

Evaluation Agreement

This evaluation agreement (“the Evaluation Agreement”) between Octopus Cloud AG, Baarerstrasse 145, CH-6300 Zug, Switzerland (**Octopus Cloud**) and the **Customer** is entered on the Effective Date (see below). Octopus Cloud and Customer each are a **Party** to this Evaluation Agreement and together are referred to as the **Parties**.

Details of the Customer:

Company: _____
Address: _____
Town/City: _____
Country: _____
Telephone: _____
Email: _____

Effective Date	Evaluation Period
[● Please complete]	[● Please complete and enter either the period or the relevant end date]

Octopus Cloud Product
[● Please complete]

Services
During the POC, Octopus Cloud will provide the following Services to Customer: [● Please complete service description and estimated time] [●] [●]

Service Charges
[● Please indicate applicable service rates or fixed prices]

Evaluation Agreement

1. Subject Matter

This Evaluation Agreement governs (i) Customer's use of the OC Product during a POC Customer wishes to conduct for evaluation purposes; and (ii) certain services Octopus Cloud does provide to Customer in relation to Customer's POC.

2. Definitions

- 2.1. **Affiliate** means, with respect to an entity, any other entity that, directly or indirectly, Controls, is Controlled by, or is under common Control with such entity from time to time but only for so long as such Control exists. "Control" and its grammatical variants for the purpose of this definition means, (i) a general partnership interest in a partnership, (ii) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors, or (iii) the power to direct or cause the direction of the management and policies of such entity whether by contract or otherwise.
- 2.2. **Customer's Use Rights** means the limited use rights Octopus Cloud grants to Customer with regard to the OC Product as specified in section 4.
- 2.3. **Confidential Information** means all information, documents, records and/or data which the disclosing Party at the time of disclosure has designated to be confidential or which, given its nature and circumstances of disclosure, ought to reasonably be considered confidential. Information is not considered Confidential Information in the event the information in question
- (i) is approved for public release by written agreement of the discloser;
 - (ii) is already rightfully known to the recipient free of any restriction at the time it is obtained from the disclosing Party;
 - (iii) is subsequently disclosed to the recipient lawfully by a third party without imposing any restrictions whatsoever;
 - (iv) is or becomes public knowledge; or
 - (v) is developed independently by one Party without referring to Confidential Information belonging to the other Party.
- 2.4. **Effective Date** means the date on which this Evaluation Agreement becomes effective, which date is specified on the cover sheet of this Evaluation Agreement.
- 2.5. **Evaluation Agreement** means this evaluation agreement.
- 2.6. **Evaluation Period** means the term during which this Evaluation Agreement remains effective (see section 11.1).
- 2.7. **OC Product** shall mean the software-solution developed and offered for subscription by Octopus Cloud, which Customer elects to evaluate during the POC and which identified in the header of this Evaluation Agreement. Depending on the type of product, the OC Product may be used in either (i) a software edition, that is to be installed on end clients' premises; and/or (ii) a cloud-based online edition (it being understood though that normally with each query in the central data base the logic is on a per-request basis transferred to Customer's systems).
- 2.8. **POC** means the evaluation/proof of concept Customer is conducting with regard to the OC Product.
- 2.9. **Services** shall mean the services Octopus Cloud will provide to Customer in relation to the POC if and to the extent identified on the cover page of this Evaluation Agreement).

3. Intellectual Property Rights

- 3.1. The Customer hereby acknowledges that the OC Product is subject to intellectual property rights which are and shall remain in their entirety with Octopus Cloud, its Affiliates and/or its suppliers (if and to the extent third party components are integrated). Unauthorized copying use or modification of any portion of the OC Product, or violation of the terms of this Evaluation Agreement may be subject to legal prosecution.
- 3.2. All rights to trademarks, brand names, logos and other words and symbols that serve to identify either of the Parties and/or its products and/or services remain with such Party or, as the case may be, a third party. Either Party shall only be entitled to use any such trademarks, brand names, logos and other words and symbols of the other Party if and to the extent permitted by this Evaluation Agreement.

4. Customer's Use Rights

Octopus Cloud grants to the Customer a non-exclusive and non-transferrable right to use the OC Product solely for evaluation and testing purposes during the Evaluation Period. Customer's Use Rights may not be sublicensed or used for the benefit of third parties other than Customer's Affiliates.

5. Customer's General Obligations

Customer undertakes to take all actions, preparations and/or precautions and grant all system access which can reasonably be expected from Customer in order to enable Octopus Cloud to provide the Services and meet its obligations under this Evaluation Agreement – this will include (but not be limited to) the Customer being responsible for and preparing all information, data and necessary access to such information or data as may be required by Octopus Cloud.

6. Octopus Cloud's Services

If so specified on the cover page of this Evaluation Agreement, Octopus Cloud will provide to Customer installation and other POC-related support and consulting Services.

7. Fees

- 7.1. The Customer Use Rights with regard to the OC Product as per section 4 are granted to Customer free of any charge.
- 7.2. Customer shall pay the fees for Services provided by Octopus Cloud in relation to Customer's POC as identified on the cover page of this Evaluation Agreement, except that any such fee shall be waived in the event Customer does decide not to pursue the business opportunity and not to subscribe to an edition of the OC Product.
- 7.3. The applicable fees in relation to Services provided by Octopus Cloud shall be invoiced upon the expiry or termination of this Evaluation Agreement and shall become due within a period of thirty (30) days as from receipt of the according invoice.
- 7.4. The fees specified in this Evaluation Agreement do not include applicable VAT and other taxes.

8. Service and Product Warranty

- 8.1. Octopus Cloud undertakes to perform all Services related to Customer's POC with regard to the OC Product faithfully and with due care and in accordance with customary industry standards.
- 8.2. Customer acknowledges that the OC Product is provided by Octopus Cloud under this Evaluation Agreement free of any charge. Hence, the OC Product is provided "as is" and Octopus Cloud, its Affiliates and/or suppliers make and Customer receives no warranties, express or implied, statutory or otherwise, and Octopus Cloud, its Affiliates and/or its suppliers specifically disclaim any implied warranty of merchantability, satisfactory quality, compatibility with other software and/or devices, fitness for a particular purpose, freedom from errors and/or non-infringement and their equivalents.

9. Liability

- 9.1. Irrespective of the legal grounds for such claim, neither Octopus Cloud nor its Affiliates shall, except as provided below, be liable to the Customer and/or its Affiliates for (i) for damages caused to the other Party as a result of slight negligence; (ii) any acts or omission and/or any act or omission by its auxiliary persons and/or subcontractors, agents or other authorized third parties; and (iii) any indirect or consequential, exemplary, punitive or special damages or other damages or losses of profit etc. of any kind whatsoever or for loss of or recovery of data, or any damages caused by corrupt or inadequate data, defects, viruses, poor data quality, omissions or inaccuracies in data arising out of or in connection with the OC Product.
- 9.2. The exclusions and limitations set forth above shall not apply:
 - (i) to claims and/or losses based on death and/or personal injury;
 - (ii) to claims and/or losses based on Octopus Cloud's gross negligence and/or willful misconduct;
 - (iii) to claims and/or losses based on fraudulent misrepresentation;
 - (iv) if and to the extent such limitation or exclusion is not permitted by applicable law.

10. Confidentiality

- 10.1. Each Party shall keep Confidential Information of the disclosing Party in strict confidence and shall safeguard such Confidential Information from unauthorized disclosure, reproduction or use no less rigorously than the stricter of the standards that would apply to its own Confidential Information of similar nature and the standards required by applicable law and regulatory requirements.
- 10.2. Both Parties agree not to disclose Confidential Information to any third parties without either Party's prior written consent. However, both Parties shall be entitled to on a "need-to-know" basis share Confidential Information with its employees, subcontractors, agents and/or other authorized third parties to the extent such entities or individuals need to know such information in connection with this Evaluation Agreement.
- 10.3. Notwithstanding section 10.2, each Party may make available Confidential Information to a third party, provided such third party is subject to confidentiality obligations at least as stringent as those applicable to the Parties hereunder and for the purpose and to the extent necessary (i) for the performance of the receiving Party's rights and obligations under this Evaluation Agreement; or (ii) to permit a third party to perform legal, accounting or audit services for or in relation to a Party in assessing its business operations.
- 10.4. A Party may disclose the Confidential Information of the other Party to the extent, but only to the extent, required by law, regulation, rule, act, order, or request of any court, governmental authority or agency, self-regulatory organization or exchange, including but not limited to any subpoena, civil investigative demand, or discovery request or demand, provided such Party gives the other Party (to the extent not prohibited from doing so) prompt written notice and cooperation in seeking to limit the disclosure to the greatest extent possible, consistent with the legal obligations of the Party required to disclose the Confidential Information, and in obtaining confidential treatment for such information, if available.
- 10.5. Each Party shall immediately notify the other Party if it becomes aware of
 - (i) any potential disclosure, access to or use of any Confidential Information in breach of this Evaluation Agreement;
 - (ii) any unauthorized intrusion into systems containing Confidential Information; and
 - (iii) any disclosure of any Confidential Information where the purpose of such disclosure does not have any apparent correlation with the execution of this Evaluation Agreement.

Both Parties will give reasonable assistance to the other in order to prevent such breach of confidentiality and/or limit the consequences thereof.

- 10.6. The confidentiality obligations specified in this section 10 will continue to apply even after termination or expiration of this Evaluation Agreement.

11. Term and Termination

11.1. Evaluation Period

This Evaluation Agreement enters into force on the Effective Date (as specified on the cover page of this Evaluation Agreement) and will automatically expire at the end of the Evaluation Period (as specified on the cover page of this Evaluation Agreement).

11.2. Termination for Convenience

Customer may terminate this Evaluation Agreement at any given time and with immediate effect by issuing a written notice to Octopus Cloud.

11.3. Termination for Cause

Notwithstanding any of the provisions contained herein, this Evaluation Agreement may be terminated by either Party at any time and with immediate effect by issuing a written notice to the other Party upon any material and persistent breach of this Evaluation Agreement in such manner, that the terminating Party may not reasonably be expected to continue to be bound to the Evaluation Agreement, provided however that the Party in breach has failed to remedy such breach within a reasonable period of time after receipt of a written notice specifying the nature of the breach. A Party may refrain from granting a reasonable period of time for remedy if and to the extent such breach from an objective point of view is not reasonably to be considered capable of remedy.

11.4. Upon termination or expiration of this Evaluation Agreement

- (i) Customer's Use Rights cease to exist, and Customer shall no longer make use of the OC Product;
- (ii) Customer's access to the relevant user accounts shall be deactivated (if so applicable);

(iii) Customer shall uninstall or delete all copies of the OC Product and any and all intellectual property provided by Octopus Cloud to Customer (if and to the extent Customer has subscribed to the on-premises software edition) and shall issue a self-declaration of removal duly signed by any of Customer's authorized representatives within thirty (30) days as from the receipt of Octopus Cloud's standard declaration form.

11.5. Termination of this Evaluation Agreement shall

- (i) not prejudice or affect any right of action, remedy, or liability which shall have accrued prior to or as a consequence of such termination or expiration; and
- (ii) not affect the provisions of this Evaluation Agreement which, given their nature, shall survive such termination (such as the provisions in sections 3.1 and 10).

12. Miscellaneous

12.1. Nothing in Evaluation Agreement shall constitute or be deemed to constitute between the Parties a joint venture, partnership, employment relationship or staff loaning.

12.2. Customer shall not assign this Evaluation Agreement or delegate any of its rights, duties or obligations thereunder without the prior written consent of Octopus Cloud. Octopus Cloud may assign this Evaluation Agreement or its rights, interests and obligations thereunder to (i) Affiliates; and/or (ii) another party in connection with a merger with or acquisition by or sale of all of its assets. This Evaluation Agreement shall be binding upon any successor in interest or title of the Parties.

12.3. Octopus Cloud is entitled to with regard to the fulfillment of its obligations under this Evaluation Agreement contract with and use subcontractors, agents and other authorized third parties.

12.4. Additions, modifications, supplements and/or amendments to this Evaluation Agreement and/or any of its Annexes (including this section 12.4) cannot be made except if made in writing and if authorized by both Parties.

12.5. At no time shall any failure or delay by either Party in enforcing any provisions, exercising any option, or requiring performance of any provisions, be construed to be a waiver of same.

12.6. If any provision of this Evaluation Agreement is for any reason held to be invalid, illegal or unenforceable, the remaining provisions shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a valid, legal and enforceable provision that to the highest extent reasonably possible achieves the original intention of the Parties. This section shall apply accordingly if the Evaluation Agreement is silent on an issue to be resolved.

13. Governing Law and Forum

13.1. This Evaluation Agreement shall exclusively be governed and construed in accordance with the substantive **laws of Switzerland**, whereby (i) international conventions, including the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) and/or (ii) standard conflict of law rules are hereby excluded from application to this Evaluation Agreement.

13.2. The ordinary courts of the Canton of Zug shall have exclusive jurisdiction with regard to all disputes arising from or in connection with this Evaluation Agreement. **The place of jurisdiction is Zug/Switzerland**

Place, Date

Octopus Cloud AG

Authorized signatory 1

Authorized signatory 2

Place, Date

Customer

Authorized signatory 1

Authorized signatory 2