

Terms and Conditions for IT Support Services
Contents

1.0 IT Support Definitions.....2

2.0 IT Support Services3

3.0 Getting Started4

4.0 Requesting Support5

5.0 Availability of Support5

6.0 Out of Hours Helpdesk Support.....5

7.0 System monitoring and management8

8.0 Changes to the Customer’s System9

9.0 Exclusions and details.....10

10.0 Option Packages12

11.0 Charges and Invoicing.....12

12.0 Variable Charging13

13.0 Fixed price charging.....13

14.0 Unpaid Invoices13

15.0 Complaints.....14

16.0 Term of Agreement14

17.0 Termination of Agreement.....14

18.0 Data Protection.....15

19.0 Intellectual Property Rights15

20.0 Warranty.....16

21.0 Limitation of Liability16

22.0 Confidentiality16

23.0 Solicitation17

24.0 Force Majeure17

25.0 Changes to the Price of IT Support Services.....17

26.0 Changes to these Terms and Conditions.....17

27.0 Entire Agreement17

28.0 Notice18

29.0 Governing Law18

30.0 ANNEX A –Online Backups.....19



1.0 IT Support 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 IT Support. This will be the organisation to whom services will be delivered and/or Support Invoices will be addressed to.
- 1.3 Agreement: means a contract for the provision of IT Support services signed by both parties (Octavia and the Customer). The Agreement declares that the Customer accepts the IT Support Terms and Conditions.
- 1.4 Asset Register: means a record of all hardware and software items that form the Customer's System. The Asset Register will be generated and maintained via the System Monitoring and Management service.
- 1.5 Agreed Balance: means a sum of money invoiced to the Customer, in advance, from the outset of the IT Support Agreement. Octavia, at its discretion, may insist on a Customer having an Agreed Balance in order to provide service.
- 1.6 Authorised Caller(s): means representatives of the Customer, of whom we hold records in our support systems, that are able to log IT Support Incidents. There is no restriction on changes to, or the number of Authorised Callers.
- 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 Customer Site(s): means the Site(s) at which the Customer operates the System defined in the Agreement.
- 1.10 Developer Support: means any time spent by a member of the Octavia Software Development Team performing work covered by a IT Support Agreement.
- 1.11 Option Package: means a range of additional service packages that can be purchased in addition to the services defined in The Agreement
- 1.12 Incident: means the request for Support and all the actions associated with it.
- 1.13 Incident Support: means Support relating specifically to Incident requests as opposed to Support via IT Support Options packages and other general assistance relating to the System.
- 1.14 On Site Support: means the provision of Support services by Octavia at the Customer Site(s).
- 1.15 Out of Hours Period: means the periods beyond Octavia's standard working hours
- 1.16 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 IT Support from Octavia.
- 1.17 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
- 1.18 Roaming Computer / User; means a workstation, mobile communication device or user that is not permanently located at the Customer's site when the workstation or mobile communications device in question is owned by the Customer and is part of the Customer's domain.
- 1.19 Service Level Agreement means a document that defines the target times for Octavia to respond to Incidents, create a plan to resolve Incidents and to resolve Incidents. The Service Level Agreement also defines the current prices and rates for IT Support. The Service Level Agreement is included in The Agreement



- 1.20 Server Instance: means a network, email or other server, whether physical or virtual.
- 1.21 Support: means IT Support services designed to assist with the maintenance of the Customer's System. Support may include both proactive and reactive actions to maintain the System's accepted operational status. There will be times when Changes as opposed to Support are required to maintain the accepted operational status of the System. Such Changes may be deemed as being chargeable.
- 1.22 Support Application: means the software application used by Octavia to setup and administer the Customer's IT Support Account and record all actions and time in relation to Incidents.
- 1.23 Support Invoice: means the invoice raised by Octavia for the provision of Support as set out in section 11 below.
- 1.24 Customer Portal: means a web-based facility provided by Octavia to allow customers to interact with various elements of our service.
- 1.25 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.
- 1.26 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.
- 1.27 System Definition: means the definitive list of elements of The System that will (or will not) be covered by The Agreement. The System Definition will be held in Octavia's internal systems and made available to The Customer on request. A printed copy will be included in the initial Agreement. The System Definition will include (but not be limited to) The Asset Register.

2.0 IT Support Services

- 2.1 IT Support provides the following services either as Support or Developer Support:
 - 2.1.1 Corrective action.
 - 2.1.2 System fault analysis.
 - 2.1.3 Status reporting.
 - 2.1.4 Application monitoring.
 - 2.1.5 System administration.
 - 2.1.6 Performance testing.
 - 2.1.7 Proactive System Monitoring.
 - 2.1.8 Real Time Remote Monitoring.
 - 2.1.9 Online backup solutions.
 - 2.1.10 Out of Hours (24/7) Support cover.
 - 2.1.11 Software Bug fixes*
 - 2.1.12 Software patch development*
- *Services delivered Developer Support only.
- 2.2 Specific services NOT covered by the Agreement:
 - 2.2.1 Procurement of new hardware, software.
 - 2.2.2 Any form of IT training or organised education.
 - 2.2.3 Extensions or Changes to the system.



- 2.3 Octavia will install 3rd party software on the Customer's System to facilitate the remote connection and delivery of Support to the Customer. In accordance with this right:
- 2.3.1 If at any stage following the commencement of the Agreement the Customer refuses Octavia the right to install / use 3rd party software for the purposes stated in clause 2.3, upon their System, Octavia retain the right to impose additional charges in order to facilitate the delivery of services under the Agreement.
 - 2.3.2 Octavia warrant to the Customer that all 3rd party software installed upon the Customer's System for the purpose stated in clause 2.3 above will be licensed accordingly by Octavia.
 - 2.3.3 The ownership of 3rd party software installed upon the Customer's System for the purpose stated in clause 2.3 above will remain vested in Octavia.

3.0 Getting Started

- 3.1 Prior to the commencement of the IT Support Agreement a System Audit will be performed.
- 3.2 The Customer accepts responsibility for the status of their System prior to the involvement of Octavia.
- 3.3 Any deficiencies found during the System Audit will be noted in the report produced and can be corrected or improved by Octavia for a fixed price prior to or post commencement of the IT Support Agreement.
- 3.4 The Customer is under no obligation to commission Octavia to resolve issues discovered during the System Audit.
- 3.5 If the Customer does not wish to adopt recommendations for improving aspects of the System or resolve deficiencies highlighted or if there are omissions in the information provided by the Customer during the System Audit, Octavia retain the right to charge additional fees or impose reasonable limits on the Support provided for certain aspects of the System.
- 3.6 The Agreement will state the Update Policy to be operated via System Monitoring and Management. Sign off of the Agreement will be deemed as acceptance of these service schedules.
- 3.7 All service schedules may require amending from time to time depending upon the Customer's needs and Changes to the System. Any such amendments will be recorded and appended to the Agreement.
- 3.8 The Customer is responsible for giving Octavia the authority to deal with 3rd 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.
- 3.9 Octavia will require Administrator-level access to The System at all times
- 3.10 Octavia cannot be held responsible for being unable to provide Remote Support due to a lack of remote access to the System, when the lack of remote access results from a problem with connectivity that is beyond Octavia's control.
- 3.11 Octavia will respond to Incidents in accordance with the Service Level Agreement that is specified in the Agreement.
- 3.12 Octavia retain the right to decide the appropriate course of action for each Incident and will follow the necessary troubleshooting steps in order to diagnose and then rectify the Incident.
- 3.13 Depending upon the nature of the Incident, Octavia may have to impose a workaround to rectify the Incident as opposed to a fix.
- 3.14 A workaround may be temporary prior to a permanent solution being instigated or permanent if the Customer decides not to proceed with a permanent fix.



- 3.15 A workaround may be of a technical nature or may involve changing a manual business process performed by the Customer.
- 3.16 Octavia will always aim to return the affected area of the System to an acceptable operational state, however depending on the nature of the problem this may not be possible without Changes to the System being made.

4.0 Requesting Support

- 4.1 All requests for Support from the Customer must be made by Authorised Callers via telephone, emails . or via the Customer Portal.
- 4.2 Customers can view the current list of Authorised Callers or amend the list of Authorised Callers at any time using our Customer Portal.
- 4.3 The Customer agrees to incur any 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 (not applicable for Customers with fixed fee charging).
- 4.4 If a Customer specifically wishes to exclude a person at their organisation from being able to raise Incidents, they must inform Octavia in writing or by email. Octavia will consequently remove that person from our database.
- 4.5 Incidents will be prioritised by Octavia according to their impact on the Customers organisation and the severity of the problem.
- 4.6 Target times for response, creation of resolution plans and resolution will vary according to prioritisation as defined in the Service Level Agreement.
- 4.7 Octavia retain the right to perform Incident Support at any point within the target times specified by the Service Level Agreement. If the Customer cancels an Incident when work has already commenced, the time spent up to that point will remain chargeable (not applicable for Customers with fixed fee charging).
- 4.8 In cases where Developer Support is required, charges will be incurred according the rates for Developer support as defined in the Service Level Agreement.
- 4.9 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.
- 4.10 The Customer accepts that they will be legally liable for maintaining, acquiring and proving that appropriate licensing agreements for all software in use on their IT system exists.

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 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 nd

- 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 No On Site Support will be available during Out of Hours Periods.
- 6.6 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.
- 6.7 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.
- 6.8 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.
- 6.9 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.
- 6.10 Planned maintenance (e.g. Server reboots) cannot be scheduled for Out of Hours.
- 6.11 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).
- 6.12 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.
- 6.13 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.
- 6.14 The Customer can opt to pay for Support during Out of Hours Periods either by:
 - 6.14.1 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.
 - OR
 - 6.14.2 Agreeing to pay for Out of Hours Support on a pay as you go basis at an agreed hourly rate stated in the Agreement, in which case:
 - 6.14.2.1 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).



- 6.14.2.2 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.
 - 6.14.2.3 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 a separate line item in Octavia's Support invoices.
 - 6.14.2.4 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.
- 6.15 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 System monitoring and management**
- 7.1 Elements of the Customer's System as stated in the System Definition will be continuously monitored and managed by Octavia in a proactive manner.
 - 7.2 System monitoring and management is an integral aspect of the IT support service.
 - 7.3 Continuous System monitoring will allow Octavia to provide proactive Support of all aspects of the Customer's System including Servers, workstations and peripherals.
 - 7.4 The software used to monitor and manage the Customer's System will generate alerts and notifications that will be sent directly to Octavia's Support team.
 - 7.5 Octavia Consultants will react to alerts and notifications generated by the monitoring software during standard Support hours as specified in clause 5.1 above (8.00AM and 6.30PM Monday to Friday excluding public holidays). Incidents will be created if corrective action or detailed investigation is required.
 - 7.6 Where such Incidents are created, the Principle contact will receive an email notification that the Incident has been created. Octavia will NOT telephone the Customer under normal circumstances
 - 7.7 For Customers who pay via variable charging (as per section 12 below)
 - 7.7.1 The Customer accepts that such Incidents will incur costs in exactly the same way as any other Incident
 - 7.7.2 The Customer may, at any time, ask Octavia to stop work on such Incidents and accepts that any costs up to that point will be NOT be refunded
 - 7.8 If required the Customer can opt for alerts to be sent to an alternative email address (other than Octavia) outside of Octavia's standard hours of Support.
 - 7.9 If, having received an alert outside of standard Support hours, the Customer can request Support from Octavia.
 - 7.10 In such circumstances when Out of Hours Support is requested, the provision of Support will be delivered as specified in section 6.
 - 7.11 The System services that will be monitored for the Customer will be in accordance with Octavia's standard key System monitoring items as outlined in the Agreement.



- 7.12 Octavia retain the right to add to and expand the scope of the monitoring performed upon the Customer's System as they see fit in order to improve the overall System Monitoring and Management service provided.
- 7.13 If the Customer requires a variation or addition to these standard monitoring items this will be discussed on a case by case basis.
- 7.14 In some circumstances alerts and notifications may require Octavia to contact the Customer and advise / propose a Change or enhancement to the System. Such Changes may cause the Customer to incur costs.
- 7.15 System management will encompass whatever measures are deemed appropriate by Octavia to resolve issues, prevent or diminish the possibility of future IT issues and ensure updates and patching is performed in accordance with the Update Policy.
- 7.16 The Update Policy in the Agreement will specify what updates and patches released by 3rd party manufacturers will be deployed on the Customer's System by Octavia. This will confirm what operating platform and software application patches will be kept up to date with service packs and patches as they are released by 3rd party manufacturers.
- 7.17 Continuous monitoring of the Customer's System will allow Octavia to maintain an accurate Asset Register of the Customer's System.
- 7.18 This will cover all items specified in the System Definition in the Agreement and all additional items added to the network following the production of the System Definition.
- 7.19 Any equipment that Octavia purchase, configure and install for the Customer will be automatically added to the Asset Register and The System Definition will be updated. This will constitute a Change to The System
- 7.20 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.
- 7.21 The Asset Register will include all physical equipment items and details of all installed software.
- 7.22 To ensure the operational status of the Customer's System via ongoing Management, Octavia will insist the Customer has appropriate protection against viruses, spyware and malware installed on the System for Octavia to manage and maintain.
- 7.23 There may be 3rd party items (Hardware and Software) for which the Customer will be required to have current vendor Support arrangements to enable Octavia to include relevant updates and patches in the Update Policy.
- 7.24 Certain installations of 3rd party updates and patches may be subject to additional payment beyond the scope of the Agreement.
- 7.25 Octavia cannot guarantee the impact of service packs and patches will always be error free or without negative impact upon the System.
- 7.26 System Monitoring and Management can in no way ensure the continuous operation and status of the System and its component elements.

8.0 Changes to the Customer's System

- 8.1 Octavia retain the right to revise the fees charged for ongoing Support under the Agreement following the implementation of Changes.
- 8.2 A Change may be in the form of urgent repair work deemed as being within the scope of the Support contract in order to maintain the accepted operational status of the System. Alternatively a Change may be



an enhancement for security, stability, scalability or functionality reasons that will not be covered within the scope of the IT Support Agreement unless undertaken at the discretion of Octavia as a proactive measure.

- 8.3 Requests from Customers for Changes to their System not deemed as being implicit within the ongoing Support duties required under the scope of this Agreement will be chargeable as separate pieces of work.
- 8.4 For separate pieces of work in the form of “consultancy” or “project work”, a fixed price will be provided whenever possible along with supporting quotes and proposals. The Customer will be required to confirm commencement of such work via sign off of a booking form and/or provision of a valid purchase order.
- 8.5 Octavia will always endeavour to seek the Customer’s approval for chargeable Changes in advance, however, Octavia retain the right to perform chargeable Changes that fall outside of the Agreement without prior sign off if deemed absolutely necessary for the continued operation of the Customer’s System.
- 8.6 Any Changes performed by Octavia to the System will be Supported under the Agreement, once any bedding down or warranty periods have expired (Bedding down periods and Warranties apply to fixed price project work only and are covered by separate Terms and Conditions). These Changes will be added to the System Definition and ongoing charges under the Agreement adjusted accordingly.
- 8.7 The Customer retains overall responsibility for their System. Any Changes made to the System by the Customer or a 3rd party instructed by the Customer, may be approved in principle prior to being implemented. However, such changes will only be covered by the Agreement once approved by Octavia upon completion of the implementation.
- 8.8 For such Changes to be approved upon completion, Octavia must receive appropriate details from the Customer in a timely fashion in order to assess the impact they will have on the System and if they may cause the need for additional Support.
- 8.9 If Support is required for an unapproved System Change or another System, Octavia will retain the right to refuse Support or impose additional charges as necessary.

9.0 Exclusions and details

- 9.1 Octavia retain the right to exclude 3rd party software from the scope of the Agreement.
- 9.2 When 3rd party software is included within the scope of the Agreement, Support will only be provided to users that have a reasonable level of competency and once the user has used help files and other resources available from the vendor.
- 9.3 Octavia do not commit to having experts available for all 3rd party software and therefore cannot guarantee being able to resolve all Incidents relating to 3rd party software logged and will not provide training under the terms of the Agreement.
- 9.4 When 3rd party information or services are provided Octavia can make no guarantees about quality or suitability.
- 9.5 Octavia cannot guarantee that any 3rd party software including but not limited to Anti Virus, security and firewall software, whether or not recommended by Octavia will keep computer(s) free of errors, viruses, worms, trojans, email spam, spy ware, hacking or any other unauthorised access.



- 9.6 In certain circumstances when an issue exists with an element of the Customer's System, Octavia may recommend a solution that will require a capital cost outlay by the Customer. Such costs will not be covered by the Agreement.
- 9.7 If the Customer chooses not to adopt the solution recommended by Octavia and the issues continue, Octavia retain the right to refuse or limit Support in respect of the item / issue in question.
- 9.8 Alternatively a higher charge for continued Support for the item / issue may be introduced to reflect the additional effort that would not have been required if the recommendation were adopted.
- 9.9 Octavia retain the right to not install, configure or Support any software for which the Customer cannot provide / produce a valid license for.
- 9.10 Other services not included as standard within the scope of the Agreement include:
- 9.10.1 Procurement of new or replacement hardware, software of whatever nature.
 - 9.10.2 Installation, physical removal or relocation of hardware and software.
 - 9.10.3 Provision of Hardware warranty for repairs or replacement of equipment including but not limited to networked printers, photo copiers, fax and scanning machines (The Customer is responsible for keeping records of all 3rd party warranties and licences).
 - 9.10.4 PDA's and other handheld mobile communication devices (Such devices are only covered by the Agreement when specified as Roaming Users / Computers.)
 - 9.10.5 Provision of Anti Virus Software (Octavia will make recommendations but the Customer will remain responsible for purchasing the appropriate license).
 - 9.10.6 Technical or end user training on the Customer's System or 3rd party applications.
 - 9.10.7 Internet connections email and web hosting services and remote file storage services.
 - 9.10.8 Insurance of any form.
 - 9.10.9 The creation of financial budgets and other management reports.
 - 9.10.10 Research on behalf of the Customer.
 - 9.10.11 Website or domain migration and management.
- 9.11 Support and assistance for issues that do not relate to the System defined in the System Definition in the Agreement will not be supported for the fixed price specified in the Agreement.
- 9.12 If Octavia are requested to perform work not relating to the System defined in the Agreement, Octavia retain the right to either :
- 9.12.1 Charge for such work under the applicable Terms and Conditions (e.g. Terms and Conditions for the Supply of Consultancy services).
 - 9.12.2 Amend The System Definition (resulting in potentially higher ongoing charges).
- 9.13 When other Terms and Conditions will apply to work being performed by Octavia, prior permission from the Customer will be sought in advance and when possible a "booking form" will be signed as acceptance confirmation.
- 9.14 Items that are not included as standard within the IT Support Agreement but that can be added as optional extras (Option packages) include:
- 9.14.1 Data Backup: the supply of services for managing the process of remote online data backup or provision of physical backup device and backup media



9.14.2 The provision of Support beyond Octavia's standard hours of business.

9.14.3 IT Manager Service (for strategic IT planning & direction)

10.0 Option Packages

- 10.1 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 IT Support Agreement.
- 10.2 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 IT Support Agreement.
- 10.3 Full Terms and Conditions for Option Packages, if/when applicable are included as Annexes to these main Terms and Conditions.
- 10.4 The terms of termination for each Option Package will be stated in the relevant Agreement Annex.
- 10.5 In such circumstances when an Option Package requires a 3rd 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 IT Support Agreement are cancelled or terminated.
- 10.6 When a IT Support 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.
- 10.7 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.
- 10.8 The price of each Option Package will be determined by the needs of the Customer and the size of the System.
- 10.9 When applicable the agreed fees for Option Packages will be billed in arrears via Support Invoices.
- 10.10 Octavia retain the right to add new Option Packages to its range of services at any time.
- 10.11 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 section 26 below.

11.0 Charges and Invoicing

- 11.1 The fees for Octavia's IT Support will be calculated based upon the number of sites, Server Instances and workstations within the Customers IT System along with any other relevant factors or specific requirements the Customer may have.
- 11.2 For work performed on behalf of UK registered organisations all amounts invoiced will be subject to VAT payable at the then prevailing rate.
- 11.3 There are two distinct methods of charging for Support under this agreement:
- 11.3.1 Variable Charging.
 - 11.3.2 Fixed fee charging
- 11.4 The method used for charging will be stated in The Agreement



11.5 The Customer can elect to switch from one charging mechanism to another by giving 90 (ninety) days written notice to Octavia. In such cases, the current charges (not the charges from the initial Agreement) will be used as the basis for calculation.

12.0 Variable Charging

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

12.1.1 Charges for Incident Support, based on the time worked on such incidents by Consultants during the previous month and the chargeable rate for that time. The chargeable rate is defined in the Agreement.

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

12.1.3 An Agreed fee for System monitoring and management.

12.1.4 For Customers who do not wish to have System monitoring and management, an agreed "SLA Management Fee" will be charged.

12.2 Octavia retain the right to revise the price 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.

12.3 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.

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

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

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

12.4 The Customer will be invoiced for IT Support on a monthly basis. Monies will be taken by direct debit on or around the 15th of each month.

13.0 Fixed price charging

13.1 A fixed monthly fee will be specified in the Agreement which will include all services delivered under this agreement (excluding any Option Packages)

13.2 The Customer will be invoiced for Octavia's IT Support in advance.

13.3 The Customer may pay monthly in advance via Direct Debit

OR

13.4 The Customer may pay quarterly, 6 monthly or annually in advance via Direct Debit and receive a 2% discount on the baseline price for the services specified in the Agreement.

14.0 Unpaid Invoices

14.1.1 If Support Invoices remain unpaid, Octavia retain the right to limit the level of Support on an ongoing basis. A Consultant, upon instruction from Octavia, may not be able to conclude the Support required for particular Incidents

14.1.2 Services associated with Option Packages can be put on hold if payments for Support Invoice(s) are overdue.



14.2 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.

14.3 If a Direct Debit payment from the Customer is declined for any reason, it will be deemed as being a breach of contract and Octavia retain the right to suspend the services stated in the Agreement until payment is received.

When a Direct Debit payment from a Customer is declined for any reason, Octavia retain the right to charge an administration fee for reclaiming the amount owed from the Customer as well as charging interest as outlined in section 14.2 above.

15.0 Complaints

15.1 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.

15.2 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.

16.0 Term of Agreement

16.1 The Agreement between the Customer and Octavia, with the exception of Option Packages with specific contractual periods has a minimum term of 12 (twelve) months

16.2 After the minimum term has expired, 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 17.0 below.

17.0 Termination of Agreement

17.1 The Customer may cancel the Agreement within the first 12 months (with the exception of any Option Packages with specific contractual periods) at any time upon provision of 90 days written notice to Octavia. In such circumstances, The Customer agrees to pay, in full, the remaining charges and fees that would be due under the original Agreement for the initial 12 month period.

17.2 After the first 12 months, The Customer may cancel the Agreement, (with the exception of any Option Packages with specific contractual periods) at any time upon provision of 90 days written notice to Octavia.

17.3 If The Customer cancels the Agreement and if The Customer has an Agreed Balance, that Agreed Balance will be non-refundable.

17.4 Octavia can terminate the Agreement with 90 days notice in writing. If the Customer has an Agreed Balance, Octavia will refund that balance to The Customer in full.

17.5 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.



- 17.6 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.
- 17.7 Any termination shall be without prejudice to Octavia's other rights or to the Customers liability for amounts payable under this agreement.
- 17.8 In the event of termination of the Agreement, Octavia retain the right to uninstall any 3rd party software from the Customer's System that Octavia own the licence for or that Octavia have installed on behalf of a 3rd party who own the software licence.

18.0 Data Protection

- 18.1 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.
- 18.2 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.
- 18.3 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;
- 18.4 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.
- 18.5 The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.
- 18.6 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.
- 18.7 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.
- 18.8 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.
- 18.9 All of Octavia's employees sign an IT Usage Policy as part of their Contract of Employment, a copy of which is available on request. This policy defines the measures that Octavia's Employees will go to to ensure Customers data is safe and secure.

19.0 Intellectual Property Rights

- 19.1 Intellectual property rights in respect of Network Infrastructure Solutions including Hardware, Operating Systems and 3rd Party Software:
 - 19.1.1 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.
 - 19.1.2 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.



19.1.3 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.

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

19.2.1 When ownership of the Software remains vested in Octavia:

19.2.1.1 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.

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

19.2.2.1 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).

19.2.2.2 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.

19.2.2.3 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.

20.0 Warranty

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

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

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

20.4 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.

21.0 Limitation of Liability

21.1 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 IT Support Agreement up to the date in question.

21.2 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.

22.0 Confidentiality

22.1 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.



23.0 Solicitation

- 23.1 The Customer will make no approach or offer relating to employment to a Consultant or any other employee of Octavia introduced by Octavia.
- 23.2 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.
- 23.3 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 3rd party (including benefits and commission) of the Consultant or employee in question.

24.0 Force Majeure

- 24.1 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').
- 24.2 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.
- 24.3 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.

25.0 Changes to the Price of IT Support Services

- 25.1 Octavia retains the right to review the price of any element of the service 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.
- 25.2 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 90 days notification in writing as per section 17 above.

26.0 Changes to these Terms and Conditions.

- 26.1 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 10 above, Octavia undertake to inform the Customer of any such alterations with 90 days notification via email to the Principal Contact.
- 26.2 The new altered Terms and Conditions will be posted on the website www.octaviaais.co.uk along with the existing Terms and Conditions for the 90 day notice period.
- 26.3 Following the 90 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 IT Support will always be displayed on www.octaviaais.co.uk.
- 26.4 The Customer is responsible for being aware of the applicable Terms and Conditions for IT Support as displayed on www.octaviaais.co.uk .
- 26.5 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 90 days notification in writing as per section 17 above

27.0 Entire Agreement



- 27.1 The IT Support 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 IT Support.
- 27.2 The IT Support 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.
- 27.3 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.
- 27.4 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.
- 27.5 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.
- 27.6 Headings are included for convenience only and shall not affect the interpretation of these Terms and Conditions or the IT Support Agreement.

28.0 Notice

- 28.1 Any notice given under the Agreement by the Customer to Octavia shall be provided in writing by post or fax as set out below:
- 28.1.1 Postal address: Octavia Information Systems Ltd, WTG Building, 90 Union Street, London, SE1 0NW. **Fax Number:** 0207 928 9226
- 28.2 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.

29.0 Governing Law

- 29.1 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.



ANNEX A –Online Backups

- 30.1 This Annex will only apply if the appropriate Agreement Annex is signed by both parties (Octavia and the Customer)
- 30.2 Definitions specific to the provision of Attix 5 Online Backup Services.
- 30.3 Backup Service(s): means the online data backup service outlined in these Terms and Conditions. The service is delivered as an Option package.
- 30.4 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:
- 30.4.1 Attix5 Backup Professional Server Edition (SE) & associated plugins
 - 30.4.2 Attix5 Backup Professional Desktop & Laptop (D&L) Edition
 - 30.4.3 Attix5 Backup Professional Monitoring and Deployment
 - 30.4.4 Attix5 Backup Professional Storage Platform
- 30.5 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 IT Support service.
- 30.6 Business Day: means any day within the year, excluding weekends (Saturday, Sunday) and public holidays.
- 30.7 Allocated Limit: means amount of storage allocated to store the Customer's data on the Data Storage Centre system.
- 30.8 Data Storage Centre: means the remote, secure managed location where backed up data will be stored and maintained.
- 30.9 Terms and Conditions
- 30.10 Octavia's Online Backup Service relies upon 3rd 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 3rd party software license.
- 30.11 In accordance with these Terms and Conditions, the Customer will be given the use of 3rd 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.
- 30.12 The Data Storage Centre is managed and hosted by a 3rd party in a secure environment.
- 30.13 Octavia will set up the Software and liaise with the Customer to select and schedule their backup configuration.



- 30.14 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.
- 30.15 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.
- 30.16 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.
- 30.17 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.
- 30.18 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.
- 30.19 All charges for the Backup Service as stated in the Agreement will be billed monthly in arrears.
- 30.20 The charges will comprise of:
- 30.20.1 The fixed components of the Backup Service including server and remote recovery licences referred to as "plugins".
 - 30.20.2 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.
- 30.21 The unit price for each component of the Backup Service may be reviewed periodically by Octavia.
- 30.22 The Customer may not withhold payment for the Backup Services by reason of any outstanding claim under this or any other agreement with us.
- 30.23 Any delay in payment will entitle Octavia to suspend the Backup Service.
- 30.24 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).
- 30.25 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.
- 30.26 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.



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.

- 30.27 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.
- 30.28 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 or by telephone 020 7940 6100.
- 30.29 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.
- 30.30 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 IT Support Agreement.
- 30.31 In the event that the existence of a bug within the Attix5 Agent is confirmed, Octavia will notify the 3rd party provider as soon as is practically possible.
- 30.32 Once informed by the 3rd 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 3rd party provider to rectify the bug or non conformance.
- 30.33 Octavia cannot provide guarantees or take responsibility for the time taken by the 3rd party provider to rectify the bug or non conformance.
- 30.34 When the 3rd party provider is required to resolve Software Support queries, the work shall be performed remotely via the Internet.
- 30.35 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 IT Support Agreement itself is cancelled or terminated.
- 30.36 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.
- 30.37 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 IT Support Agreement itself is cancelled or terminated.



- 30.38 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.
- 30.39 The notice period will always be ninety (90) days from the 1st 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.
- 30.40 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 for the Data Storage Centre and will not be retrievable.
- 30.41 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.

