



OctopusPMI

Powered by **SAP** Business One

Sample Services Agreement

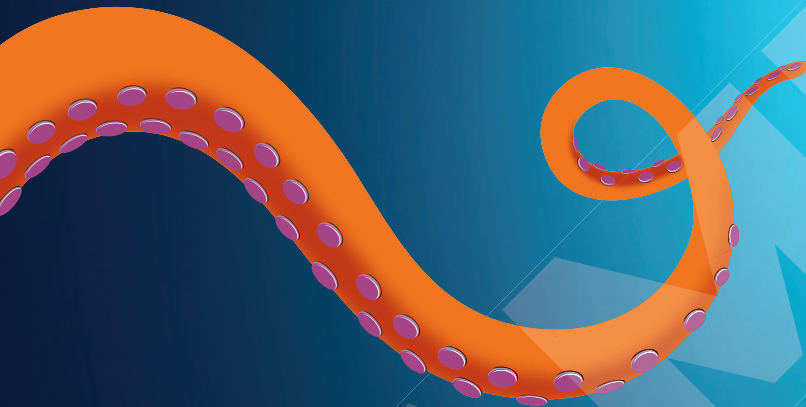


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TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. In this Agreement the following words and phrases shall, unless the context otherwise requires, have the following meanings:-

“ACCEPTANCE LETTER” means the Acceptance Letter to which these terms and conditions are attached;

“ACCESS LICENCE KEYS” means the access licence keys made available by the Supplier to use the Software as set out in Schedule 1;

“ADDITIONAL COMPANY LICENCE FEES” means the additional company licence fees referred to in Schedule 1;

“ADDITIONAL MOBILE APP USERS” means the number of individual Users of the Mobile App in addition to the Specified Individual Mobile App Users;

“ADDITIONAL MOBILE APP LICENCE FEES” means the same as the Mobile App Licence Fees (increased if applicable pursuant to clause 8.4 but excluding any discount);

“ADDITIONAL MOBILE APP LICENCES” means the Mobile App Licences granted above the Specified Individual Mobile App Users (on the basis of one individual Mobile App Licence for each Additional Mobile App User);

“ADDITIONAL SOFTWARE CONCURRENT USERS” means the number of Concurrent Users of the Software in excess of the Specified Number of Software Users from time to time;

“ADDITIONAL SOFTWARE LICENCE FEES” means the same as the Software Licence Fees (increased if applicable pursuant to clause 8.4 but excluding any discount);

“ADDITIONAL SOFTWARE LICENCES” means the Software Licences granted above the Specified Number of Software Users (on the basis of one Additional Software Licence for each Additional Software Concurrent User);

“AGREEMENT” means the Acceptance Letter, these Terms and Conditions and Schedules 1-7;

“BUSINESS DAY” means a weekday on which the banks are open generally in England;

“COMMENCEMENT DATE” [Commencement date of this agreement];

“CONCURRENT USER” means an individual authorised by the Customer or by any Permitted Group Company to use the Software at the same time as another Concurrent User;

“CONFIDENTIAL INFORMATION” means the terms of this Agreement and any information which is identified as confidential or is clearly by its nature confidential (including, but not limited to, system or application documentation, product updates, product development plans trade secrets, the commercial dealings between the Supplier and the Customer, information relating to this Agreement or the Services, data used or generated in the provision of Services provided under this Agreement, or any of the Customer’s or the Permitted Group Companies’ or any of the Supplier’s products (including the OctopusPMI Software), operations, processes, plans or inventions, know-how, market opportunities, customers and business affairs and any information of commercial value) which has been or may be disclosed in the course of discussions leading up to entering into or the performance of this Agreement which relates to the other party unless such information: (i) is public knowledge at the time of the disclosure; or (ii) is already known to such party at the time of disclosure; or (iii) subsequently becomes public knowledge other than by breach of this Agreement; or (iv) subsequently lawfully comes into the possession of such party from a third party;

“CONTROL” in the case of a company has the meaning contained in Section 416 of the Income and Corporation Taxes Act 1988 and in the case of a partnership the holding of a majority interest (whether existing by virtue of voting entitlement ownership or any other ability to determine the affairs of the partnership); controller, processor, data subject, personal data, process, processing, personal data breach, data protection impact assessment and the Commissioner have the meaning given to that term in the Data Protection Legislation;

“CRITICAL FAULT” means a reproducible fault which is either a Major Impact Critical Fault, a Moderate Impact Critical Fault or a Minor Impact Critical Fault;

“CURRENCY FOR USE OF THE SOFTWARE” means US dollars;

“CURRENT VERSION” means the most recent Version accepted by the Customer under this Agreement at the Commencement Date;

“CUSTOMER” means the Customer defined as such on the Acceptance Letter as currently constituted but no rights shall extend to any after acquired or otherwise amalgamated or merged business;

“DATA PROTECTION LEGISLATION” means the Data Protection Act 2018 (“DPA”), the UK GDPR (as defined in in section 3(10) of the DPA, read with section 205(4) of the DPA) and any other applicable law having effect in the United Kingdom concerning privacy or the use of personal data and any applicable laws replacing, amending, extending, re-enacting or consolidating the DPA, UK GDPR or such applicable laws from time to time and any subordinate legislation made under that law;

“FEES” means all the fees payable by the Customer under this Agreement as set out in Schedule 1;

“FIXED ASSET MODULE” means the Supplier’s fixed asset module;

“INTELLECTUAL PROPERTY RIGHTS” means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights, and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same;

“LARGE OPCO GROUP” means an Opco Group or Label whose turnover is £50 million or above;

“LARGE OPCO GROUP LICENCE FEES” means the Large Opco Group or Label licence fees referred to in clause 2.4, and Schedule 1;

“LICENCE TERM” the term for the Software Licence and the Mobile App Licence will commence on the Commencement Date and expire three years thereafter. (For the avoidance of doubt, any Additional Mobile App Licence and/or Additional Software Licence granted after the Commencement Date will expire three years after the Commencement Date);

“MAJOR IMPACT CRITICAL FAULT” means a Critical Fault which substantially prevents the Customer’s Users from using a material part of the functionality of:

(a) the OctopusPMI Software and has a major detrimental effect on the Customer’s business; or

(b) the Mobile App and has a major detrimental effect on the Customer’s business; or

(c) the Modules and has a has a major detrimental effect on the Customer’s business;

“MAN DAY” means seven Standard Hours carried out by one Worker;

“MEDIUM OPCO GROUP” means an Opco Group or Label whose turnover exceeds £20 million but is less than £50 million;

“MEDIUM OPCO GROUP LICENCE FEES” means the Medium Opco Group or Label licence fees referred to in clause 2.4, and Schedule 1;

“MINOR ENHANCEMENT RELEASE” means a release of:

(a) the OctopusPMI Software which may or may not correct faults but which (at the absolute discretion of the Supplier) contains minor enhancements or upgrades to the OctopusPMI Software; or

(b) the Mobile App which may or may not correct faults but which (at the absolute discretion of the Supplier) contains minor enhancements or upgrades to the Mobile App; or

(c) the Modules which may or may not correct faults but which (at the absolute discretion of the Supplier) contains minor enhancements or upgrades to the Modules;

“MINOR IMPACT CRITICAL FAULT” means a Critical Fault which prevents the Users from using a material part of the functionality of:

(a) the OctopusPMI Software and has a minor detrimental effect on the Customer’s business; or

(b) the Mobile App and has a minor detrimental effect on the Customer’s business; or

(c) the Modules and has a minor detrimental effect on the Customer’s business;

“MOBILE APP” means the OctopusPMI Mobile App Version 3.0;

“MOBILE APP LICENCE” means the licence to use the Mobile App during the Licence Term referred to in clause 2.4;

“MOBILE APP LICENCE FEES” the individual User licence rental fees for use of the Mobile App referred to in clause 2.4 and Schedule 1;

“MODULE APP UPDATE” means an update of the Module App which contains (i) defect fixes, (ii) universal bug fixes and (iii) new functionality;

“MODERATE IMPACT CRITICAL FAULT” means a Critical Fault which prevents the Users from using a material part of the functionality of:

(a) the OctopusPMI Software and has a moderately detrimental effect on the Customer’s business; or

(b) the Mobile App and has a moderately detrimental effect on the Customer’s business; or

(c) the Modules and has a moderately detrimental effect on the Customer’s business;

“MODULE FEES” means the Module fees referred to (if at all) in Schedule 1;

“MODULES” means the modules listed in Schedule 6;

“NEW FUNCTION OR MODULE” means any new function or module which the Supplier from time to time makes available to the Customer on payment of a fee;

“NEW VERSION” means any new version of the OctopusPMI Software or Mobile App which from time to time is publicly marketed and offered for purchase by the Supplier in the course of normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product (but for the avoidance of doubt, is not an Update);

“NON-CRITICAL FAULT” means a reproducible fault in the OctopusPMI Software which is not a Critical Fault or a reproducible fault in the Mobile App which is not a Critical Fault;

“OCTOPUSPMI SOFTWARE” OctopusPMI Version 12.2.H;



“OPCO GROUP” means a separate division or label within the Customer’s Group

“PARTICIPATION REPORTING MODULE” means the Supplier’s participation reporting module;

“PERMITTED GROUP COMPANIES” means the Customer’s subsidiaries on the date hereof as listed in Schedule 4 and as amended in accordance with clause 6;

“PREVAILING FEE RATES” means the rate per Man Day referred to in Schedule 1;

“PROFESSIONAL SERVICES” means the professional services (including, without limitation, implementation, project management and training) provided by the Supplier as agreed between the Supplier and the Customer from time to time;

“PROFESSIONAL SERVICES FEES” means the fees for Professional Services referred to in Schedule 1;

“QUARTER” means each three month period commencing on 1st January; 1st April, 1st July and 1st October;

“SAP” means SAP Ireland Limited, Waterside 3. Citywest Business Campus Dublin 24. D24 WA02 Ireland;

“SAP SOFTWARE” means SAP [Business One Version 9.3 PL12];

“SERVICES” means Software Support and Professional Services;

“SMALL OPCO GROUP” means an Opco Group or Label whose turnover is £20 million or less;

“SMALL OPCO GROUP LICENCE FEES” means the Small Opco Group or Label licence fees referred to in clause 2.1;

“SOFTWARE” means OctopusPMI Software and the SAP Software;

“SOFTWARE LICENCE” means the licence to use the Software during the Licence Term referred to in clause 2.1;

“SOFTWARE LICENCE FEES” means the Concurrent User licence rental fees for use of the Software referred to in Schedule 1;

“SOFTWARE UPDATE” means an update of the Software which contains (i) defect fixes, (ii) universal bug fixes and (iii) new functionality;

“SOURCE MATERIALS” means any materials provided to the Supplier in connection with this Agreement;

“SPECIFICATION” the facilities and functions provided by OctopusPMI Version 12.2.H and/ or the Mobile App and/or the Modules as previously demonstrated to the Customer;



“SPECIFIED NUMBER OF SOFTWARE USERS” means the number of Concurrent Users licensed to use the Software as specified in Schedule 1 as adjusted, if at all, up pursuant to clause 2.9.1 or down pursuant to clause 2.9.2;

“SPECIFIED INDIVIDUAL MOBILE APP USERS” means the specified individual users of the Mobile App as agreed by the Customer and the Supplier from time to time to use the Mobile App as specified in Schedule 1 as adjusted, if at all, up pursuant to clause 2.9.4 or down pursuant to clause 2.9.5;

“SPV” a special purpose vehicle company set up for a limited purpose, including, without limitation, for the purpose of obtaining tax credits;

“STANDARD HOURS” means 9.30am to 5.30pm London (UK) time on Business Days;

“SUPPORT SERVICES” the maintenance and telephone/online support obligations of the Supplier relating to the Software, the Mobile App and the Modules set out in Schedule 2;

“TIME RECORDING FOR ANIMATION MODULE” means the Supplier’s time recording for animation module;

“TIME RECORDING FOR ANIMATION MODULE FEE” means the Time Recording for Animation Module fee referred to in Schedule 1;

“UPDATES” means a Mobile App Update or a Module App Update or a Software Update;

“USER” means the number of individuals or specified individuals (as the case may be) authorised by the Customer or any Permitted Group Company to use the Software and/or the Mobile App and/or the Modules;

“VERSION” means a version of:

- (a) the OctopusPMI Software which is not a Software Update; or
- (b) the Mobile App which is not a Mobile App Update; or
- (c) the Modules which is not a Modules Update;

“WORKER” means any person employed or employed by the Supplier or any sub-contractor of the Supplier) to carry out all or any part of the Services.

“YEAR END DATE” means [Client Year End Date].

The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

1.2. Unless the context otherwise so requires:-

1.2.1. references to the Supplier and the Customer include their permitted successors and assigns;

1.2.2. references to statutory provisions include those statutory provisions as amended or re-enacted;

1.2.3. references to any gender include all genders;

1.2.4. references to the singular shall include the plural; and

1.2.5. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. SOFTWARE LICENCE

- 2.1. Subject to payment of the Software Licence Fees the Supplier grants to the Customer and each Permitted Group Company a non-exclusive licence for the Licence Term to use the Software subject to the terms of this Agreement.
- 2.2. In the event that the Customer or a Permitted Group Company:
- 2.2.1.1. uses the Software with a currency which is different from the Currency for use of the Software then the Customer or Permitted Group Company, as the case may be, shall pay an Additional Company Licence Fee in respect of each such different currency;
 - 2.2.1.2. has more than one database on which the Software will run then the Customer or Permitted Group Company, as the case may be, shall pay an Additional Company Licence Fee in respect of each additional database; and
 - 2.2.1.3. has a different year end date from the Year End Date the Customer or Permitted Group Company, as the case may be, shall pay an Additional Company Licence Fee.
- 2.3. In the event that any of the Permitted Group Companies (other than SPV's) has their own purchase ledger an Additional Company Licence Fee will be payable in respect of each such Permitted Group Company.
- 2.4. In the event that:
- 2.4.1. the Customer has any Small Opco Groups a Small Opco Group Licence Fee will be payable in respect of each Small Opco Group;
 - 2.4.2. the Customer has any Medium Opco Groups a Medium Opco Group Licence Fee will be payable in respect of each Medium Opco Group;
 - 2.4.3. the Customer has any Large Opco Groups a Large Opco Group Licence Fee will be payable in respect of each Large Opco Group.
- The Customer's Small Opco Groups, Medium Opco Groups and Large Opco Groups (if any) at the date of this Agreement are set out in Schedule 7.
- 2.5. Subject to payment of the Mobile App Licence Fees the Supplier hereby grants to the Customer and each Permitted Group Company a non-exclusive licence for the Licence Term to use the Mobile App subject to the terms of this Agreement.



- 2.6. Subject to payment of the Module Fees the Supplier grants to the Customer and each Permitted Group Company a non-exclusive licence to use the Modules (or such of the Modules in respect of which the Module Fee is paid) provided that in the case of the Fixed Asset Module and the Participation Reporting Module in the event that the Customer has any Opco Groups the Module Fees in respect of the Fixed Asset Module and the Participation Reporting Module must also be paid in respect of each Opco Group for use of the Fixed Asset Module and the Participation Reporting Module.
- 2.7. "Use" of the Software shall be restricted to use of the Software by the Specified Number of Software Users provided that the number of Concurrent Users who may use the Software shall be limited to the number of Access Licence Keys made available by the Supplier. Use of the Mobile App shall be restricted to use of the Mobile App by the Specified Individual Mobile App Users unless Schedule 1 provides for invoicing each Quarter by the Supplier by reference to the number of individuals who have used the Mobile App during such Quarter. Subject to clause 2.10) use of the Modules shall not be limited to any number of Users. The Software, the Mobile App and the Modules may only be used for the purpose of processing the Customer's data for the normal internal business purposes of the Customer and in the case of a Permitted Group Company for the purpose of processing the Permitted Group Company's data for the normal internal business purposes of the Permitted Group Company. Further, "Use" of the SAP Software shall be limited to use only with the OctopusPMI Software.
- 2.8. The Customer may not (and the Customer shall procure that each Permitted Group Company shall not) use the Software, the Mobile App and the Modules other than as expressly specified in this Agreement without the prior written consent of the Supplier and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.
- 2.9. In the event that:
- 2.9.1. the Software is to be used by more than the Specified Number of Software Users at any time then the Customer shall notify the Supplier in writing and forthwith after the Customer's notification, the Supplier shall enable the Software to be used by the Additional Software Concurrent Users (subject to payment of the Supplier's invoice for the Additional Software Licence Fees);
- 2.9.2. the Software is to be used by less than the Specified Number of Software Users at any time then the Customer shall notify the Supplier and the Supplier shall reduce the Software Licence Fees by the reduction in the number of Software Concurrent Users with effect from (subject to clause 2.9.2.3) the beginning of the Quarter following the Customer's notification provided that:
- 2.9.2.1. the minimum Specified Number of Software Users shall never be less than that specified in Schedule 1;
- 2.9.2.2. if at any time the Customer has paid a lower Software Licence Fee than the Software Licence Fees prevailing on the date of this Agreement then the reduction of the Software Licence Fees shall be made first in respect of such lower Software Licence Fee; and

2.9.2.3. if the notification of the Customer referred to in clause 2.9.2 is less than 45 days prior to the next Quarter then the reduction in the Software Licence Fees shall take effect from the beginning of the Quarter after the next Quarter.

2.9.3. a/an

2.9.3.1. Small Opco Group ceases to exist then the Small Opco Group Licence Fee shall cease to be payable with effect from the end of the Quarter during which the cessation took place;

2.9.3.2. additional Small Opco Group is created then the Small Opco Group Licence Fee shall be payable with effect from the date of creation of the additional Small Opco Group;

2.9.3.3. Medium Opco Group ceases to exist then the Medium Opco Group Licence Fee shall cease to be payable with effect from the end of the Quarter during which the cessation took place;

2.9.3.4. additional Medium Opco Group is created then the Medium Opco Group Licence Fee shall be payable with effect from the date of creation of the additional Medium Opco Group;

2.9.3.5. Large Opco Group ceases to exist then the Large Opco Group Licence Fee shall cease to be payable with effect from the end of the Quarter during which the cessation took place;

2.9.3.6. additional Large Opco Group is created then the Large Opco Group Licence Fee shall be payable with effect from the date of creation of the additional Large Opco Group;

(any change referred to in clauses 2.9.3.1 to 2.9.3.6 shall be notified by the Customer to the Supplier within 30 days of the change. (For the avoidance of doubt the Customer shall notify the Supplier where any existing Small Opco Group, Medium Opco Group or Large Opco Group becomes a different Opco Group);

2.9.4. the Mobile App is to be used by more than the Specified Individual Mobile App Users at any time then the Customer shall notify the Supplier in writing and forthwith after the Customer's notification, the Supplier shall enable the Mobile App to be used by the Additional Mobile App Users (subject to payment of the Supplier's invoice for the Additional Mobile App Licence Fees);

2.9.5. the Mobile App is to be used by less than the Specified Individual Mobile App Users at any time then the Customer shall notify the Supplier and (save where Schedule 1 provides for invoicing each Quarter by the Supplier by reference to the number of individuals who have used the Mobile App during such Quarter) the Supplier shall reduce the Mobile App Licence Fee by the reduction in the number of Mobile App Users with effect from the beginning of the Quarter following the Customer's notification provided that if such notification is given less than 45 days prior to the next Quarter then the reduction in the Mobile App Licence Fees shall take effect from the beginning of the Quarter after the next Quarter.

- 2.10. The Supplier shall issue an invoice each month for the Time Recording for Animation Fee, which shall be calculated by reference to the number of individuals who have used the Time Recording for Animation Module during the prior month.
- 2.11. The Customer may not (and the Customer shall procure that each Permitted Group Company shall not) use the Software other than as expressly specified in this Agreement without the prior written consent of the Supplier and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.

3. PROFESSIONAL SERVICES

- 3.1. The Supplier shall endeavour to supply to the Customer such Professional Services as the Customer requests from time to time.
- 3.2. All Professional Services will be provided remotely unless otherwise agreed in writing by the Supplier.

4. SYSTEM AND SYSTEM SOFTWARE

- 4.1. The Customer shall (unless the Supplier has agreed to host the Software) ensure that at all times during the Licence Term it shall:
 - 4.1.1. use the Software on a system meeting the requirements set out in Schedule 5; and
 - 4.1.2. use software in conjunction with the system referred to in clause 4.1.1 in accordance with the requirements set out in Schedule 5 and update such software as recommended by the suppliers of the software from time to time.

5. HOSTING

The Customer is responsible for the hosting of the Software, the Mobile App (if licensed by the Supplier) and the Modules (if licensed by the Supplier) at all times during the Licence Term unless otherwise specified in Schedule 1.

6. PERMITTED GROUP COMPANIES

- 6.1. The Customer shall notify the Supplier of any additions to the Permitted Group Companies which it wishes to make. Any addition to the Permitted Group Companies shall be subject to the prior written approval of the Supplier.
- 6.2. The Customer shall notify the Supplier within 30 Business Days of any reductions in the Permitted Group Companies.

7. DELAYS CAUSED BY THE CUSTOMER

The Supplier shall be prevented, hindered or delayed from performing any of its obligations under this Agreement by reason of any act or omission of the Customer then notwithstanding anything in this Agreement the Customer shall pay to the Supplier such reasonable charges as may be incurred by the Supplier as a result of such act or omission of the Customer.

8. PAYMENT AND INCREASE OF FEES

- 8.1. The Customer shall pay all undisputed amounts payable by it under this Agreement within 30 (thirty) days of receipt of a valid invoice.
- 8.2. If the Customer fails to pay any undisputed amount payable by it under this Agreement within 30 (thirty) days from receipt of a valid invoice, the Supplier shall be entitled (without prejudice to its other remedies including the withholding of any services) to charge the Customer interest on the overdue disputed amount, payable by the Customer forthwith on demand, from the due date of payment up to and including the date of actual payment at the rate of 3% (three per cent.) per annum above the base rate of the Bank of England. Such interest shall accrue on a daily basis and shall be compounded quarterly.
- 8.3. The Supplier shall (without prejudice to its other remedies) be entitled to suspend the provision of Support Services in the event that the Supplier fails to pay any undisputed amount payable by it under this Agreement within 60 (sixty) days from receipt of a valid invoice.
- 8.4. The Fees and the Prevailing Fee Rates will be revised up by 3% (three per cent.) per annum above the increase in the United Kingdom's CPI (All Items Index) from the prior twelve months (unless otherwise specified in Schedule 1).

9. CUSTOMER ASSISTANCE

- 9.1. The Customer will nominate a manager to be available to liaise with and respond to queries from the Supplier including, without limitation, the resolution of conflicting priorities between two or more items of support or maintenance. Such manager shall devote such time and effort as may be reasonably necessary to provide an effective liaison with the Customer. The Customer acknowledges that any failure by the manager to do so may result in the provisions of clause 6 above applying.
- 9.2. The Customer shall also co-operate with the Supplier in performing its obligations under this Agreement and provide any assistance or information as may reasonably be required by the Supplier. The Customer shall report faults promptly to the Supplier and keep full back-up copies of all of its data.

10. WARRANTIES

- 10.1. The Customer warrants and represents that the Customer is a company duly and properly organised and existing according to the laws of England and Wales and it has the power and authority to enter into this agreement and perform its obligations hereunder.
- 10.2. The Supplier warrants that it will carry out any services under this Agreement with reasonable care and skill.
- 10.3. The Supplier warrants that subject to the provisions of clause 10.4 and paragraph 1.4 of Schedule 2 and payment by the Customer of the fees:
- 10.3.1. the OctopusPMI Software will conform in all material respects to the Specification relating to the OctopusPMI Software. At such time that a New Version of the OctopusPMI Software is accepted by the Customer this warranty shall apply to the New Version of the OctopusPMI Software in the same way as set out above in relation to the Current Version; and
- 10.3.2. the Mobile App and the Modules will conform in all material respects to the Specification relating to them. At such time that a New Version of the Mobile App is accepted by the Customer this warranty shall apply to the New Version of the Mobile App or Module in the same way as set out above in relation to the Current Version.
- 10.4. The Supplier's obligations under clause 10.3 shall extend only to the Supplier carrying out the Support Services and that during the period of 90 (ninety) days from the Commencement Date (or the date of acceptance of the New Version as referred to in paragraph 3.4 of Schedule 2) the reference to "use its reasonable endeavours" to correct the fault in paragraph 1.1.2 and 1.2.2 of Schedule 2 shall not apply.
- 10.5. The Supplier warrants that it has applied and will continue to apply reasonable care and skill in developing the OctopusPMI Software, the Mobile App, the Modules and any New Functions, New Versions and Updates but the Supplier does not warrant that the use of them will be uninterrupted or error-free.
- 10.6. The Supplier shall have no liability under the warranties in this clause if the claim arises due to any error or defect in the Source Materials or in the event of any of the matters listed in paragraph 1.4 of Schedule 2 having occurred.

11. DATA PROTECTION

- 11.1. Both parties will comply, and the Customer will procure that all Permitted Group Companies comply, with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's, or a Permitted Group Company's, obligations under the Data Protection Legislation.
- 11.2. The parties acknowledge and agree that:
- 11.2.1. if the Supplier processes any personal data on the Customer's or any Permitted Group Company's behalf when performing its obligations under this Agreement, the



Customer or the relevant Permitted Group Company is the controller (“**Controller**”) and the Supplier is the processor for the purposes of the Data Protection Legislation; and

11.2.2. Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

- 11.3. Without prejudice to the generality of clause 11.1, the Controller will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier and/or lawful collection of the personal data by the Supplier on behalf of the Controller for the duration and purposes of this Agreement.
- 11.4. Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:

11.4.1. process that personal data only on the written instructions of the Controller unless the Supplier is required by the laws of the United Kingdom or a part of the United Kingdom (“**Domestic Law**”) to otherwise process that personal data. Where the Supplier is relying on Domestic Law as the basis for processing personal data, the Supplier shall promptly notify the Controller of this before performing the processing required by the Domestic Law, unless the Domestic Law prohibits the Supplier from so notifying the Controller;

11.4.2. immediately inform the Controller if, in the Supplier’s opinion, an instruction from the Controller infringes the Data Protection Legislation;

11.4.3. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data; ensuring confidentiality, integrity, availability and resilience of its systems and services; ensuring that availability of and access to personal data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

11.4.4. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

11.4.5. assist the Controller, at the Controller’s cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Commissioner;

11.4.6. notify the Controller without undue delay on becoming aware of a personal data breach;



11.4.7. at the written direction of the Controller, delete or return personal data and copies thereof to the Controller on termination of the Agreement unless required by Domestic Law to store the personal data; and

11.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Controller or the Controller's designated auditor;

- 11.5. The Controller consents to the Supplier appointing third-party processors of personal data under this Agreement. The Supplier confirms that it has entered or will enter into a written agreement with such third party processor incorporating terms which are substantially similar to those set out in this clause 11. As between the Controller and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.5.
- 11.6. The Controller agrees that the Supplier may transfer personal data to countries outside the UK for the purpose of performance by the Supplier of its obligations under this Agreement provided that, where applicable, all transfers by the Supplier of personal data to such recipients are in accordance with such safeguards or other mechanism(s) for such transfers of personal data as may be permitted under the Data Protection Legislation from time to time, subject to clause 11.7.
- 11.7. Where the Controller requires the Supplier to transfer personal data for the purpose of providing the Services to a country outside the UK which is not subject to an adequacy regulation under the Data Protection Legislation then, if and when necessary to comply with the Data Protection Legislation:
- 11.7.1. the Controller will enter into with the applicable third party recipient of the personal data, standard data protection clauses authorised under the Data Protection Legislation for the international transfer of personal data that provide sufficient safeguards for the relevant transfer, and will provide evidence to the Supplier that it has done so, on request; and
- 11.7.2. where the data protection clauses referred to in clause 11.7.1 are not entered into for any reason, or where otherwise required to comply with Domestic Law (including the Data Protection Legislation), the Controller will procure that, prior to the transfer, the relevant data subjects provide valid consent to the transfer for the purposes of the Data Protection Legislation, and the Controller will provide evidence of such consents to the Supplier on request.

12. LIABILITY

- 12.1. Subject to clause 12.2, the Supplier's liability to the Customer and all Permitted Group Companies in connection with this Agreement, whether arising from tort (including negligence), breach of contract or statutory duty, shall not exceed, in respect of all claims arising in each year of the Licence Term such amount as shall be calculated by multiplying the cost of the Software Licence Fees and Additional Concurrent User Licence Fees (if any) for such year by 1.5.

- 12.2. The exclusions and limitations in this clause 12, shall apply to the fullest extent permissible at law and nothing in this Agreement shall limit either party's liability:
- 12.2.1. for death or personal injury resulting from negligence of that party;
 - 12.2.2. for recklessness, fraud, fraudulent misrepresentation, dishonesty, wilful default or any deliberate act or omission by a party, its employees, agents (or, in the case of the Supplier, by its officers or Workers); and/or
 - 12.2.3. under any indemnity given under this Agreement.
- 12.3. The Supplier does not exclude or limit its liability for breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 12.4. The Supplier's aggregate liability under this Agreement (whether arising out of negligence or otherwise) shall not:
- 12.4.1. exceed £50,000 in respect of all claims for loss of profit, anticipated savings, business opportunity or impairment to goodwill arising during each year of the Licence Term; and
 - 12.4.2. exceed £25,000 in aggregate in respect of all claims for loss of data arising during each year of the Licence Term;
- subject however to the overall limitation referred to in clause 12.1.
- 12.5. Save as provided herein the Supplier shall have no liability to the Customer or Permitted Group Companies in respect of:
- 12.5.1. loss of profits;
 - 12.5.2. loss of business;
 - 12.5.3. impairment of goodwill or similar losses;
 - 12.5.4. loss of goods;
 - 12.5.5. loss of contract;
 - 12.5.6. loss of use;
 - 12.5.7. loss or corruption of data or information; or
 - 12.5.8. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 12.6. The Supplier shall have no liability to Permitted Group Companies who do not pay an Additional Company Licence Fee other than in respect of:
- 12.6.1. a breach by the Supplier of clause 10;
 - 12.6.2. a breach by the Supplier of clause 11;
 - 12.6.3. a breach by the Supplier of clause 13;
 - 12.6.4. a breach by the Supplier of clause 17; and
 - 12.6.5. any liability which cannot be excluded by law.
- 12.7. The limitations set out in this clause 12 shall apply in aggregate and not in respect of each of the Customer and Permitted Group Company.



13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The Customer acknowledges that all Intellectual Property Rights in the OctopusPMI Software, the Mobile App and the Modules and any related documentation belong to and shall belong to and be fully vested in the Supplier and/or its licensors and the Customer and the Permitted Group Companies shall have no rights in or to the OctopusPMI Software, the Mobile App and the Modules or any related documentation other than the right to use them in accordance with the terms of this Agreement.
- 13.2. The Supplier undertakes at its own expense to defend the Customer and/or Permitted Group Companies or, at its option, settle any claim or action brought against the Customer and/or a Permitted Group Company alleging that the possession, and use, of the OctopusPMI Software (or any part thereof) and/or the Mobile App (or any part thereof) and/or the Modules (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party (an "Infringement Claim") and shall (subject to clause 12.1) be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer and/or Permitted Group Company as a result of or in connection with any such Infringement Claim. For the avoidance of doubt, this clause shall not apply where the Infringement Claim in question is attributable to use of the OctopusPMI Software (or any part thereof) and/or the Mobile App (or any part thereof) and/or the Modules (or any part thereof) by the Customer and/or Permitted Group Company other than in accordance with the terms of this Agreement or use of the Software and/or the Mobile App (or any part thereof) and/or the Modules (or any part thereof) without all issued Updates (where they (or the relevant functionality) are required to be accepted by the Customer pursuant to paragraphs 2.3, 2.4 and 2.5 of Schedule 2).
- 13.3. Clause 13.2 is conditional upon the following:
- 13.3.1. the Customer and (if applicable) the Permitted Group Company notifying the Supplier in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
- 13.3.2. the Customer and (if applicable) the Permitted Group Company not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of the Supplier which consent shall not be unreasonably withheld or delayed; and
- 13.3.3. the Supplier having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer and (if applicable) the Permitted Group Company giving the Supplier all reasonable assistance in connection with those negotiations and such litigation at the Supplier's request and expense. The Supplier shall keep the Customer and (if applicable) the Permitted Group Company reasonably informed in connection with the conduct of any Infringement Claim.
- 13.4. If any Infringement Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer and (if applicable) the Permitted Group Company, the Supplier may at its sole option and expense:



13.4.1. procure for the Customer and (if applicable) the Permitted Group Company the right to continue using the OctopusPMI Software (or any part thereof) and/or the Mobile App (or any part thereof) and/or the Modules (or any part thereof) in accordance with the terms of this Agreement; or

13.4.2 modify the OctopusPMI Software and/or the Mobile App and/or the Modules (or any part thereof) so that it ceases to be infringing; or

13.4.3. replace the OctopusPMI Software and/or the Mobile App and/or the Modules (or any part thereof) with non-infringing software; or

13.4.4. if none of the options in clauses 13.4.1, 13.4.2, and 13.4.3, are commercially possible, terminate this Agreement immediately by notice in writing to the Customer and (if applicable) the Permitted Group Company and refund all of the Software Licence Fees and/or Mobile App Fees and/or Module Fees paid by the Customer under this Agreement which relate to the period after termination.

13.5. The Customer for itself and on behalf of the Permitted Group Companies accepts that should the Supplier choose to act under clauses 13.4.1 and/or 13.4.2, this may result in an alteration in the way the OctopusPMI Software and/or the Mobile App and/or the Modules operate.

13.6. For the avoidance of doubt, the provisions of clauses 13.1 to 13.4 above shall not apply in respect of the SAP Software. The Supplier excludes all liability in the respect of any damages all costs (including legal fees) and expenses suffered by the Customer where the possession and use of the SAP Software infringes the Intellectual Property Rights of a third party.

13.7. The Customer shall indemnify the Supplier and keep the Supplier fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Supplier may sustain or incur or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of any claim or allegation that any of the Source Material infringes any Intellectual Property Rights of any third parties.

13.8. Without limitation to the provisions of clause 17, the Customer shall not without the Supplier's written consent disclose any Confidential Information about the OctopusPMI Software and/or the Mobile App and/or the Modules (including but not limited to) its design, structure or function to any third party.

14. DURATION

This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with clause 15 or this clause, this Agreement shall continue for the Licence Term and shall automatically extend for another three years ("Extended Term") at the end of the Licence Term and at the end of each Extended Term. Either party may give written notice to the other, not later than 90 days before the end of the Licence Term or the relevant Extended Term, to terminate this Agreement at the end of the Licence Term or the relevant Extended Term, as the case may be.

15. TERMINATION

- 15.1. Either party may terminate this Agreement at any time on written notice to the other if the other:-
- 15.1.1. is in material (including but not limited to a breach of clause 17) or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
- 15.1.2. is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or becomes insolvent; or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction); or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; or enters into or proposes any composition or arrangement with its creditors generally; or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 15.2. The Customer shall notify the Supplier if it undergoes a change of Control. The Supplier may at its option terminate this Agreement including Support Services at any time on written notice to the Customer if the Customer comes under the Control or part Control of a person the Supplier reasonably regards as a competitor of the Supplier or a business threat or lead to the Supplier's position being compromised. The Supplier may also at its option terminate this Agreement in respect of any Permitted Group Company at any time on written notice to the Customer if the Permitted Group Company comes under Control or part Control of a person the Supplier reasonably regards as a competitor of the Supplier or a business thereof or leads to the Supplier's position being compromised.
- 15.3. Termination by either party in accordance with the rights contained in this clause 14 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.
- 15.4. Upon termination of this Agreement for any reason:-
- 15.4.1. other than as detailed in clause 15.4.4 all rights granted to the Customer and Permitted Group Companies under this Agreement shall cease;
- 15.4.2. the Customer shall (and shall procure that all Permitted Group Companies shall) cease all activities authorised by this Agreement;
- 15.4.3. the Customer shall (and shall procure that all Permitted Group Companies shall) immediately destroy or return (at the Supplier's option) to the Supplier all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so; and
- 15.4.4. clauses 1, 11.1 and 11.3, this clause 14 and clauses 17 and 18 shall survive termination.
- 15.5. In the event that this Agreement terminates as a result of an event detailed in clause 15.1.2 happening to the Supplier the benefit of the licence granted to the Customer and Permitted Group Companies as set out in clause 2 of this Agreement shall survive the termination of this Agreement.

16. FORCE MAJEURE

No party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion. For the avoidance of doubt, nothing in this clause 16 shall excuse the Customer from any payment obligations under this Agreement.

17. CONFIDENTIALITY AND PUBLICITY

17.1. Subject to clause 17.2, each party agrees and undertakes that during the Licence Term and thereafter it will:

17.1.1. keep all of the other party's and, in the case of the Supplier, all of the Permitted Group Companies' Confidential Information confidential;

17.1.2. not use any of the other party's, nor in the case of the Supplier any of the Permitted Group Companies, Confidential Information for any other purposes other than as set out in this Agreement; and

17.1.3. not without the prior written consent of the other party, disclose any of the other party's (and in the case of the Supplier any of the Permitted Group Companies') Confidential Information to any other third party other than (in the case of the Customer) to other Permitted Group Companies or to those of their employees who need to know the same for the purposes of (in the case of the Customer and the Permitted Group Companies) using the Software and (in the case of the Supplier) discharging its obligations under this Agreement. Without limitation to the provisions of this clause 17.1.3 the Customer shall not demonstrate the operation of all or any part of the OctopusPMI Software to any third party (other than a Permitted Group Company) without the prior written consent of the Supplier.

17.2. The obligations set out in clause 17.1 shall not prohibit the disclosure of Confidential Information by a party who has received Confidential Information (the "Receiving Party") from the other party where such disclosure is required to be disclosed by the Receiving Party by law or by regulation providing that the Receiving Party notifies the other party of the information to be disclosed and the circumstances in which the disclosure is required as soon as practicable before such disclosure is made and only to the extent that the Receiving Party is permitted to do so by any other law or regulation binding upon it.

17.3. The Receiving Party shall ensure that all such persons to whom Confidential Information is disclosed pursuant to clause 17.1.3 (including without limitation all Users) are made aware of its confidential nature and shall ensure that the confidential nature of such information is maintained. Where the Customer is the Receiving Party the Customer will (without limitation to the foregoing provisions of clause 17.3);

17.3.1. inform the recipient of the confidential nature of the Confidential Information before it is disclosed;

17.3.2. procure that those recipients comply with the confidentiality obligations in clause 17.1 as if they were the other party in this clause 17.3;

17.3.3. procure that in the case of employees their contracts of employment include confidentiality obligations at least as onerous as the provisions set out in clause 17.1; and

17.3.4. if the other party requests, procures that any of recipients enter into a confidentiality agreement with the other party on terms equivalent to those contained in this agreement.

17.4. Without prejudice to any other rights and remedies of the other party, the Receiving Party agrees and acknowledges that the other party shall be entitled to seek injunctive or other equitable relief in addition to damages or any other remedy to which it may be entitled.

17.5. The Customer shall procure that each Permitted Group Company complies with the confidentiality obligations in this clause 17 as if it were the Customer.

18. THIRD PARTY RIGHTS

18.1. Subject to clause 12.6, any of the Permitted Group Companies may bring a claim against the Supplier provided that any such claim may only be brought by the Customer on its behalf. The Supplier may not bring a claim against any Permitted Group Company (other than injunctive relief against any Permitted Group Company. The Customer shall remain liable for each Permitted Group Company's compliance herewith.

18.2. Except as provided in this Agreement, a person who is not party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

18.3. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

19. GENERAL

19.1. No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

19.2. If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

19.3. Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties. Notwithstanding this clause, it is expressly agreed that the parties to this Agreement may by agreement rescind or vary this Agreement or any term of this Agreement without the consent of any Permitted Group Company, notwithstanding that such rescission or variation may extinguish or alter their entitlement under that right.

- 19.4. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts shall together constitute the one Agreement.
- 19.5. The Supplier may sub-license, assign, charge or otherwise transfer any of its rights or obligations under this Agreement. The Customer shall have no right to sub-license or to assign the benefit or to transfer the burden of this Agreement in whole or in part or to allow the OctopusPMI Software or the Mobile App or the Modules to become the subject of any charge, lien or encumbrance without the prior written consent of the Supplier.

19.6. Notices

19.6.1. A notice given to a party under or in connection with this Agreement:

19.6.1.1. shall be sent to the party for the attention of the contact and to the address or email address specified in the letter to which this Agreement is attached, or such other contact or address or email address as that party may notify in accordance with clause 19.6.2:

19.6.1.2. shall be sent by a method listed in clause 19.6.3; and

19.6.1.3. is deemed received as set out in clause 19.6.3 if prepared and sent in accordance with this clause 19.6.

19.6.2. A party may change its details for service of notices as specified in clause 19.6.1 by giving notice. Any change notified pursuant to this clause shall take effect at 9.00 am on the later of:

19.6.2.1. the date, if any, specified in the notice as the effective date for the change; and

19.6.2.2. the date five Business Days after deemed receipt of the notice of change.

19.6.3. This clause sets out the delivery methods for sending a notice to a party under this Agreement and, for each delivery method, the date and time when the notice is deemed to have been received:

19.6.3.1. if delivered by hand, at the time the notice is left at the address; or

19.6.3.2. if sent by pre-paid first class post or another next working day delivery service, at 9.00 am on the second Business Day after posting; or

19.6.3.3. if sent by email, at the time of transmission provided that the sender does not receive an undelivered message or similar notification.

19.6.4. If deemed receipt under clause 19.6.3 would occur outside business hours in the place of receipt (which in the case of service of a notice by email shall be deemed to be the same place as is specified for service of notices on the relevant party by hand or post) it shall be deferred until business hours resume. In this clause, business hours means 9.00 am to 5.30 pm Monday to Friday on a day which is not a public holiday in the place of receipt.

19.6.5. This clause 19.6 does not apply to the service of any proceedings or other documents in any legal action.

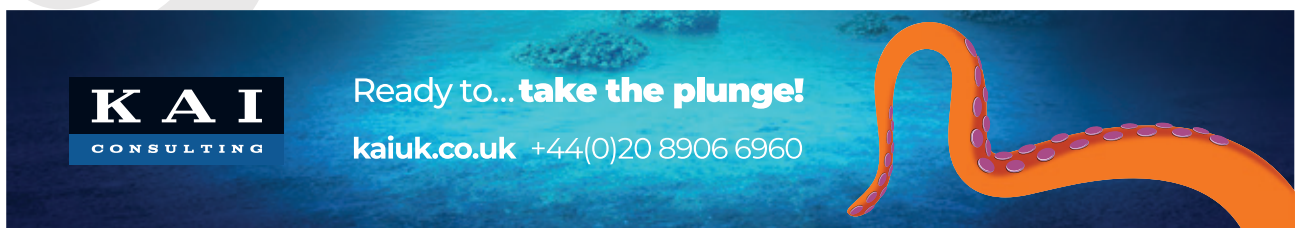
19.7. This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

19.8. Both the Customer and the Supplier mutually covenant that, for the duration of this Agreement and for a period of six months following termination, either party will not directly or indirectly induce or attempt to induce any employee of the other party who has been engaged in the provision, receipt, review or management of the OctopusPMI Software or Mobile App or the Modules or Updates or otherwise involved in connection with this Agreement to leave the employment of the other party. The Customer shall procure that each Permitted Group Company complies with this Agreement as if it were the Customer.

19.9. This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.



SCHEDULE 1 FEES







Fee Summary

OctopusPMI Version 12.2.H

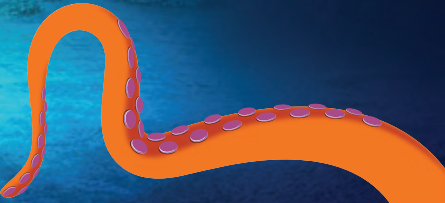


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SCHEDULE 2

SOFTWARE SUPPORT

Subject to the payment by the Customer of the Software Licence Fees, the Supplier shall provide the Customer with the following maintenance services:

1. ERROR CORRECTION

1.1 NON CRITICAL FAULTS

1.1.1 If the Customer shall discover that the Current Version fails to conform with any part of the Specification then the Customer shall within seven days after such discovery notify the Supplier in writing of the defect or error in question and if reasonably practicable provide the Supplier with a documented example of such defect or error but the Customer must demonstrate or reproduce such defect or error (provided however that if such failure constitutes a Critical Fault then the fault shall be dealt with pursuant to paragraph 1.2 below).

1.1.2 The Supplier shall acknowledge the Customer's notification within five Business Days thereof and will (subject to clause 10.4) use its reasonable endeavours to correct the fault in the next Update that the Supplier produces.

1.2 CRITICAL FAULTS

1.2.1 If the Customer shall discover a Critical Fault then the Customer shall forthwith after such discovery notify the Supplier in writing of the Critical Fault in question and if reasonably practicable provide the Supplier with a documented example of the Critical Fault but the Supplier must be able demonstrate or reproduce such Critical Fault.

1.2.2 The Supplier shall acknowledge the Customer's notification and will use its reasonable endeavours to deal with it as follows:

TYPE OF FAULT	REMEDY	TIMESCALES
1. Major Impact Critical Fault	Acknowledgement by the Supplier together with a provisional assessment	Within 3 Standard Hours of the Customer's Notification.
	Provision of patch work around or temporary fix	Within 3 Business Days after the Business Day of receipt of the Customer's notification.
	Provision of corrected object code	Within 30 Business Days after the Business Day of receipt of the Customer's notification.
2. Moderate Impact Critical Fault	Acknowledgement by the Supplier together with a provisional assessment	Within 1 Business Day of the Customer's notification.
	Provision of patch work around or temporary fix	Within 5 Business Days after the Business Day of receipt of the Customer's notification.
	Provision of corrected object code	Within 90 Business Days after the Business Day of receipt of the Customer's notification.
3. Low Impact Critical Fault	Acknowledgement by the Supplier together with a provisional assessment	Within 1 Business Day of the Customer's notification.
	Provision of patch work around or temporary fix	Within 10 Business Days after the Business Day of receipt of the Customer's notification.
	Provision of corrected object code	Within 180 Business Days after the Business Day of receipt of the Customer's notification.

1.3 THIRD PARTY SOFTWARE

1.3.1 In the event that any error or defect occurs in any third party software (for example, the SAP Software) supplied through the Supplier, then the Supplier's responsibilities shall be subject to the relevant third party's response times but the Supplier shall use all reasonable endeavours to cure any such error or defect as soon as possible for the Customer.

1.4 The foregoing error correction service referred to in paragraphs 1.1 and 1.2 above shall not include the provision of services in respect of:

1.4.1.1 defects or errors resulting from any modifications of the Current Release made by any person other than the Supplier without the Supplier's prior written consent;

1.4.1.2 any version of the Software or Mobile App or Modules other than the Current Version;

1.4.1.3 operator/user error and not a system error or fault;

1.4.1.4 any defect or error in the Designated Equipment or in any programs used in conjunction with the Current Version;

1.4.1.5 defects or errors caused by the use of the Current Version on or with equipment (other than the Designated Equipment) or Software not supplied by or approved in writing by the Supplier;

1.4.1.7 any modification or enhancement of the Current Version made by the Customer if such modification or enhancement results in a departure from the Specification.

1.5 The Supplier shall make an additional charge on the basis of the Additional Services Fee from time to time in force for any services provided by the Supplier:

1.5.1 at the request of the Customer but which do not qualify under this aforesaid error correction service by virtue of any of the exclusions referred to in paragraph 1.4 above; or

1.5.2 at the request of the Customer but which the Supplier finds are not necessary.

1.6 For the avoidance of doubt nothing in this paragraph shall impose any obligation on the Supplier to provide services in respect of any defect, error or circumstance arising due to any of the exclusions referred to in paragraph 1.4.

2. UPDATES

2.1 The Supplier shall promptly notify the Customer of Update which the Supplier shall from time to time make generally available to its customers. The Supplier shall provide the Customer with such notification and an explanatory memorandum specifying the nature of the new functionality.

2.2 If requested by the Customer, the Supplier shall provide training for the Customer's staff in the use of the new Update at the Supplier's standard scale of charges from time to time in force as soon as reasonably practicable after the delivery of the Update.

2.3 If the Update is produced by the Supplier solely to ensure that any function within the Update complies with any legal or regulatory requirement and/or contains error corrections then the Customer must accept the Update. In such circumstances no charge shall be payable by the Customer for the Update.

2.4 If the Update is produced by the Supplier with new functionality and:

2.4.1 some of such new functionality is included to ensure that any function within the Update complies with any legal or regulatory requirement and/or contains error

corrections then the Customer must accept (at no charge to the Customer) only such new legal/regulatory new functionality and/or error corrections and shall be entitled to determine which of such other new functionality it wishes to use (at such cost as the Supplier shall notify the Customer in writing); and

2.4.2 none of such new functionality is included to ensure that any function within the Update complies with any legal or regulatory requirements and/or contains error corrections then the Customer shall be entitled to determine which new functionality it wishes to use at such cost as the Supplier shall notify to the Customer in writing.

- 2.5 If the Update is produced by the Supplier with new functionality introduced as a result of the introduction of any new version of third party software by any of the Customer's third party software suppliers then the Customer must accept the Update at such cost as the Supplier shall notify the Customer in writing.

3. VERSIONS

- 3.1 The Supplier shall promptly notify the Customer of any New Version which the Supplier shall from time to time make generally available to its customers together with the increase in the Software Licence Fees payable and any other costs in respect of related services. The Supplier shall invite the Customer to view and evaluate the New Version.
- 3.2 If the Customer shall wish to evaluate the New Version then the Customer shall notify the Supplier in writing accordingly. Upon receipt of such notification, the Supplier shall deliver to the Customer as soon as reasonably practicable (having regard to the number of other users requiring the New Version) the object code of the New Version in machine-readable form.
- 3.3 The Customer's use of such New Version shall be governed by the provisions of the Agreement.
- 3.4 The Customer shall be responsible for evaluating the New Version at no licensing cost to the Customer during the period of 3 months after delivery to the Customer pursuant to paragraph 3.2. On the expiry of such period the Customer shall notify the Supplier whether or not it wishes to accept the New Version. If the Supplier does not receive any such notification then the Customer shall be deemed to have rejected the New Version in which case the provisions of paragraph 3.7 below shall apply. If the Customer does accept the New Version then the Supplier shall invoice the Customer in respect of the additional Fees thereof and the costs of any related services notified to the Customer prior to its acceptance of the New Version.
- 3.5 If requested by the Customer, the Supplier shall provide training for the Customer's staff in the use of the New Version at the Supplier's standard scale of charges from time to time in force as soon as reasonably practicable after the delivery of the New Version.
- 3.6 If the Customer accepts the New Version then the New Version shall thereby become the Current Version and the provisions of this Agreement shall apply accordingly. Upon such acceptance the Customer shall return to the Supplier the Software or the previous Current Version (as the case may be) and any part of the Specification which has

been superseded and all copies of the whole or any part thereof, or, if required by the Supplier, shall destroy the same and certify in writing to the Supplier that they have been destroyed.

- 3.7 If the Customer shall not accept the New Version then the Customer shall immediately return to the Supplier the New Version and the amendments to the Specification and the documentation relating thereto insofar as they relate solely to the New Version and all copies of the whole or any part thereof, or, if required by the Supplier, shall destroy the same and certify in writing to the Supplier that they have been destroyed. .
- 3.8 If the Customer shall not accept the New Version and this Agreement extends beyond the Licence Term or any Extended Term then the Customer must accept (and the Supplier shall deliver) the most recent New Version notified to it by the Supplier prior to the end of the Licence Term or Extended Term (as the case may be) at the commencement of the next Extended Term (whereupon the Customer shall pay the additional standard Fees thereof applicable at that time and the costs of any related services).

4.0 TELEPHONE/ONLINE SUPPORT

- 4.1 The Supplier will provide a telephone helpdesk during Standard Hours to provide assistance and information on the use of the OctopusPMI Software, the Mobile App, the Modules, the SAP Software and related third party software.
- 4.2 Data Access: The Customer will enable online access to the system and data for the Supplier. The Supplier will be authorised to make a copy of the live data at the end of each working day.
- 4.3 Any other support services provided by the Supplier shall be charged on (a time and materials basis) provided that the Suppliers shall only commence work following the receipt of the purchase order from the Customer.



SCHEDULE 3

PERSONAL DATA PROCESSING AND DATA SUBJECTS

1 PROCESSING BY THE SUPPLIER

SCOPE:

The Customer may supply personal data to the Supplier and the Supplier may collect personal data from data subjects, to enable the Supplier to enter into and perform the Agreement, and provide the Services to the Customer.

NATURE:

Personal data may be supplied to facilitate the performance of the Agreement, in particular the Support Services, and incidentally to the performance of the Agreement, such as Personal Data revealed during the process of remotely accessing a Concurrent User's account.

PURPOSE:

To perform the Agreement and provide the Services.

DURATION:

As detailed in clause 11.4.7.

2 TYPES OF PERSONAL DATA

Names; email addresses, telephone numbers; and associated activity information, banking details and other payment information. Other categories of personal data may be accessed by the Supplier incidentally to the performance of the Agreement, in particular when carrying out the Support Services.

3 CATEGORIES OF DATA SUBJECT

The Customer's employees and suppliers.



SCHEDULE 4 PERMITTED GROUP COMPANIES

[TBA]

SAMPLE

SCHEDULE 5

SYSTEM AND SYSTEM SOFTWARE REQUIREMENTS



OCTOPUSPMI VIRTUAL SERVER REQUIREMENTS

The Customer will make best endeavours to ensure the designated server has all specified operating software properly installed, tested and in good operational order. Virtual resources will need to be monitored and potentially increased in line with usage.

DATABASE SERVER

A. VIRTUAL HARDWARE:

At least 8 VCPUs

At least 32 GB RAM

1 System VHD (100 GB)

1 Data VHD (500 GB)

1 Log VHD (100 GB)

B. SOFTWARE:

MS Windows Server 2019 Standard

MS SQL Server 2017 Standard

C. CALS

Assume that CALS for Windows 2019 are already in place

MS SQL 2017 CALS required for the maximum no. of named users Octopus/PMI or licence SQL by core

D. BACKUPS

Backup location to be provided for SQL database backups

Retention: Hourly – 2 days

Daily – 3 months

VM Image backup recommended



OCTOPUS/PMI & SAP BUSINESS ONE APPLICATION SERVER

A. VIRTUAL HARDWARE:

At least 2 VCPUs

At least 8 GB RAM

1 System VHD (100 GB)

1 Data VHD (100 GB)

B. SOFTWARE:

MS Windows Server 2019 Standard

C. CALS

Assume that CALS for Windows 2019 Server are already in place

D. BACKUPS

Backup location to be provided for static file backups

Retention: Daily – 3 months

VM Image backup recommended

REMOTE DESKTOP SERVER(S) (OPTIONAL)

A. VIRTUAL HARDWARE:

At least 4 VCPUs

8 GB RAM (additional RAM may be required depending on no of users)

1 System VHD (100 GB)

B. SOFTWARE:

MS Windows Server 2019 Standard

C. CALS

Assume that CALS for Windows 2019 Server are already in place

Remote Desktop Access CALS - number of independent remote users in total

D. BACKUPS

VM Image backup recommended



WEB SERVER

A. VIRTUAL HARDWARE:

At least 2 VCPUs

8 GB RAM

1 System VHD (100 GB)

B. SOFTWARE:

MS Windows Server 2019 Standard

IIS role installed.

SSL Certificate

C. CALS

Assume that CALS for Windows 2019 Server are already in place

D. BACKUPS

VM Image backup recommended

ANTI -VIRUS SOFTWARE

Essential current and up to date industry recognised anti-virus software to be in operation to minimise any possible damage due to computer virus attack or infection. Please ensure that the users receive their training as recommended.

AVAILABILITY

The Customer is fully responsible for the availability of the required infrastructure at the commencement of the work and for the provision of its maintenance and support.



SCHEDULE 6 MODULES

OPTIONAL MODULES – AVAILABLE FOR PURCHASE

1. FIXED ASSET MODULE

This module provides a detailed Fixed Asset Register with the ability to post monthly depreciation journals which are automatically generated based on various calculation methods. It can also be integrated with the Purchase Ledger for ease of entry and has numerous reports for analysis.

2. PARTICIPATION REPORTING MODULE

This module provides the facility to generate statements on secondary income and costs to third party participants and broadcasters. Shares can be entered for projects for the various participants per income stream and transactions are recorded and reported on statements, typically on a quarterly basis, which can be sent out straight for OctopusPMI. Accrual journals and purchase orders can also be generated if required.

3. TIME RECORDING FOR ANIMATION MODULE

This module allows staff members to log their time onto the various projects they are working on. Managers can review and report on the time logs, which can then be used to recharge costs to the relevant projects. Holidays and absences can also be managed and reported on.

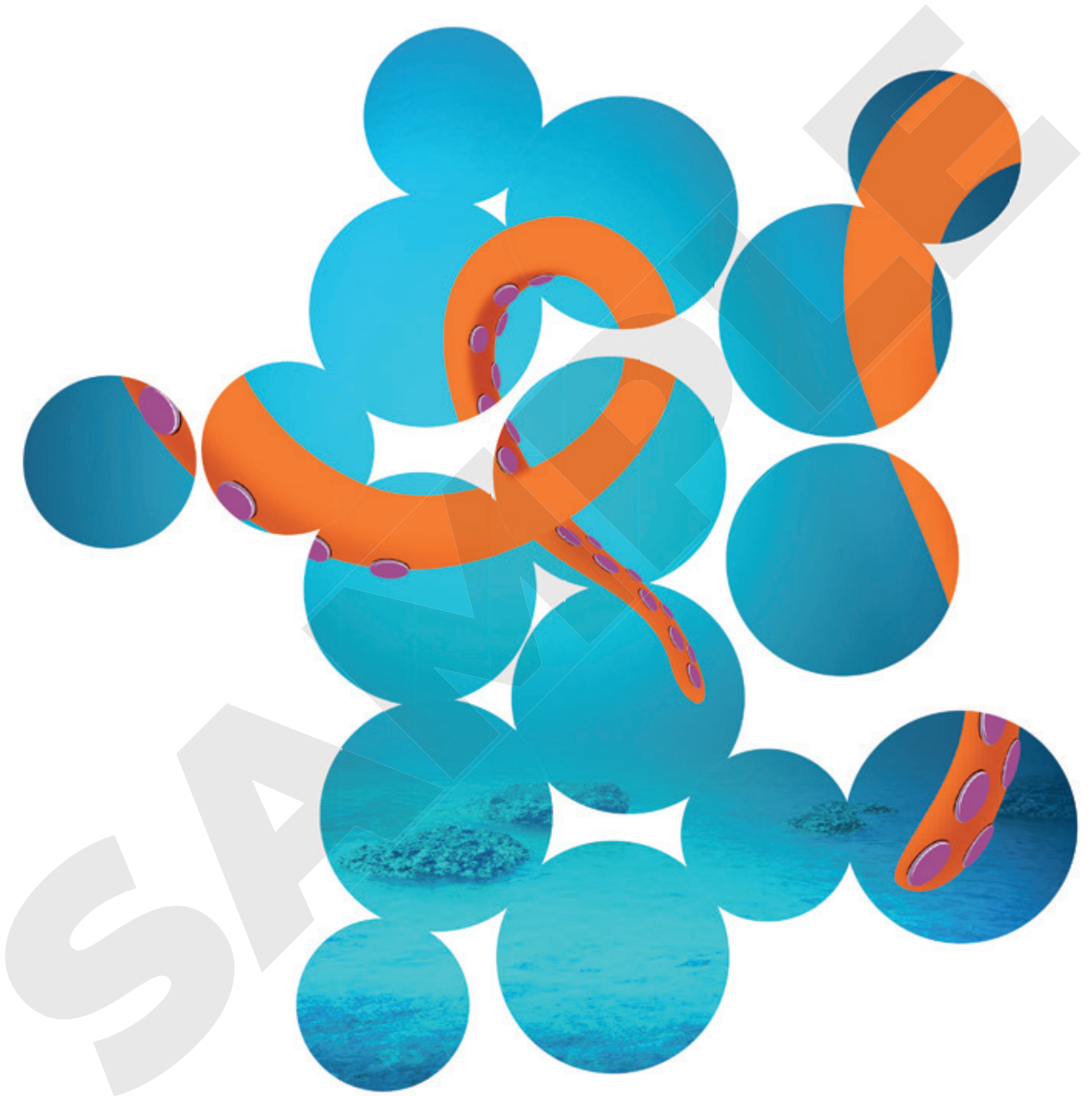


SCHEDULE 7 OPCO GROUPS/LABELS

[TBA]

SAMPLE

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