

OctoCue Limited
TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 Definitions In these Conditions, the following definitions apply:

Account Holder the primary user who has an OctoCue Account (the User who signed up for the account);

Charges the charges payable by the Customer for the supply of the Services in accordance with condition 5;

Commencement Date has the meaning given in condition 2.3;

Conditions the terms and conditions set out in this document as amended from time to time in accordance with condition 11;

Confidential Information any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products and/or methods of the Supplier or the Customer and disclosed to or otherwise obtained by the other party in connection with the Contract;

Contract the contract between the Supplier and the Customer for the supply of Services which incorporates these Conditions;

Customer the person or firm who purchases Services from the Supplier;

Force Majeure Event has the meaning given in condition 10;

Free Trial the period of time where no payment is necessary to use the full functionality of the system, however the Free Trial application will display a permanent warning message and will lock out every 10 minutes for a 30 second period;

Insolvency Event has the meaning given in conditions 9.2(a) and 9.2(b);

Initial Subscription Period the period after the Start Date to the Initial Expiry Period as specified in the applicable ordering document;

Intellectual Property Rights patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

OctoCue Account the current subscription to the Service;

Price the price payable by the Customer for the supply of the Services in accordance with condition 5.1;

Renewal Period each successive one-month period if on the Monthly Subscription or each successive 12-month period if using an annual subscription, following the expiry of the Initial Subscription Period;

Services the software services, including any Deliverables, to be provided by the Supplier under the Contract;

Start Date in respect of the software licenced, the latter of a) the date specified on the date on which access to the software is intended to start and b) the actual start date on which access to the software is given;

Subscription the period from the start date to the subscription end period;

Supplier OctoCue Limited (registered in England and Wales with company number 1267198);

Term in respect of each software licenced comprises the subscription period and any Renewal Period to that Software;

Updates any periodic Software releases, if for any purposes, of providing minor enhancements, improvements, patches, fixes or

the like, to the software or resolving technical issues related to the then-current version of the Software;

User personnel of the Customer or Account Holder who are authorised to use the Software;

1.2 Interpretation In these Conditions, the following rules apply:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(b) any phrase introduced by the terms including, include, in-particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.

2.3 The Subscription be deemed to be accepted when the Customer makes payment to the Supplier, at which point the Contract shall come into existence (**Commencement Date**).

2.4 In the event that the Customer cancels the Subscription, the Customer will be liable for all charges to the end of the calendar month in which the Subscription is cancelled.

2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.

3. Performance of the Services

3.1 The Supplier shall from the date the subscription commences and for the duration of the agreed term subscribed to, provide the Services to the Customer in accordance with the functionality of the software.

3.2 The Supplier shall use its reasonable endeavours to perform the Services specified in the Subscription Agreement.

3.3 The Supplier warrants that it shall provide the Services with reasonable care and skill.

3.4 To access and use the Software Service, an account must be created, which can be applied by completing the sign-up form on the Website. Acceptances for the account constitutes an agreement to pay due consideration for the services.

3.5 If the Supplier accepts the application of a user Account, this will be confirmed by email and a legally binding contract will be created between the Supplier and Customer. A username and Password will be generated, which is required in order to access the Services.

3.6 There is no obligation by the Supplier to accept an account application. The Supplier reserves the right to deny any account application without explanation, but this will result in no charges been levied to the Customer.

3.7 The supplier makes no guarantee that:

(a) The Service provided will meet your specific needs

(b) The Service will be uninterrupted, timely, secure, error free or work in all circumstances

(c) The results of the Service that may be obtained from the Service will be effective, accurate or reliable

(d) The quality of the Service will be free of errors, mistakes, or defects

4. Software Licence

- 4.1 The Supplier grants a non-exclusive, non-transferrable, limited licence for the Customer to use, including the initial version and any subsequent Updates
- 4.2 Copying of the software for non-licensed use, onward selling is prohibited
- 4.3 The customer may not publish, transmit, re-transmit, disseminate, broadcast, circulate, sell, re-sell, , loan, lease, distribute or transfer Software to third parties, nor reverse engineer, decompile, , disassemble or otherwise attempt to discern the source code of the components of the Software. The customer may not reproduce all or any portion of the Software or any accompanying documentation, or modify or translate, or otherwise create derivative works of the Software.
- 4.4 The Software may be used to access and use various other products and services
- 4.5 The Customer acknowledges and agreed that all right, title and interest in and to the Software , the Documentation and any other materials are and shall remain, vested solely in the Supplier , its Affiliates and other software owners., if any, and the Customer shall not hold itself out as having any ownership or other rights. Any such Goodwill associated with the Software shall inure directly and exclusively to the benefit of the Supplier.
- 4.6 The Free Trial period gives full functionality, with no paid subscription period, however a permanent warning message is prominently displayed, during its use, which will only be removed once a paid subscription option is chosen
- 4.7 You shall only access the Service using the email address and password which has been provided by the Supplier
- 4.8 It is expected that the Customer, Account Holder or User shall not do anything which could reasonably be expected to damage disable, overburden or materially impair the Service or Website generally or which is likely to interfere with any other party's use of the Service.

5. Charges and payment

- 5.1 The Price is exclusive of (unless otherwise noted):
 - (a) amounts in respect of value added tax (VAT), which the Customer shall pay to the Supplier at the prevailing rate, subject to receipt of a valid VAT invoice.
- 5.2 The Charges payable by the Customer for the use of the Software will be as specified in the applicable ordering document and will cover the Software licence, maintenance, and support services.
- 5.3 The Customer shall pay the charges for the initial Subscription and any Renewal Period
- 5.4 The supplier reserves the right to increase the subscription price at the time of each subsequent re-newal, but notice if any change in subscription price, 30 days prior.
- 5.5 The Customer is deemed to have agreed to extend the Agreement for the Renewal Period and pay any proposed charges for the software either:
 - (a) On the expiry of the 'Objection Deadline' (being 1 calendar month after the date of the Renewal Notification, unless the Supplier has prior to that date received notice in writing that the Customer does not accept the proposed charges; or
 - (b) After bona fide discussions have resulted in agreement for the renewal charges
- 5.6 Subject to clause 5.3, the Customer shall pay each invoice in full and in cleared funds either on the dates stipulated in the Order. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 5.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Supplier reserves the right to terminate the contract immediately and without notice. Alternatively, the Supplier may allow the Customer to pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank UK PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual

payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6. Intellectual Property Rights

- 6.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Software and the Supplier Materials are and shall remain (as between the Supplier and the Customer) the sole property of the Supplier or (as the case may be) any third party rights owner.
- 6.2 All Intellectual Property Rights created in the performance of the Services (including any Deliverables) shall be owned by and vested in the Supplier.
- 6.3 The Customer may use the Deliverables only for the purpose of receiving the Services. The Customer shall not supply the Deliverables to any third party or use the Services or use the Deliverables to provide a service to any third party.
- 6.4 Where Intellectual Property Rights are previously vested with the Customer, the Supplier will have no ownership, retention or any rights or use of any materials which the Customer runs through the Software application other than specifically for the delivery of Services to the Customer
7. **Liability – the Customers attention is particularly drawn to this clause.**

- 7.1 Except as specifically provided in this Agreement, the Software is provided "as is" without warranty of any kind, express or implied, including but not limited to warranties of performance, merchantability, fitness for a particular purpose, accuracy, omissions, completeness, being current and delays. The Customer agrees that outputs from the Software will not, under any circumstances, be considered legal or professional advice and are not meant to replace the experience and sound professional judgment of professional advisors in full knowledge of the circumstances and details of any matter on which advice is sought.
- 7.2 The Supplier warrants to the Customer that it holds itself the necessary rights to grant the rights specified in this Agreement and that it has authority to enter into this Agreement with Customer.
- 7.3 Some systems/software may not be capable of supporting the Software and Customer acknowledges (a) that it has made appropriate investigations into the necessary systems/software required to support Customer's use of the relevant Software and (b) that performance of that Software may vary with equipment and telecommunications links with which it is used.
- 7.4 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its Supplier Personnel (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1979;
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (e) defective products under the Consumer Protection Act 1987; or
 - (f) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 7.5 Subject to condition 7.4:
 - (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:
 - (i) any indirect, special, consequential or pure economic loss or damage;
 - (ii) any loss of profits, anticipated profits, revenue, or business opportunities; or
 - (iii) damage to goodwill

(in each case arising as a direct or indirect result of the relevant claim); and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the subscription charges which have been paid by the Customer over the previous 12 months.

7.6 The Supplier will not be responsible to the extent that the Software fails to perform due to one or more of the following: (1) the malfunction of software not provided by Supplier (2) the malfunction of hardware, (3) Customer's negligence or fault, (4) Customer's failure to follow the instructions set forth in the Documentation, (5) material changes in the operating environment not authorised by Supplier, (6) modifications to or changes in the Software not made or suggested by Supplier or (7) Customer's failure to implement and maintain a proper and adequate backup and recovery system for the Software and associated files. If Supplier discovers that a failure is caused by one of the above, Supplier reserves the right to charge Customer for its work in investigating such failure. At Customer's request and at a fee to be agreed upon, Supplier will thereafter assist Customer in resolving such failure. It is Customer's responsibility to develop and implement a proper and adequate backup and recovery system.

7.7 It is the responsibility of the Account Holder, Customer, User to ensure the password issued remains confidential and used in the proper circumstances

7.8

8. Confidentiality

8.1 Subject to condition 8.2, each party to the Contract (the **Recipient**) shall:

(a) use the other party's (the **Disclosing Party's**) Confidential Information solely for the performance of the Contract; and

(b) keep the Disclosing Party's Confidential Information strictly confidential and not, without the Disclosing Party's prior written consent, disclose it to any other person.

8.2 The Recipient may disclose the Disclosing Party's Confidential Information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Recipient's rights or carrying out its obligations under or in connection with the Contract and the Recipient shall ensure that such persons comply with this condition 8.2;

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and

(c) if such information is public knowledge or already known to the Recipient at the time of disclosure or subsequently becomes public knowledge other than by breach of any duty of confidentiality (contractual or otherwise).

8.3 This condition 8 shall survive termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, either party may terminate the Contract in whole, immediately and without notice.

9.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect if the other party:

(a) (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an **Insolvency Event**);

(b) (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business,

takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him or any other person in respect of any of these circumstances) (also an **Insolvency Event**) (or, the other party being a partnership, has a partner to whom any Insolvency Event applies);

(c) (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or

9.3 Without limiting its other rights or remedies, the Supplier may:

(a) terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) suspend provision of the Services under the Contract or any other contract between the Supplier and the Customer if the Customer becomes subject to an Insolvency Event or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason:

(a) the Customer shall immediately pay to the Supplier all the Supplier's outstanding subscription charged, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which the Customer shall pay immediately on receipt;

(b) the parties' rights and remedies that have accrued as at termination shall be unaffected; and

(c) conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. General

11.1 Assignment subcontracting and other dealings

(a) The Supplier may at any time assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate, or deal in any other manner with any or all of its rights or obligations under the Contract without the Supplier's written consent.

11.2 **Entire agreement** The Contract (incorporating these Conditions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any

statement, promise, representation, assurance, or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

11.3 **Variation** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

11.4 **Waiver** Except as set out in condition 2.5, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 **Severance** If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

11.6 Notices

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be (i) delivered by hand or (ii) by pre-paid first-class post or (iii) by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or (iv) sent by email:

(i) to the Supplier, at support@octocue.com or such email address as communicated to the Customer by the Supplier from time to time; or

(ii) to the Customer, to the email address specified in the Order,

with a copy of the notice or communication to be sent simultaneously by pre-paid first-class post.

(b) Any notice or communication shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address; (ii) if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; (iii) if sent by a signed-for next working day delivery service, at the time recorded by the delivery service; and (iv) if sent by email, at 09:00 on the next Business Day after transmission unless that the sender receives an error message or out of office message in response to such email.

(c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.7 **Third party rights** No one other than a party to the Contract shall have any right to enforce any of its terms.

11.8 **Relationship** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Supplier and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

11.9 **Governing law** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.

11.10 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this condition shall limit the Supplier's right to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdictions.