

Managed IT Support Service Terms and Conditions

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1.0 Managed IT Support Service Definitions

- 1.1 Octavia: means Octavia Information Systems Limited of WTG Building, 90 Union Street, London, SE1 0NW.
- 1.2 Customer: means the organisation that enters into the Agreement for the delivery of Octavia's Managed IT Support service. This will be the organisation to whom services will be delivered and/or Octavia's Managed IT Support Service Invoices will be addressed.
- 1.3 Account: means the confidential file where the details of the Customer are held.
- 1.4 Agreement: means a contract for the provision of Octavia's Managed IT Support Service signed by both parties (Octavia and the Customer). The Agreement declares that the Customer accepts Octavia's Managed IT Support Service Terms and Conditions.
- 1.5 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.
- 1.6 Change(s): means a modification that is material or otherwise that alters the hardware or software configuration of the System defined in the Agreement.
- 1.7 Consultant: means any technical staff of Octavia assigned to provide Support to the Customer.
- 1.8 Customer Site: means the Site or Sites specified in the Agreement at which the Customer operates the System defined in the Agreement.
- 1.9 Incident: means the request for Support and all the actions associated with it.
- 1.10 Octavia Support Application: means the software application used by Octavia to setup and administer the Customer's Account and record all actions and time in relation to Incidents.
- 1.11 Octavia Support Invoice: means the invoice raised by Octavia for the provision of Support as set out in the Octavia's Managed IT Support Service Agreement.
- 1.12 On Site Support: means the provision of Support services by Octavia at the Customer Site.
- 1.13 Option packages: means additional service / work packages that are available in addition to the standard Managed IT Support Service.
- 1.14 Out of Hours Period: means the periods beyond Octavia's standard working hours from which Remote Support is available to the Customer.
- 1.15 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, important information and formal notices regarding Octavia's Managed IT Support Service.
- 1.16 Remote Support: means the provision of Support services by Octavia from a site that is remote from the Customer's Site. Primarily this will be from Octavia's offices.
- 1.17 Response Time: means the time taken to respond to an Incident from the point at which it is logged.
- 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 SLA: means the Service Level Agreement that dictates the Response Times provided by Octavia to the Customer for Incidents and the availability / regularity of other



associated services in respect of Octavia's Managed IT Support Service. The SLA will be stated in the Agreement.

- 1.20 System Monitoring and Management: means a service whereby Octavia will continuously monitor the Customer's System and manage the System through proactive measures, improvements and resolution of issues as they arise.
- 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 Server Instance: means a network, email or other server, whether physical or virtual.
- 1.23 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.
- 1.24 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 additional Option packages.
- 1.25 System Definition: means the description included in the Agreement to define the Customer's System that is to be Supported.
- 1.26 System Health Report: means a report that is presented to the Customer regularly to summarise and explain the general System Health status of the Customer's System.
- 1.27 Update Policy: means the list of System, software patches and updates as defined in the Agreement that will be installed and maintained by Octavia as part of the ongoing System Monitoring and Management service.
- 1.28 Web Interface: means the secure area of the Octavia website available for Customers to view their Account details, Consultants notes and other details in relation to Incidents.

2.0 Getting Started

- 2.1 Prior to the commencement of the Managed IT Support Service Agreement a System Audit will be performed.
- 2.2 The Customer accepts responsibility for the status of their System prior to the involvement of Octavia.
- 2.3 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 Managed IT Support Service Agreement.
- 2.4 The Customer is under no obligation to commission Octavia to resolve issues discovered during the System Audit.
- 2.5 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.
- 2.6 The fees for Octavia's Managed IT Support Service 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.
- 2.7 The Managed IT Support Service Agreement will include the System Definition. This will be a precise list of the component parts of the Customer's System at the time of writing along with any specific exclusions or caveats relating to the Support service.



- 2.8 Sign off of the Agreement by the Customer will be deemed as acceptance of the System Definition and therefore acceptance of what will be supported under the terms of the Agreement.
- 2.9 The Agreement will state the System Health Report items to be reported and 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.
- 2.10 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.
- 2.11 The System Definition may include Roaming Computers (usually laptops or mobile communications devices such as Blackberrys) that are regularly away from the Customer's Site. Such computers must be owned by the Customer and of a configuration that is consistent with the computers at the Customer's Site. This configuration requires Roaming Computers to be within the Customer's domain architecture and having appropriate Antivirus software installed.
- 2.12 Computers that meet the criteria in clause 2.11 above that are used remotely from the Customer's site will be subject to a Roaming Computer charge.
- 2.13 For Roaming Computers the Customer must furnish Octavia with the up to date, relevant account credentials including user names and passwords. The Roaming User must be an Authorised Caller in order for Support to be delivered.
- 2.14 Only Remote Support at the response rate specified below in clause 4.9 will be available for Roaming Computers / Users.
- 2.15 Computers and mobile communications devices that do not meet the criteria in clause 2.11 above will not be supported regardless of whether they connect to the Customer's System via secure VPN or any other remote connection mechanism.
- 2.16 The Customer will be required to provide confirmation of all Software Licensing applicable to the System either at the commencement of the Agreement or as required by Octavia during the Agreement.

3.0 Requesting Support

- 3.1 All requests for Support from the Customer must be made by Authorised Callers via telephone on 020 7940 6100 or e-mail on Support@octaviaais.co.uk or via the Support web logging System.
- 3.2 The Customer must inform Octavia of any Incidents as soon as is practically possible. If there is a delay informing Octavia of obvious warning signs then the fault may grow and cause additional impact.
- 3.3 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.
- 3.4 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.
- 3.5 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.



4.0 Delivery of Support

- 4.1 Support will be delivered by Octavia to the Customer in accordance with the SLA. The SLA will be stated in the Managed IT Support Service Agreement. The SLA agreed upon with the Customer will be dependent upon locality and number of Customer Sites, System deficiencies or other specific conditions requested by the Customer.
- 4.2 Octavia retain the right to 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:
- 4.2.1 If at any stage following the commencement of the Agreement the Customer refuses Octavia the right to install / use 3rd party software upon their System for the purposes stated in clause 4.2 above, Octavia retain the right to revise any pricing previously agreed for the Agreement or to terminate the Agreement.
 - 4.2.2 Octavia warrant to the Customer that all 3rd party software installed upon the Customer's System for the purpose stated in clause 4.2 above will be licensed accordingly by Octavia.
 - 4.2.3 The ownership of 3rd party software installed upon the Customer's System for the purpose stated in clause 4.2 above will remain vested in Octavia.
 - 4.2.4 The Customer can request that Octavia demonstrate and explain what 3rd party software it intends to install on the Customer's System and for what purpose it is intended.
- 4.3 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 Octavia Support Application under the specific Incident reference number.
- 4.4 No guarantees or commitments will be given regarding the length of time required for resolving Incidents.
- 4.5 In providing Support, Consultants regularly refer to colleagues for help and advice with specific issues in order to resolve Incidents as quickly as possible.
- 4.6 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.
- 4.7 Once the issue in question is resolved the Consultant will close the Incident in the Octavia Support Application and an automatic email will be sent to the Authorised Caller stating the Incident details including times and Consultants notes.
- 4.8 All Consultant notes and times are available to the Customer to view via www.octaviais.co.uk. Details on how to access the Customer area of the Octavia Web site are provided when the Customer's Account is first setup.
- 4.9 The SLA specified in the Agreement will determine the actual Response Times available under the following categories:
- 4.9.1 Immediate Remote Support (within 30 minutes) – unlimited for all Customers.
 - 4.9.2 Standard On Site Support (Response Times will vary depending on location of Customer Site) – unlimited for all Customers
 - 4.9.3 Business Critical On Site Support (Response Times will vary depending on the location of Customer Site) – number of responses per month will be agreed in advance.



- 4.9.4 Out of Hours Support (within 30 minutes) – unlimited for all Customers regardless of whether they opt for a fixed monthly fee or pay as you go option for Support during Out of Hours periods.
- 4.10 The number of Business Critical On Site Responses available per month will be determined by the number of sites and Server Instances operated by the Customer.
- 4.11 Upon request by the Customer, additional packs containing 5 x Business Critical On Site responses per month can be added to the Agreement.
- 4.12 Additional packs cannot be purchased for a specific Incident on an as required basis. Additional packs will be incorporated into the Agreement on an ongoing basis from the point requested, therefore increasing the standard monthly charges.
- 4.13 If the Customer wishes to cancel Additional packs of Business Critical On Site Responses, 90 days notice must be provided.
- 4.14 Octavia retain the right to decide whether Support will be delivered Remotely or On Site at all times.
- 4.15 When the Customer has Business Critical On Site responses available for use, Octavia will commit to being present at the Customer's site within the time specified in the SLA upon On Site Support being deemed as appropriate / required.
- 4.16 When a Customer does not have any business critical On Site responses available and does not wish to purchase additional business critical On Site Support packs on an ongoing basis, only Standard On Site Support in accordance with the time specified in the SLA will be available.
- 4.17 If as a consequence of Support being provided, software, other than that installed by Octavia for the purpose of facilitating remote connection and the delivery of Support as stated in clause 4.2. is installed, configured or in any way utilised on the Customer's System the Customer is responsible for having the appropriate license for the intended use of that software.
- 4.18 The Customer accepts that whilst Octavia may advise on software licensing matters 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. Consequently the Customer will be solely legally liable to pay any fees, fines or other costs associated with software licensing except for software installed by Octavia as per clause 4.2.

5.0 Availability of Support

Standard Working Hours.

- 5.1 Octavia's standard working Hours for the provision of full Support services outlined herein and including planned proactive Support, 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.

Out of Hours Periods.

- 5.4 Octavia provide remote helpdesk Support during Out of Hours Periods which are the times beyond Octavia's standard working hours as outlined in clause 5.1 above.
- 5.5 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

5.6 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 Year's Eve until 8.00AM on January 2 nd

- 5.7 All 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.
- 5.8 All PCs and laptops used by Authorised Callers must have remote connection software installed in accordance with the instructions provided by Octavia.
- 5.9 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.
- 5.10 No On Site Support will be available during Out of Hours Periods unless explicitly stated in the Customer's Support Agreement.
- 5.11 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.
- 5.12 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.
- 5.13 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.
- 5.14 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.
- 5.15 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.
- 5.16 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
- 5.17 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.
- 5.18 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.



- 5.19 An on duty Consultant will be notified of the message once they are available and they will respond accordingly.
- 5.20 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.
- 5.21 There is no limit to the number of Support calls that can be logged by a Customer during an Out of Hours Period.
- 5.22 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.
- 5.23 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).
- 5.24 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).
- 5.25 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.
- 5.26 When an On site 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)
- 5.27 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.
- 5.28 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.
- 5.29 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.
- 5.30 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.
- 5.31 The Customer can opt to pay for Support during Out of Hours Periods either by:
 - 5.31.1 Agreeing to a fixed fee as part of the overall contract cost in order to be able to log unlimited Out of Hours Support. The fixed fee will be stated in the Agreement.
 - OR
 - 5.31.2 Agreeing to pay for Out of Hours Support on a pay as you go basis at an agreed hourly rate stated in the Agreement.



- 5.31.3 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...)
- 5.31.4 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.
- 5.31.5 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.
- 5.31.6 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.
- 5.31.7 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.
- 5.32 Octavia retain the right to revise the fees for Out of Hours Support from time to time and will notify Customers in advance in accordance with the guidelines stated in the Agreement from time to time.

6.0 System Monitoring and Management

- 6.1 The Customer's System as stated in the System Definition will be continuously monitored and managed by Octavia in a proactive manner.
- 6.2 System Monitoring and Management is an integral aspect of the Managed IT Support Service.
- 6.3 Continuous System monitoring will allow Octavia to provide proactive Support of all aspects of the Customer's System including Servers, Workstations and peripherals.
- 6.4 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 teams.
- 6.5 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).
- 6.6 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.
- 6.7 If, having received an alert outside of standard Support hours, the Customer can request Support from Octavia.
- 6.8 In such circumstances when Out of Hours Support is requested, the provision of Support will be delivered as specified in clauses 5.4 – 5.32 above
- 6.9 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.
- 6.10 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.
- 6.11 If the Customer requires a variation or addition to these standard monitoring items this will be discussed on a case by case basis.



- 6.12 Acting upon the alerts and notifications generated by the monitoring and management software will enable Octavia to prevent many IT issues from having a negative impact upon the Customer's System,
- 6.13 The alerts and notifications received may enable Octavia to resolve issues with System configuration changes that the Customer will be unaware of.
- 6.14 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 capital costs as per clause 9.8
- 6.15 Server 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.
- 6.16 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.
- 6.17 Continuous monitoring of the Customer's System will allow the production of regular System Health Reports
- 6.18 System Health Reports will be produced in accordance with the System Health Report definition stated in the Agreement.
- 6.19 In addition to the standard System Health Report specific requirements / requests from Customers will be considered on a case by case basis.
- 6.20 System Health Reports will be issued on a monthly basis.
- 6.21 The report is for information purposes only and the Customer will not be required to take action based upon its findings because issues highlighted by the motoring software will be dealt with by Octavia as soon as is practical within standard working hours.
- 6.22 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 with the Customer upon request from the Customer
- 6.23 In addition to continuous System Monitoring and Management Octavia may wish to perform additional System health monitoring at the Customer's site in which case a convenient time will be arranged with the Customer.
- 6.24 Continuous monitoring of the Customer's System will allow Octavia to maintain an accurate Asset Register of the Customer's System.
- 6.25 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.
- 6.26 Any equipment that Octavia purchase, configure and install for the Customer will be automatically added to the Asset Register.
- 6.27 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.
- 6.28 The Asset Register will include all physical equipment items and all software licence details.
- 6.29 The Asset register will specify correctly licensed software items as well as software that is not correctly licensed.
- 6.30 As stated in clause 4.18 the responsibility for ensuring the Customer is in possession of correct licensing details for all software in use remains strictly with the Customer.



- 6.31 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.
- 6.32 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.
- 6.33 Certain installations of 3rd party updates and patches may be subject to additional payment beyond the scope of the Agreement.
- 6.34 Octavia cannot guarantee the impact of service packs and patches will always be error free or without negative impact upon the System.
- 6.35 System Monitoring and Management can in no way ensure the continuous operation and status of the System and its component elements.

7.0 Option packages

- 7.1 Option packages are available in addition to the standard Managed IT Support Service. The Terms and Conditions for these additional Option packages are included as Annexes below.
- 7.2 Any additional Option packages will be agreed with the Customer prior to being included within their Managed IT Support Service Agreement.
- 7.3 The price of each Option package will be determined by the needs of the Customer and the size of the System.
- 7.4 Octavia retain the right to add or remove additional Option packages to its range of services at any time.
- 7.5 The Terms and Conditions for new Option packages will 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 clause 14.2 below.
- 7.6 The notice period required for the removal of Option packages will depend upon the Option package in question. Option packages may be subject to a minimum contract period. The minimum contract period for that Option package will apply, even if all other aspects of the contract are terminated.

8.0 Changes to the Customer's System

- 8.1 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 Managed IT Support Service Agreement unless undertaken at the discretion of Octavia as a proactive measure.
- 8.2 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.
- 8.3 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.
- 8.4 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.



- 8.5 Octavia retain the right to revise the fees charged for on going Support under the Agreement following the implementation of Changes.
- 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), pending agreement being reached on revised fees for ongoing Support.
- 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 accepted, with or without an increase to the fees charged via the Agreement, the Changes will be noted in Appendix 1 of the Managed IT Support Service Agreement.
- 8.10 If Support is required for an unapproved System Change or another System, Octavia will endeavour to provide Support under the terms of the Agreement, however Octavia retain the right to refuse Support or impose additional charges as necessary.
- 8.11 If the Customer's System grows in numbers of workstations or Server Instances by 20% over any given period, Octavia retain the right to instigate a System review.
- 8.12 The result of the System review may lead to the fees charged under the Agreement to be revised.
- 8.13 If the Customer's users adopt the use of handheld mobile communications devices (e.g. Blackberry or Windows Mobile devices) once an Agreement is in place, Support for the devices will only be available once the users in question have been added to the list of Roaming Users stated in the Agreement.
- 8.14 By adding users to the list of Roaming Users in the Agreement, the applicable Roaming User fees will be added to the monthly Support charges levied to the Customer.

9.0 Managed IT Support Service Exclusions

- 9.1 Octavia design and implement IT network infrastructure as well as building bespoke software for Customers. Support for both types of solution may be provided by Octavia's Managed IT Support Service.
- 9.2 Customers must accept that computers, software and their associated products can be supplied in an imperfect state or can develop faults over time and that Octavia's role is to reduce the effects of such imperfections rather than to eliminate them.
- 9.3 Octavia retain the right to exclude 3rd party software from the scope of the Agreement.
- 9.4 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.
- 9.5 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.
- 9.6 When 3rd party information or services are provided Octavia can make no guarantees about quality or suitability.
- 9.7 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.
- 9.8 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.
 - 9.9 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.
 - 9.10 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.
 - 9.11 Octavia will require Administrator-level access to the System at all times
 - 9.12 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.
 - 9.13 Octavia will respond to Incidents in accordance with the Service Level Agreement that is specified in the Agreement.
 - 9.14 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.
 - 9.15 Depending upon the nature of the Incident, Octavia may have to impose a workaround to rectify the Incident as opposed to a fix.
 - 9.16 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.
 - 9.17 A workaround may be of a technical nature or may involve changing a manual business process performed by the Customer.
 - 9.18 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 as in accordance with the Change management process described in section 8 above.
 - 9.19 Octavia retain the right to not install, configure or Support any software for which the Customer cannot provide / produce a valid license for.
 - 9.20 Other services not included as standard within the scope of the Agreement include:
 - 9.20.1 Procurement of new or replacement hardware, software of whatever nature.
 - 9.20.2 Installation, physical removal or relocation of hardware and software.
 - 9.20.3 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).
 - 9.20.4 Telephony or VOIP System Support.
 - 9.20.5 PDA's and other handheld mobile communication devices (Such devices are only covered by the Agreement when specified as Roaming Users / Computers.)
 - 9.20.6 Provision of Anti Virus Software (Octavia will make recommendations but the Customer will remain responsible for purchasing the appropriate license).



- 9.20.7 Technical or end user training on the Customer's System or 3rd party applications.
- 9.20.8 Internet connections email and web hosting services and remote file storage services.
- 9.20.9 Insurance of any form.
- 9.20.10 The creation of financial budgets and other management reports.
- 9.20.11 Research on behalf of the Customer.
- 9.20.12 Website or domain migration and management.
- 9.21 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.
- 9.22 If Octavia are requested to perform work not relating to the System defined in the Agreement, Octavia retain the right to charge for such work under the applicable Terms and Conditions (e.g. Terms and Conditions for the Supply of Consultancy services or Terms and Conditions for the Supply of Equipment.)
- 9.23 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.
- 9.24 Items that are not included as standard within the Managed IT Support Service Agreement but that can be added as optional extras (Option packages) include:
 - 9.24.1 Data Backup: the supply of services for managing the process of remote online data backup or provision of physical backup device and backup media
 - 9.24.2 The provision of Support beyond Octavia's standard hours of business.

10.0 Performance levels and rebates

- 10.1 The SLA stated in the Agreement will be assessed quarterly against the table below to determine the Performance level achieved and whether any rebates are applicable as a result.
- 10.2 Rebates will be awarded to Customers in the form of a reduction in the charge for the next quarterly period.

Performance Level	Performance Target for Quarter	Rebate applicable to charges for the following quarter.
1	97%	Nil
2	95% to 97%	10%
3	93% to 95%	20%
4	Below 93%	30%

- 10.3 The table above relates to Response Times not Incident resolution times
- 10.4 When Support isn't possible immediately due to the delivery of a vital piece of equipment; the On Site Support will be delivered as soon as is possible and will not be deemed to be a breach of the SLA.

11.0 Complaints

- 11.1 In the event of a complaint in respect of Octavia's Managed IT Support Service in whole or part, the Customer shall notify Octavia as soon as possible.



- 11.2 When a Customer needs to raise a complaint, the complaint should be lodged with the appropriate Octavia Account Manager either verbally or in writing. The Account Manager will then investigate the complaint to resolve the issue or provide a full explanation of the actions / issues that resulted in the complaint.
- 11.3 If the Octavia Account Manager is unable to satisfactorily resolve the complaint / issue in question, it will be escalated to a senior member of Octavia's staff and up to board level if deemed necessary.
- 11.4 If Octavia fail to resolve the Customers complaint in a reasonable and or timely fashion, the Customer may exercise its right to terminate the Agreement as outlined in section 16 below.
- 11.5 In the event that the Customer is dissatisfied with the quality of performance of a Consultant, the Customer must 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 its reasonable endeavours to provide a replacement.

12.0 Account Information and Invoicing

- 12.1 The Customer will be invoiced for Octavia's Managed IT Support Service in advance.
- 12.2 The Customer may pay monthly in advance via Direct Debit
OR
- 12.3 The Customer may pay quarterly in advance via Direct Debit and receive a 2% discount on the baseline price for the services specified in the Agreement.
OR
- 12.4 The Customer may pay 6 monthly in advance via Direct Debit and receive a 4% discount on the baseline price for the services specified in the Agreement.
OR
- 12.5 The Customer may pay annually in advance via Direct Debit and receive an 8% discount on the baseline price for the services specified in the Agreement.
- 12.6 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.
- 12.7 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 19.9 below.
- 12.8 For work performed on behalf of UK registered organisations all amounts invoiced will be subject to VAT payable at the then prevailing rate.
- 12.9 If any Managed IT Support Service Invoice payment remains outstanding, 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.

13.0 Changes to the Price of Octavia's Managed IT Support Services

- 13.1 Further to Octavia's right to revise pricing due to Changes to the System, Octavia retain the right to review the price of its services and therefore the charges levied in respect of the Agreement from time to time.
- 13.2 When the charges levied change, 90 days notice will be provided to the Customer in writing and via email to the Customer's Principle Contact.



13.3 If the Customer wishes to terminate the Agreement as a result of the increased charges it may do so in accordance with the termination procedure stated in section 16 below.

14.0 Changes to the Terms and Conditions of Octavia's Managed IT Support Service.

14.1 Octavia retains the right to review these Terms and Conditions from time to time.

14.2 With the exception of changes and additions to Annexes that relate to the Terms and Conditions of Option packages or changes that rectify errors, omissions, inaccuracies or ambiguities, Octavia undertake to inform the Customer of any alterations with 90 days notice via email to the Customer's Principal Contact.

14.3 The new updated Terms and Conditions will be posted on the website www.octaviais.co.uk at the point of notification.

14.4 Following the 90 day notice period provided, the alterations will come in to effect and the updated Terms and Conditions will become applicable.

14.5 For the avoidance of doubt the copy of the Terms and Conditions that will become void at the end of the 90 day notice period will be removed from www.octaviais.co.uk from the point of notification.

14.6 A copy of the Terms and Conditions that will become void at the end of the 90 day notice period will be available to Customers upon request.

14.7 If the Customer feels unable to adhere to the new Terms and Conditions, they have the right to terminate the Agreement upon the provision of 90 days notification in writing as per section 16 below.

15.0 Term of Agreement

15.1 The Managed IT Support Service Agreement will have no minimum period and will be perpetual not withstanding termination as per section 16 below.

16.0 Termination of Agreement

16.1 The Customer can terminate the Agreement at any time with the provision of 90 days notice in writing.

16.2 If the Customer wishes Support services to be ceased immediately or at any specific point during the 90 day notice period, the FULL charges for the 90 day notice period will remain applicable and payable in full by the Customer.

16.3 Octavia can terminate the Agreement or any aspect of it including any / all Option packages at any time with 90 days notice in writing.

16.4 Octavia can terminate the Agreement or any aspect of it including any / all Option packages with immediate effect 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.

16.5 Octavia shall be entitled to terminate the Agreement in the event that the Customer commits a material breach of the Agreement and fails to remedy the breach within 30 days of receipt of written notice from Octavia.

16.6 Any termination shall be without prejudice to Octavia's other rights or to the Customers liability for amounts payable under the Agreement.

16.7 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.

17.0 Data Protection



- 17.1 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.
- 17.2 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.
- 17.3 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;
- 17.4 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 undertake to allow the Customer access to any relevant premises on reasonable notice to inspect our procedures described above.
- 17.5 The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.
- 17.6 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.
- 17.7 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.
- 17.8 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.
- 17.9 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.
- 17.10 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.

18.0 Intellectual Property Rights

- 18.1 Intellectual property rights in respect of Network Infrastructure Solutions including Hardware, Operating Systems and 3rd Party Software:
 - 18.1.1 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 that subsequently fall under the remit of the Agreement.
 - 18.1.2 Any System documentation created under the terms of 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 up to date with no invoices being disputed.
 - 18.1.3 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 in question.
- 18.2 Intellectual property rights in respect of Software built by Octavia:
 - 18.2.1 When ownership of the Software remains vested in Octavia:



- 18.2.1.1 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.
- 18.2.2 When ownership of the Software is transferred to the Customer:
 - 18.2.2.1 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).
 - 18.2.2.2 The intellectual property rights and copyright and all other confidential information in the development of a Change to the Software shall vest in Octavia until approved by the Customer.
 - 18.2.2.3 Upon receipt of the Customer's approval /acceptance for a Change to the Software and upon payment from the Customer for all associated fees, Octavia will assign the intellectual property rights and copyright relating to that Change, to the Customer.

19.0 Warranty

- 19.1 Octavia warrant that Support will be delivered as set out in the Agreement in a professional and workmanlike manner with reasonable skill and care in accordance with generally accepted industry standards.
- 19.2 Octavia warrant that it will have and maintain the necessary technical skills and knowledge to Support the System defined in the Agreement.
- 19.3 Octavia do not warrant that the operation of the System will be uninterrupted or error free over any specified period of time.
- 19.4 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.

20.0 Limitation of Liability

- 20.1 Octavia is not responsible for the loss of Customer data. Octavia is responsible for ensuring the backup software and related hardware (when applicable) is set up correctly and monitored accordingly.
- 20.2 Octavia will assist the Customer in instigating a suitable backup schedule, however, the Customer is ultimately responsible for ensuring the appropriate backups are completed and that tapes are taken off site or otherwise secured appropriately. It will be the Customers responsibility to change backup tapes.
- 20.3 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 Agreement up to the date in question.
- 20.4 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.



21.0 Confidentiality

21.1 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 Agreement and beyond.

22.0 Solicitation

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

22.2 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.

22.3 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 (including benefits and commission) of the Consultant or employee in question.

23.0 Entire Agreement

23.1 The Managed IT Support Service 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 to Octavia's Managed IT Support Service.

23.2 The Agreement does not supersede the Full Terms and Conditions of Octavia for any other business activities that the parties are or have been engaged in or may be engaged in the future.

23.3 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.

23.4 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.

23.5 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.

23.6 Headings are included for convenience only and shall not affect the interpretation of the Agreement.

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 Notice

25.1 Any notice given under the Agreement by the Customer to Octavia shall be provided in writing by post or fax as set out below:

25.1.1 Postal address: Octavia Information Systems Ltd, WTG Building, 90 Union Street, London, SE1 0NW. **Fax Number:** 020 7928 9226

25.2 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.

26.0 Governing Law

26.1 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.



27.0 ANNEX A

Annex A no longer exists. This page is intentionally left blank.



28.0 ANNEX B – Attix 5 Online Backups

28.1 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.

28.2 Backup Service(s): means the online data Backup Service outlined in these Terms and Conditions. The service is delivered as an Option package.

28.3 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:

28.3.1 Attix5 Backup Professional Server Edition (SE) & associated plugins

28.3.2 Attix5 Backup Professional Desktop & Laptop (D&L) Edition

28.3.3 Attix5 Backup Professional Monitoring and Deployment

28.3.4 Attix5 Backup Professional Storage Platform

28.4 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 the Managed IT Support Service.

28.5 Business Day: means any day within the year, excluding weekends (Saturday, Sunday) and public holidays.

28.6 Allocated Limit: means amount of storage allocated to store the Customer's data on the Data Storage Centre system.

28.7 Data Storage Centre: means the remote, secure managed location where backed up data will be stored and maintained.

Terms and Conditions

28.8 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.

28.9 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.

28.10 The Data Storage Centre is managed and hosted by a 3rd party in a secure environment.

28.11 Octavia will set up the Software and liaise with the Customer to select and schedule their backup configuration.

28.12 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.



- 28.13 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.
- 28.14 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.
- 28.15 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.
- 28.16 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.
- 28.17 All charges for the Backup Service as stated in the Agreement will be billed monthly in arrears.
- 28.18 The charges will comprise of:
- 28.18.1 The fixed components of the Backup Service including server and remote recovery licences referred to as "plugins".
 - 28.18.2 The charges for the variable 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.
- 28.19 The unit price for each component of the Backup Service may be reviewed periodically by Octavia.
- 28.20 The Customer may not withhold payment for the Backup Services by reason of any outstanding claim under this or any other agreement with us.
- 28.21 Any delay in payment will entitle Octavia to suspend the Backup Service.
- 28.22 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).
- 28.23 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.
- 28.24 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.
- 28.25 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.

- 28.26 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.
- 28.27 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 or by telephone 020 7940 6100.
- 28.28 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.
- 28.29 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 beyond the scope of the Managed IT Support Service Agreement.
- 28.30 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.
- 28.31 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.
- 28.32 Octavia cannot provide guarantees or take responsibility for the time taken by the 3rd party provider to rectify the bug or non conformance.
- 28.33 When the 3rd party provider is required to resolve Software Support queries, the work shall be performed remotely via the Internet.
- 28.34 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 Managed IT Support Service Agreement itself is cancelled or terminated.
- 28.35 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.
- 28.36 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 Managed IT Support Service Agreement itself is cancelled or terminated.
- 28.37 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.
- 28.38 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 rata or apportioned to cease part way through a month.

- 28.39 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.
- 28.40 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.

