required for particular Incidents, as the necessary Credit balance is not available (due to the unlimited Overdraft facility being removed or capped).
- 9.11.3 Services associated with Option Packages can be put on hold if payments for Support Invoice(s) are overdue.
- 9.12 If any payment remains outstanding in respect of Support Invoices, Octavia retain the right to recover on a full indemnity basis any costs incurred collecting overdue payments including interest at a rate of 4% above the Bank of England base rate.
- 9.13 For work performed on behalf of UK registered organisations all amounts invoiced will be subject to VAT payable at the then prevailing rate.

## **10.0 Complaints**

- 10.1 In the event that the Customer is dissatisfied with the quality or performance of a Consultant, the Customer shall inform Octavia immediately, stating the basis for dissatisfaction. If, in the view of Octavia, the situation merits it, Octavia will withdraw the Consultant immediately and will use all reasonable endeavours to provide a replacement.
- 10.2 In the event of a complaint by the Customer in respect of work performed by a Consultant, in terms of time taken or methodology and techniques used, the Customer shall notify Octavia immediately and no later than 5 working days after the completion of the Support. Failure to notify Octavia of such an issue within this time will absolve Octavia from any liability in this respect. Any other complaint by the Customer in respect of any other aspect of the work shall be notified as soon as the fault in question is found.

## **11.0 Term of Agreement**

- 11.1 The Agreement between the Customer and Octavia, with the exception of Option Packages with specific contractual periods, is perpetual and will only cease upon termination by the Customer or Octavia in accordance with section 12.0 below.

## **12.0 Termination of Agreement**

- 12.1 The Customer may cancel the Agreement, (with the exception of any Option Packages with specific contractual periods) at any time upon provision of 30 days written notice to Octavia.
- 12.2 In such circumstances all Credits in the Customer's Account at the point of termination (i.e. after 30 days) will be negated and are non-refundable.
- 12.3 At the end of the notice period the Customer's Account will be terminated unless Overdrawn.
- 12.4 When Overdrawn the termination will only proceed upon receipt of all monies owed in full; i.e. the Customer's Account balance must be a minimum of zero and all Option Packages for which work has been performed must be paid.



- 12.5 Octavia can terminate the Agreement with 30 days notice in writing. The value of any Credits left in the Customer's Account at the point of termination will be paid by Octavia to the Customer in full.
- 12.6 Octavia can terminate the Agreement or any aspect of it, including any / all Option packages at any time if the Customer becomes the subject of a receivership winding up administration or bankruptcy order (or a petition is presented in respect of any of these). Or, if it otherwise appears to Octavia that the Customer is insolvent and unable to pay its debts as they fall due.
- 12.7 Octavia shall also be entitled to terminate this Agreement in the event that the Customer commits a material breach of this Agreement and fails to remedy the breach within 30 days of receipt of written notice from Octavia.
- 12.8 Any termination shall be without prejudice to Octavia's other rights or to the Customers liability for amounts payable under this agreement.
- 12.9 In the event of termination of the Agreement, Octavia retain the right to uninstall any 3<sup>rd</sup> party software from the Customer's System that Octavia own the licence for or that Octavia have installed on behalf of a 3<sup>rd</sup> party who own the software licence.

### **13.0 Data Protection**

- 13.1 Octavia aims to keep the Customer's data as private as possible. The Customer acknowledges that in certain situations Octavia's staff may be in a position to see the contents of files on the Customer's System. Octavia will apply every safeguard to ensure that their staff do not violate the privacy of the Customer's data in any way.
- 13.2 Octavia undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation insofar as the same relates to the provisions and obligations of this Agreement.
- 13.3 Octavia have taken reasonable steps to ensure the reliability of any of their staff who have access to personal data processed in connection with the Agreement;
- 13.4 Octavia undertake to act only on the Customer's instructions in relation to the processing of any personal data in connection with the Agreement and further undertake to allow the Customer access to any relevant premises on reasonable notice to inspect its procedures described above.
- 13.5 The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.
- 13.6 The Customer understands that they can use encryption and personal security programs to increase the security and privacy of their files. The Customer agrees that if any of its files are particularly private then such precautions will be used. The Customer agrees that if they are required under any professional or statutory regulations to keep their data confidential or secure then they will encrypt them so that Octavia's Support staff cannot have access to them when working on the Customer's equipment.
- 13.7 The Customer understands that Octavia are not authorised by any financial regulators such as the UK Financial Services Authority or the US Securities and Exchange Commission.
- 13.8 Octavia gather and hold personal data about the Customer's employees, including names, physical and email addresses, and telephone numbers. Octavia do not hold Customer credit card information.
- 13.9 Octavia's Privacy Policy states how Octavia will use and protect personal data. This is included within Octavia's overall IT Security Policy which is available upon request.



13.10 All of Octavia's employees sign a Client Data Confidentiality Agreement as part of their Contract of Employment, a copy of which is available on request.

#### 14.0 Intellectual Property Rights

14.1 Intellectual property rights in respect of Network Infrastructure Solutions including Hardware, Operating Systems and 3rd Party Software:

14.1.1 The System shall remain the property of the Customer and legal ownership shall remain vested in the Customer along with any future Changes made to the System under the Agreement.

14.1.2 Any System documentation created under the Agreement is the property of the Customer. This will be provided to the Customer upon request as long as the Customer's Account is not in negative balance and/or being disputed.

14.1.3 The knowledge and expertise that Octavia utilise or gain in order to perform Support as required/requested by the Customer will inherently remain vested in Octavia and the Consultant(s) in question.

14.2 Intellectual property rights in respect of Software built by Octavia:

14.2.1 When ownership of the Software remains vested in Octavia:

14.2.1.1 All Intellectual Property Rights and copyright relating to the System that is licensed to the Customer shall remain vested in Octavia in accordance with the license that has been granted by Octavia for the use of the System by the Customer.

14.2.2 When ownership of the Software is transferred to the Customer:

14.2.2.1 No part of the System may be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in a retrieval system, by Octavia without the prior written permission of the copyright owner (the Customer).

14.2.2.2 The intellectual property rights and copyright and all other confidential information in the development of a Change shall vest in Octavia until approved by the Customer.

14.2.2.3 Upon receipt of the Customer's approval /acceptance for a Change and upon payment from the Customer for all associated charges, Octavia will assign the intellectual property rights and copyright relating to that Change, to the Customer.

#### 15.0 Warranty

15.1 Octavia warrant that Support will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

15.2 Octavia warrant that it will have and maintain the necessary technical skills and knowledge to Support the System defined in the Agreement.

15.3 Octavia do not warrant that the operation of the System will be uninterrupted or error free over any specified period of time.



15.4 Octavia do not warrant the performance of third party Hardware and Software. Advice and Support from third party manufacturers will be sought where necessary and when available. Octavia have partnership agreements with key suppliers and manufacturers to enable such Support to be obtained but cannot warrant the quality or accuracy of advice and Support received from 3rd parties.

#### **16.0 Limitation of Liability**

16.1 The liability of Octavia for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the aggregate price paid for the services under the Flexisupport Agreement up to the date in question.

16.2 In no event shall Octavia, it's partners or suppliers be liable for costs of substitute goods or services, nor will they be liable for loss of profits, loss of data or any indirect, special, incidental, consequential or punitive damages however caused, whether due to a breach of contract, negligence or otherwise unless such liability is determined by a Court of competent jurisdiction, without further recourse to appeal, that it was caused by gross negligence, wilful misconduct or fraudulent acts by Octavia.

#### **17.0 Confidentiality**

17.1 Each party undertakes to the other to treat all information (in any form) exchanged in relation to the Agreement as strictly confidential for the period of the contract and beyond.

#### **18.0 Solicitation**

18.1 The Customer will make no approach or offer relating to employment to a Consultant or any other employee of Octavia introduced by Octavia.

18.2 Upon termination of the Agreement or upon completion / termination of any other bookings / agreements under which Octavia may deliver services to the Customer, the Customer agrees not to engage any Consultant or employee introduced by Octavia in any form without the written consent of Octavia for a period of six months from the conclusion of the most recent booking / agreement.

18.3 Octavia retain the right to charge the Customer if a Consultant or employee is engaged in employment by the Customer or by any 3rd party introduced by the Customer. It is agreed the Customer shall pay an introductory fee to Octavia the equivalent of 40% of the annual remuneration package offered by the Customer or 3<sup>rd</sup> party (including benefits and commission) of the Consultant or employee in question.

#### **19.0 Force Majeure**

19.1 Neither party shall be liable for any breach of its obligations 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').

19.2 Each of the parties agrees to give notice to the other upon becoming aware of an Event of Force Majeure. Such notice must contain details of the circumstances giving rise to the Event of Force Majeure.



19.3 If a default due to an Event of Force Majeure shall continue for more than twelve [12] weeks then the party not in default shall be entitled to terminate the Agreement. Neither party shall have any liability to the other in respect of the termination of the Agreement as a result of an event of Force Majeure.

## **20.0 Changes to the Price of Flexisupport Services**

- 20.1 Octavia retains the right to review the price of Credits or the number of Credits charged per hour from time to time. Octavia undertake to inform the Customer of any such alterations with 30 days written and email notification to the Principal Contact.
- 20.2 In the event of a change in price, all Credits purchased prior to the change in price will remain valid at the price they were purchased.
- 20.3 In the event of a change in the number of Credits charged per hr, the new charges will apply to all Incidents closed after the date of introduction of the new charges.
- 20.4 Octavia retain the right to review the price of Flexisupport Options from time to time. Octavia undertake to inform the Customer of any such alterations with 30 days written and email notification to the Principal Contact.
- 20.5 If the Customer objects to a change in price, they have the right to terminate the entire Agreement or the Option package in question upon the provision of 30 days notification in writing as per section 12 above.

## **21.0 Changes to the Terms and Conditions of Flexisupport.**

- 21.1 Octavia retains the right to review these Terms and Conditions from time to time. With the exception of changes and additions to Annexes as stated in section 7 above, Octavia undertake to inform the Customer of any such alterations with 30 days notification via email to the Principal Contact.
- 21.2 The new altered Terms and Conditions will be posted on the website [www.octaviaais.co.uk](http://www.octaviaais.co.uk) along with the existing Terms and Conditions for the 30 day notice period.
- 21.3 Following the 30 day notice period provided, the alterations will come in to effect and the new Terms and Conditions will become applicable. For the avoidance of doubt the current applicable Terms and Conditions for Flexisupport will always be displayed on [www.octaviaais.co.uk](http://www.octaviaais.co.uk).
- 21.4 The Customer is responsible for being aware of the applicable Terms and Conditions for Flexisupport as displayed on [www.octaviaais.co.uk](http://www.octaviaais.co.uk) .
- 21.5 If the Customer feels unable to adhere to the altered Terms and Conditions, they have the right to terminate the Agreement upon the provision of 30 days notification in writing as per section 12 above

## **22.0 Entire Agreement**

- 22.1 The Flexisupport Agreement supersedes all prior Agreements made between Octavia and the Customer for the provision of Support services and constitutes the entire Agreement between the parties relating Flexisupport.
- 22.2 The Flexisupport Agreement does not supersede Octavia's full Terms and Conditions or Agreement of any other business activities that the parties are or have been engaged in or may be engaged in the future.



- 22.3 No addition to or modification of any provision of these Terms and Conditions shall be binding upon the parties, except as set out herein, unless made in writing and signed by a duly authorised representative of each of the parties.
- 22.4 If any term, clause or condition of these Terms and Conditions is in violation of any applicable law, statute or regulation, the term, clause or condition in question shall be deemed as being deleted without effect to the remainder of these Terms and Conditions.
- 22.5 These Terms and Conditions shall remain in full force as if the deleted term, clause or condition had not been included. Octavia and the Customer will negotiate, in good faith, alternative terms, clauses or conditions to those deleted that are mutually acceptable to both parties.
- 22.6 Headings are included for convenience only and shall not affect the interpretation of these Terms and Conditions or the Flexisupport Agreement.

### 23.0 Notice

- 23.1 Any notice given under the Agreement by the Customer to Octavia shall be provided in writing by post or fax as set out below:
- 23.1.1 Postal address: Octavia Information Systems Ltd, WTG Building, 90 Union Street, London, SE1 0NW. **Fax Number:** 0207 928 9226
- 23.2 Any notice given under the Agreement by Octavia to the Customer shall be provided to the Customer as set out herein and in accordance with the contact details for the Customer stated in the Agreement. The Customer may change its contact details from time to time if required, by the provision of notice to Octavia.

### 24.0 Governing Law

- 24.1 The Agreement shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.



## 1.0 ANNEX A – Terms and Conditions for Proactive System Monitoring Package

### Definitions.

- 1.1 All definitions stated in the full Terms and Conditions for Flexisupport apply to this Annex, Terms and Conditions for Proactive System Monitoring package.
- 1.2 In addition to the definitions stated in the full Terms and Conditions for Flexisupport the definitions below will apply to the Proactive System Monitoring package.
- 1.3 Asset Register: means a record of hardware and software items on the Customer's System.
- 1.4 Remote System Monitoring: means the continuous monitoring of the Customer's System in order to find and highlight issues and errors that exist with the Customer's System.
- 1.5 System Health Report: means an overview report indicating the health status of the Customers System that is issued periodically as required by the Customer.

### Terms and Conditions.

- 1.6 When required by the Customer, the Customer's System as stated in the System Definition will benefit from Proactive System Monitoring via the deployment and operation of 3<sup>rd</sup> party software.
  - 1.7 Without the deployment of 3<sup>rd</sup> party software Octavia will be unable to deliver the Proactive System Monitoring service.
  - 1.8 A set up fee will be charged upon the commencement of Proactive System Monitoring followed by a fixed monthly fee thereafter.
  - 1.9 Proactive System Monitoring incorporating the periodic presentation of System Health Reports, the maintenance of an Asset Register and Remote System Monitoring will be billed in arrears as a separate line item on the Customer's monthly Support Invoice.
  - 1.10 The set monthly charge will be based upon the size of the Customer's System being monitored. If / when the Customer's System grows in size (no. of Server instances or Workstations), Octavia retain the right to revise the fixed monthly fee charged for the service.
  - 1.11 The Customer may request changes to the Proactive System Monitoring package. Such changes will need to be considered and agreed by Octavia prior to being confirmed by the Principal Contact named in the Agreement.
  - 1.12 Depending on the nature of the changes to the Proactive System Monitoring package requested by the Customer, Octavia retain the right to adjust fees accordingly. Changes and associated fees will either be updated in the Agreement Annex or set out in a side letter and signed by both parties.
  - 1.13 The Customer may cancel the Proactive System Monitoring package at any time with 30 days notice.
  - 1.14 Cancellation of Proactive System Monitoring has no effect upon other aspects of the Flexisupport Agreement in respect of Octavia's contractual obligations to the Customer. However by not holding and maintaining the information that is generated as a result of the Proactive System Monitoring package Octavia cannot guarantee there will be no degradation in the overall quality of service provided.
- 
- 1.15 The purpose of Proactive System Monitoring is to identify issues and make the Customer aware of them in order that the Customer can then make a decision as to whether to log a Support Incident with Octavia.



- 1.16 None of the aspects of the Proactive System Monitoring package can in anyway ensure the continuous operation and status of the System and its component elements.

### **System Health Reports**

- 1.17 The 3<sup>rd</sup> party software used will assist with the production of System Health Reports on a periodic basis.
- 1.18 System Health Reports will be issued via email on a periodic basis as required by the Customer.
- 1.19 The System Health Report is a business focussed management report indicating the overall health status of the Customer's System. Octavia will be happy to explain and discuss System Health Reports upon request from the Customer.

### **Asset Register**

- 1.20 As part of the Proactive System Monitoring package Octavia will generate an Asset Register. Octavia will hold and maintain the Asset Register in order to assist with the delivery of Support. The Asset Register will be made available to the Customer upon request.
- 1.21 If the Customer purchases equipment independently from Octavia that is not added to the network (e.g. a laptop purchased for an employee's use at home), Octavia will require formal notification of the equipment item in order for it to be included on the Asset Register.
- 1.22 The Asset Register will include all physical equipment items and all software licence details.
- 1.23 The Asset Register will specify correctly licensed software items as well as software that is not correctly licensed.
- 1.24 With the exception of Software installed by Octavia, as stated in section 2.5 of the full Terms and Conditions for Flexisupport, the responsibility for ensuring the Customer possess correct licensing details for all software in use on their System will rest with the Customer.

### **Remote System Monitoring**

- 1.25 Remote System Monitoring will apply to all aspects of the Customer's System including Servers (whether physical or virtual), Workstations and peripherals in accordance with Octavia's standard Remote System Monitoring checklist.
  - 1.26 Remote System Monitoring generates alerts and notifications in respect of the Customer's System on an ongoing basis.
  - 1.27 Remote System Monitoring is designed to discover and highlight issues only. Any work required to rectify issues must be raised by the Customer as an Incident
  - 1.28 The Customer will be notified of any issues highlighted by the Remote System Monitoring software.
- 
- 1.29 Alerts and notifications generated by the Remote System Monitoring software in respect of the Customer's System will be sent directly to an email address specified by the Customer.



- 1.30 The Customer is responsible for monitoring the alerts and notifications it receives and acting upon them.
- 1.31 Octavia will take no action in respect of any issues highlighted by the monitoring software unless contacted by the Customer who may then choose to log a chargeable Support Incident in order for Octavia to deliver Support in respect of the alert.
- 1.32 Support fees for time spent resolving Support Incidents logged by the Customer which have been highlighted by Remote Monitoring will be charged in addition to the set fee for the Proactive System Monitoring package as. Such Support Incidents will be charged at the standard rates applicable to all Support Incidents logged by the Customer under the Flexisupport Agreement.
- 1.33 The Support delivered to resolve the issues highlighted may result in System configuration changes or on occasion they could require a System enhancement.
- 1.34 Enhancements to the Customer's System may incur capital costs in addition to Support charges.
- 1.35 If the Customer receives an alert outside of Octavia's standard Support hours, the Customer can request Support from Octavia via Octavia's Out of Hours Helpdesk service as described in the full Terms and Conditions for Flexisupport.
- 1.36 If the Customer raises an Incident during an Out of Hours period, Octavia will deal with the Incident accordingly. The standard charges for the provision of Out of Hours Support will apply.



**2.0 ANNEX B – Real Time Remote Monitoring package**

2.1 The Real Time Remote Monitoring package has now been replaced / incorporated to Annex A, Proactive System Monitoring package. Therefore this Annex has been left intentionally blank.



**3.0 ANNEX C – Terms and Conditions for Line One package**

3.1 The Line One option package is no longer available. Therefore this Annex has been left intentionally blank.



**4.0 ANNEX D – Terms and Conditions for Out of Hours Support package**

- 4.1 Out of Hours Support is now included as a standard service within Octavia's Flexisupport service.
- 4.2 The relevant Terms and Conditions for Out of Hours Support are stated within the full Terms and Conditions for Flexisupport. Therefore this Annex has been left intentionally blank.



## 5.0 ANNEX E –Online Backups

5.1 This Annex will only apply if the appropriate Agreement Annex is signed by both parties (Octavia and the Customer)

### Definitions specific to the provision of Attix 5 Online Backup Services.

- 5.2 Backup Service(s): means the online data backup service outlined in these Terms and Conditions. The service is delivered as an Option package.
- 5.3 Software: means all or any computer programs sold or leased by Octavia to the Customer specific to the purposes of providing online Backup Services, whether such programs are produced by Octavia, or are sold or leased as distributor or agent of a third party whether by licence or through the public domain. The Software specific to the service is as follows:
- 5.3.1 Attix5 Backup Professional Server Edition (SE) & associated plugins
  - 5.3.2 Attix5 Backup Professional Desktop & Laptop (D&L) Edition
  - 5.3.3 Attix5 Backup Professional Monitoring and Deployment
  - 5.3.4 Attix5 Backup Professional Storage Platform
- 5.4 Software Support: means all reports of Software faults or queries, in relation to the Software and its operation. This is distinct from other types of Support delivered via Octavia's Flexisupport service.
- 5.5 Business Day: means any day within the year, excluding weekends (Saturday, Sunday) and public holidays.
- 5.6 Allocated Limit: means amount of storage allocated to store the Customer's data on the Data Storage Centre system.
- 5.7 Data Storage Centre: means the remote, secure managed location where backed up data will be stored and maintained.

### Terms and Conditions

- 5.8 Octavia's Online Backup Service relies upon 3<sup>rd</sup> party suppliers for the provision of software and the management of the Data Storage Centre. In agreeing to these Terms and Conditions, the Customer is accepting the full terms of the 3<sup>rd</sup> party software license.
- 5.9 In accordance with these Terms and Conditions, the Customer will be given the use of 3<sup>rd</sup> party online backup software to securely backup and retrieve their data on-line via any TCP/IP connection to the Data Storage Centre, where the Customer's backed up data will be stored.
- 5.10 The Data Storage Centre is managed and hosted by a 3<sup>rd</sup> party in a secure environment.
- 5.11 Octavia will set up the Software and liaise with the Customer to select and schedule their backup configuration.
- 5.12 After the initial data backup, incremental backups are done for a two calendar month period. At the end of that period, the oldest month is consolidated into a single backup volume, with the last version of all files selected at the end of that month, until a further month has elapsed, when the cycle is repeated.
- 5.13 Customers of the Backup Service are able to access specific data backups up to the month end consolidation allowing restores to be effected from any point within the cyclic one to three month window. This enables Customers to restore data from any time within a two month (60 day) window.
- 5.14 The Customer will be provided with the client application. The Customer will then be required to provide a User Name, Password and Encryption Key. All of this information is required to enable the data to be recovered from the System housed at the Data Storage Centre. This encryption key will not be stored by the Software and is ultimately the responsibility of the Customer.



- 5.15 Without the Password and Encryption Key data cannot be recovered. If the Password and Key Combination is lost, the Customer's data will not be retrievable as this information is not stored within the Online Backup system.
- 5.16 When the Backup Service is operational all reasonable efforts will be made to ensure that the Backup Service is maintained and fully available to the Customer 24 hours x 365 days per year.
- 5.17 All charges for the Backup Service as stated in the Agreement will be billed monthly in arrears.
- 5.18 The charges will comprise of:
- 5.18.1 The fixed components of the Backup Service including server and remote recovery licences referred to as "plugins".
  - 5.18.2 The charges for the amount of data stored. The amount of data stored by the Customer will be variable and charges will be calculated according to the amount of data protected by the Backup Service on the last day of the month.
- 5.19 The unit price for each component of the Backup Service may be reviewed periodically by Octavia.
- 5.20 The Customer may not withhold payment for the Backup Services by reason of any outstanding claim under this or any other agreement with us.
- 5.21 Any delay in payment will entitle Octavia to suspend the Backup Service.
- 5.22 In respect of the Backup Services, if Octavia delays or fails to perform its obligations under the Agreement, the maximum liability is limited to the amount already paid by the Customer under the Agreement for Backup Services (excluding VAT or other tax and the cost of any equipment provided under the Agreement for services and which shall be owned or controlled by the Customer).
- 5.23 Octavia shall not be liable to the Customer for any claims, loss or damage (including consequential loss or damage) of whatsoever nature and howsoever caused except as is provided by statute.
- 5.24 Other than as required by law, no other conditions, warranties, terms, representations and undertakings apply to the Backup Services if Octavia are prevented from providing the Backup Service for any reason beyond our reasonable control. In such circumstances Octavia may suspend or delay delivery of the Backup Services and shall not be held responsible or liable to the Customer for inability to deliver them.
- 5.25 Octavia cannot guarantee the proper delivery of any email message or other data item once it has left the confines of the Data Storage centre, and similarly Octavia cannot guarantee that data traffic will be delivered or that its contents will be held secure once it passes from the Data Storage Centre's control.
- 5.26 The Customer warrants and undertakes that neither it nor any person authorised by it, will knowingly publish or transmit over the Internet nor store on the Online Backup System at the Data Storage Centre any material that is obscene, threatening, defamatory or likely to cause offence or which in any way infringes the intellectual property rights of another party. The Customer hereby agrees to indemnify and hold Octavia harmless from any and all demands, losses, claims, proceedings, damages, costs and expenses including legal fees arising out of any claim against us in relation to such materials.
- 5.27 In the event that a Customer identifies, or suspects, a bug or non conformance in the Attix5 Backup Agent Online Backup Software Support requests are to be sent via email to Octavia at [support@octaviais.co.uk](mailto:support@octaviais.co.uk) or by telephone 020 7940 6100.
- 5.28 All Software Support calls relating to the Online Backup Service received by Octavia will be logged in the Octavia Support Application and whenever possible Octavia will resolve the issue and all details of the Software Support provided will be recorded accordingly.
- 5.29 If the Customer requires Support in relation to the Backup Service such as an alteration to the backup schedule or the retrieval of backup data, this will be deemed as chargeable under the scope of the Flexisupport Agreement.
- 5.30 In the event that the existence of a bug within the Attix5 Agent is confirmed, Octavia will notify the 3<sup>rd</sup> party provider as soon as is practically possible.



- 5.31 Once informed by the 3<sup>rd</sup> party provider Octavia will inform the Customer as to the nature of the non conformance, platforms affected, any actions which should be taken by the Customer, and estimated time for the 3<sup>rd</sup> party provider to rectify the bug or non conformance.
- 5.32 Octavia cannot provide guarantees or take responsibility for the time taken by the 3<sup>rd</sup> party provider to rectify the bug or non conformance.
- 5.33 When the 3<sup>rd</sup> party provider is required to resolve Software Support queries, the work shall be performed remotely via the Internet.
- 5.34 The provision of the Backup Service shall commence on the date specified in the Agreement and shall continue regardless of whether any other options or the Flexisupport Agreement itself is cancelled or terminated.
- 5.35 If at any point in time, the Customer wishes to have data from additional Server Instances backed up online, a new Agreement Annex specific to the separate server(s) / data will need to be signed.
- 5.36 Any additional Agreement Annexes will commence on the day specified in the new Agreement and shall continue regardless of whether any other options or the Flexisupport Agreement itself is cancelled or terminated.
- 5.37 The Agreement for the provision of Backup Services will be perpetual unless notice of termination is provided in writing by either the Customer or Octavia to the other party.
- 5.38 The notice period will always be ninety (90) days from the 1<sup>st</sup> day of the following month. This is because the billing cycle for the Backup Service requires the service to cease on the final day of a month. Charges for the Backup Service cannot be pro ratad or apportioned to cease part way through a month.
- 5.39 In the event whereby the Customer provides notice of termination of the Backup Service, Octavia will issue the Customer with a letter that an authorised representative of the Customer MUST sign and return to confirm that on a specific date the data in question will be removed from the Data Storage Centre and will not be retrievable.
- 5.40 After the specified date whereby the data is removed from the Data Storage Centre, Octavia will bear no responsibility for the availability of the data in question.

