



Octopus Deploy Customer Agreement

Effective 1 August 2023

This Agreement is a legal agreement between you and Octopus Deploy which sets out the terms and conditions of our supply of, and your access to, our Products. Capitalized terms have the meaning given to them in Section 19.

By (a) clicking on the “I agree” (or similar button or checkbox) that is presented to you at the time of placing an Order; (b) installing, using, or accessing our Products; or (c) otherwise indicating your acceptance (for example, by signing and returning a copy of an Order or these terms, or by making payment for the Order), you agree to be bound by the terms of this Agreement. In the event of any inconsistency or discrepancy between a copy of these terms embedded in any stand-alone application or other resources, and the current version of these terms published on our website at the time of your acceptance, the latter shall prevail in all respects. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF ANY OTHER PERSON OR ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORISED TO DO SO ON BEHALF OF THAT PERSON OR ENTITY, AND A REFERENCE TO “YOU” IN THIS AGREEMENT SHALL BE A REFERENCE TO THAT PERSON OR ENTITY.

1. What this Agreement covers.

- 1.1. **Scope.** This Agreement (comprising this Customer Agreement together with our Policies and Product Terms) governs all Orders that you place with us. If there are any discrepancies or inconsistencies between:
- (a) this Customer Agreement;
 - (b) any applicable Product Terms;
 - (c) our Policies; and
 - (d) your Order,
- the document higher in the above list shall prevail unless otherwise specified.
- 1.2. **Affiliates.** Your Affiliates shall be entitled to make full use of our Products to the same extent as if they were you. You remain responsible and liable for your Affiliates’ use of our Products as if their acts or omissions were your own.
- 1.3. **End users and representatives.** You may authorise end users or representatives to access or use Products on your behalf. Your authorised users may be required to accept additional terms as between us and them (for example, in relation to confidentiality or acceptable usage) in order for your authorised users to access or use the Products. You remain responsible or liable for your authorised users’ access and use of our Products as if their acts or omissions were your own.

2. Placing and managing Orders.

- 2.1. **Account administration.** You must register an Account with us at our website in order to place and manage your Order(s). You must keep your Account information accurate, complete, and up to date. We will send notices, statements, and other information to you by email or through your Account. You are responsible for keeping the login details for your account secure and confidential and for preventing any unauthorised access to your Account. You are responsible for all actions taken through your Account, including all Order(s) made, modified, or managed, through your Account. We are not responsible for any unauthorised access or use of your Account or any acts or omissions of any persons whom you have authorised to access your Account on your behalf.
- 2.2. **Placing Orders.** An Order will be created by you through our website, or by requesting an invoice from us. Your Order will provide information including:
- (a) the name of the Product(s) you are purchasing or licensing;
 - (b) the fees payable for the Product and the currency, means, and time for payment;
 - (c) the scope of your permitted use; and
 - (d) the Order Term. If the Order is silent as to the Order Term, the Order Term



shall be as specified in the applicable Product Terms and Policies.

An Order is not binding on either of us until we accept the Order in and provide you access to the Product(s) specified in the Order. For the avoidance of doubt, Your Order is subject to the version of this Agreement in effect at the time of the Order.

- 2.3. **Payments.** You must pay for your Order at the time of placing or renewing your Order unless otherwise agreed. Payments shall be in the currency specified in the Order, or, if not specified, in United States Dollars. You consent to and accept responsibility for all related charges (including, in the case of renewals, recurring charges) to your applicable payment method without further authorization from you and without further notice unless required by law.
- 2.4. **Taxes.** Unless otherwise specified by us, the fees payable under each Order or any quotation or invoice are net and do not include any taxes, duties, excises, or other payments. We may charge you an amount equal to the amount of such taxes or duties in addition to any fees owed under the Order. If your relevant tax authority requires you to withhold taxes, you remain liable to pay us the full amount listed on the Order or any invoice issued thereunder, grossed up as if the amount to be withheld was an amount payable in addition to the amount payable net to us. If you require a revised quotation or invoice recording such additional sums payable, it is your responsibility to notify us and we will provide you with the revised quotation or invoice.
- 2.5. **Renewals.** Unless otherwise specified in your Order or configured in your Account, your Order shall automatically renew for the original period specified in your Order or twelve (12) months (whichever is lesser), unless you give us notice of your intention not to renew at least thirty (30) days prior to expiry of the then-current term. The foregoing shall not apply to month-to-month Orders, which shall continue on a monthly basis until terminated. The pricing applicable to any renewal, or on your next month if month-to-month, shall be at our standard pricing as at

that date and shall be on our then-current terms in accordance with Section 15. If you do not renew, your right to our Products shall immediately cease upon expiry of your then-current Order. For the avoidance of doubt, (a) each renewal Order shall constitute a separate Order from the original expired Order, and (b) your continued use of our Products following expiry of your then-current Order shall constitute your good and sufficient acceptance of any renewal Order under this Section 2.5.

- 2.6. **Termination.** Either party may terminate an Order without cause on thirty (30) days' notice in writing (or such other period specified in any applicable Product Terms and Policies, or in the Order). You may continue to use the Products supplied under the Order for the remainder of the then-current Order Term. You remain liable for payment of any monies which are or become due and owing during the balance of the then-current Order Term. You are not entitled to any refund, pro rata or otherwise, or credit for affected Orders. If the Order included any discount or credit or right to a future discount or apply credit to a future payment, on termination you will lose any future entitlement to that discount or credit.
- 2.7. **Survival.** The following Sections will expressly survive any termination or expiration of an Order: 2.6 (*Termination*), 2.7 (*Survival*), 3 (*Resellers*), 4.5 (*Liability of Your Data*), 5 (*Confidentiality*), 6 (*Warranty*), 7 (*Liability*), 8 (*IP Indemnification by Octopus Deploy*) (solely with respect to claims arising from your use of our software during the Order Term), 16 (*Entire Agreement*), 18 (*Law and Jurisdiction*), 19 (*Definitions*), and 20 (*Interpretation*). The foregoing does not limit the survival of any Section which reasonably survives termination or expiration of an Order by implication or if necessary to give effect to any of the foregoing Sections.



3. Resellers.

- This Section 3 applies if you have purchased any Products through a Reseller.
- 3.1. Your Reseller shall place your Order with us (including making any payments or receiving any refunds), and we will supply the Products in accordance with that Order. The accuracy and completeness of that Order is solely a matter between you and your Reseller. You acknowledge and agree that the Reseller's pricing for the Products may be different to our own.
 - 3.2. You are and shall remain liable for any act or omission by your Reseller (including a failure to pay any amount as and when due or any misuse of any Products). Our performance of any obligation under this Agreement through or on request of your Reseller (including any refund we may pay to the Reseller on your behalf) shall be deemed to have been performed for you. For the purposes of Section 7.4 (*Liability Cap*), any payment made by your Reseller shall be deemed to be made by you.
 - 3.3. Save as otherwise set out in this Section 3, your right to access and use, and our obligations to provide you, the Products, are solely on the terms of this Agreement. The terms of your agreement with your Reseller shall govern your relationship with them and we are not party to or have any obligation or liability under that agreement. Resellers are not authorised to make any modifications to this Agreement or to make any representation on our behalf. Any such modification or representation shall be void and of no effect.
 - 3.4. If your agreement with your Reseller ends for any reason, and you continue to use our Products, these Products shall be supplied on the terms of this Agreement. You shall be solely and directly liable for any ongoing or future obligations previously assumed by the Reseller on your behalf including paying any renewal or other prices at our then-current pricing.

4. Your Data

- 4.1. **Ownership of Your Data.** You are responsible for the accuracy and completeness of Your Data. You will retain all right, title and interest in and to Your Data. Subject to the terms of this Agreement, you grant us a worldwide, non-exclusive, royalty-free right to collect, use, transfer and store Your Data solely for the purposes of providing any Product including responding to any support requests.
- 4.2. **Nature of Your Data.** You must ensure that Your Data is at all times compliant with our Policies and all appropriate laws and regulations. You warrant that you have the rights and permissions to provide Your Data to us, and that your transfer of Your Data to use does not violate any laws, regulations or the rights of third parties.
- 4.3. **Personally Identifiable Information.** You will not submit to us any personally identifiable information (except as necessary for your authorised users to use and access a Product). You will not submit to us any patient, medical or other protected health information regulated by any relevant laws in any country. You shall pay any damages and costs awarded against us in connection with any claim brought by a person whose personally identifiable information you submit to us (except for personal information necessary for your authorised users to use and access a Product).
- 4.4. **Security.** We implement and maintain security measures to help protect Your Data from security attacks. However, you acknowledge and agree that as a consequence of the inherent nature of electronic communications networks, Your Data will often be transported over networks that are not owned or operated by us, and that we are not responsible for any of Your Data that is lost, intercepted, altered or stored across such networks, except to the extent caused by our negligence or intentional misconduct. You acknowledge that we are unable to guarantee complete security or confidentiality of Your Data or guarantee that third parties will never be able to defeat our security measures or those of our third-party service providers.



- 4.5. **Liability.** For the avoidance of all doubt, we assume no responsibility or liability for Your Data other than described in this Section 4, and you shall be solely responsible for Your Data and the consequences of you using, storing, disclosing or transmitting it. We have no obligation to monitor any of Your Data uploaded to the service.
- 4.6. **Deletion of Your Data.** We may remove or delete Your Data 90 days after the termination or expiry of your relevant Order(s), or upon your request.

5. Confidentiality

Either party (as “**Recipient**”) may receive from the other party (as “**Discloser**”) Confidential Information of the Discloser relevant to this Agreement or the supply of products or services under this Agreement. This may happen in various ways, including, but not limited to, when these are uploaded or shared through the Products or exchanged for the purpose of supplying the Products. The Recipient agrees:

- (a) that all Confidential Information shall be and shall remain the Discloser’s exclusive property;
- (b) to only disclose the Confidential Information: (i) to the Recipient’s authorized employees, contractors, and agents, and those of its Affiliates, who have a need to know such information in the performance of their work; or (ii) as necessary to explore or consummate an investment into the Recipient, or a reorganization, merger, or acquisition involving the Recipient;
- (c) to inform all such secondary recipients engaged in handling the Discloser’s Confidential Information of the confidential character of the information;
- (d) to keep the Confidential Information confidential;
- (e) not to copy, publish, or disclose Confidential Information to others or authorize others to copy, publish, disclose Confidential Information without the Discloser’s written approval;

- (f) at the Discloser’s option, promptly return to the Discloser or destroy any copies of the Confidential Information upon request and in any event following expiry or termination of the Order(s) to which the Confidential Information pertains. However, the Recipient may keep such copies of the Confidential Information as it may be required by law, or as are saved in its ordinary business backups and archives, provided that those copies remain confidential in accordance with this Section 5;
- (g) to use such information solely for purposes of accepting fulfilling work or services performed hereunder, and for other purposes only upon such terms as may be agreed upon between us in writing; and
- (h) that, in the event any of the information is required to be produced pursuant to a subpoena, court order, valid legal or administrative process, or other operation of law, to the extent permitted by the foregoing:
 - (i) the Recipient shall notify the Discloser of such potential disclosure in order that the Discloser may take appropriate action at its own expense to limit or prevent such disclosure; and
 - (ii) furnish only that portion of the Confidential Information that has been legally compelled; and
- (i) the unauthorised disclosure of Confidential Information may cause harm or loss to the Recipient for which damages would be an inadequate remedy and, accordingly, the Recipient may take action for injunctive relief against any unauthorised disclosure without burden of proof of actual or anticipated monetary loss or damage.

6. Warranty

- 6.1. **General Warranties.** Each of us warrants that we have the legal power and authority to enter into and perform this Agreement. We each further represent and warrant that our performance of this Agreement shall not



breach any law or other obligation owed to any third party.

6.2. **Product Warranty.** We warrant that, during the Order Term, the Products supplied under the Order will, when properly used, perform substantially as described in their Documentation, provided that the Product:

- (a) is properly used on the computer and with the operating system and software environment for which it was designed; and
- (b) is used in accordance with our Documentation.

We do not warrant that the Products are error free, will operate in an uninterrupted manner, will not damage or interfere with your computer operating system and will not damage or interfere with your business or the business of third parties.

6.3. **Virus Warranty.** We represent and warrant that we will take reasonable commercial efforts to ensure that the Products, in the form and when provided to you, will be free of any viruses, malware, trojans or other harmful code. For any breach of the foregoing warranty, your sole and exclusive remedy, and our sole obligation, is to fix or replace the Products promptly upon written notice.

6.4. **Remedies during the Order Term.** If, during the Order Term, a Product fails to perform as described due to a defect or fault (that is not the result of you having modified the Product without our prior knowledge and authorization or having used it in contravention of the terms of this Agreement or outside its ordinary operating requirements as we have described), we will, at our sole option, and as your sole remedy, repair or replace the Product, provided that you:

- (a) notify us in writing of the defect or fault in the Product during the Order Term; and
- (b) make available all the information that may be necessary to assist us in resolving the defect or fault, including sufficient information to enable us to recreate the defect or fault.

6.5. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 OR IN ANY PRODUCT TERMS (AND THEN ONLY IN RESPECT OF THE PRODUCT TO WHICH THOSE TERMS APPLY), ALL PRODUCTS ARE PROVIDED “AS-IS”, AND OCTOPUS DEPLOY AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. OCTOPUS DEPLOY WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF OCTOPUS DEPLOY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER OCTOPUS DEPLOY NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCT WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCT WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE PRODUCT WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (D) ERRORS OR DEFECTS WILL BE CORRECTED; OR (E) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.3 (VIRUS WARRANTY), THE SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU MAY HAVE OTHER STATUTORY RIGHTS, IN WHICH CASE: (F) THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW; (G) YOUR ENTITLEMENT TO RELIEF IS LIMITED TO THOSE FORMS OF RELIEF REQUIRED BY STATUTE; AND (H) TO THE EXTENT PERMITTED BY LAW, THE FORM OF ANY RELIEF SHALL BE AT OUR DISCRETION.



7. Liability

7.1. **EXCLUSIONS TO LIABILITY.** NEITHER PARTY NOR ITS SUPPLIERS OR AFFILIATES WILL HAVE ANY LIABILITY (WHETHER IN CONTRACT, TORT, STATUTE, EQUITY, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR ANY LOSS OF PROFITS, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS, GOODWILL, REVENUE, HARDWARE, SOFTWARE, DATA, OR ANY OTHER INDIRECT, SPECIAL, OR CONSEQUENTIAL LOSS WHATSOEVER, EVEN IF THE PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OR OUGHT OTHERWISE REASONABLY BE AWARE OF THE POSSIBILITY OF SUCH LOSS.

7.2. **Your Representations.** You acknowledge and agree that:

- (a) the Products have not been developed to meet your individual requirements;
- (b) it is your responsibility to ensure that the facilities and functions of the Products meets your requirements;
- (c) you have made your own independent enquiries and have satisfied yourself of the nature and adequacy of our Products for the purpose for which you have obtained the Products;
- (d) the existence of any minor errors shall not constitute a breach of this Agreement; and
- (e) the provisions of Sections 6 (*Warranty*), 7 (*Liability*), and 8 (*IP Indemnification by Octopus Deploy*) are reasonable and reflected in the price, which would be much higher without those provisions, and you accept such risk.

7.3. **Restrictions.** Except as otherwise permitted in this Agreement, or by us in writing, you will not:

- (a) intentionally use any Product in any way that could damage our reputation;
- (b) in any way that does not comply with the Documentation; or
- (c) rent, lease, sub-license, loan, translate, merge, adapt, vary or modify any Product, without our express written consent.

7.4. **LIABILITY CAP.** TO THE EXTENT PERMITTED BY LAW, OUR MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE), UNDER OR IN CONNECTION WITH ANY ORDER IS LIMITED TO THE AMOUNT PAID BY YOU AND RECEIVED BY OCTOPUS DEPLOY UNDER THAT ORDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

8. IP Ownership; IP Indemnification by Octopus Deploy

8.1. Except as specified otherwise in an Order or Product Terms, we will retain all right, title, and interest in and to all Intellectual Property we own before the Effective Date, or which is developed during an Order Term or otherwise in connection with this Agreement. You may not use, modify, copy, distribute, reverse engineer or otherwise attempt to discover the source code or other components of, or otherwise exploit in any way any of our Intellectual Property unless permitted under this Agreement or any applicable Product Terms or Order.

8.2. If any claim is brought, or you reasonably anticipate that a claim may be brought, against you alleging that your use of the Intellectual Property associated with the Products infringes a patent right granted in the United States, United Kingdom, Australia or a member nation of the European Union or a copyright registered in such a jurisdiction (a "claim"):

- (a) you shall promptly provide us written notice of the claim (but in any event notice in sufficient time for us to respond without prejudice);
- (b) the two of us shall consult together on an appropriate course of action and shall seek to minimize the effect of any claim on each other's businesses;
- (c) we shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim;
- (d) we will pay any damages and costs awarded against you in connection with any claim, however we are not and you agree not to hold us responsible or liable for any damages,



- costs, or expenses suffered or incurred by or awarded against you:
- (i) prior to your providing notice of the claim of under Section 8.2(a);
 - (ii) arising out of any act or omission by you or any of your Affiliates in respect of the claim without our prior and express written consent, including any admission or concession; or
 - (iii) to the extent that any act or omission by you or any of your Affiliates in the course of your or their use of the Product caused or contributed to the infringement of the rights of the third party;
- (e) we shall have the right, at our sole choice, either:
- (i) to negotiate terms for continued use by you of the claimed infringing Product;
 - (ii) amend the Product to make it non-infringing; or
 - (iii) terminate all affected Orders with immediate effect and in such event, we shall refund to you the purchase price that you paid and any renewal fees pro rated from the date of termination of this Agreement to the date which, but for the Order's early termination, would have been the end of the Order Term,
- (f) our indemnification obligations in this Section 8 DO NOT APPLY if:
- (i) the total aggregate fees received by Octopus Deploy from you, under any Orders, in the twelve (12) month period immediately preceding the claim, is less than USD \$50,000; or
 - (ii) you settle or make any admissions with respect to a claim without our prior written consent.

8.3. THIS SECTION 8 STATES OUR SOLE LIABILITY AND OBLIGATIONS AND IS YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY PRODUCTS SUPPLIED BY OCTOPUS DEPLOY UNDER THIS AGREEMENT.

9. Transfer of Rights and Obligations

9.1. You may not assign or transfer this Agreement without our prior written consent. As an exception to the foregoing, you may assign this Agreement in its entirety (including all Orders) to your successor resulting from your merger, acquisition, or sale of all or substantially all of your assets or voting securities, provided that you provide us with prompt written notice of the assignment and the assignee agrees in writing to assume all of your obligations under this Agreement (including liability for past performance). Any attempt by you to transfer or assign this Agreement except as expressly authorized above will be null and void.

9.2. We may assign our rights and obligations under this Agreement (in whole or in part) without your consent. We may also permit our affiliates, agents and contractors to exercise our rights or perform our obligations under this Agreement, in which case we will remain responsible for their compliance with this Agreement. Subject to the foregoing, this Agreement will inure to the parties' permitted successors and assigns.

10. Export

You represent and warrant that you are not in violation of and will not violate any export control laws, regulations or directives in the United States, Australia, the United Kingdom, or in your own country or region (if applicable) by entering into or in the performance of your rights or obligations under this Agreement.

11. Publicity

We may identify you as a customer in our promotional materials. We will promptly stop doing so upon your request via email sent to sales@octopus.com.



12. Notices

Any notice under this Agreement must be given in writing.

We may provide notice to you via email. You agree that any such electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing.

You may provide notice to us:

- (a) by post to: Octopus Deploy Pty. Ltd., Level 4, 199 Grey St, South Brisbane, QLD 4101, Australia.; or
- (b) by email to: legal@octopus.com.

Notices shall be deemed given upon receipt if received on a business day in the place of receipt between the hours of 9.00am and 5.00pm. If received outside those times, notices shall be deemed received at 9.00am on the following business day.

13. Waiver

Either party's failure to insist upon strict performance of any obligations under this Agreement, or the failure to exercise any of the rights or remedies to which either party is entitled under this Agreement, does not constitute a waiver of such rights or remedies and shall not relieve either party from compliance with such obligations.

Our waiver of any default shall not constitute a waiver of any subsequent default.

A waiver of any of these terms and conditions shall not be effective unless it is expressly stated to be a waiver and is communicated to the other party in writing.

14. Severability

If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

15. Changes to this Agreement

15.1. Notice for changes. We may modify the terms and conditions of this Agreement from time to time. Notice of any modifications may be given to you by email or other correspondence, via the Product, or on our website. Together with notice, we will specify the effective date of the modifications.

15.2. Effective Date of Changes. If we make modifications to this Agreement, the modifications will take effect upon your next Order or renewal or extension of your existing Order. In some cases – for example, to address compliance with Laws, or as necessary for new features – we may give notice that such modifications shall become effective during your then-current Order Term. In any event, for the absence of doubt, this Agreement, as modified, shall supersede and replace all prior agreements between us. If the effective date of such modifications is during your then-current Order Term and you object to the modifications, then (as your exclusive remedy) you may terminate your affected Orders upon notice to us, and we shall provide a refund pro rata for the balance of the Order Term. To exercise this right, you must provide us with notice of your objection and termination within thirty (30) days of us providing notice of the modifications.

16. Entire Agreement

This Agreement constitutes the whole of the agreement between us with respect to its subject matter. You agree that you have not relied on any statement, representation, assurance or warranty made by any person (including a third party) in entering into this Agreement. This Agreement supersedes all prior or contemporaneous oral or written communications, proposals and representations between us with respect to the Products or any other subject matter covered by this Agreement.

17. Force Majeure

Neither party is responsible or liable for any omission or delay under this Agreement where the omission or delay is caused by an event beyond the reasonable control of any party, including, but not limited to, act of God, natural disaster, war or invasion, terrorism or



act of a public enemy, strikes and industrial disputes, embargo, prohibition, confiscation, act of government authority, or failure of telecommunications or data networks or services.

18. Law and Jurisdiction

Where either party may have a dispute or claim against the other party, each party:

- (a) agrees that the Agreement shall be interpreted in accordance with the applicable laws of the Governing Law, without reference to its conflict of laws principles from time to time;
- (b) submits to the exclusive jurisdiction and venue of the Governing Venue, and courts of appellate jurisdiction; and
- (c) consents to the enforcement of any judgment of the courts of the Governing Venue (and appellate courts) in any other jurisdiction,

In this section 18, **Governing Law** and **Governing Venue** mean:

Your country of residence or incorporation	Governing Law	Governing Venue
Asia, Australasia and the Pacific	Queensland, Australia	Brisbane
European Union	Ireland	Dublin
United Kingdom	England and Wales	London
Other	California, United States of America	San Francisco

19. Definitions

In this Agreement, unless the context requires otherwise:

Account means your account on our website used to place Orders and manage your access to and use of the Products we have supplied you.

Agreement means this Customer Agreement including any Product Terms and Policies.

Affiliate means any body corporate, unincorporated association, or partnership, which directly or indirectly, (a) owns or

controls, (b) is owned or is controlled by, or (c) is under common ownership or control with a party, where **control** means the power to direct the entity's management or affairs, and **ownership** means the beneficial ownership of greater than 50% of the voting equity securities or other equivalent voting interests of the entity.

Confidential Information means the proprietary and confidential information of a party and / or its Affiliates including, but not limited to, documents, data, technical information, methods and processes, computer programs and scripts, source code, reports, manuals, databases, and data. In your case, your Confidential Information includes Your Data. Confidential Information excludes information which:

- (a) was known to the Recipient before disclosure as evidenced by bona fide written documents;
- (b) is or becomes publicly known through no wrongful act of the Recipient;
- (c) is independently developed by the Recipient; or
- (d) is disclosed to the Recipient by a third party without breach of any obligations of confidentiality.

Discloser means a party disclosing Confidential Information.

Documentation means our Product documentation published on our website, through the Product, or otherwise supplied to you from time to time.

Intellectual Property means all copyright, patent rights and rights and inventions, trademarks, rights in databases, Confidential Information, and other intellectual property rights, however, described, anywhere in the world.

Octopus Cloud means our Octopus Cloud service.

Octopus Server means our Octopus Server application software.



Order means an order created in accordance with Section 2.2 as recorded in an order form, order submission, quote, invoice, and / or other such document recording the particulars of the transaction detailed in that Section.

Order Term means the term during which we will supply and you may use the Products specified in an Order.

Policies means our Privacy Policy, our Acceptable Use Policy, and other policies we may publish from time to time. We may update our Policies from time to time in our sole discretion.

Products means our application software, cloud services, professional services, support services, and any other goods, products, or services, that we may offer on the terms of this Agreement from time to time.

Product Terms or **Terms** means any terms or policies specific to our supply of a particular Product or which otherwise govern particular requirements of your or our performance of this Agreement, including the Octopus Server Terms, Octopus Cloud Terms, TAM Services Terms, and Priority Terms. We may update our Product Terms from time to time in our sole discretion, in accordance with Section 15.

Recipient means a party receiving Confidential Information.

Reseller means one of our authorised channel partners or resellers.

you means the person, corporation, partnership, or other entity, entering into this Agreement to procure Products from us.

Your Data means any data, applications, configuration settings, content, code, images or material of any type that you upload, submit or otherwise provide us (including via our Products) for any purpose.

We, our, us, or Octopus Deploy, means Octopus Deploy Pty Ltd ABN 69 160 339 186, an Australian company.

20. Interpretation

In this Agreement, unless the context otherwise requires:

- 20.1. A reference to the singular includes the plural and the plural includes the singular.
- 20.2. A reference to any contract (including this Agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated.
- 20.3. A reference to a law includes subordinate legislation (including regulations) and other instruments under it and any amendment or replacement of any of them.
- 20.4. A reference to a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority.
- 20.5. A reference to a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns.
- 20.6. A reference to a day or a month means a calendar day or calendar month.
- 20.7. No party enters into this Agreement as agent for any other person (or otherwise on their behalf or for their benefit).
- 20.8. The meaning of any general language is not restricted by any accompanying example, and the words “includes”, “including”, “such as”, “for example” or similar words are not words of limitation.
- 20.9. No part of this Agreement shall be construed against a party merely because the party caused or contributed to the inclusion of that part in this Agreement.
- 20.10. Headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation.
- 20.11. Where there are two or more persons in a party each are bound jointly and severally.



Octopus Server Product Terms

Effective starting 1 August 2023

If you Order Octopus Server, these Terms shall apply. Your use of the Octopus Server application software is subject to our Customer Agreement together with these Terms.

1. **Grant of License.** We grant you a worldwide, non-exclusive, fully paid, non-transferable license to install and use Octopus Server for your own business purposes during the Order Term. You may only use Octopus Server in accordance with its Documentation and as specified under the Order.
 - (a) we may, but are under no obligation to, release any update, upgrade or patch at any time or for any reason;
 - (b) certain features may be offered on a trial, temporary, or beta basis, and the continued availability of any particular feature is not guaranteed; and
 - (c) updates, upgrades, and patches could cause disruption to services, for some features to not work as they previously did, or other interruptions.
2. **License Delivery.** To activate and use the Software, you will be required to provide a license key. License keys will be delivered electronically to your Account and via email when payment has been received as per your Order.
3. **Term of License.** Your license to use the Software is granted only for the Order Term (as renewed in accordance with the Customer Agreement).
4. **Usage.** The fees payable for your continued license to Octopus Server shall be calculated:
 - (a) based on fixed usage limits;
 - (b) with variable or consumption-priced billing based on actual usage; or
 - (c) a combination of the above, as specified in your Order.

If you choose options (b) or (c), you acknowledge that your bill may vary each billing period, subject to your actual consumption in that billing period. We may require you to make an advance payment towards any consumption-based pricing.

5. **Support, Maintenance and New Releases.** During the Order Term you will have access, free of charge, to all updates, upgrades, new releases and patches for Octopus Server that we release during the Order Term, along with technical support in accordance with our standard practices. You acknowledge and agree that:

You must promptly install any updates, upgrades, or patches ("**Updates**"). If you do not apply any Update within three (3) months of it being made generally available to Octopus Server users free of charge (or three (3) days in the case of Updates that we identify as priority, urgent, or similar), the warranties and indemnities under the Customer Agreement or these or any other Terms SHALL NOT APPLY and shall be re-enlivened only upon the date that the Update is installed.

6. **Third Party Code and Open Source Libraries Used.** Octopus Server includes code and libraries licensed to us by third parties, including open source software. To the extent applicable, we shall identify open source software included in Octopus Server in or through Octopus Server itself, or on a page in our Documentation. Some of these licenses require us to provide the open source software to you on the terms of the open source license. In that case, the terms of the open source license will apply, and you will have the rights granted in such licenses to the open source software itself, such as access to source code, right to make modifications, and right to reverse engineer. Notwithstanding the foregoing, if you are using Octopus Server in the form provided to you, in accordance with your permitted scope of use, with no



distribution of software to third parties, then none of these open source licenses impose any obligations on you beyond what is stated in the Agreement.



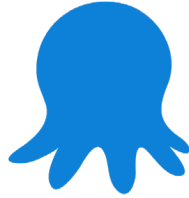
Octopus Cloud Product Terms

Effective starting 1 August 2023

If you Order Octopus Cloud, these Terms shall apply. Your use of Octopus Cloud is subject to our Customer Agreement together with these Terms.

1. **Access to Cloud Services.** We grant you a non-exclusive right to access and use Octopus Cloud for your own business purposes during the Order Term. You may only use Octopus Cloud in accordance with its Documentation and as specified under the Order.
 - (b) certain features may be offered on a trial, temporary, or beta basis, and the continued availability of any particular feature is not guaranteed; and
 - (c) updates, upgrades, and patches could cause disruption to services, for some features to not work as they previously did, or other interruptions.
2. **Nature of Octopus Cloud.** You acknowledge that Octopus Cloud is an online, subscription-based service hosted and managed by us, the features of which may change from time to time.
3. **Term of access.** Your access to Octopus Cloud shall continue for the Order Term (as renewed in accordance with the Customer Agreement).
4. **Usage.** The fees payable for your continued license to Octopus Server shall be calculated:
 - (a) based on fixed usage limits;
 - (b) with variable or consumption-priced billing based on actual usage; or
 - (c) a combination of the above, as specified in your Order.

If you choose options (b) or (c), you acknowledge that your bill may vary each billing period, subject to your actual consumption in that billing period. We may require you to make an advance payment towards any consumption-based pricing.
5. **Fair Usage.** Your usage of Octopus Cloud is governed by our Acceptable Usage Policy.
6. **Support, Maintenance, and New Releases.** Octopus Cloud is provided as an ongoing software-as-a-service. During the Order Term we may update, upgrade, and patch, Octopus Cloud, from time to time. You acknowledge and agree that:
 - (a) we may, but are under no obligation to, release any update, upgrade or patch at any time or for any reason;
7. **Termination, removal and suspension.** We may remove Your Data from Octopus Cloud, or suspend your access to Octopus Cloud, if we deem such action necessary based on your violation of our Customer Agreement, these Terms, any other agreements or terms between us, or our Acceptable Use Policy. We will provide thirty (30) days' notice and provide reasonable opportunity for you to correct your breach prior to removing Your Data, but we may also suspend your access immediately without notice if we deem it necessary to protect Octopus Cloud, security of other customers or to comply with any law or regulation. We have no liability to you for removing or deleting Your Data from or suspending your access to any Cloud Services under this Section.
8. **Static IP Addresses.** Your Order may include a static IP address ("Static IP"). We may on rare occasions need to change the Static IP you have been provided. In such cases we will do our best to give you at least thirty (30) days' notice so you can prepare for the change.



TAM Services Terms

Effective starting 1 August 2023

If you purchase TAM Services, these Terms shall apply. Our performance and your receipt of TAM Services is subject to our Customer Agreement together with these Terms.

1. Purchasing TAM Services

1.1. **Performance.** We shall perform the TAM Services as set forth in our Proposal.

1.2. **Restrictions.** You must not obtain our TAM Services for the purpose of sub-contracting or reselling our TAM Services (whether on their own or together with your own additional goods or services).

2. **Upgrades.** You may request to upgrade your TAM Services. If we accept that request, we shall invoice you pro rata the difference between your existing TAM Services and your upgraded TAM Services for the balance of the applicable Order Term. The upgrade shall be effective as of the date specified in the invoice. However, we are under no obligation to continue providing the upgraded TAM Services until you have paid our invoice in full.

3. **Term.** Unless otherwise specified in the applicable Order, the TAM Services shall continue for the same Order Term as that during which you are supplied Octopus Server and/or Octopus Cloud. If the Order(s) under which you are supplied Octopus Server and/or Octopus Cloud and the Order under which you are supplied TAM Services are separate Orders, termination of your Octopus Server and/or Octopus Cloud Order shall also constitute termination of the TAM Services Order, unless you have other separate surviving Octopus Server and/or Octopus Cloud Orders.

4. **Warranties.** We warrant that the TAM Services we provide to you will be as we have described at the time of your Order. We do not warrant any particular result or outcome of the TAM Services, including, without limitation, that the TAM Services we provide

to you will fix, solve, remedy, alleviate, improve or inform any problem or issue you may have.

5. **Definitions.** Any defined words not defined in this Section have the meaning given to them in the Customer Agreement. In these Terms, unless the context requires otherwise:

TAM Services means the provision of a dedicated technical account manager as set out in the Proposal.

Terms means these TAM Services Terms.



Priority Support Terms

Effective starting 1 August 2023

If you purchase Priority Support, these Terms shall apply. Our performance and your receipt of Priority Support is subject to our Customer Agreement together with these Terms.

1. Support Service Commitment

1.1. **Performance.** In these Terms, **Priority Support** means our commitment to meeting all of our Response Time Objectives from time to time which, but for your purchase of Priority Support, would be indicative only and non-binding on us, and any other support benefits that we may offer as part of Priority Support from time to time.

1.2. **Conditions.** In order to continue to receive and have the benefit of Priority Support, you must meet any technical requirements which we may specify from time to time including, without limitation, utilising modern and up-to-date operating systems and support software, utilising up-to-date versions of our software, and submitting support requests through the means expressly provided by us for that purpose from time to time.

1.3. **Restrictions.** You must not obtain our Priority Support for the purpose of sub-contracting or reselling our Priority Support (whether on their own or together with your own additional goods or services).

1.4. **Scope increases.** If you increase your usage of Octopus Server and/or Octopus Cloud during the Order Term of your Priority Support Order, we shall invoice you for any corresponding additional Priority Support fees correlating to the scope of your increased usage of Octopus Server and/or Octopus Cloud. If you fail to pay such additional Priority Support Fees then our obligation to continue providing and your rights in relation to Priority Support under these Terms shall lapse until such fees are paid in full.

2. **Service Credits.** If, in a calendar month, we fail to meet our Response Time Objectives,

you may request, and we may provide, a Service Credit. We must receive such request within thirty (30) days of the end of the month in which we failed to meet the Response Time Objectives, following which, your right to make such request shall lapse. We shall calculate the Service Credit at our reasonable discretion relative to the severity of the failure. Such Service Credit shall not exceed fifty percent (50%) of the Priority Support fees paid or payable in respect of the month in which the failure occurred. Service Credits may be applied to any outstanding or future payment which may be or become due and owing from you to us. Service Credits shall expire twelve (12) months from the date that they are provided to you and are not refundable or redeemable for cash. The right to request service credits constitutes your sole remedy for our failure to meet our Response Time Objectives. Notwithstanding any of the foregoing, we may provide additional Service Credits on the same or another basis at any time at our sole discretion.

3. **Term.** Unless otherwise specified in the applicable Order, Priority Support shall continue for the same Order Term as that during which you are supplied Octopus Server and/or Octopus Cloud. If the Order(s) under which you are supplied Octopus Server and/or Octopus Cloud and the Order under which you are supplied Priority Support are separate Orders, termination of your Octopus Server and/or Octopus Cloud Order shall also constitute termination of the Priority Support Order, unless you have other separate surviving Octopus Server and/or Octopus Cloud Orders, in which case, the Priority Support Order shall continue in full force and effect for the duration of those other surviving Orders.



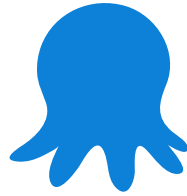
4. **Warranties.** We warrant that Priority Support will be as we have described at the time of your Order. Notwithstanding the foregoing, we may vary our Response Time Objectives from time to time provided that such variation does not substantially diminish the quality of our Priority Support. You acknowledge and agree that our delivery of Priority Support is materially dependent upon your providing us fulsome information and assistance and promptly implementing any measures that we may instruct from time to time, and, consequently, while we shall deliver the Priority Support on a 'best efforts' basis, we do not warrant any particular result or outcome of the Priority Support, including, without limitation, that the Priority Support we provide to you will fix, solve, remedy, alleviate, improve or inform any problem or issue you may have.

5. **Definitions.** Any defined words not defined in this Section have the meaning given to them in the Customer Agreement. In these Terms, unless the context requires otherwise:

Priority Support has the meaning given to that term in section 1.1 of these Terms.

Response Time Objectives means our published guidelines for the manner and time in which we will respond to any support requests which you may submit to us from time to time.

Service Credits means credits provided in accordance with section 2 of these Terms.



Octopus Deploy Data Processing Agreement

This Data Processing Agreement ("**Agreement**") is an addendum to our Octopus Deploy Customer Agreement ("**Customer Agreement**").

This Agreement applies to the extent that we act as a Processor and you act as a Controller of any Personal Data in connection with our Customer Agreement

We enter into this Agreement on our own behalf and on behalf of each of our Affiliates. If your Affiliates have the benefit of our Services, or provide Personal Data to us for the purposes of your Customer Agreement, you enter into this Agreement on your own behalf and on behalf of each of your Affiliates.

For the purposes of this Agreement only, save as indicated otherwise, a reference to "**we**", "**our**" or "**us**" is also a reference to each of our Affiliates, and a reference to "**you**" or "**your**" is also a reference to each of your Affiliates. For the avoidance of doubt, this does not impose any further rights or obligations on any of our respective Affiliates under the Customer Agreement.

In the event of any inconsistency between this Agreement and the Customer Agreement, the terms of this Agreement shall prevail in respect of our respective privacy and data security rights and obligations as described herein, and the terms of the Customer Agreement shall prevail in all other respects.

1. Definitions and Interpretation

1.1. Unless otherwise defined herein, capitalized terms and expressions used in this Agreement shall have the following meaning:

"**Agreement**" means this Data Processing Agreement and all schedules.

"**Affiliate**" means:

- (a) the partners of any partnership;
- (b) an incorporated entity that owns or controls, is owned or controlled by, or is under common ownership or control, with a party to this Agreement (the term "control" meaning the power to directly or indirectly direct the management or conduct of the entity by any means); or
- (c) any unincorporated association, or the trustee of any trust, which, if incorporated, would be an Affiliate under (b).

"**Applicable Laws**" means:

- (a) the CCPA;
- (b) the GDPR;
- (c) the UK Data Protection Laws
- (d) the Australian *Privacy Act 1988* (Cth); and
- (e) any other applicable law with respect to Your Data in respect of which we,

our Affiliates, and / or a Subprocessor, are subject.

"**CA Personal Information**" means Personal Data that, under the CCPA, constitutes "personal information".

"**CCPA**" means California Civil Code Sec. 1798.100 et seq. (also known as the California Consumer Privacy Act of 2018).

"**Controller**" means you, as the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data, whether defined as a controller or otherwise, or otherwise defined as a controller under Applicable Laws.

"**Data Subject**" means a person to whom Personal Data relates, whether defined as a data subject or otherwise, or otherwise defined as data subject under Applicable Laws.

"**GDPR**" means EU General Data Protection Regulation 2016/679.

"**ICO**" means the Information Commissioner's Office or such other data protection regulator responsible for monitoring or enforcing



compliance with UK Data Protection Laws in the UK.

"**include**" includes without limitation.

"**Personal Data**" means data about an identified individual or a person whom is reasonably capable of being identified (whether by reference to the Personal Data or in combination with other data) or otherwise defined as personal data, personal information, or similar, under Applicable Laws.

"**Personal Data Breach**" means a breach of security actually leading to the unauthorised or unlawful processing, damage, alteration, disclosure or access to, loss, destruction, or other dealing, of Personal Data.

"**Processing**" includes collecting, recording, storing, modifying, using, disclosing, distributing, publishing, deleting, or otherwise dealing with, Personal Data, whether defined as processing or otherwise, under Applicable Laws.

"**Processor**" means us, being a company which processes Personal Data on your behalf (as Controller), whether defined as a processor or otherwise, under Applicable Laws.

"**Services**" means:

- (a) our commercially available downloadable software products;
- (b) our cloud services; and
- (c) any related support, maintenance, or professional services, provided by us, as set out in our Customer Agreement.

"**Standard Contractual Clauses**" means the standard contractual clauses approved by the European Commission for transfers of Personal Data to countries not otherwise recognised as offering an adequate level of protection for Personal Data by the European Commission, being Module 2 controller to processor clauses as approved by the European Commission in Commission Decision 2021/914 dated 4 June 2021 (as amended and updated from time to time).

"**Subprocessor**" means any person (whom we appoint or is appointed on our behalf, to process Personal Data on your behalf, in connection with the Customer Agreement (which may include our Affiliates, but which excludes our employees, agents, and sub-contractors, and those of our Affiliates).

"**UK Addendum**" means the UK International Data Transfer Addendum to the Standard Contractual Clauses version B1.0, as may be amended, replaced or superseded by the ICO from time to time (including as formally issued by the ICO under section 119A(1) of the DP Act).

"**UK Data Protection Laws**" means any applicable laws and regulations in the UK relating to the use or processing of personal data including:

- (a) the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the *European Union (Withdrawal) Act 2018* ("**UK GDPR**");
 - (b) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR;
 - (c) the *Data Protection Act 2018* ("**DP Act**");
 - (d) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC); and
 - (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003,
- in each case, as updated, amended or replaced from time to time.

"**Your Data**" means any Personal Data which we, or a Subprocessor, Process on your behalf under or in connection with the Customer Agreement.

- 1.2. Plural or other derived terms of those terms defined in section 1.1 shall be construed accordingly.



2. Your use of Your Data

2.1. You acknowledge and agree, and represent and warrant, that:

- (a) you appoint us as a Processor of Your Data for the purposes of the Applicable Laws;
- (b) you are solely responsible for:
 - (i) the contents of Your Data including ensuring that it is accurate, complete, and up to date; and
 - (ii) your instructions to us and to our Sub-Processors in dealing with Your Data from time to time (including that those instructions comply with any Applicable Laws); and
- (c) you have full legal right and authority (including any and all necessary consents) under Applicable Laws to provide us:
 - (i) the Your Data; and
 - (ii) instructions regarding the Your Data; and
- (d) you will promptly inform us if any of the circumstances in sections 2.1(a) to 2.1(c) change.

2.2. Subject to section 5 below, you acknowledge and agree that your acceptance of our Customer Agreement (including this Agreement) constitutes your lawful, valid and final instructions to us, and authorisation for us to retain Subprocessors and direct our Subprocessors, to:

- (a) process Your Data; and
- (b) transfer Your Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with the Customer Agreement and this Agreement.

2.3. You acknowledge and agree that:

- (a) nothing in this Agreement (including, without limitation, sections 4, 6, and 7), is a substitute for you implementing your own independent policies and procedures for dealing with Your Data in accordance with your own obligations under contract, under Applicable Law, or otherwise (including technical and organisational policies,

physical and electronic security measures, and legal measures); and

- (b) we are not responsible, and you indemnify us from, any liability (including to a Data Subject), for any act, omission, or event (including a Personal Data Breach) which arises as a result of your breach of section 2.1 or your failure to implement and abide by appropriate policies and procedures as described in section 2.3(a) (including where we have done, or omitted to do, anything, in reliance on an instruction from you, where the instruction arises from your such failure).

3. Our obligations in respect of Your Data

3.1. We shall only Process Your Data for the purposes of the Customer Agreement and this Agreement and in compliance with Applicable Laws.

3.2. Where we process Your Data, we will in respect of Your Data, act only on written instructions and directions from the you (which includes, for the avoidance of doubt, all authorisations given by you under the Customer Agreement) and will comply promptly with all such instructions and directions received from you from time to time unless we are required to Process Your Data to comply with Applicable Law to which we are subject to in which case we will notify you of such legal requirement prior to such processing unless such law prohibits notice to you on public interest grounds.

4. Confidentiality and security

4.1. We shall take reasonable steps to ensure that access to Your Data is limited to those of our:

- (a) employees, agents, and sub-contractors;
- (b) Affiliates, and their respective employees, agents, and sub-contractors; and
- (c) Sub-processors, and their respective employees, agents, and sub-contractors,

for the purposes of the Customer Agreement and of this Agreement, and subject to obligations of confidentiality (which may be under contract or under Applicable Law).



- 4.2. We shall implement all appropriate technical and organisational measures to ensure a level of security in relation to Your Data. The nature of these measures may change or vary from time to time but may include, as appropriate:
- (a) the pseudonymisation and encryption of personal data;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and / or
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

- 4.3. The technical and organisational security measures that we may take from time to time may take into account matters including:
- (a) the state of the art;
 - (b) the costs of implementation;
 - (c) the nature, scope, context and purposes of Processing;
 - (d) the risk of varying likelihood and severity for the rights and freedoms of natural persons; and
 - (e) the risk of Processing your Data, e.g. from a Personal Data Breach.

5. Subprocessors

- 5.1. We may engage Subprocessors from time to time, a current list of which is published on our website and kept up to date. Where we engage or intend to engage a Subprocessor, or change or intend to change a Subprocessor, we shall update such list in advance and such update shall constitute our notice to you of the engagement or change. We will ensure that any Subprocessors provide the level of protection of Your Data required under Applicable Laws, including as set out in the remainder of this section 5.
- 5.2. When appointing a Subprocessor in accordance with section 5.1, we shall enter into a written agreement with such

Subprocessor, prior to any processing by such Subprocessor, requiring the Subprocessor to:

- (a) process Your Data only in accordance with our written instructions;
- (b) comply with data protection obligations equivalent in all material respects to those imposed on us under this Agreement.

- 5.3. Your authorisation pursuant to section 2.2 shall be conditional upon us ensuring there is adequate protection and appropriate safeguards for Your Data in accordance with Applicable Laws when it is transferred or accessed in that country or territory.
- 5.4. Notwithstanding the appointment of a Subprocessor, we are responsible and liable to you for any processing by the Subprocessor in breach of this Agreement.

6. Data Subject Rights

We shall as soon as reasonably practicable notify you if we receive a request, notice, communication or complaint from a Data Subject in respect of Your Data (where you are the Controller and we are the Processor). We shall give you our full co-operation and assistance in responding to the same, and to enable you to otherwise comply with Applicable Laws, including to provide you with ways in which you can reasonably manage Your Data.

7. Personal Data Breach

- 7.1. If we become aware of a Personal Data breach affecting Your Data, we will (subject to the requirements of any Applicable Laws) endeavour to:
- (a) notify you as soon as practicable; and
 - (b) provide you with sufficient information as is available to us to allow you to meet any obligations to report or inform any affected Data Subjects of the Personal Data breach under Applicable Laws.
- 7.2. We shall co-operate with you and take such reasonable commercial steps as you direct to assist in the investigation, mitigation and remediation of each such Personal Data Breach. We may require or request that you



reimburse our reasonable costs of providing assistance where the assistance directed goes further than is necessary for the purpose of complying with Applicable Law.

8. Your Data post-termination or expiry of Customer Agreement

- 8.1. We will delete or return all Your Data Processed under this Agreement in accordance with Applicable Law and our Customer Agreement.
- 8.2. We may retain Your Data to the extent required or permitted by Applicable Law and our Customer Agreement. We shall ensure that any such retained Your Data is kept confidential and only used, disclosed, retained, or otherwise dealt with, as permitted under Applicable Law and our Customer Agreement.

9. Assistance

- 9.1. We shall, on request or where otherwise reasonable to do so, provide reasonable assistance to you with any data protection impact assessments, or any prior consultations with competent data privacy authorities, in relation to our, and any Subprocessors, Processing of Your Data.
- 9.2. We may, where permitted by Applicable Laws, require or request that you reimburse our reasonable costs of providing assistance under section 9.1.

10. Compliance

- 10.1. We will provide you with any information reasonably necessary to demonstrate our compliance with this Agreement (which may include inspection or audit of relevant records) in accordance with this section 10.
- 10.2. Any request by you or any of your Affiliates, is deemed to be a request by you and all of your Affiliates jointly.
- 10.3. You may make a request for information once in any calendar year unless you have genuine reasons for a request sooner or are required or entitled to do so under Applicable Laws, and have identified those reasons to us when making the request.

10.4. Your right to request information only applies to the extent relevant to our compliance with the requirements of Applicable Laws and does not constitute a general right to request any other information.

10.5. The persons to whom any information is provided in response to your request must keep the information provided to them confidential save to the extent necessary to confirm to you our compliance with this Agreement. Those persons must further (at our option) return or destroy that information upon delivery of their final report to you.

10.6. You must provide us a reasonable time to respond to your request.

10.7. If our response to your request includes your inspection or audit of any of our infrastructure or premises, the persons carrying out such inspection must avoid or minimise any disruption to us, and comply with any directions, policies, or procedures, which we may require (including physical or electronic security policies).

10.8. We may require your auditor or representative to provide reasonable evidence of identity or authority before responding to their request or permitting access to any information or to conduct any audit.

10.9. We may, only where expressly permitted by Applicable Laws or where the assistance that you request and we may provide exceeds the scope of the assistance which we are required to provide under Applicable Laws, require or request that you reimburse our reasonable costs of providing assistance under this section 10.

11. Restricted data transfers under the GDPR

11.1. This section 11 applies to the extent that you instruct us to Process Personal Data originating from within the European Union and/or European Economic Area and to the extent that the GDPR applies to our Processing when making that transfer, such transfer is not governed by an adequacy



decision made by the European Commission in accordance with the relevant provisions of the GDPR. Such transfer shall constitute an "EU SCCs Transfer".

11.2. Subject to our compliance with this section 11 you consent to our transferring Your Data (including Personal Data) to countries outside of the European Union and/or European Economic Area.

11.3. Where there is an EU SCCs Transfer, such transfer shall be permitted provided that where we process Personal data as a Processor, and you are a Controller, we shall be bound by and comply with the Standard Contractual Clauses and the following shall apply:

- (a) Clause 7 (docking) shall not apply;
- (b) In respect of Clause 9 (sub-processors), Option 2 (general authorisation) applies, and we shall specifically inform you in writing of any intended changes to our Subprocessors in accordance with section 5;
- (c) The "OPTION" in Clause 11(a) shall not apply and the wording in square brackets in that Clause shall be deleted;
- (d) In respect of Clause 17 (governing law), the Parties agree that the governing law shall be Ireland;
- (e) In respect of Clause 18 (choice of forum and jurisdiction), the relevant courts shall be the courts of Ireland;
- (f) Annex I, Section A of the Standard Contractual Clauses shall be completed with the information set out in Schedule 1 of this Agreement and the signature and date shall be deemed to be as at the date of this Agreement;
- (g) Annex I, Section B of the Standard Contractual Clauses shall be completed with the information set out in Schedule 1 of this Agreement;
- (h) Annex I, Section C shall be completed as follows: *[the Data Exporter's competent supervisory authority as determined by the EU GDPR]*; and
- (i) Annex II of the Standard Contractual Clauses shall be completed with the information set out in section 4 and Schedule 2 of this Agreement.

11.4. In the event of any inconsistency between this Agreement and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail to the extent of the inconsistency.

11.5. If the Standard Contractual Clauses entered into in accordance with section 11.3 are deemed at any time not to provide an adequate level of protection in relation to Your Data or transfers of data within/to the under the Applicable Laws, on receipt of notice of such from either party, the parties will work to implement such alternative measures and execute all such documents as may be required to comply with the Applicable Laws to ensure that the relevant transfer and all resulting Processing are compliant with Applicable Laws.

12. Restricted data transfers under the UK GDPR

12.1. Where Your Data is transferred by you to us outside the UK, then to the extent that the UK GDPR applies to our Processing when making that transfer, and such transfer is not governed by an adequacy decision made by the Secretary of State in accordance with the relevant provisions of the UK GDPR and the DP Act, such transfer shall constitute a "UK Addendum Transfer".

12.2. Subject to our compliance with this section 12 you consent to our transferring Your Data (including Personal Data) to countries outside of the UK.

12.3. For the UK Addendum, the following shall apply:

- (a) Table 1 shall be deemed completed with the relevant information from Schedule 1 of this Agreement;
- (b) In Table 2, the first option shall be selected with the date being the date of this Agreement and the reference being to the EU SCCs identified in section 11.3 of this Agreement;
- (c) Table 3 shall be deemed completed with the relevant information as set out in Schedule 1 of this Agreement; and
- (d) Table 4 shall be deemed completed such that we have the right to end the



UK Addendum as set out in Section 19 of Part 2 of the UK Addendum.

- 12.4. In the event of any inconsistency between this Agreement and the UK Addendum, the UK Addendum shall prevail to the extent of the inconsistency.
- 12.5. If the UK Addendum entered into in accordance with section 12.3 is deemed at any time not to provide an adequate level of protection in relation to Your Data or transfers of data within/to the under the Applicable Laws, on receipt of notice of such from either party, the parties will work to implement such alternative measures and execute all such documents as may be required to comply with the Applicable Laws to ensure that the relevant transfer and all resulting Processing are compliant with Applicable Laws.

13. Application of the CCPA

- 13.1. For the purpose of the CCPA, you acknowledge and agree that you are a Business and we are a Service Provider (as those terms are defined in the CCPA).
- 13.2. To the extent that any of Your Data is subject to the CCPA, we shall Process Your Data in accordance with and as permitted by the CCPA, this Agreement, and the Customer Agreement.
- 13.3. More particularly:
- (a) We shall not:
 - (i) sell any CA Personal Information;
 - (ii) retain, use or disclose any CA Personal Information for any purpose other than for the specific purpose of providing the Services, including retaining, using, or disclosing the CA Personal Information for a commercial purpose (as defined in the CCPA) other than provision of the Services; or
 - (iii) retain, use or disclose the CA Personal Information outside of the direct business relationship between us and You. We hereby certify that we understand our

obligations under this section and will comply with them.

- (b) Notwithstanding anything in the Agreement or any order form entered in connection therewith, the parties acknowledge and agree that our access to CA Personal Information or any other of Your Personal Data does not constitute part of the consideration exchanged by the parties in respect of the Agreement.

14. General

- 14.1. All notices and communications given under this Agreement must be in writing and in accordance with the Customer Agreement.
- 14.2. Each party's liability (excluding under any indemnity) under this Agreement including the Standard Contractual Clauses, is limited as set out in the Customer Agreement.
- 14.3. Save to the extent that this Agreement or Applicable Law provides otherwise, this Agreement is subject to the law and jurisdiction, and the venue for any dispute, shall be as provided in the Customer Agreement.

Schedule 1

Data Processing Particulars

(A)	Role of Parties	Octopus Deploy Pty Ltd (we, our, or us) act as processor on behalf of the Customer (you, your) as Controller.													
(B)	Subject matter, nature and purpose of the processing of Personal Data	<p>Subject matter Our provision of software and services to you in accordance with our Customer Agreement.</p> <p>Nature We may undertake Processing activities such as collecting, recording, storing, modifying, using, disclosing, distributing, publishing, deleting, and other operations.</p> <p>Purpose Personal Data is processed in order to facilitate our supply of and your use of software and services in accordance with the Customer Agreement.</p>													
(C)	Duration of the processing of Personal Data	For the term of the Customer Agreement and for up to seven (7) years following termination or expiry of the agreement, subject to our lawful and legal requirements and obligations, and any request for earlier deletion which may be received.													
(D)	Type of Personal Data processed	<p>Personal Data The personal data transferred contains a data subject's name, contact information including email address(es), payment information (where applicable), data related to third party single sign on (SSO) services, and behavioural data while carrying out operations in respect of the software and services supplied under the Customer Agreement, including the time actions are performed.</p> <p>Special Categories of Personal Data No transfer of special categories of data is anticipated.</p> <p>Criminal Records Data No transfer of criminal records data is anticipated.</p>													
(E)	Categories of data subjects of the Personal Data	The Personal Data transferred concerns technical representatives, billing representatives, project managers, end users, and other persons whom may act on your behalf from time to time for the purposes of the Customer Agreement.													
(F)	Cross-Border Data Transfers Which party is the data exporter and data importer will depend on how data flows between the Parties.	<p>Data exporter(s) Note: the data exporter is the party transferring personal data outside of the UK/EEA, as applicable.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Name</td> <td>As recorded in Octopus Deploy's licensing portal from time to time.</td> </tr> <tr> <td>Address</td> <td>As recorded in Octopus Deploy's licensing portal from time to time.</td> </tr> <tr> <td>Contact person's name, position, and contact details</td> <td>As recorded in Octopus Deploy's licensing portal from time to time.</td> </tr> <tr> <td>Activities relevant to the data transferred under these Clauses</td> <td>As agreed between the Parties, in accordance with this Agreement and the Customer Agreement.</td> </tr> <tr> <td>Signature and Date</td> <td>Signature and date shall be deemed to be as at the date of this Agreement.</td> </tr> <tr> <td>Role</td> <td>Controller</td> </tr> </table>		Name	As recorded in Octopus Deploy's licensing portal from time to time.	Address	As recorded in Octopus Deploy's licensing portal from time to time.	Contact person's name, position, and contact details	As recorded in Octopus Deploy's licensing portal from time to time.	Activities relevant to the data transferred under these Clauses	As agreed between the Parties, in accordance with this Agreement and the Customer Agreement.	Signature and Date	Signature and date shall be deemed to be as at the date of this Agreement.	Role	Controller
Name	As recorded in Octopus Deploy's licensing portal from time to time.														
Address	As recorded in Octopus Deploy's licensing portal from time to time.														
Contact person's name, position, and contact details	As recorded in Octopus Deploy's licensing portal from time to time.														
Activities relevant to the data transferred under these Clauses	As agreed between the Parties, in accordance with this Agreement and the Customer Agreement.														
Signature and Date	Signature and date shall be deemed to be as at the date of this Agreement.														
Role	Controller														

		Data importer(s) Note: the data importer is the party receiving personal data outside of the UK/EEA, as applicable.	
		Name	Octopus Deploy Pty Ltd (and, where applicable, its Affiliates as defined in the Agreement)
		Address	(c/o) Octopus Deploy Pty Ltd Level 4, 199 Grey Street South Brisbane QLD 4101 Australia
		Contact person's name, position, and contact details	The Data Protection Officer privacy@octopus.com
		Activities relevant to the data transferred under these Clauses	As agreed between the Parties, in accordance with this Agreement and the Customer Agreement.
		Signature and Date	Signature and date shall be deemed to be as at the date of this Agreement.
		Role	Processor
		Description of the Transfer	
		As set out in Items (B) to (E) of this Schedule.	
		Frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis)	
Continuous			
(G)	Is personal data received from the Data Importer combined with personal data collected by the Data Exporter?	Yes, in some circumstances according to the Data Exporter's use of the software and services under the Customer Agreement.	
(H)	List of Approved Subprocessors	As set out from time to time at https://octopus.com/legal/gdpr	

Schedule 2

Technical and Organisational Security Measures

We shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including as appropriate:

1. the pseudonymization and encryption of Personal Data;
2. measures designed to ensure the on-going confidentiality, integrity, availability and resilience of processing systems and services and deliverables under the Agreement;
3. the ability to restore the availability and access to your Personal Data in a timely manner in the event of a physical or technical incident;
4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing;
5. a process and procedures to monitor and log processing systems for unauthorized changes and other evidence the processing environment has been compromised. We shall document and monitor compliance with these measures. Technical and organizational measures are subject to technical progress and further development and we may implement alternative adequate measures provided we shall not decrease the overall security of the services and deliverables during the term of the Agreement. The minimum security measures to be implemented by us are as follows:

- (a) **Encryption.** We shall use strong encryption methodologies to protect your Personal Data transferred over public networks, and shall implement whole disk encryption for all Personal Data at rest and in transit. We will fully document and comply with industry best practice and our key management procedures for crypto keys used for the encryption of your Personal Data.
- (b) **Storage.** We shall retain all your Personal Data in a physically and logically secure environment to protect from unauthorized access,

modification, theft, misuse and destruction. We shall utilize platforms to host your Personal Data that are configured to conform to industry standard security requirements and will only use hardened platforms that are continuously monitored for unauthorized changes.

- (c) **Endpoint Detection & Response; Firewall.** We shall utilize programs that are capable of detecting, removing, and protecting against known types of malicious or unauthorized software. We will implement firewalls designed to ensure that all traffic from and to the supplier's systems that host your data systems are restricted to only what is necessary to ensure the proper functioning of the services and deliverables under the Agreement. All other unnecessary ports and services will be blocked by firewall rules at our network.

- (d) **Vulnerability Management**

- (i) **Updates and Patches.** With regards to the handling of your Personal Data, we shall establish and maintain mechanisms for vulnerability and patch management that are designed to evaluate application, system, and network device vulnerabilities and apply our operating system and application like Web Servers, Database etc., and our security fixes and patches in a timely manner taking a risk-based approach for prioritizing critical patches. For critical, zero-day, patches will be applied within 30 days.

- (ii) **Data Loss Prevention.** We shall implement appropriate controls that prevent data loss to protect your Personal Data, and shall integrate the results of that activity with its program for

audit logging and intrusion detection as described below.

(iii) **Audit Logging; Intrusion Detection.** We shall collect and retain audit logs recording privileged user access activities, authorized and unauthorized access attempts, system exceptions, and information security events, complying with applicable policies and regulations. Audit logs shall be reviewed at least daily and automated detection tools shall be implemented to help facilitate timely detection, investigation by root cause analysis and response to incidents. Physical and logical user access to audit logs shall be restricted to authorized Parties only.

(iv) **Information Risk Assessment.** On an annual basis, we shall cooperate with you, at your discretion, to perform formal risk assessments to determine the likelihood and impact of potential privacy and security risks to your Personal Data. We shall conduct the audit annually in accordance with all applicable local laws, regulations and where applicable requirements for credit card and privacy (including without limitation PCI DSS) as well as industry common standards for information security. An audit report shall be provided to you within three (3) months upon the completion of every year's Services by us to you.

(v) **Physical Security.** Where we are Processing your Personal Data, such Personal Data shall be housed in secure areas,

physically protected from unauthorized access, with appropriate environmental and perimeter controls. the facilities shall be physically protected from unauthorized access, damage, theft and interference.

(vi) **Disaster Recovery Management.** We shall provide documentation of its formal and secure disaster recovery plan, meeting a standard of industry best practice standards and redacted for proprietary and confidential information. We shall share evidence with you that we conduct regular testing of that plan on at least an annual basis, which impacts any of your Systems and your Personal Data governed by the Agreement.