



## Octopus Deploy Customer Agreement General Terms Effective 1 October 2024

These General Terms form part of a legal agreement between you and Octopus Deploy Pty Ltd ABN 69 160 339 186, an Australian company (**Octopus Deploy, we, our, or us**). These General Terms provide the general terms and conditions for using our Products. Terms with capitalised letters are defined in Section 23.

By doing any of the following, you agree to these General Terms: (a) clicking "I agree" (or a similar button or checkbox) when displayed to you; (b) installing, using, our accessing our Products; (c) placing an order; or (d) indicating your acceptance in any other way (such as signing an order, informing us orally that you agree to these terms, or paying an invoice). If there is any difference between these terms as found in any of our Products and the latest version on our website at the time of your acceptance, the website version will apply.

IF YOU ARE ACCEPTING THESE GENERAL TERMS ON BEHALF OF ANOTHER PERSON OR AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORISED TO DO SO, AND A REFERENCE TO "YOU" OR "YOUR" SHALL BE A REFERENCE TO THAT PERSON OR ENTITY.

### **1. Our agreement with you.**

1.1. **Formation.** An agreement is formed when you place an order and we accept it (the "**Customer Agreement**" or "**Agreement**"). Your Agreement consists of:

- (a) these General Terms;
- (b) the Data Processing Agreement;
- (c) any applicable Product Terms; and
- (d) your order form, and commences on the date we accept the order.

1.2. **Orders separate.** Each order creates a separate Agreement.

1.3. **Acceptance.** When we accept your order, subject to your paying the required fees, you get a license or right to use our Products as specified in the order.

1.4. **Affiliates.** Your Affiliates can use our Products just as you can, within the limits of your Agreement. You are responsible and liable for their actions as if they were your own.

1.5. **End users and representatives.** You can allow end users to use our Products on your behalf, within the limits of your Agreement. They may need to agree to additional terms, for example, in

relation to confidentiality or acceptable usage. You must use commercially reasonable efforts to prevent unauthorised access to or use of any of our Products. You are responsible and liable for the actions of your end users as if they were your own, even if not actually authorised by you.

### **2. Our Products.**

2.1. **Permitted use.** You may use our Products only:

- (a) for your own business purposes (and / or those of your Affiliates);
- (b) in accordance with any applicable documentation we publish from time to time;
- (c) in accordance with all applicable laws;
- (d) during your order term; and
- (e) as otherwise specified in your order.

2.2. **Product features.** We continuously work to develop our Products and Product features may be added, change, or be removed, from time to time at our discretion. You agree that your order(s) are not contingent on the delivery of any future functionality or features.



2.3. **Availability.** Hosted Products or services may be temporarily unavailable for scheduled maintenance or unscheduled emergency maintenance, either by us or by our third party providers, or because of causes beyond our reasonable control. We shall use reasonable efforts to provide advance notice of any scheduled unavailability. For self-hosted Products, availability is subject to your own maintenance of your infrastructure and software installation and configuration.

2.4. **Integration with third party services and applications.** You may access or use our Products through services or applications provided by third parties. In these cases, you may be required to accept terms and conditions of a third party or to provide authentication details to third parties. Such third parties may share information that you provide to them with us. Any third party service or application that we may provide access to, an integration for, or otherwise identify, is for convenience only and is not an endorsement or approval. The manner in which a third party deals with any information that you give them is solely between you and the third party. We are not responsible or liable for any third party services or applications or your usage of them, and do not guarantee interoperability with any third party services or applications.

2.5. **Monitoring.** We have the right, but not the obligation, to monitor use of our Products.

2.6. **Restrictions.** You may not:

- (a) reverse engineer, copy, modify, distribute, or try to uncover the source code or components of our Products (other than as provided through our documentation and APIs, or open source software);
- (b) resell, sublicense, or distribute our products or services, whether for free or for payment, and

- whether alone or bundled with other offerings;
  - (c) misrepresent your identify or affiliation with any person or entity;
  - (d) attempt to circumvent any actual, intended, or implied licensing or contractual restrictions on your use of the Products;
  - (e) use our products or services if you are a direct competitor, or to monitor, benchmark, or evaluate them for competitive purposes; or
  - (f) do any other thing which would violate our Acceptable Use Policy,
- and we may:
- (g) suspend supply of our Products with or without notice; or
  - (h) terminate your Agreement(s) for breach under Section 6.1(a), for your breach of any of these restrictions.

### **3. Orders.**

3.1. **Form of orders.** Your order form may provide information including:

- (a) the Product(s);
- (b) fees;
- (c) payment due date (or the time of ordering net 0 if not specified);
- (d) payment methods;
- (e) payment currency (default is United States dollars if not specified);
- (f) permitted use; and
- (g) order term.

An order is only binding once we accept it and give you access to the Product(s).

3.2. **Taxes.** Fees do not include taxes, charges, excises, duties, etc. unless specified otherwise. We may charge you for such amounts on top of the fees. If you need to withhold taxes or other sums, you still need to pay us the full amount listed, including the withheld amount, with the full amount grossed up to include any withholding. If you need a revised invoice to show these additional amounts, let us know and we will provide it.



3.3. **Credit card payments.** If you are paying fees by credit card, you must give us accurate information. By providing us credit card information you confirm that you are authorised to use the credit card for the payment of those fees. It is your responsibility to update your credit card details when necessary, including any change of billing address or expiration date. You authorise us to charge your card for any fees payable as and when due under any order including any renewals (if applicable).

3.4. **Upgrading and downgrading Product licenses and subscriptions.** You may upgrade your Product license or subscription tier during your order term. We will invoice you the difference in cost between your prior and upgraded license or subscription pro rata for the remainder of your order term. Any downgrade in Product license or subscription shall only take effect upon renewal of the order. Downgrades may cause the loss of features or capacity and we are not liable for your decision to downgrade.

3.5. **Default.** If you do not pay on time, we may:

- (a) immediately suspend or terminate your Agreement(s) with us; and / or
- (b) charge interest at 1.5% per month (calculated and compounding daily) or the maximum allowed by law, whichever is lesser.

We may also require that you pay our enforcement and recovery costs, including legal fees and expenses as incurred.

#### **4. Order Renewals.**

4.1. **Renewal of annual or multi-year orders.** Unless stated otherwise in your order, annual or multi-year orders automatically renew for successive twelve (12) month terms unless you notify us at least 30 days before the current term ends (or such other period as may be specified in your order).

4.2. **Renewal of monthly orders.** Monthly orders automatically renew every month until you terminate them. The termination will take effect at the end of the order month.

4.3. **Continued usage post-expiry.** If you keep using the Products after your then-current order term ends, you are deemed to accept renewal of the order.

4.4. **Renewal pricing.** Renewals will be invoiced at our standard fees at the time of renewal.

4.5. **Renewals are separate orders and Agreements.** Each renewal is a new order and forms a new Agreement effective as of the day after expiry of the preceding order and Agreement, separate from the preceding or any concurrent or future orders or Agreements.

4.6. **Non-renewal.** Notwithstanding the rest of this Section 4, we may, at our discretion, elect not to accept renewal of an order.

#### **5. Trials.**

5.1. **Trials.** We may offer certain Products at no charge for a free trial. Unless expressly agreed otherwise by us in writing, trials:

- (a) expire thirty (30) days from the trial start date;
- (b) are for internal evaluation purposes only and not for production use;
- (c) are provided "AS-IS" and "AS-AVAILABLE" without any warranty or indemnity of any kind whatsoever including those provided in the Agreement; and
- (d) may be subject to additional terms.

5.2. **Number of trials limited.** Unless we expressly agree otherwise in writing, you are limited to a single trial in any twelve (12) month period. If during this period you:

- (a) attempt to sign up for multiple trials after your first one; or



(b) continue using the Product after the trial has ended, this shall be deemed an order for that Product and we reserve the right to invoice our then-current fees for that Product for your continued usage.

## 6. Termination, expiry, and non-renewal.

6.1. **Termination for breach.** Either party may terminate its Agreement(s) by notice in writing if the other party:

- (a) is in breach of an Agreement which is capable of remedy, and has not remedied the breach within thirty (30) days of notice of the breach to the party in breach;
- (b) is in breach of the Agreement and the breach is incapable of remedy;
- (c) is in breach of applicable law in its performance of the Agreement or the continued performance of the Agreement may render the terminating party in breach of applicable law;
- (d) ceases to carry on business; or
- (e) is subject to bankruptcy proceedings, appointment of an administrator, or similar event.

6.2. **Termination for repeated breach.** We may terminate your Agreement(s) immediately upon notice in writing if we have notified you more than twice of the same breach in respect of any of them.

6.3. **Effect of termination, expiry, or non-renewal.** On termination, expiry, or non-renewal (as applicable):

- (a) your right to use our Products shall immediately and unconditionally cease;
- (b) you remain liable for payment of any monies which are, were, or became, due and owing during the order term. You are not entitled to any refund or credit, pro-rata or otherwise, save where terminated for our unremedied breach, in which case any refund or credit shall be at our reasonable discretion; and

(c) if the order included any discount or credit or right to a future discount or to apply credit to a future payment, on termination you will lose any entitlement to that discount or credit.

## 7. Your Data.

7.1. **Ownership of Your Data.** You keep all rights to Your Data. By using our Products, you grant us a worldwide, non-exclusive, royalty-free license to use, transfer, store, and deal in any way with, Your Data, for the purposes of or incidental to supplying any Product including, without limitation, research, development, and responding to any support requests.

7.2. **Completeness of Your Data.** You are responsible for ensuring Your Data is accurate and complete.

7.3. **Legality of Your Data; personally identifiable information.** Your Data must comply with the terms of your agreement with us and all relevant laws. You must not give us any personally identifiable information unless needed for your end users to use our Product(s). Do not submit any patient, medical, or health information or information otherwise deemed as sensitive under any applicable laws.

7.4. **Right to provide Your Data.** You warrant that you have the right to provide Your Data to us and that doing so shall not violate any applicable laws or third party rights. You indemnify us from any claims by third parties in relation to Your Data.

7.5. **Security of Your Data.**

- (a) We take measures to protect Your Data from security threats. These measures shall include organisational restrictions on accessing, using, modifying, or disclosing Your Data.
- (b) As data often travels over networks we do not control, we cannot guarantee complete security or confidentiality of Your



Data. We are not responsible for any data lost, intercepted, or altered on third party networks or systems unless due to our negligence or intentional misconduct.

- (c) You are responsible for the security of Your Data when it is in your own possession or that of your end users, including any of your accounts and passwords. You must not hold us responsible or liable for your failure to maintain your own appropriate security over Your Data.
- (d) You are responsible for backing up Your Data. We are not liable for any unauthorised access or use of Your Data, or any corruption, deletion, destruction, or loss of any of Your Data.

7.6. **Liability.** We are not responsible for Your Data except as described here. You are solely responsible for Your Data and its use, storage, disclosure, or transmission. We have no obligation to monitor Your Data.

7.7. **Deletion of Your Data.** We may delete Your Data 90 days after your order (including any renewals) ends, or your request.

## 8. Confidentiality.

8.1. **Disclosure.** Either party (the "Recipient") may receive Confidential Information from the other party (the "Discloser") related to the Agreement or the supply of products/services. This may occur through uploads, sharing via the Products, or exchanges for product supply purposes.

8.2. **Permitted use.** Confidential Information can only be used for the purposes of the Agreement or related to the development, supply, or receipt of the Products. The Recipient must not copy, publish, or disclose Confidential Information without the Discloser's written approval, except as provided in this Section 8.

8.3. **Protection standard.** The Recipient must keep the Discloser's Confidential Information confidential and protect the Discloser's Confidential Information with at least the same level of care as it does its own similar information.

8.4. **Permitted disclosure:** Confidential Information can only be shared with the Recipient's Affiliates, their directors, officers, employees, contractors, agents, and professional advisors, provided they need the information for a permitted purpose and are bound by confidentiality obligations. The Recipient must inform anyone handling the Discloser's Confidential Information about its confidential nature.

8.5. **Ownership.** Confidential Information remains the property of the Discloser.

8.6. **Return or destruction.** Following expiry of the Agreement and any other relevant Agreements, or the Discloser's reasonable request, the Recipient must return or destroy the Discloser's Confidential Information, except for such copies as the Recipient may be required to retain by law, or copies stored in routine backups, provided that any surviving copies remain confidential in accordance with this Section 8.

8.7. **Compelled disclosure.** If the Recipient is compelled by a legal, regulatory, or administrative process, to disclose the Discloser's Confidential Information, the Recipient shall:

- (a) if practicable and lawful to do so, notify the Discloser of the disclosure and allow the Discloser to take action to limit or prevent the disclosure; and
- (b) disclose only the Confidential Information necessary to comply with the obligation.

8.8. **Damages insufficient.** The Recipient acknowledges that unauthorised disclosure of the Discloser's Confidential Information may cause the Discloser irreparable harm, and agrees



that the Discloser can seek injunctive relief without proving monetary loss.

- 8.9. **Obligations absolute.** This Section 8 supersedes and replaces any obligations of confidentiality owed or exchanged by the parties, whether prior to or during the Agreement, in relation to the types of information which may be disclosed as described in Section 8.1.

## 9. Warranties.

- 9.1. **General Warranties.** Both parties warrant, both when an Agreement is formed and on an ongoing basis, that they have the legal power to enter into and perform the Agreement and that doing so does not violate any laws or obligations to third parties. Any user of any of our Products must be thirteen (13) years old or older. Users whom are under the age of majority must have the approval of their parent or legal guardian.

- 9.2. **Product Warranty.** We warrant that, for your order term, the Product(s) will work as described in our documentation when used properly, provided that they are used:

- (a) on the appropriate computer system and software environment;
- (b) without unauthorised modification, or integration or use with third party products; and
- (c) according to our documentation.

- 9.3. **Virus Warranty.** We will take commercially reasonable and industry standard steps to ensure the products are free from viruses, malware, or harmful code when provided to you. If they are not, your sole and exclusive remedy, and our sole obligation, is to fix or replace the Product(s).

- 9.4. **Your Representations.** You acknowledge and agree that:

- (a) the Products are not tailored to your specific requirements;
- (b) it is your responsibility to ensure the Product(s) meets your needs;

- (c) you have independently verified that the Product(s) are suitable for your purposes;
- (d) minor Product errors do not constitute a breach of an Agreement; and
- (e) the terms of each Agreement are reasonable and reflected in the price, which would be higher without these terms, and you accept this risk.

- 9.5. **DISCLAIMER OF IMPLIED WARRANTIES.** EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES THAT BY LAW OR IN EQUITY CANNOT BE WAIVED OR LIMITED BY CONTRACT, THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THESE GENERAL TERMS ARE THE ONLY REPRESENTATIONS OR WARRANTIES MADE BY US AND NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WILL APPLY. WHERE YOU HAVE LEGAL OR EQUITABLE RIGHTS OR REMEDIES, TO THE EXTENT PERMITTED BY LAW, SUCH RIGHTS (A) ARE LIMITED TO THE SHORTEST PERIOD ALLOWED BY THE LAW, (B) YOUR ENTITLEMENT TO RELIEF IS LIMITED TO THE FORMS OF RELIEF REQUIRED BY THE LAW, AND (C) THE FORM OF RELIEF SHALL BE AT OUR DISCRETION.

## 10. Liability.

- 10.1. **EXCLUSIONS TO LIABILITY.** NEITHER PARTY, NOR ITS SUPPLIERS OR AFFILIATES, WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL LOSSES SUCH AS LOSS OF PROFITS, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS, GOODWILL, REVENUE, HARDWARE, SOFTWARE, OR DATA, EVEN IF THEY WERE WARNED OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH LOSS.

- 10.2. **Remedies.** If, during your order term, a Product fails to perform in accordance with Section 9.2, we will, at our sole option, and as your sole remedy, repair



or replace the Product, provided that you:

- (a) notify us in writing:
  - (i) during your order term; and
  - (ii) within thirty (30) days of your first becoming aware of the defect; and
- (b) provide us all necessary information we may request or require to help us identify and resolve the issue.

10.3. **LIABILITY LIMITED.** IN RESPECT OF ANY AGREEMENT, TO THE EXTENT PERMITTED BY LAW, OUR MAXIMUM LIABILITY TO YOU, PER EVENT AND IN THE AGGREGATE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, IS LIMITED TO THE AMOUNT PAID TO US UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT CAUSING THE LIABILITY.

## 11. Intellectual property.

11.1. **Ownership.** We retain all right, title, and interest in our intellectual property, whether created before or after your Agreement. We only license or grant any rights to our intellectual property where expressly provided under your Agreement.

11.2. **License to feedback.** You grant us worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into our Products any suggestions, enhancement requests, recommendations, corrections, or other feedback which you, your Affiliates, or your respective end users, may provide.

11.3. **Third party and open source material.** Our Products may utilise or include material licensed from third parties, including material published under an open source or public license. We will identify the open source or publicly licensed material included in our shipped Products either within the Product, in our documentation, or on our website. Where an open source or public license applies to such material,

the terms of the open source or public license will apply to that material, such as access to source code, modification rights, and reverse engineering rights. Provided you use our Products as provided, within your permitted scope, and without distributing the software to third parties, the open source licenses will not impose additional obligations beyond what is stated in your Agreement.

## 12. Indemnities.

12.1. **Conditions of indemnity.** A person indemnified under this section 12 ("**the indemnified**") shall not have the benefit of the indemnity unless they comply with the following requirements:

- (a) the indemnified must promptly notify the indemnifying party ("**the indemnifier**") in writing about the claim.
- (b) the indemnified must permit the indemnifier the right, but not the obligation, to take control of the defence of the claim including any negotiations; and
- (c) the indemnified must provide the indemnifier any reasonable information or assistance the indemnifier may require to conduct the defence of the claim including any negotiations.

12.2. **Your indemnity to us.** You will indemnify and hold us, our Affiliates, and our respective officers, directors, employees, contractors, agents, and servants, harmless from and against any third party claims, disputes, demands, liabilities, damages, losses, costs, and expenses, including reasonable legal and professional fees, arising out of or in any way connected with your breach of any law in the course of your accessing or using any of our Products or providing us with any of Your Data.

12.3. **Our indemnity to you.** We will indemnify and hold you, your Affiliates, and your respective officers, directors, employees, contractors, agents, and servants, harmless from and against



any third party claims, third party claims, disputes, demands, liabilities, damages, losses, costs, and expenses, including reasonable legal and professional fees, arising out of or in any way connected with alleged infringement of the copyright or patent of the third party arising as a result of your accessing or using any of our Products in accordance with your Agreement. Without limiting any other action we may take in response to such claim, we may, at our sole option:

- (a) negotiate terms for the continued use of the Product;
- (b) amend the Product to be non-infringing; or
- (c) if we reasonably consider that neither of the foregoing are practicable, terminate the affected order and refund you pro-rata for the balance of the order term.

**12.4. Exceptions to our indemnity.** Our indemnification obligations in Section 12.3 DO NOT APPLY:

- (a) to any damages and costs arising prior to your giving us notice of the claim;
- (b) if you made any act or omission in response to the claim without our prior written consent, including making any admission, concession, or settlement offer;
- (c) if your, or your Affiliates', actions contributed to the infringement;
- (d) if you are in breach of any part of an Agreement with us including your obligations under Section 12.3; or
- (e) if the total aggregate fees which we have received from you, under all of your orders, in the twelve (12) months prior to the claim, are less than USD \$50,000.

**12.5. SECTION 12.3 OUTLINES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY IP INFRINGEMENT CLAIMS RELATED TO OUR PRODUCTS.**

**13. Transfer of Rights and Obligations.**

**13.1. Permitted assignment.** Either party ("**assignor**") may assign an Agreement to:

- (a) an Affiliate;
- (b) an entity divested from the assignor or its parent group which, but for the divestment, would be an Affiliate of the assignor; or
- (c) a successor arising from the assignor's merger with another entity or from the sale of all or substantially all the equity or assets of the assignor, (the "**assignee**"), provided that:
- (d) such assignment would not cause the assignor, assignee, or other party, to be in breach of any part of the Agreement; and
- (e) if you are the assignor, as of the assignment date:
  - (i) there are no outstanding fees or monies owing to us; and
  - (ii) you are not in unremedied breach of the Agreement.

**13.2. Notice of assignment.** The assignor must give the other party at least seven (7) days' written notice of the assignment. Upon assignment, the assignee shall be responsible and liable for performance of the Agreement and the assignor's rights and obligations under the Agreement (including accrued rights and obligations) shall lapse.

**13.3. Invalid assignments.** Any assignment which does not comply with this Section shall be void and of no effect unless the other party provides its prior express written consent (which may not be unreasonably withheld or delayed).

**14. Export.**

Products may be subject to export controls or trade laws in the deemed jurisdiction of import or export. Each party shall comply with all applicable trade laws. You represent and warrant that you will not violate any such laws





or engage in any action which may cause us to violate such laws.

#### **15. 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.

#### **16. Force Majeure.**

Neither party is responsible or liable for any omission or delay under an 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, pandemic, epidemic, embargo, prohibition, confiscation, act of government authority, or failure of telecommunications or data networks or services. If a party is prevented from performing its obligations under an Agreement for a period of thirty (30) days due to such an event, or the nature of the force majeure is such that the continued performance of the Agreement is rendered impracticable, a party may terminate the Agreement by giving written notice.

#### **17. Notices.**

Any notices must be given in writing. You agree that any electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing.

We may provide notice to you via email to any of the email address(es) that you have provided us.

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.

#### **18. Waiver; election of remedies.**

**18.1. Waiver.** If either party does not enforce strict performance of any obligations or exercise their rights under an Agreement, it does not mean they waive those rights or obligations. Waiver of a default does not mean that future defaults are waived. A waiver is only valid if it is expressly stated as a waiver and communicated in writing to the other party.

**18.2. No election of remedies.** Except as expressly set forth in your Agreement, the exercise by either party of any of its remedies under the Agreement will not be deemed an election of remedies and will be without prejudice to its other remedies under the Agreement or available at law or in equity or otherwise.

#### **19. Enforcement.**

**19.1. Notice.** You must promptly notify us of any actual or anticipated breach of any Agreement and assist us to investigate the breach and take any appropriate enforcement action.

**19.2. Telemetry.** Our Products may include licensing and usage telemetry. If telemetry is disabled, usage of our Products may be limited, disabled, or suspended, until telemetry is re-enabled. We are not responsible or liable for any unintended or non-performance due to telemetry being disabled. If your usage of our Products is invoiced on a consumption or variable basis, and telemetry is not enabled, we may invoice you according, at our discretion, to either your maximum permitted usage or our own reasonable estimates of your usage, either of which may be greater



than your actual usage had telemetry been enabled, and such estimate is final.

- 19.3. **Verification that use is within permitted scope and limits.** Should you exceed your permitted scope and limits of use of our Products, we may invoice you for the excess use. To enable us to confirm whether you have exceeded your scope of usage, we may audit your or our relevant records of your usage of the Product(s). We will give you reasonable notice of any required audit of your records. We will bear the costs of the audit unless the audit reveals excess use, in which case, you will bear the costs of the audit in addition to the fees payable for the excess use.

## 20. Law and Jurisdiction.

- 20.1. **Governing law.** Agreements shall be interpreted in accordance with the applicable laws of the Governing Law, without reference to its conflict of laws principles.
- 20.2. **Jurisdiction.** Each party submits to the exclusive jurisdiction and venue of the Governing Venue, and courts of appellate jurisdiction. Notwithstanding the foregoing, a party may take action in another jurisdiction for urgent interlocutory relief pending final determination of the dispute in the Governing Venue under the Governing Law.
- 20.3. **Enforcement.** Each party consents to the enforcement of any judgment of the courts of the Governing Venue (and appellate courts) in any other jurisdiction.
- 20.4. **Costs.** The prevailing party in any dispute determined by a Court of competent jurisdiction shall be entitled, in addition to damages or other relief, its reasonable costs and expenses, including reasonable legal fees, expert fees, and court fees and expenses.

## 21. Dispute resolution.

- 21.1. **Application.** A party must not commence legal proceedings (except for urgent interlocutory relief) against the other party without first complying with the dispute resolution process set out in this Section 21. However, if a party does not comply with the process, the other party need not comply with the process.
- 21.2. **Notice.** If a dispute arises between the parties, a party may give notice to the other party of the dispute.
- 21.3. **Parties to meet.** Authorised representatives of the parties with authority to resolve the dispute shall meet within fourteen (14) days of receipt of notice of the dispute and shall endeavour in good faith to resolve the dispute. Such meeting may take place by video.
- 21.4. **Referral to mediation.** If the dispute remains unresolved fourteen (14) days after the meeting of the parties' authorised representatives, either party may refer the dispute for mediation to a person agreed by the parties, or, if a mediator is not agreed by the parties within a further fourteen (14) days, a mediator appointed by the President (or equivalent) of the association regulating the legal profession practicing the Governing Law, or the President's nominee.
- 21.5. **Conduct of mediation.**
- The mediation shall take place in the Governing Venue. The parties may attend the mediation by video.
  - The parties shall comply with the directions given by the mediator as to the conduct of the mediation.
  - The parties are entitled to legal representation at the mediation.
  - The parties shall bear their own costs of the mediation and shall bear equally the mediator's costs.



21.6. **Termination of mediation process.** If the dispute remains unresolved thirty (30) days after the appointment of the mediator, a party that has complied with this dispute resolution process may terminate the process by notice to the other party.

## 22. Construction.

22.1. **Priority.** If there is any conflict between the documents forming an Agreement, the document listed higher in Section 1.1 will take precedence.

22.2. **Supplier.** Some Products may be provided by our Affiliates. If this is the case, this will be noted in the applicable Product Terms. In such cases, your Agreement will be between you and that Affiliate, and references to "we", "our", "us" or "Octopus Deploy" will refer to that Affiliate, and your relationship in respect of those Products shall be solely between you and that Affiliate. Payments for Agreements with us and our Affiliate(s) may be invoiced together or separately at our discretion.

22.3. **Other documents excluded.** Any additional terms, policies, or documents you attach to an order form or otherwise provide do not form part of your Agreement. Notices that you send us under cover presuming that they are accepted unless we state otherwise, are expressly rejected.

22.4. **Severability.** If any part of your Agreement is found to be invalid, illegal, or unenforceable, by a competent authority, that part will be removed, but the rest of the Agreement will remain valid and enforceable to the fullest extent allowed by law.

22.5. **Survival.** Sections of your Agreement that expressly or by implication or necessity survive termination or expiry of the Agreement will continue to apply, including, without limitation, Sections 3.5 (*Default*), 6.3 (*Effect of termination, expiry, or non-renewal*), 7.7 (*Deletion of Your Data*), 8 (*Confidentiality*), 10 (*Liability*), 11.2 (*License to feedback*),

17 (*Notices*), 19 (*Enforcement*), 20 (*Law and Jurisdiction*), 21 (*Dispute resolution*), 22 (*Construction*), 23 (*Definitions*), and 24 (*Interpretation*), of these General Terms.

22.6. **Changes.** We may update these General Terms, our Product Terms, or our Data Processing Agreement, from time to time. We will notify you via email, the Product, or our website, specifying the effective date. If you do not accept the changes, you may elect to terminate any or all of your outstanding orders with us with 30 days' notice in writing, provided that we receive such notice within thirty (30) days of the date we give notice of the change.

22.7. **Electronic Signature.** The parties may use electronic signatures to sign an Agreement and agree that an electronic signature will have the same legal force and effect as a handwritten signature.

22.8. **No partnership or joint venture.** No agreement creates any partnership or joint venture or allows either party to act on behalf of the other.

22.9. **Counterparts.** Agreements may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

22.10. **Entire Agreement.** Each Agreement is the complete agreement between us regarding its subject matter. You agree that you have not relied on any statements, assurances, or warranties not included in the Agreement. The Agreement replaces all previous or current oral or written communications, proposals, and representations related to the Products or any other subject matter covered by the Agreement.



## 23. Definitions.

In these General Terms, unless the context requires otherwise:

**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.

**Acceptable Use Policy** means our policy governing the acceptable use of our Products.

**Agreement** means an agreement formed upon our acceptance of an order as described in Section 1.1.

**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.

**Data Processing Agreement** means our agreement governing our collection and dealing with personally identifiable information in accordance with applicable privacy laws.

**General Terms** means Sections 1 to 24 of these terms.

**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

**Product Terms** means any terms specific to our supply of a particular Product.

**Products** means our application software, cloud services, professional services, support services, and any other goods, products, or services, that we may offer from time to time.

**you** means the person, corporation, partnership, or other entity, entering into your Agreement to procure Products from us, and **your** has its corresponding meaning.

**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.



## **24. Interpretation.**

In these General Terms, unless the context otherwise requires:

- 24.1. A reference to the singular includes the plural and the plural includes the singular.
- 24.2. A reference to any contract (including an Agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated.
- 24.3. A reference to a law includes subordinate legislation (including regulations) and other instruments under it and any amendment or replacement of any of them.
- 24.4. A reference to a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority.
- 24.5. A reference to a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns.
- 24.6. A reference to a day or a month means a calendar day or calendar month.

- 24.7. No party enters into an Agreement as agent for any other person (or otherwise on their behalf or for their benefit).
- 24.8. 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.
- 24.9. No part of an Agreement shall be construed against a party merely because the party caused or contributed to the inclusion of that part in the Agreement.
- 24.10. Headings and the table of contents are for convenience only and do not form part of the Agreement or affect its interpretation.
- 24.11. Where there are two or more persons in a party each are bound jointly and severally.



## Octopus Deploy Customer Agreement Product Terms

### Octopus Server Product Terms *Effective 1 October 2024*

Your use of the Octopus Server application software is subject to these Product Terms.

1. **Grant of License.** We grant you a worldwide, non-exclusive, fully paid, non-transferable license to install and use Octopus Server.
2. **License Delivery.** You will need a license key to activate and use Octopus Server. This key will be delivered electronically.
3. **Usage.** The fees for Octopus Server may be calculated:
  - (a) based on fixed usage limits;
  - (b) based on actual usage;
  - (c) user or seat-based pricing;
  - (d) a combination of the above; or,
  - (e) by other means,as specified in your order.

If your fee schedule provides for variable or consumption-based pricing, your fees may vary during each billing period based on actual usage. We may require advanced payment for variable or consumption-based pricing.
4. **Support, Maintenance and New Releases.** During your order term, you will have free access to all updates, upgrades, new releases, and patches for Octopus Server, as well as technical support. We may, but are under no obligation to, release any update, upgrade or patch at any time or for any reason. New features may be offered on a trial, temporary, or beta basis, and the continued availability of any particular feature is not guaranteed.
5. **Installation of Updates.** 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 General Terms or these or any other Product Terms SHALL NOT APPLY and shall be re-enlivened only upon the date that the Update is installed.
6. **Impact of Updates.** Updates could cause disruption to services, for some features to not work as they previously did, or other interruptions. We will notify you in the release notes if this is the case.



## Octopus Cloud Product Terms

Effective 1 October 2024

Your use of the Octopus Cloud service is subject to these Product Terms.

- 1. Access to Octopus Cloud.** We grant you a non-exclusive right to access and use Octopus Cloud.
- 2. Licensed to installed components.** We grant you a worldwide, non-exclusive, fully paid, non-transferable license to install and use the self-installed application components of Octopus Cloud.
- 3. 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.
- 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.** Octopus Cloud is provided as an ongoing software-as-a-service. During your order term we may update, upgrade, and patch, Octopus Cloud, from time to time, and provide you technical support. You acknowledge and agree that We may, but are under no obligation to, release any update, upgrade or patch at any time or for any reason. New features. certain features may be offered on a trial, temporary, or beta basis, and the continued availability of any particular feature is not guaranteed.
- 6. Termination, removal and suspension.** Without limiting our rights under the General Terms, 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 General Terms, these Terms, any other agreements or terms between us, or our Acceptable Use Policy. We may provide notice and 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 the integrity of the Product, 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 Octopus Cloud under this Section.
- 7. Impact of Updates.** Updates could cause disruption to services, for some features to not work as they previously did, or other interruptions. We will notify you in the release notes if this is the case.
- 7. 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 attempt to give you at least thirty (30) days' notice (or such other period as we may specify in our documentation) so you can prepare for the change.



## Codefresh Terms Effective 1 October 2024

Your use of the Codefresh software, and optional hosted service, is subject to these Product Terms.

1. **Supplier.** For the purposes of Section 22.2 of the General Terms, the supplier of Codefresh is Codefresh, Inc., a Delaware corporation.
2. **Grant of License.** We grant you a worldwide, non-exclusive, fully paid, non-transferable license to install and use Codefresh.
3. **Access to Hosted Service.** If included in your order, we grant you a non-exclusive right to access and use the Codefresh hosting platform for the sole purpose of hosting part or all of your Codefresh instance (**Hosted Service**).
8. **License Delivery.** You may need a license key to activate and use Codefresh. This key will be delivered electronically.
9. **Usage.** The fees for Codefresh may be calculated:
  - (a) based on fixed usage limits;
  - (b) based on actual usage;
  - (c) user or seat-based pricing;
  - (d) a combination of the above; or,
  - (e) by other means,as specified in your order.

If your fee schedule provides for variable or consumption-based pricing, your fees may vary during each billing period based on actual usage. We may require advanced payment for variable or consumption-based pricing.
10. **Hosting credits.** You may purchase credits for the Hosted Service as part of your order. Such credits:
  - (a) will be calculated based on the criteria published and detailed by us from time to time;
  - (b) are available during your order term only;
  - (c) expire upon termination or expiry of your then-current order; and
  - (d) are not refundable, transferrable, or redeemable for cash.
11. **Support, Maintenance and New Releases.** During your order term, you will have free access to all updates, upgrades, new releases, and patches for Codefresh, as well as technical support. You acknowledge that the Hosted Service is provided as an ongoing software-as-a-service. We may, but are under no obligation to, release any update, upgrade or patch to either Codefresh or the Hosted Service at any time or for any reason. New features may be offered on a trial, temporary, or beta basis, and the continued availability of any particular feature is not guaranteed.
12. **Installation of Updates.** 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 Codefresh 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 General Terms or these or any other Product Terms SHALL NOT APPLY and shall be re-enlivened only upon the date that the Update is installed.
13. **Impact of Updates.** Updates could cause disruption to services, for some features to not work as they previously did, or other interruptions. We will notify you in the release notes if this is the case.
14. **Termination, removal and suspension of the Hosted Service.** Without limiting our rights under the General Terms, we may remove Your Data from the Hosted Service, or suspend your access to Hosted Service, if we deem such action





necessary based on your violation of our General Terms, these Terms, any other agreements or terms between us, or our Acceptable Use Policy. We may provide notice and 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 the integrity of the Product, 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 Hosted Service under this Section.



## TAM Services Terms

*Effective 1 October 2024*

TAM Services are subject to these Product Terms.

1. **Supplier.** For the purposes of section 22.2 of the General Terms, the supplier of the TAM Services is the supplier of the Product for which you have purchased the TAM Services, unless provided otherwise.
2. **TAM Services.** We shall provide a dedicated technical account manager (the **TAM Services**) as set out in your order.
3. **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.
4. **Term.** The order term for your TAM Services shall be for the same order term as that under which you are supplied the Product supported by the TAM Services. Termination or expiry of your order for the supported Product shall automatically terminate your order for the TAM Services. However, if you have multiple orders for supported Products, the TAM Services will continue until termination or expiry of your last outstanding order for the TAM Services-supported Product.
5. **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.



## Priority Support Terms

Effective 1 October 2024

Priority Support is subject to these Product Terms.

- 1. Supplier.** For the purposes of section 22.2 of the General Terms, the supplier of Priority Support is the supplier of the Product for which you have purchased Priority Support, unless provided otherwise.
- 2. Priority Support.** We publish guidelines for the manner and time in which we will respond to any support requests which you may submit to us (our **Response Time Objectives**). These are usually indicative only and non-binding on us. By purchasing Priority Support, we commit to meeting these Response Time Objectives as a binding obligation, as well as other support benefits which we may offer as part of Priority Support from time to time. 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 during your order term.
- 3. Nature of Priority Support.** Our ability to provide Priority Support depends on you giving us complete information and promptly following our instructions. Priority Support is a commitment to responsiveness to, not resolution of, your support requests. While we will make our best effort to help, we cannot guarantee any specific results, such as fixing or solving your problem, as this is dependent upon factors outside of our control including your particular software, infrastructure, configurations, and your ability to implement any rectification works such as installing updates or reconfiguring your environment and your own timeframes for doing so.
- 4. Conditions.** You must comply with any technical requirements which we may require from time to time. This may include 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 appropriate channels that we provide.
- 5. Increase in Product use.** If you increase your use of the Product for which you have purchased Priority Support, we may invoice you for any corresponding additional Priority Support fees correlating to your increased usage of Octopus Server and/or Octopus Cloud. If you fail to pay the additional fees as and when due, our obligation to continue providing Priority Support shall lapse until the fees are paid in full.
- 6. Term.** The order term for your Priority Support shall be the same as the order term for the supported Product. Termination or expiry of the order term of the supported Product shall automatically terminate Priority Support. However, if you have multiple orders for supported Products, Priority Support will continue until termination or expiry of your last outstanding order for the supported Product.
- 6. Service Credits.** If we do not meet our Response Time Objectives in a calendar month, as your sole remedy, you can request a credit. You must make this request within 30 days after the end of that month, or you lose the right to do so. We will calculate the credit based on the severity of the issue, but it will not exceed 50% of the Priority Support fees for that month. You can use credits toward any outstanding or future payments you owe us. Credits expire 12 months after they are issued and cannot be refunded or exchanged for cash.



## **Reseller Terms** *Effective 1 October 2024*

If you have purchased any of our Products through one of our authorised Resellers, your purchase is subject to these Product Terms.

1. **Resellers.** Resellers include any of our authorised channel partners, distributors, or resellers.
2. **Orders.** Your Reseller handles your orders including payments, credits, refunds, etc. on your behalf. We fulfil orders based on the information that your Reseller provides. The accuracy, completeness, and timeliness, of your order and the making of any payments under your order is solely between you and your Reseller. Your Reseller's pricing may be different to our own.
3. **Liability.** Any payments we receive from or refunds or credits we give to your Reseller are deemed to be on your behalf. If we owe any obligation to you under your Agreement, we have satisfied that obligation if we have done so for your Reseller. You are liable for your Reseller's actions as if they are your own, including if the Reseller defaults on payment or misuses the Products supplied to you. We are not liable for responding to directions given to us by your Reseller on your behalf, regardless of whether your Reseller was authorised to give that direction.
4. **Standard terms apply.** Except as otherwise provided in these Product Terms, our respective obligations are as per our Agreement formed in accordance with Section 1.1 of our General Terms. Your agreement with your Reseller is solely between you and your Reseller and we are not party to that agreement. Resellers are not authorised to accept any supplemental or other terms on our behalf and any terms which they purport to accept on our behalf are void, non-binding and of no effect on us.
5. **Termination or expiry of your agreement with your Reseller.** If your agreement with your Reseller ends for any reason, and you continue to use our Products, 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.



## Octopus Deploy Customer Agreement Data Processing Agreement Effective 1 October 2024

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

This DPA 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 DPA 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 DPA on your own behalf and on behalf of each of your Affiliates.

For the purposes of this DPA 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 DPA and the Customer Agreement, the terms of this DPA 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 DPA shall have the following meaning:

"**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 DPA (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 Personal 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.

"**Customer Agreement**" means our standard Customer Agreement for the supply of our Services as amended,



superseded, or replaced from time to time.

**"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.

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

**"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 Personal 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 Personal Data**

- 2.1. You acknowledge and agree, and represent and warrant, that:
- (a) you appoint us as a Processor of Your Personal Data for the purposes of the Applicable Laws;
  - (b) you are solely responsible for:
    - (i) the contents of Your Personal 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 Personal 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) Your Personal Data; and
    - (ii) instructions regarding Your Personal 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 DPA) constitutes your lawful, valid and final instructions to us, and authorisation for us to retain Subprocessors and direct our Subprocessors, to:

- (a) process Your Personal Data; and
- (b) transfer Your Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with the Customer Agreement and this DPA.

- 2.3. You acknowledge and agree that:

- (a) nothing in this DPA (including, without limitation, sections 4, 6, and 7), is a substitute for you implementing your own independent policies and procedures for dealing with Your Personal 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 Personal Data**

- 3.1. We shall only Process Your Personal Data for the purposes of or incidental to the Customer Agreement and this DPA and in compliance with Applicable Laws.
- 3.2. Where we process Your Personal Data, we will in respect of Your Personal 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 Personal 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 Personal 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 DPA, 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 Personal 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 Personal 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 Personal 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 Personal 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 DPA.

5.3. Your authorisation pursuant to section 2.2 shall be conditional upon us ensuring there is adequate protection and appropriate safeguards for Your Personal 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 DPA.

## **6. Data Subject Rights**

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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 Personal 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 Personal Data.

## **7. Personal Data Breach**

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7.1. If we become aware of a Personal Data breach affecting Your Personal 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 Personal Data post-termination or expiry of Customer Agreement**

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8.1. We will delete or return all Your Personal Data Processed under this DPA in accordance with Applicable Law and our Customer Agreement.

8.2. We may retain Your Personal Data to the extent required or permitted by Applicable Law and our Customer Agreement. We shall ensure that any such retained Your Personal Data is kept confidential and only used, disclosed, retained, or otherwise dealt with, as permitted under Applicable Law and our Customer Agreement.

## **9. Assistance**

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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 Personal 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**

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10.1. We will provide you with any information reasonably necessary to demonstrate our compliance with this DPA (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 DPA. 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**

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- 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 Personal 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 DPA and the signature and date shall be deemed to be as at the date of this DPA;
  - (g) Annex I, Section B of the Standard Contractual Clauses shall be completed with the information set out in Schedule 1 of this DPA;
  - (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 DPA.
- 11.4. In the event of any inconsistency between this DPA 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 Personal 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 Personal 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 Personal 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 DPA;
  - (b) In Table 2, the first option shall be selected with the date being the date of this DPA and the reference being to the EU SCCs identified in section 11.3 of this DPA;
  - (c) Table 3 shall be deemed completed with the relevant information as set out in Schedule 1 of this DPA; 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 DPA 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 Personal 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.

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 Customer Agreement.

### **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 Personal Data is subject to the CCPA, we shall Process Your Personal Data in accordance with and as permitted by the CCPA, this DPA, 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 Customer Agreement or any order form entered in connection

### **14. General**

- 14.1. All notices and communications given under this DPA must be in writing and in accordance with the Customer Agreement.
- 14.2. Each party's liability (excluding under any indemnity) under this DPA including the Standard Contractual Clauses, is limited as set out in the Customer Agreement.
- 14.3. Save to the extent that this DPA or Applicable Law provides otherwise, this DPA 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)	<b>Role of Parties</b>	Octopus Deploy Pty Ltd ( <b>we, our, or us</b> ) act as processor on behalf of the Customer ( <b>you, your</b> ) as Controller.										
(B)	<b>Subject matter, nature and purpose of the processing of Personal Data</b>	<p><b>Subject matter</b> Our provision of software and services to you in accordance with our Customer Agreement.</p> <p><b>Nature</b> We may undertake Processing activities such as collecting, recording, storing, modifying, using, disclosing, distributing, publishing, deleting, and other operations.</p> <p><b>Purpose</b> 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)	<b>Duration of the processing of Personal Data</b>	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)	<b>Type of Personal Data processed</b>	<p><b>Personal Data</b> 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><b>Special Categories of Personal Data</b> No transfer of special categories of data is anticipated.</p> <p><b>Criminal Records Data</b> No transfer of criminal records data is anticipated.</p>										
(E)	<b>Categories of data subjects of the Personal Data</b>	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)	<b>Cross-Border Data Transfers Which party is the data exporter and data importer will depend on how data flows between the Parties.</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;"><b>Data exporter(s)</b></td> </tr> <tr> <td colspan="2" style="font-size: small;">Note: the data exporter is the party transferring personal data outside of the UK/EEA, as applicable.</td> </tr> <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> </table>	<b>Data exporter(s)</b>		Note: the data exporter is the party transferring personal data outside of the UK/EEA, as applicable.		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.
<b>Data exporter(s)</b>												
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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 DPA and the Customer Agreement.
		Signature and Date	Signature and date shall be deemed to be as at the date of the Customer Agreement.
		Role	Controller
		<b>Data importer(s)</b> 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 DPA and the Customer Agreement.
		Signature and Date	Signature and date shall be deemed to be as at the date of the Customer Agreement.
		Role	Processor
		<b>Description of the Transfer</b>	
		As set out in Items (B) to (E) of this Schedule.	
		<b>Frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis)</b>	
		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 <a href="https://octopus.com/legal/gdpr">https://octopus.com/legal/gdpr</a>	

## 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 ongoing 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.