

Octopus Terms and Conditions

These Terms and Conditions shall apply and be incorporated into all agreements for Beaumont Solutions Limited's ("BSL") OCTOPUS (as defined below) and any other services it has been agreed that BSL will provide to the Client (as defined below). By using or visiting OCTOPUS you expressly agree to be bound by these Terms and Conditions and to comply with them and all applicable laws and regulations governing the use of OCTOPUS. BSL reserves the right to change these Terms and Conditions at any time, effective immediately upon posting on the OCTOPUS website. Please check Octopus periodically. This is an important document and affects your rights and obligations. These Terms and Conditions may not be altered or modified by the use of any other documents or oral communications.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

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

"Agreement"	means these Terms and Conditions, and any Solution Costs from time to time;
"Associated Company"	means any company which is in relation to another company its parent undertaking or its subsidiary undertaking and parent undertaking and subsidiary undertaking shall have the meaning given to them in the Companies Act 1985.
"Authorised User"	means an officer or employee of the Client who has been authorised to access Octopus in accordance with this Agreement;
"Client"	means the person named as such in the Solutions Cost;
"Contract Term"	means the period of duration of this Agreement as detailed in the Solution Costs.
"Data"	means and includes, any information provided by the Client or its agents which can be displayed by Octopus concerning: the Client's employees' personal details; the Client's organisation, benefits provided by the Client to its employees.
"Payment Schedule"	means the schedule detailing when the Client is required to make payments of sums due to BSL;
"Services"	means any services provided by BSL to the Client as detailed in the Solution Costs.
"Software"	Means the computer/software code developed by or licensed to BSL used to operate Octopus and/or used to provide the Services;
"Deliverables"	any implementation or configuration of software, applications support, reports, analysis, pre-existing works, and/or other deliverable items as detailed in the Solution Costs;
"Solution Costs"	means the document detailing the Services to be provided by BSL to the Client, any Deliverables and/or the amounts payable by the Client to BSL for making Octopus available to the Client.

"Normal Working Day" means Monday to Friday excluding public holidays as recognised in England.

"Normal Working Hours" means between 09:00 and 17:00 UK time each Normal Working Day.

"Octopus" means the website with URL www.octopus-hr.co.uk incorporating the Software whereby Authorised Users can view displays of the Data via the internet, and to obtain information relating to their personal employment; and access certain online content and services.

"Trained Administrator" Means an officer or employee of the Client who has been trained by BSL in the use of Octopus;

1.2. References to Sections, Clauses and Sub-Clauses are to the sections, clauses and sub-clauses of this Agreement.

1.3. The headings in this document are inserted for convenience only and shall not effect the construction or interpretation of this Agreement.

2. Personnel

2.1 Each party is responsible for the supervision, direction and control of their respective personnel. BSL reserves the right to determine the appointment and assignment of its given personnel and may subcontract all or any part of the provisions of the Services to a subcontractor as selected by BSL.

2.2 BSL shall perform the Services using such personnel as it considers suitably qualified. BSL shall use all reasonable endeavours to maintain continuity of personnel throughout the provision of the Services but reserves the right at any time to vary personnel upon reasonable notice.

3. Client's Obligations

3.1. Access to Octopus shall only be permitted to Authorised Users.

3.2. In consideration of BSL making Octopus available to the Client, the Client shall pay BSL' charges from time to time as detailed in the Solution Costs and in accordance with Clause 4 below.

3.3. The Client shall use all reasonable efforts to ensure that Octopus is only used by those of its officers and employees who are Authorised Users. Should the Client know or suspect that an Authorised User's password has been made available or is being used by an unauthorised third party, the Client shall immediately inform BSL.

3.4. The Client will provide BSL with all Data and all other information BSL may reasonably request from time to time to allow BSL to make Octopus available to the Client and will provide such Data and information in the format

specified by BSL in the Solutions Costs. The Client agrees to use its reasonable endeavours to ensure that all information the Client supplies will be complete, accurate and given in good faith. Such information will be treated as Confidential Information under the terms of Clause 12 of this Agreement.

- 3.5. The Client acknowledges that Octopus may enable the Client and/or the Client's employees to access other websites and that when entering any other site such site may have its own terms and conditions of use which are specific to such site. When the Client and/or the Client's employees access browse or use such site the Client and/or the Client's employees (as applicable) accept without limitation or qualification the terms and conditions of use set out in such site.

4. Charges and Payment Terms

- 4.1. The Client shall be invoiced for the first months subscription cost, payable immediately (calculated on a pro-rata basis), then on a monthly basis by standing order as detailed in the Payment Schedule. Payment for Services provided will be invoiced and payable within 30 days of the date of invoice. All amounts due are payable in UK pounds sterling.
- 4.2. Any pre-approved travel and reasonable and necessary out of pocket expenses incurred by BSL or the Client in relation to the provision of the Services shall be borne by the Client. All invoices shall detail such expenses and are due and payable upon presentation to the Client.
- 4.3. BSL reserves the right having given the Client seven (7) business days prior written notice to temporarily suspend Octopus's availability to the Client in cases of late or non-payment of BSL' invoices.
- 4.4. The Client shall not be entitled by reason of any set-off, counter-claim, abatement or other similar deduction to withhold payment of any amount due to BSL.
- 4.5. Interest shall be chargeable on any amounts overdue to BSL at the rate of four percent per annum above the base rate from time to time of Allied Irish Bank from the due date for payment until receipt by BSL in full of the outstanding amount whether or not after judgement and without prejudice to any other right or remedy of BSL including the recovery of costs incurred in pursuing the outstanding debt.
- 4.6. The charges detailed in the Solution Costs are exclusive of any value added and other applicable taxes. Such taxes will be added to any invoices issued by BSL at the rate current at the date of the invoice.
- 4.7. BSL shall invoice the Client quarterly, in advance, on or shortly after BSL has made Octopus ready for the Client's use and delivered the implementation training day to the client and will continue quarterly thereafter until lawful termination of this Agreement. The Client shall pay BSL's charges in accordance with the Payment Schedule.
- 4.8. The contract term will commence on the day that BSL has delivered the implementation training and made the systems use available to the client. At the end of the Contract Term, this Agreement will be automatically renewed for the minimum period of 12 months and will continue after such renewal unless terminated by either party giving not less than three months' written notice prior to the expiry of the Contract Term or any anniversary thereof.
- 4.8.1 Termination of the contract by the client prior to the implementation and training day must be put in writing and will result in the client reimbursing BSL with all set up costs and three months subscription payments, as specified in the BSL system cost proposal. The client shall pay the termination charge within 7 days from date of invoice.
- 4.9. BSL may vary any recurring charges subject to the appropriate Employee Banding Category for the use of

Octopus as set out in the table within the section headed Subscription Costs in the Solution Costs and give the Client at least thirty (30) days written notice of any increase in charges. BSL may not apply an increase of more than 5% per annum compound since the last increase whichever is the greater. Any increase in the recurring charges must be communicated to the Client not less than three months prior to the next date for payment.

- 4.10. At the end of each calendar quarter (March, June, September, December) BSL will review the number of the Clients active employees and set the monthly subscription for the next quarter accordingly. A full list of Employee Banding Categories is available from BSL on request.

5. Marketing

- 5.1. Subject to the Client's prior written approval, the Client agrees that BSL may use the Client's company name and logo in BSL' promotional material and communications including, but not limited to, proposals, presentations, website and corporate brochure.

6. Conditions of Sale

- 6.1. The terms of this Agreement and the Solution Costs shall apply to the provision of the Services. Any terms and conditions stated on the Client's purchase order shall be null and void unless expressly agreed to in writing by BSL. BSL are the owners of the software and have the right to license the software.

7. Warranties, BSL's Obligations and Customer Support Services

- 7.1. BSL makes no warranty that the use or operation of Octopus will be uninterrupted or error free.
- 7.2. Subject to clause 4.3, BSL warrants that Octopus will be provided on a continuous basis throughout the Contract Term and shall promptly credit or refund to the Client a pro rata proportion of the quarterly subscription fee for any period of unavailability of the Service longer than 24 hours, such period to commence from the receipt of written notice of any unavailability of Octopus from the Client.
- 7.3. BSL will update Octopus and the Software from time to time to enhance the then current functionality and structures of the Data to improve its usability by the Client. For the avoidance of doubt this does not include new and separate modules and products developed by BSL. BSL reserves the right to change the structure of the Data to enable it to provide these enhancements.
- 7.4. Subject to the prior written acceptance by BSL of an agreed order with the Client and a signed Solution Costs agreement from the Client, BSL will provide the Services with all reasonable skill, care and diligence and in accordance with the Solution Costs. Timely completion of any Services by BSL will be subject to the timely satisfaction of the Client of any Client obligations or requirements as detailed in the relevant Solution Costs.
- 7.5. Subject to applicable legislation, BSL may provide the Services from any hardware installation forming part of the Service anywhere in the world and may, at any time, transfer the provision of Octopus from one installation to another. BSL does not guarantee that any such installation is dedicated to the sole use of the Client. In order to fulfil its obligations in managing Octopus BSL may at any time amend it and any documentation relating thereto for any reason including, but not limited to: legal; safety; business; or technical considerations
- 7.6. BSL will provide customer support regarding Octopus to the Client in accordance with this clause 7.6. If any Authorised Users have any queries regarding Octopus the Client must ensure that they first refer them to the Trained Administrator who shall use all reasonable efforts

to resolve such queries without involving BSL. If the Trained Administrator is unable to resolve the issue he shall be entitled to contact BSL for assistance. BSL will only be obliged to provide customer support to the Trained Administrator and will refer any queries raised to it directly by Authorised Users back to the Trained Administrator. BSL will be available to the Trained Administrator to provide support services during Normal Working Hours within the Normal Working Day.

8. Limitation Of Liability

8.1. BSL does not limit its liability (if any) in respect to the following:

fraud, or the death of, or personal injury to, any person caused by negligence, or breach of section 12.1.

8.2. BSL's liability to the Client for actual loss by the Client caused either by;

breach of contract or misrepresentation by BSL; or

defects in Octopus resulting from BSL's negligence, or

the negligence of BSL or its employees or agents in the provision of the Services

is limited to a maximum of the actual amount paid by the Client to BSL under this Agreement. Such limit shall apply to each event or series of connected events.

8.3. Subject to Clause 8.1 neither party accepts any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason), including under any indemnity given, for any loss of profits, loss of sales or turnover, loss of or damage to reputation, loss of contracts, loss of Clients, loss of, or loss of use of, any software or data, loss of use of any computer or other equipment or plant, wasted management or other staff time, losses or liabilities under or in relation to any other contract, indirect loss or damage, consequential loss or damage, loss(es) directly or indirectly due to network access by third parties; or special loss or damage. For the purposes of this Clause 8.3 the term "loss" includes a partial loss or reduction in value as well as a complete or total loss and third party claims relating to clients use of software.

9. Intellectual Property Rights

9.1 The intellectual property rights in Octopus and any hardware or the Software is and will at all times remain BSL's property or that of BSL's licensors.

9.2 BSL grants the Client a non-exclusive, non-transferable licence to use Octopus, the Software and any reports, information, drawings, software, or other material specifically produced by BSL pursuant to this Agreement only for the purposes of this Agreement or for which they were prepared. Nothing in this Agreement shall operate to prevent BSL from making use of know-how acquired, principles learned or developed or experience gained during the performance of this Agreement on future contracts with third parties or the Client.

9.3 The Client shall not without the prior written consent of BSL:

market, exploit or make Octopus or the Software available to another person or permit another person to use Octopus or the Software;

use Octopus or the Software on behalf of or for the benefit of another person or company;

decompile or disassemble the program code or any other part of Octopus or the Software except to the extent permitted at law;

make copies of the Software ;

charge or otherwise deal in or encumber the Software;

or delete, remove or in any way obscure BSL's proprietary notices on Octopus or any copy of the Software.

alter or modify the Software;

combine the Software with or incorporate it in any other programs;

and shall not attempt to do so or permit others to do so.

9.4 Nothing in this Agreement shall be deemed to or require BSL to transfer, assign or license any intellectual property rights to the Client, copyright and any other intellectual property rights in any Deliverables produced by BSL pursuant to this agreement shall be vested in and remain the absolute property of BSL or its licensors.

10. Termination

10.1 Without prejudice to any other rights to which it may be entitled, either party may terminate this Agreement with immediate effect:

10.2 if the other party commits any material breach of any of the terms herein and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified under this Sub-Clause 10.2 of the breach, such notice to refer to the notifying party's intent to terminate this Agreement unless the breach is remedied; or

10.3 if an order is made or a resolution is passed for the winding up of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or if a receiver, administrator or administrative receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt.

11. Effects of Termination

11.1. Upon termination:

11.1.1 BSL shall be entitled to cancel the provision of Octopus to the Client;

11.1.2 30 days from termination date, BSL will delete all Client Data from Octopus;

11.1.3 all unpaid invoices from BSL become due and payable; and

11.1.4 subject to Clause 11.2 all rights of the Client under this Agreement shall terminate on the termination date.

11.2. The following Clauses shall survive termination

Clause 8 Limitation Of Liability

Clause 9 Intellectual Property Rights

Clause 11 Effects of Termination

Clause 12 Confidentiality

Clause 15 Contract (Rights of Third Parties) Act 1999

12. Confidentiality

12.1. Each party agrees and undertakes that during the term of this agreement and for five years after its termination it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may become known to that party from the other party ("Confidential Information") unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or subsequently comes lawfully into the possession of that party from a third party.

12.2 To the extent necessary to implement the provisions of this Agreement each party may disclose the Confidential Information to those of its employees and sub-suppliers as may be reasonably necessary or desirable provided that before any such disclosure each party shall make those

employees and sub-suppliers aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees and sub-suppliers with them.

12.3 Where BSL exercises the rights outlined in clause 12.2 BSL will use all reasonable endeavours to keep confidential all information received from the Client or for the Client in connection with this Agreement.

12.4 BSL will keep the Client's Data secure and apply appropriate policies and safeguards. If any breach of security should occur due to the standard policies and safeguards not being adhered to, then BSL will inform the Client immediately of the breach of security and work with the Client as a matter of highest priority to ensure the security and integrity of the Data.

13. Force Majeure

13.1. Excepting any obligation to make payment hereunder the obligations of each party under this Agreement shall be suspended during the period and to the extent that such party is prevented or hindered from complying with them by any cause beyond its reasonable control including events such as, but not limited to: strikes; lock-outs; labour disputes; act of God; war; riot; civil commotion; malicious damage; compliance with any law or governmental order; rule; regulation or direction; accident; loss of electrical power; loss of telephone/internet/wide area network and similar infrastructure; fire; flood; storm; materials, unavailability of goods or raw materials.

13.2. In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than thirty (30) days after written notification as aforesaid either party may terminate this Agreement in accordance with Clause 10 of this Agreement.

14. Dispute Resolution

14.1. All disputes between the parties arising out of or relating to this Agreement or the breach, termination or validity thereof shall be referred by either party in writing, first to each party's managing director. The managing directors shall meet and attempt to resolve the dispute within a period of thirty (30) days from the date of referral of the dispute to them.

15. Contract (Rights of Third Parties) Act 1999

15.1. Nothing in this Agreement is intended to confer on a person any right to enforce any term of this Agreement which that person would not have had but for the Contract (Rights of Third Parties) Act 1999.

16. Data Protection

16.1. Under the Data Processing rules within the Data Protection Act (1998) BSL is exempt from registration.

16.2. The Client confirms that it is registered under and conforms to the requirements of the Data Protection Act (1998)

16.3. The Client hereby gives BSL express permission to hold and display the Data on the Client's behalf and to provide access to the Client's employees to view the Data or amend the Data as appropriate.

16.4. Other than the provision of Octopus and in the provision of the Services and in accordance with Clause 2.2 and unless expressly agreed with the Client BSL will not utilise the Data for any other purpose.

17. Amendments

17.1. Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

18. Assignment and Change of Ownership

18.1. Client is not entitled to transfer or assign this Agreement without BSL's prior written consent, which shall not be unreasonably withheld or delayed. BSL may assign or sub-contract this Agreement or any part thereof.

18.2. A change of Client ownership does not constitute a break in the contract for the Client. If a change of Client ownership occurs BSL reserve the right to terminate the contract subject to BSL's written notice.

19. Waiver

19.1. The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

20. Severability

20.1. If any provision of this Agreement becomes invalid, illegal or unenforceable then such provision shall be severed and the remainder of this Agreement shall continue in full force and effect.

21. Notices

21.1. Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the notice by hand, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the address of the relevant party set out in this Agreement or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

21.2 Any notifications by the Client under this Agreement must be sent to:- Cancellations Manager, BSL, Bishops House, Market Place, Chalfont St. Peter, Bucks, SL9 9HE

22. Governing Law and Jurisdiction

22.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales. Notwithstanding the foregoing nothing herein shall preclude either party from seeking injunctions from any court of competent jurisdiction in order to protect its intellectual property rights or Confidential Information.