Octopus Deploy End User Licence Agreement

Important notice – please read carefully before installing the software: this licence agreement ("Agreement") is a legal agreement between you ("Licensee", "You" or "Your") and Octopus Deploy Pty Ltd ACN 160 339 186 ("Licensor", "Us" or "We") for this software product, which includes computer software, printed materials and Documentation ("Documentation").

By using all or any portion of the Software, You agree to be bound by the terms of this Agreement. If You do not agree to the terms of this Agreement, we will not licence the Software to You and You must uninstall and desist from using the Software and the Documentation within 30 days of purchase. We will refund Your Licence Fee to You upon receiving notification that You have uninstalled the Software.

Definitions

"Derivative Works" shall mean any work, whether in Source Code or Object form, that is based on (or derived from) the Work and for which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work of authorship. For the purposes of this Agreement, Derivative Works shall not include works that remain separable from, or merely link (or bind by name) to the interfaces of, the Work and Derivative Works thereof.

"Licence" shall mean the terms and conditions for use of the Software as set out in this Agreement.

"Licence Fee" shall mean the fee paid by You to Us in consideration for the grant of the Licence (other than the licence to the free Octopus Community Edition of the Software).

"Object" form shall mean any form resulting from mechanical transformation or translation of a Source Code, including but not limited to compiled object code, generated Documentation, and conversions to other media types.

"Octopus Server" means the central web portal and co-ordination service as described in the Documentation.

"Octopus Tentacles" means the agent service that is installed onto endpoints that will receive deployment packages, as described in the Documentation.

"Project" refers to the concept of a project as described in the Documentation; typically, a single set of deployment steps that are executed at the same time.

"Software" means the software program known as Octopus in binary form, including its Documentation.

"Software Releases" means all Software upgrades issued by the Licensor.

"Source Code" form shall mean the preferred form for making modifications, including but not limited to software source code, Documentation source, and configuration files.

"Upgrade Fee" means 50% of the Licence Fee.

"User Account" means an individual login that will be used to access the Octopus web portal as described in the Documentation.

"Work" shall mean the work of authorship, whether in Source Code or Object form, made available under the Licence.

1.   Grant and scope of Licence

1.1   In consideration of the payment of the Licence Fee (where applicable) and of Your acceptance of the terms, conditions and limitations set forth in this Agreement, the Licensor grants You a

worldwide, non-exclusive, non-transferable, licence to use the Software and the Documentation for Your own internal business purposes as follows:

(a) You may install and use up to three separate Octopus Servers ("Instances"). Instances are counted whether on the same physical or virtual server, or on different servers. Each Octopus Server may only be used for the benefit and business of the Licensee. Under the free Community Edition license, you may install an unlimited number of Octopus Servers.

(b) You will have access, free of charge, to all generally available Software Releases issued by Us for a period of 12 months from payment of the Licence Fee ("Release Period").

(c) You may make backup copies of the Software for archival and business continuity purposes.

(d) You may use any Documentation in support of the use of the Software permitted under clause 1.1 and of the Source Code permitted under clause 1.2 (if applicable) and make as many copies of the Documentation as are reasonably necessary for its lawful use.

1.2 If You have purchased an Octopus Source Code Edition licence, the Licensor grants You the right to view and modify the Source Code for the sole purposes of education, trouble-shooting, and customizing features for Your own particular needs. If You modify the Source Code, you may compile and distribute the resulting Object subject to the following clauses:

(a) You may not distribute or disclose the Source Code, or any portion or modifications or derivative works thereof, to any third party;

(b) You acknowledge that the Source Code contains valuable property of the Licensor, and You agree to take reasonable measures to help ensure its confidentiality;

(c) Under no circumstances may the Source Code be used, in whole or in part, as the basis for creating a product that provides the same, or substantially the same, functionality as the Software; and

(d) You agree that the Licensor is not obliged to provide any technical support or error corrections in relation to any issues or problems arising out of any modifications of the Source Code.

2. Upgrades

2.1 The Release Period may be extended for further twelve month periods ("Upgrade Period") upon payment of the Upgrade Fee.

2.2 The Upgrade Period will commence from the date the Upgrade Fee is paid.

2.3 You acknowledge that, unless notified otherwise, the terms and conditions of this Agreement apply to the purchase of additional Upgrade Period Purchases and any Software Releases downloaded by You.

3. Licensee's undertakings

3.1 Except as expressly set out in this Agreement or as permitted by any local law, You undertake:

(a) not to copy the Software, the Source Code or the Documentation except where such copying is incidental to normal use of the Software or the Source Code or where it is necessary for the purpose of back-up or operational security;

(b)   not to use the Software, the Source Code or the Documentation for any purpose other than the purposes set forth in sections 1.1 and 1.2;

(c)   not to use the Software, the Source Code or the Documentation in any way that could damage the reputation of the Licensor or the goodwill or other rights enjoyed by the Licensor;

(d)   not to rent, lease, sub-licence, loan, translate, merge, adapt, vary or modify the Software, the Source Code or the Documentation;

(e)   not to make alterations to, or modifications of, the whole or any part of the Software or the Source Code nor permit the Software or the Source Code or any part of them to be combined with, or become incorporated in, any other programs;

(f)   not to disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Software or the Source Code nor attempt to do any such things except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by You during such activities:

   (i)   is used only for the purpose of achieving inter-operability of the Software with another software program; and

   (ii)   is not unnecessarily disclosed or communicated to any third party without the Licensor's prior written consent; and

   (iii)   is not used to create any software which is substantially similar to the Software;

(g)   to keep all copies of the Software and the Source Code secure;

(h)   to supervise and control use of the Software and the Source Code and ensure that Your employees and representatives use the Software and the Source Code in accordance with the terms of this Agreement; and

(i)   to include the copyright notice of the Licensor on all entire and partial copies You make of the Software or the Source Code on any medium.

4.   Intellectual property rights

4.1   You acknowledge that all intellectual property rights in the Software, the Source Code and the Documentation throughout the world belong to the Licensor, that rights in the Software, the Source Code and the Documentation are licenced (not sold) to You, and that You have no rights in, or to, the Software, the Source Code and the Documentation other than the right to use them in accordance with the terms of this Agreement.

4.2   You acknowledge that unless You have purchased an Octopus Enterprise + Source Edition licence You have no right to have access to the Software in the Source Code or in unlocked coding or with comments.

4.3   You and the Licensor acknowledges that if You have purchased an Octopus Enterprise + Source licence:

(a)   intellectual property rights in the amendments made by You to the Source Code are owned by You;

(b)   You provide Us with an irrevocable, royalty-free, fee-free, world-wide licence, with the right to sub-licence the amendments made by You to the Source Code; and

(c)   You permanently waive Your moral rights (as defined in the *Copyright Act 1968* (Cth)) in the amendments made by You to the Source Code.

5.   Warranty

5.1   Subject to clauses 5.2 to 5.5, the Licensor warrants that during the Warranty Period, the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation (provided that the Software is properly used on the computer and with the operating system for which it was designed as referred to in the accompanying Documentation), and the Documentation correctly describes the operation of the Software in all material respects. The Warranty Period will be two years from the date of purchase.

5.2   The warranty set out at clause 5.1 does not apply to Beta or pre-release versions of the Software or to Software supplied under the free Octopus Community Edition licence, for which no warranty is given. Such Software is supplied on an as-is basis and without warranties of any kind save for those required by applicable law.

5.3   The Licensor does not warrant that the Software is error free, will operate in an uninterrupted manner, will not damage or interfere with Your computer operating system and will not damage or interfere with Your business or the business of third parties.

5.4   You acknowledge that the Software, the Source Code and the Documentation have not been developed to meet Your individual requirements and that it is Your responsibility to ensure that the facilities and functions of the Software and the Source Code meet Your requirements.

5.5   You agree that the existence of any minor errors shall not constitute a breach of this Agreement.

5.6   If, within the Warranty Period, You notify the Licensor in writing of any defect or fault in the Software (other than in the Beta version of the Software or in Software supplied under the free Octopus Community Edition licence, for which no warranty is given) in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from You having amended the Software or used it in contravention of the terms of this Agreement, the Licensor will, at its sole option, repair or replace the Software, provided that You make available all the information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault.

6.   Licensor's liability

6.1   Nothing in this Licence excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by legislation which cannot be lawfully excluded or limited. This legislation includes the Australian Consumer Law which contains guarantees that protect the purchasers of goods or services in certain circumstances ("Non-Excludable Provisions").

6.2   Subject to the Licensor's obligations under the Non-Excludable Provisions and clause 5, the Licensor expressly disclaims all warranties of any kind with respect to the Software and the Source Code, whether express, implied, statutory or arising out of the course of performance, course of dealing or usage of trade including any warranties of merchantability, fitness for a particular purpose, satisfactory quality, accuracy, title of non-infringement.

6.3   Subject to the Licensor's compliance with the Non-Excludable Provisions and clause 5, and otherwise to the fullest extent permissible by law, the Licensor is not liable (whether in contract or tort) for:

(a)   any computer virus or bug that infects Your computer operating systems;

(b)   anything You may do to a third party as a result of using the Software, Source Code or Documentation;

(c)   any inability to use Your equipment or access Your data as a result of using the Software, Source Code or Documentation;

(d)   any loss or corruption of data, loss of business, loss of profits, loss of revenue and anticipated savings, business interruption of the like regardless of whether the loss is directly or indirectly caused by the Software or Source Code;

(e)   for any indirect, incidental, punitive, special or consequential loss or damage whatsoever, in each case arising out of the use or inability to use the Software or Source Code, even if the Licensor has been advised of the possibility of such damages or if such damages are foreseeable. Subject to the obligations of the Licensor under the Non-Excludable Provisions and to the fullest extent permissible by law, in no event will the Licensor's liability for all damages exceed the amount actually paid by You to the Licensor for the Software or Source Code;

(f)   any loss or damage including personal injury, death, loss of profits or revenue however arising out of the use of, or created in accordance with the Software or Source Code;

(g)   fraud or fraudulent misrepresentation; or

(h)   the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

6.4   Subject to clause 6.3 the Licensor's maximum aggregate liability under or in connection with this Agreement, or any collateral contract, whether in contract, tort (including negligence), for breach of a Non-Excludable Provision or otherwise, shall in all circumstances be limited to a sum equal to the Licence Fee.

6.5   This Agreement sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Software, the Source Code and the Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Agreement. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into or incorporated in this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

7.   Payment

7.1   The Licence Fee and any Upgrade Fee are payable in accordance with the payment methods stipulated on Our website (octopusdeploy.com).

7.2   The Licence Fee is refundable by Us to You within 30 days of Your purchase of the Licence if You do not agree to the terms contained in this Agreement.

8.   Term and termination

8.1   Subject to clause 8.2, the parties will be bound by the terms of this Agreement for the duration of Your use the Software and Software Releases.

8.2   The Licensor may terminate this Agreement immediately on written notice to You if You commit a material or persistent breach of this Agreement which You fail to remedy (if remediable) within 14 days after the service on You of written notice requiring You to do so.

8.3   Upon termination of this Agreement for any reason:

(a)   all rights granted to You under this Agreement shall cease;

(b)   You must cease all activities authorised by this Agreement; and

(c)   You must immediately delete or remove the Software, Source Code and Documentation from all computer equipment in Your possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software, Source Code and Documentation then in Your possession, custody or control and, in the case of destruction, certify to the Licensor that You have done so.

9.   Transfer of rights and obligations

9.1   This Agreement is binding on You and Us and on Our respective successors and assigns.

9.2   We may transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of Our rights or obligations arising under it, at any time during the term of the Agreement. You agree to take all steps necessary to enable Us to transfer, assign, charge, sub-contract or otherwise dispose of this Agreement.

10.   Events outside the Licensor's control

10.1   The Licensor will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under this Agreement that is caused by an event outside Our reasonable control ("Force Majeure Event").

10.2   A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

(a)   strikes, lock-outs or other industrial action;

(b)   civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

(c)   fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

(d)   impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

(e)   impossibility of the use of public or private telecommunications networks; and

(f)   the acts, decrees, legislation, regulations or restrictions of any government.

10.3   The Licensor's performance under this Agreement is deemed to be suspended for the period that the Force Majeure Event continues, and the Licensor will have an extension of time for performance for the duration of that period. We will use Our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which Our obligations under this Agreement may be performed despite the Force Majeure Event.

11.   Notices

11.1   For all correspondence related to the Licence and Upgrade Periods, please contact Us on:

(a)   Email: support@octopusdeploy.com;

(b)   Telephone: +61 (0)7 3040 1339

11.2   If required, We will contact You via the contact details You provided when You purchased the Licence and/or Upgrade Periods. In instances where Our records indicate We have multiple contact details available for You, We will contact You using the most recent contact details We have on file.

12. Waiver

12.1 If We fail, at any time during the term of this Agreement, to insist upon strict performance of any of Your obligations under this Agreement, or if We fail to exercise any of the rights or remedies to which We are entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve You from compliance with such obligations.

12.2 A waiver by Us of any default shall not constitute a waiver of any subsequent default.

12.3 No waiver by Us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to You in writing.

13. Severability

If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

14. Entire agreement

14.1 This Agreement and any document expressly referred to in it constitute the whole agreement between You and the Licensor and supersede any previous arrangement, understanding or agreement between You and the Licensor, relating to the licensing of the Software and Documentation.

14.2 The parties acknowledge that, in entering into this Agreement (and the documents referred to in it), neither of party relies on any statement, representation, assurance or warranty ("Representation") of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.

14.3 The parties agree that the only rights and remedies available to each party arising out of or in connection with a Representation shall be for breach of contract as provided in this Agreement.

14.4 Nothing in this clause 14 shall limit or exclude any liability for fraud.

15. Law and jurisdiction

This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Australian law and submitted to the non-exclusive jurisdiction of the Australian courts.