

OCTOPUS EIS PRODUCTS

Terms and Conditions

Section I – Product Terms

I. ABOUT THIS DOCUMENT AND OUR AGREEMENT WITH YOU

I.1 This document (which is referred to throughout as the “*terms*”) is important and you should read it carefully along with the latest versions of the other following important documents:

- your completed and signed *application form* which is applicable to the specific *EIS service* you have selected, which amongst other important items, includes details about applicable charges and expenses; and
- the *brochure* that accompanies your *application form* – which, amongst other important items includes details about applicable charges and expenses, the investment objectives and restrictions that will apply to your *portfolio*, and a number of important risk warnings.
- the *BIR supplement* that accompanies your *application form* if you are investing in the *Octopus EIS BIR service*.

The *brochure*, *applications form*, *BIR supplement* and a soft copy of this document are available on our website: octopusinvestments.com/investors/products/eis when the Octopus EIS is open for investment.

I.2 These *terms* together with the above documents constitute our agreement with you (which we refer to as our “*agreement*”). However, for the avoidance of doubt, the provisions contained in these terms will take precedence if, for any reason, there is any inconsistency or conflict between those provisions and the other documents referred to above.

I.3 Our *agreement* governs the provision of your *EIS service*. It is a legally binding contract under which we both have rights and obligations that we owe to each other. Our *agreement* supersedes any previous terms and conditions and/or related amendments which may have previously governed the basis on which we provided your *EIS service* and, depending on the circumstances, will either be effective from a date specified by us or the commencement date as provided in clause I.1.1.

I.4 You should note that there are other materials which explain the basis on which we provide our services. However, those materials do not form part of our *agreement*. These materials are available on our website octopusinvestments.com and include:

- the *order execution policy*; and
- the *conflicts policy*.

I.5 We know that there is a lot of information here, but it is important that you read and understand the *agreement* and the risk warnings and policies referred to above before you complete your *application form*. **If you have any questions, we recommend that you consult a financial adviser who is appropriately qualified and authorised to give investment advice. We can’t provide you with any financial advice, but if you have any questions about the application process or the technicalities of the products, please call us on: 0800 316 2295 and we’ll be happy to help you.**

I.6 You will see that these *terms* are divided into two separate sections:

- this **First Section** is headed “Section 1 – *Product terms*”. This section contains the terms and conditions that apply to the services we provide to you under the *agreement*; and
- the **Second Section** is headed “Section 2 – *Glossary*”. This section contains a number of words which have a specific legal meaning when used in these *terms*.

2. MEANING OF CERTAIN WORDS USED IN THESE TERMS

2.1 There are a number of words and phrases which have a specific meaning when used in these *terms*. So, throughout these *terms*:

- “we”; “us”; “our”; and “Octopus” refers to Octopus Investments Limited;
- “you”; or “your” refers to the person(s) named in the *application form* to whom we are providing services; and
- “your *EIS service*” refers to the specific services you wish to receive from us in accordance with the *EIS product* you have selected, as stated in your *application form*.

All other words and phrases which have a specific meaning when used in these *terms* are set out in the glossary. You will be able to identify these words because they will be written in italics.

3. WHAT ARE THE SERVICES, AND WHO PROVIDES THEM?

3.1 Octopus currently offers different *EIS products* which are designed to invest your *portfolio* in investments which qualify for *EIS relief* and *BIR* if applicable (which we refer to as “*qualifying investments*”) – these are:

- the *Octopus EIS service (and formerly the Octopus Protected EIS service)*
- the *Octopus EIS BIR service*; and
- the *Octopus Eureka EIS service*.

3.2 The *brochures* and *BIR supplement*, if applicable which relate to each of the *EIS services* describe how each of these work in detail, and the services we provide in respect of each of them. Your duly completed *application form (or application forms)* will specify the particular *EIS service* you have selected and therefore which of these services you wish to receive from us.

3.3 Your *EIS service* is designed to invest your *portfolio* in *qualifying investments*. However, you should note that we are unable to give any guarantees or assurances that such investments are, or will remain, *qualifying investments*.

3.4 The assets held within your *portfolio* will be held by Octopus either through its *nominee company* or through an *eligible custodian* (which may depend on the nature of the investment in question). Any cash within your *portfolio* will be held by Octopus through its *approved bank*. These arrangements are explained further in clauses 20 and 22 of these *terms*.

3.5 For the avoidance of doubt, where we make any further reference in these *terms* to the *application form* or the *brochure* – this is a reference to those specific documents that apply to your *EIS service*.

Important regulatory information

4. YOUR STATUS AND OUR STATUS

4.1 We have categorised you as a *retail client* in accordance with the *FCA rules* and you should be aware that this categorisation generally attracts the highest level of protection under the financial services regulatory regime in the United Kingdom. You have the right to request a different client categorisation and we will always consider your request, although we are not bound to accept it. If we do accept your request, you will lose the protection afforded to you as a *retail client* under the regulatory regime in the UK.

4.2 Octopus is incorporated in England and Wales with company number: 03942880 and our registered office is at: 33 Holborn, London EC1N 2HT.

Octopus is authorised and regulated in the United Kingdom by the Financial Conduct Authority under Firm Reference Number: 194779. Details of our registration can be located via the FCA's website at fca.org.uk. The FCA's current address is: 25 The North Colonnade, London E14 5HS.

5. WHAT IF I CHANGE MY MIND?

- 5.1 We understand that circumstances can change, but once your application has been submitted we can't cancel it. If you change your mind after you've sent us your application, let us know as soon as possible. We can't guarantee, but we will try to return your funds less any fees and expenses we incur to you if you contact us before your cash is invested.

6. WHAT YOU SHOULD DO IF YOU HAVE A COMPLAINT

- 6.1 We pride ourselves on delivering a first-class service to our clients, but we recognise that there are times when things go wrong, and we may fall short of your expectations. If you have a complaint, you can contact us by phone on: **0800 316 2295**, by email to complaints@octopusinvestments.com or in writing to The Complaints Manager, Octopus Investments, 33 Holborn, London EC1N 2HT. You can ask us for a copy of our complaints-handling procedure at any time.
- 6.2 Complaints that we are unable to settle may be referred to the Financial Ombudsman Service ("FOS"). The FOS is an independent service set up to resolve disputes between customers and businesses providing financial services. The FOS can be contacted at: Exchange Tower, London E14 9SR and further information about the FOS may be found at financial-ombudsman.org.uk.

7. THE FINANCIAL SERVICES COMPENSATION SCHEME

- 7.1 We are a participant in the Financial Services Compensation Scheme (the "FSCS"). As a *retail client* you may be eligible to claim compensation from the FSCS in certain circumstances if we, any *approved*

bank, our *nominee company* or *eligible custodian* are in default. Most types of investment business are covered in full for the first £50,000 of any eligible claim. Not every investor is eligible to claim under this scheme: for further information please contact us, or the FSCS directly at fscs.org.uk.

Communications

8. OUR COMMUNICATIONS WITH EACH OTHER

- 8.1 We will communicate with you in English. All of our documentation and any other information that you receive from us will be in English.
- 8.2 Save for those instructions mentioned in clause 8.3 which must be made in writing, you can give us instructions in relation to the provision of our services either in writing or by telephone. Our telephone lines that are used for receiving instructions may be recorded. We will not usually accept instructions from you by fax or email. We will only act on such instructions at our discretion, where we believe that the instruction is genuine.
- 8.3 In all circumstances, instructions concerning changes to the important information which we hold about you must be given in writing. This information includes: your address details; your bank details; and any instructions to withdraw money or investments from your *portfolio*. If you have any queries about how you should be communicating certain information to us you can phone us on: **0800 316 2295**.
- 8.4 We are entitled to rely upon the information provided by you, unless we are aware that the information is manifestly out-of-date, inaccurate or incomplete. This includes information contained in your *application form* (or *application forms*). If you do not provide us with the information requested in the *application form*, or any further information requested by us, we may not be able to provide our services to you.

Operation of your EIS service

9. GRANT OF DISCRETIONARY AUTHORITY

- 9.1 By entering into this *agreement*, you as beneficial owner grant to us the exclusive right to manage your *portfolio* at our sole discretion and without prior reference to you or your *adviser* and to select and manage investments which correspond, or appear to correspond, with the objectives and principles of your *EIS service* as set out in the *brochure* and the *BIR supplement*. We will, normally acting as your agent, have complete discretion to buy, sell, retain, convert, exchange or otherwise deal in investments and other assets of your *portfolio*, make and withdraw deposits, execute contracts, deeds and documents, apply for issues and offers for sale and accept placings, underwritings and sub-underwritings of any investments, effect transactions on any markets or exchanges, negotiate and execute counterparty and account opening documentation, take all routine or day-to-day decisions and otherwise act as we think appropriate in relation to the management of the *portfolio*, but subject always to the provisions of our agreement. In accordance with the brochure and the *BIR supplement*, we will acquire investments for your portfolio which we reasonably believe at the time of acquisition to be *qualifying investments*.
- 9.2 If you participate in the *Octopus EIS*, *Octopus EIS BIR* or *Octopus Eureka EIS services*, you retain beneficial ownership in the underlying investments in your *portfolio* even though such investments will be registered in the name of the *nominee company* or other custodian on your behalf to whom notices of general meetings and other investor communications will be sent. We will not normally notify you of any such investor communications, particularly those of a routine or recurring nature. We may, but we need not, seek your instructions as to how we should vote on any resolutions put to members of investee entities within your *portfolio* where we consider the resolution in question to be of material importance to your *portfolio*. In addition, if you notify us in writing of a wish to be consulted in respect of any such material matters, we will use reasonable endeavours to consult you and to vote in accordance with your instructions where we deem it practical to do so, but we shall not be in breach of any provision of our *agreement* by reason of any failure so to consult.
- 9.3 There is no restriction on the amount invested in any single investment, or on the proportion of your *portfolio* in any single investment, or any particular type of investment, or on the markets on which transactions are effected, unless otherwise specified in the *brochure* and the *BIR supplement*. You should note that if we sell *qualifying investments* on your behalf, there may be tax consequences about which you should speak to your *adviser*.
- 9.4 You grant to us the right (following your initial investment or any further investments) to hold your uninvested cash in either:
- a money market fund pending investment.
 - an offshore custodian account, if your *EIS service* is the *Octopus EIS BIR service*.
- 9.5 You acknowledge receipt of and confirm your understanding of the *brochure* and the *BIR supplement*, if applicable and the risk factors set out in these and acknowledge and agree that we have not provided you with advice about the suitability of this product for your requirements.
- 9.6 You warrant that the cash and assets subject to our management under the *agreement* belong to you and shall at all times belong to you and remain free from any charge, lien, pledge or encumbrance (this means that there are no third parties who could claim any rights over such cash and assets), that you have legal power and authority to enter into and be bound by the *agreement*, and that all information that you have provided to us (including the information provided in your *application form(s)*) is true, accurate and complete in all material respects and you have not omitted any information which may be material in respect of your *EIS service*. We will have no responsibility or liability to you if such information is untrue, inaccurate or incomplete in any material way (save in the case of our own negligence, wilful default or fraud). You

agree to notify us in writing as soon as reasonably practicable if any information you have provided needs to be updated or is no longer correct.

- 9.7 You acknowledge that the investment objectives and restrictions applicable to your *EIS service*, as set out in the *brochure* and the *BIR supplement* will not be treated as breached as a result of events or circumstances beyond our reasonable control.
- 9.8 You should be aware that the investments in your *portfolio* are unlikely to be classified as “readily realisable”. This means that it may be difficult or, in some cases, impossible to sell them. Subject as stated in clause 18.6, It is open to you to have your investments transferred to you should you wish to withdraw or if you wish to terminate your agreement with us.

10. OUR ROLE IS LIMITED – WE DO NOT PROVIDE INVESTMENT ADVICE

- 10.1 You acknowledge that Octopus does not give any investment or tax advice and we therefore recommend that you seek advice from your *adviser* or consult another financial adviser that is appropriately qualified and authorised to give investment advice. If we do provide you with information on particular investments, markets (such as market trends), or the performance of selected companies, this should not be viewed as a personal recommendation or advice and is provided strictly for your information only.
- 10.2 You acknowledge that Octopus has no responsibility for monitoring any on-going service which may be provided by your *adviser*.
- 10.3 You acknowledge that other than in respect of our obligations under the *agreement* we are not responsible for providing you, and we have not provided you with any investment advice, any tax advice, or personal recommendations in respect of your *portfolio* or in relation to your decision to invest. We shall not be liable for any losses you suffer or incur as a result of acting or deciding to act on the advice or recommendation of any third party (including your *adviser*) in relation to our services.
- 10.4 You acknowledge that it is your responsibility (or the responsibility of your *adviser*) to keep your financial circumstances, objectives and appetite for risk under review, and to assess whether your *EIS service* remains suitable for your needs.
- 10.5 We reserve the right not to accept your application if you have not received advice from an *adviser* who is suitably qualified and authorised.
- 10.6 If the relationship between you and your *adviser* ceases to exist for any reason, we would strongly recommend that you appoint a new *adviser* to ensure that your *EIS service* remains suitable for you.
- 10.7 If you choose to cancel your *adviser's* ongoing service you don't have to terminate your *EIS service*. However, you should note that we reserve the right to charge you an additional fee to reflect the additional cost to us in providing the service in such situations.

11. OPENING YOUR INVESTMENT ACCOUNT AND COMMENCING YOUR EIS SERVICE

- 11.1 We will only start to provide your *EIS service*, and our agreement will commence, once we have received your duly completed *application form* (or *application forms*), have successfully and to our satisfaction undertaken the customer due diligence checks required by the *applicable rules*, confirmed acceptance of your application (or *application forms*) and have received your cleared funds. We reserve the right not to accept any application (or *application forms*) where to do so may lead to a breach of the *applicable rules*. With this in mind, we will not accept any transfer of funds into your *portfolio* until we have completed to our satisfaction the customer due diligence checks required by the *applicable rules*.
- 11.2 The customer due diligence procedures referred to in Clause 11.1 above include requiring proof of your identity and of your address. We may undertake an electronic search for the purposes of verifying your identity and address. To do so, we may check the details you supply against your particulars on any database (public or otherwise) to which we

have access. We may also use your details in the future to assist other companies for verification purposes. A record of this search will be retained. If we cannot verify your identity, we may ask you to provide, among other things, a recent, original bank statement and an original HMRC Tax Notification, or a copy of your passport certified by a bank, solicitor or accountant or a client verification certificate from your *adviser*. By accepting the *agreement*, you consent to Octopus carrying out the checks referred to in Clause 11.1 above, and you agree that we may pass on such information as we consider necessary to comply with any such regulatory requirements.

- 11.3 We will acknowledge receipt of your application by return post. Once your funds have cleared in your account, we will begin the investment process in accordance with the timescales indicated in the *brochure* and *BIR supplement*, if applicable. However as this is a discretionary service you should note that we have the flexibility to invest your funds as and when we consider appropriate and therefore your funds may not at all times be fully invested.
- 11.4 We will accept the transfer of your existing investments from another investment manager in cash. We are not usually able to accept 'in specie' transfers. If you want to transfer investments from another investment manager you will need to complete a transfer of authority form and return it to us. We can't accept any responsibility for losses incurred or delays caused in the transfer or payment of proceeds to us.

12. REPORTING TO YOU

- 12.1 You can call us at any time to check the progress of your *portfolio*. We will provide you with a *portfolio* valuation report twice a year, but you can ask us to send you a valuation at any time. This report will contain the cost, current value and dividends of all holdings within your *portfolio*.

The report will also show the performance of your *portfolio* over the reporting period. Due to the relatively illiquid nature of the investments to be held in your *portfolio*, the performance of

the investments held within your *portfolio* will not be measured against a relevant benchmark. All investments in your *portfolio* will be valued at close of business on the last *business day* of the reporting period in question, at a price which is, in our opinion, a reasonable valuation as at that date. Periodic statements will also show income and interest credited to your *portfolio*, fees charged and transactions made within the period.

Fees and Charges

13. CHARGES – GENERAL

- 13.1 How you are charged in respect of our services may depend on when the advice to invest in your *EIS service* was given.
- 13.2 The 'Product charges and fees' section below outlines the charges that are payable by you to us.
- 13.3 The 'Your adviser's charges' section below outlines the charges that may be payable to your *adviser* either as a commission payment or separate *adviser* charge.

14. PRODUCT CHARGES AND FEES

- 14.1 You shall pay the fees and charges applicable to our services as set out in the *application form(s)* and/or *brochure* and *BIR supplement*. Fees and charges will be charged with appropriate taxes applied, eg VAT.
- 14.2 An *annual management charge* will be deducted and you authorise us to make such deduction from any cash in your *portfolio* at such intervals as stated in the *application form* and/or *brochure*. In circumstances where there are insufficient monies available to meet our *annual management charge*, then we may at our discretion elect either:
- (a) to roll this up interest free to be deducted proportionally across the *portfolio* on a later occasion when sufficient monies may be available to cover such *annual management charge*, whether such monies are derived from dividends, investment liquidity events, additional investments made by you or otherwise; or

(b) liquidate a sufficient amount of assets proportionally across the *portfolio* in order to meet such fees and charges.

14.3 Initial charges and performance fees may also apply to your *EIS service*, full details of which are set in the *application form(s)* and *BIR supplement* and/or *brochure*.

15. YOUR ADVISER'S CHARGES

15.1 Your *adviser* will have disclosed to you the total charges that relate to the advice that they gave you to invest in your *EIS service*. How you pay for your *adviser's* services may depend on when the advice to invest in your *EIS service* was given.

15.2 Your *adviser* will be paid for their advice by separate *adviser* charges rather than as a portion of the *annual management charge*. If you would like us to facilitate the payment of your *adviser's* charges on your behalf you will need to complete the relevant section of the *application form*.

15.3 Any initial *adviser* charges will be deducted from the amount of cash that you subscribe before the balance is invested in your *portfolio*. The amount taken will be agreed between you as the investor and your *adviser*.

15.4 If you have agreed to pay for your *adviser's* charges on an ongoing basis, we will continue to facilitate the payment of your *adviser's* ongoing charges until you give us further instructions.

15.5 You are entitled to withdraw your consent to us facilitating your *adviser's* charges at any time by letting us know in writing. We will stop calculating the *adviser* charges as soon as we receive your instruction, but please note that we cannot backdate any instruction to stop paying your *adviser's* charges: your instruction to cease facilitating your *adviser's* charges will be valid only from the date we receive it, and we will assume that your *adviser* is entitled to receive the charges that you have authorised up to the date that you withdraw your authorisation, and we will make arrangements to pay any accrued *adviser* charges from your *portfolio*. Once we have processed the

charge and paid your *adviser*, we can't recover it, so you will need to take the matter up directly with your *adviser*.

15.6 If you change your *adviser* and want us to start paying charges to your new *adviser* you will need to let us know in writing. As above, we will stop calculating your previous *adviser's* charges as soon as we receive your instruction. Your new *adviser's* charges will start accruing from the date that we receive your instruction.

15.7 If you cancel your *adviser's* ongoing service you also need to tell us to cease debiting your *portfolio* to pay your *adviser's* ongoing charges.

15.8 If you choose to cancel your *adviser's* ongoing service you don't have to sell your investments. However, you should note that we reserve the right to charge an additional fee as referred to in clause 10.7.

16. OTHER CHARGES

16.1 Your *application form(s)* and/or *brochure* will set out all of the fees and charges that may apply to your *portfolio* that are not otherwise referred to above.

17. DEALING

17.1 When we execute orders on your behalf whilst carrying out the management of your *portfolio*, we are required to take all reasonable steps to achieve what is called 'best execution'. We maintain a document which sets out our best execution policy (which is known as our "*order execution policy*") and is in accordance with our obligations under the *FCA rules*. Our *order execution policy* is available on our website at [octopusinvestments.com](https://www.octopusinvestments.com), or you can ask us to send you a copy.

17.2 For the avoidance of doubt, by accepting the *agreement*, you consent to our *order execution policy* and you agree that we or any of our *associates* may trade outside a regulated market or multi-lateral trading facility ("MTF"). In the event that we engage in trading outside of a regulated market or MTF you should note that terms equivalent to regulated markets and/or MTFs may not apply and there is a risk that your *portfolio*

may be exposed to counterparty risk. You also acknowledge that any specific instructions you may give us about the execution of orders in respect of your portfolio may prevent us from acting in accordance with the *order execution policy* and from achieving best execution.

- 17.3 We may aggregate the orders for your *portfolio* with those of other customers, associates or persons connected to us, but only in accordance with the *applicable rules*. It is likely that the effect of such an allocation will not work to your disadvantage however, occasionally this may not be the case. We will allocate aggregated transactions promptly and on a fair basis, in accordance with the requirements of the *applicable rules*.
- 17.4 You should be aware that for the *Octopus EIS service* and *Octopus EIS BIR service* we are the only execution venue through which investments may be bought and sold for your *portfolio*. In addition, in respect of the *Octopus Eureka service* we are the only execution venue available for a substantial number of transactions carried out for your *portfolio*. Please refer to our *order execution policy* for further information.

18. WITHDRAWALS

- 18.1 Subject as stated in clause 18.6 you are entitled to withdraw the assets and/or cash from your *portfolio* at any time by giving us written notice. Upon receipt of a withdrawal notice we will, as promptly as possible, transfer to you the cash and/or assets that you wish to withdraw. Please be aware that you may lose your entitlement to certain tax reliefs where you withdraw your investments.
- 18.2 If, rather than having your assets transferred to you as provided in clause 18.1, you would prefer that we sell your investments on your behalf and, assuming your investments can be sold, transfer to you the sales proceeds, then you must provide us with written instructions to that effect. We will pay the sales proceeds less any amounts you may owe us and your adviser into your nominated bank account.
- 18.3 Where you instruct us to sell the assets in your portfolio you should be aware that investments may not be readily marketable and the timing of any sale cannot be predicted. In the normal course of events investments in *AIM* companies are usually realised within 10 *business days*, however you should be aware that large transactions may take longer. In the event that we are unable to sell your investments within six months of your instructions then we reserve the right to transfer them to you.
- 18.4 Where you elect to withdraw or transfer investments, third party administration and/or custody fees and costs may apply. If you fully withdraw funds from any of your *portfolios* we may deduct our *annual management charge*, any applicable performance fees, and any accrued *adviser charges* prior to making the payment.
- 18.5 Once we have fully withdrawn your investments we will keep your *portfolio* open for 2 months to allow for any interest to be paid. At this point we will transfer any further proceeds into your nominated bank account. Any dividends that are received after this point will be paid to your nominated bank account within one month of receipt.
- 18.6 Our ability to effect a transfer of an asset to you so as to enable a withdrawal may be subject to conditions specific to the underlying asset in question, such as a requirement for you to execute a deed of adherence to underlying shareholders' agreements and any requirements for third party approvals beyond our control. While we will make every reasonable effort to facilitate such transfer and withdrawal of assets, it cannot be guaranteed and all references to withdrawal and transfer of assets in these *terms* are to be interpreted as subject to this important qualification. If, notwithstanding our reasonable efforts we are unable to effect any such transfer or withdrawal, we may instead at our sole discretion on your behalf arrange for a sale of the assets beneficially held by you, including by way of sale at a discount to their current valuation where in our reasonable view there is no practical alternative. Such a sale

may be made to us, to the underlying investee entity or to a third party selected by us.

19. WHAT HAPPENS WHEN AN INVESTOR DIES

- 19.1 In the event of receiving notification of your death we will manage your *portfolio* on a *care and maintenance* basis. No instructions will be accepted in relation to the withdrawal of funds from the *portfolio* until title to it has been established at our discretion, at which point your personal representatives may instruct us to sell, transfer or otherwise dispose of your investments.
- 19.2 We will continue to deduct our *annual management charge* from your *portfolio* for managing your *portfolio* on this basis and for dealing with any arrangements concerned with your death, including (without limitation) closing your account with us.

20. DELEGATION AND USE OF AGENTS

- 20.1 We may delegate any of our functions under these *terms* to a third party of our choosing which is competent (and if relevant, appropriately regulated) to perform such functions. We will give you written notice of any such delegation which involves the exercise of our discretionary investment management powers and will not, without your consent in writing, delegate the whole or substantially the whole of such powers.
- 20.2 We will act in good faith and with due diligence in the selection, use and monitoring of third party delegates.
- 20.3 We may from time to time change or amend the terms of the relationship with an *eligible custodian*, including replacement thereof but such terms shall never be more onerous on you than those we presently have without your consent in writing.
- 20.4 We will use reasonable skill and care in our selection, monitoring and use of agents.

21. CONFLICTS OF INTEREST

- 21.1 We have a conflicts of interest policy (known as our "*conflicts policy*") that sets out the types of actual or potential conflicts of interest which

affect our business and how these are managed. You acknowledge that you have read the current version of our *conflicts policy* which is available on our website, or you can ask us for a copy.

Our *conflicts policy* may be updated from time to time.

- 21.2 Some of the situations where a conflict of interest may arise include the following:

- Where we are likely to make a gain (or avoid a loss) at the expense of one of our clients;
- Where our interest in an outcome is different to our clients';
- Where we may have an incentive to favour the interests of one of our clients over another;
- Where we carry on the same business as our clients, and
- Where we receive an inducement from one client in relation to the services provided to another client.

- 21.3 You agree that we or any *associate* may effect transactions in which we or an *associate* has directly or indirectly a material interest or a relationship of any description with another party which involves or may involve a potential conflict with our duty to you. We shall ensure that such transactions are effected on terms that are not less favourable to you than if the conflict or potential conflict of interest had not existed. Subject to the terms of our *conflicts policy* and subject to any contrary obligation under the *FCA rules* neither we nor any of our *associates* shall be required to account to you for any profit, commission or remuneration made or received from or by reason of such transactions.

- 21.4 It is likely that the trading activities of the entities in which your *portfolio* invests will include dealings with companies and other entities (and in the securities of such companies and entities) in which we or a member of our group (including any *associate*) or any client advised by us may have an interest. Such interests may include,

without limitation, equity investments and/or debt investments and/or our interest as a service provider. Dealings may include the provision of credit facilities on preferred or subordinated terms. Accordingly, we or any member of our group (including any *associate*) may be entitled to gains, profits or fees from or in relation to such companies and entities. Details of conflicts of interest which affect specific products are given in the relevant product brochure.

21.5 Any additional monetary benefits not otherwise referred to above which we might receive from any third parties in the course of providing our services to you will be paid into your *portfolio*.

Holding your assets and your money

22. MONEY

- 22.1 Octopus holds cash in your *portfolio* as “client money” in accordance with the applicable *FCA rules*. Amongst other things, this is intended to ensure that your money is held so that it is segregated from our own funds.
- 22.2 However, your money may be pooled with money belonging to other clients, which means that you would not have a claim against a specific sum in a specific account. In such circumstances any claim which you might have would be against the client money pool in general.
- 22.3 We will deposit your money with an *approved bank* to be held on trust in a pooled account, separate from any account used to hold money belonging to us in our own right. Whilst we take due skill, care and diligence in selecting *approved banks*, we do not accept any liability for any act, omission or default on their part.
- 22.4 To the extent that the Bank of England base rate is above 1%, you will receive interest on uninvested cash held in your *portfolio* at the rate of the Bank of England base rate less 1%. Interest will accrue daily and be paid monthly. You will have no entitlement to receive interest in respect of any month where the Bank of England base rate is at or less than 1%
- as at 3pm on the last working day of the relevant month. To the extent that the interest rates agreed with approved banks exceed the Bank of England base rate less 1%, we will retain the difference. Where interest is payable it will be treated as client money in accordance with the *FCA rules*.
- 22.5 If the *approved bank* holding your money becomes insolvent, the nature of any claim that we might have would be an unsecured claim on behalf of all our customers with an interest in the pooled client account. If there is a shortfall, our clients may share that shortfall in proportion to their original share of cash in the pool.
- 22.6 If your *EIS service* is not the *Octopus EIS BIR service* you agree that your money may also be placed in a qualifying money market fund and in such case your money will be held in accordance with the *FCA rules* on custody and not client money. You should notify us in writing if you do not wish to place any of your money in such a fund.
- 22.7 We may cease to treat your money as “client money” and donate it to a charity of our choice where we have held the balance for at least six years following the last movement on your account (disregarding any payment or receipt of interest, charges or similar items) provided we have made reasonable steps to trace you before doing so. Where we have paid away client money in these circumstances we will unconditionally undertake to reimburse you if you seek to claim the balance in the future, other than where the amount we have paid away (and the aggregate balance of money allocated to you) is £25 or less. This undertaking shall be retained by us indefinitely and legally enforceable by any person with a legally enforceable claim to the balance at the time it was released, or by an assign or successor in title to such claim.
- 22.8 We may transfer your client money to a third party as part of transferring all or part of our business where the money relates to the business being transferred and either: i) the sums transferred will be held by the person to whom they are transferred in accordance with the *FCA rules*

on client money; or ii) if not held in accordance with such rules, we will exercise all due skill, care and diligence in assessing whether the person to whom the money is transferred will apply adequate measures to protect those sums; or where the amount of your money is £25 or less if the terms of the business transfer will require the other person to return your money as soon as practicable at your request.

22.9 Client money may be transferred to third parties for the purposes of settling transactions in accordance with the *applicable rules*.

23. ASSETS

23.1 Assets held on your behalf, including any investment certificate or other documents which evidence title to assets held within your *portfolio* (including any documents of title to investments in bearer form) will be registered in the name of our *nominee company* or, if applicable, our appointed *eligible custodian*. We will, in accordance with the *FCA rules* keep records to show the beneficial owner of the assets.

23.2 Where we appoint an *eligible custodian* to hold your assets, whilst we will take due skill, care and diligence in the selection and monitoring of such *eligible custodian*, we do not accept any liability for any act, omission or default on the part of such *eligible custodian*.

23.3 Your assets will be held in a pooled account which means that whilst your assets should be held in such a way that it is readily apparent that they do not belong to us, our *nominee company* or, if applicable, an *eligible custodian*, your individual holdings and entitlements may not be identifiable by separate certificates, physical documents or equivalent electronic records on the register. In the event of an irreconcilable shortfall following any loss by or default by us, our *nominee company* or an *eligible custodian*, you may not receive your full entitlement and may have to share in a proportion of the shortfall.

23.4 Where assets are pooled with third parties, distribution of entitlements to any benefits or

entitlements arising from corporate events will be allocated pro rata. Fractions of entitlements arising from this process will be rounded down to the nearest whole unit or share.

23.5 Our *nominee company*, or if applicable, an *eligible custodian*, as soon as reasonably practical, will claim and account for all dividends, interest and other payments or entitlements received in relation to investments in your *portfolio*, but is entitled to deduct or withhold any sum on account of any tax required to be so deducted or withheld and provide you with evidence of such deduction or withholding for your tax records.

23.6 We may (where this is market practice) use the services of a clearing system (being any market clearance facility, settlement system, dematerialised book entry system, centralised custodial depository or similar facility, system or depository) on such terms as we believe to be appropriate, for the purposes of holding and transferring uncertificated investments.

23.7 You agree that it may be necessary for your assets to be held by a counterparty or sub-custodian which may be located outside of the EEA. In such circumstances, the legal and regulatory regime applying to the counterparty or sub-custodian in the name of which your assets are held will be different from that of the UK or other EEA states and in the event of a default of the counterparty or sub-custodian, assets may be treated differently from the position which would apply if the assets were held in an EEA state.

23.8 You authorise us to act on your behalf and exercise all rights (including voting rights) attaching to assets held in your *portfolio* as we shall deem fit and at our discretion subject at all times to our duties and obligations under the *applicable rules*.

23.9 We may divest ourselves of any unclaimed asset of yours by i) either liquidating the asset at market value and paying away the proceeds or ii) paying away the asset itself, in either case to a registered charity of our choice. We may only take such action where we have held the asset for at least 12 years and in the 12 years prior to such

divestment we have not received instructions relating to any assets from or on behalf of you and provided we have made reasonable steps to trace you before doing so. Where we have divested your asset in these circumstances we will unconditionally undertake to pay you a sum equal to the value of the asset at the time it was liquidated or paid away if you seek to claim the asset in the future. This undertaking shall be retained by us indefinitely and legally enforceable by any person with a legally enforceable claim to the balance at the time it was released, or by an assign or successor in title to such claim.

General

24. VARIATION AND ASSIGNMENT

- 24.1 Subject to clause 24.2, these *terms* may only be amended by the parties as agreed in writing from time to time.
- 24.2 We may, at any time, change these *terms* by giving you written notice (including for the avoidance of doubt, as regards our fees and charges or the level of service provided under your *EIS service*) for any of the following reasons:
- (a) to make them fairer or more easily understandable, or to correct a mistake (provided that this correction would not adversely affect you);
 - (b) to respond proportionately to changes in the *applicable rules* or the decisions of any relevant regulatory authority;
 - (c) to reflect new industry guidance and codes of practice;
 - (d) to reflect a change in technology, to cover an improvement or change in the way in which we provide your *EIS service*;
 - (e) to reflect a change in market conditions or the overall cost of providing our services to our clients; or
 - (f) to reflect other legitimate cost increases (or reductions) associated with providing your *EIS service*.
- 24.3 You will be given at least 30 days' prior notice in respect of any changes to these *terms*, unless the specific circumstances require a shorter or longer period (including, without limitation, where required to do so under the *applicable rules*).
- 24.4 We may assign this *agreement* to any appropriately authorised and regulated person, such assignment being effective upon written notice to you. The *agreement* is personal to you and you may not assign it.

25. TERMINATION

- 25.1 Should we wish to terminate these *terms*, we may do so by giving you not less than 30 days' prior notice. Where required to do so by the *applicable rules* or where it becomes impossible, impractical or unreasonable for us to continue to manage your *portfolio*, we may terminate these terms immediately, in which case you will be notified in writing. In such circumstances we will, subject to clause 18.6, make arrangements to either transfer the assets in your *portfolio* to you, appoint another investment manager in our place in accordance with clause 24.4, or arrange for the sale of the assets you beneficially hold in accordance with clause 18.6.
- 25.2 We will terminate your *portfolio* if it is inactive after 2 months, where there is a nil balance in the *portfolio*.
- 25.3 If you wish to terminate your *portfolio* you should notify us of your wish to do so in writing. Subject to clause 18.6 and clause 25.4, your *portfolio* will be closed as soon as practically possible after we receive your written notice. Please be aware that any transactions already initiated before we receive your instructions will be completed, and that we can't transfer, or sell the assets within your *portfolio* until all amounts due to us have been paid, and you provide us with written instructions confirming what you would like us to do with your *portfolio* investments and cash, including, whether you

would like us to sell your investments or whether you would like us to transfer the investments and cash to you (see clause 18). Please note that if *qualifying investments* are sold, or otherwise disposed of, you may lose any potential entitlement to the tax reliefs to which such investments are subject. The *brochure* and the *BIR supplement* contains more information about this.

25.4 The *agreement* will continue to apply until all outstanding transactions and liabilities have been completed and discharged. Please note that where we are required to sell investments held in your *portfolio*, this may take place over an extended period of time as there may be limited liquidity in respect of the investments in your *portfolio*. In addition you should be aware that if we are required to sell investments in your portfolio, we cannot guarantee that we will be in a position to obtain the best result for you in accordance with our *order execution policy*.

25.5 After all outstanding transactions have been completed, we will provide you with a closing valuation of your *portfolio* prepared in the manner described above. Our responsibility for managing your *portfolio* and providing your *EIS service* will then cease entirely.

25.6 On termination, you will be liable to pay (and we may debit from your *portfolio*):

- (a) all fees and other charges mentioned at clauses 13 -16 above, accrued daily up until the date of termination;
- (b) any additional expenses necessarily incurred by us in liquidating your *portfolio*, closing out any transactions or settling or concluding outstanding obligations incurred by us on your behalf; and

25.7 our charges in connection with transferring or registering your portfolio into your name or as you may direct.

25.8 On termination, we may retain and/or realise such investments as may be required to settle transactions already initiated and to pay your

outstanding liabilities. If there is a dispute as to the payment of fees to us, you may require the disputed amount to be held in an escrow account pending resolution of the dispute.

25.9 You should be aware that if on termination we are required to liquidate your *portfolio*, we cannot guarantee that we will be in a position to obtain the best result for you in accordance with our *order execution policy*.

25.10 Termination will not affect accrued rights, or any contractual provision intended to survive termination.

25.11 On termination, we may retain and/or realise such assets within your *portfolio* as may be required to settle transactions already initiated and to pay your outstanding liabilities. If there is a dispute as to the payment of fees to us, you may require the disputed amount to be held in an escrow account pending resolution of the dispute.

26. DATA PROTECTION AND CONFIDENTIALITY

26.1 We may collect, use and store personal information about you and about your relationship with us and our *associates* – including products and services you have purchased and use.

26.2 If you contact us we may keep a record of that correspondence and we may keep copies of any documents that you provide to us including any documents provided for verifying your identity such as your passport or driving licence.

26.3 We may use the information we collect about you for processing your application, verifying your identity, meeting our obligations under any *applicable rules*, providing the services to you under the *agreement*, administering your account and for customer service, product analysis and market research purposes.

26.4 We may share your information with our *associates* if they provide products or services to you, credit reference agencies and UK and overseas law enforcement agencies or regulatory authorities and other relevant bodies.

26.5 The information that we hold about you is confidential and will not be used for any other purpose other than in connection with the provision of services to you, unless it is information that is already publicly available. This confidential information will only be disclosed to third parties in the circumstances described below:

- As stated in clause 26.4 above;
- Where required by *applicable rules*, or if requested by any regulatory or competent authority having control or jurisdiction over us;
- To investigate or prevent fraud, money laundering, terrorism or any other illegal activity;
- To any third party in or outside the European Union in connection with our services;
- For identity checks;
- If it is in the public interest to disclose such information; or
- At your request or with your consent.

26.6 You have the right, upon payment of a reasonable fee (currently £10), to receive a copy of the information that we hold about you to the extent that it constitutes personal information. For more details, please write to our Compliance Officer at 33 Holborn, London EC1N 2HT.

26.7 Unless you have told us otherwise, we may send you information about our other products and services or those of our *associates* from time to time. We may provide this information by telephone, post, email, text message or other means. If you would like to stop receiving this information, please contact us at **comms@octopusinvestments.com, 0800 316 2295**, 33 Holborn, London EC1N 2HT.

27. OUR LIABILITY

27.1 For the avoidance of doubt, nothing in these *terms* or the *agreement* is deemed to limit any liability we may owe you under the *applicable rules* (including

for the avoidance of doubt, *FSMA*, any regulations made under *FSMA* or the *FCA rules*).

27.2 We will act in good faith and with due diligence in managing your *portfolio* in accordance with the *agreement*. We accept responsibility for loss to you only to the extent that such loss is due to our negligence, wilful default or fraud.

27.3 Subject to clause 27.2 above, we will not be liable for any loss in value which your *portfolio* suffers, or for our failure to perform investment transactions for the account of your *portfolio*, in the event of any failure, interruption or delay in the performance of our obligations resulting from acts, events or circumstances that are not reasonably within our control. Acts, events or circumstances that are not reasonably within our control, may for example, include: the acts or regulations of any governmental, supranational body or authority; breakdown, failure or malfunction of any telecommunications or computer service or services; disruptions to stock markets (for example, our ability to deal on stock markets); and acts of war, terrorism, civil unrest or natural disaster.

27.4 Subject to clause 27.2 above, we accept no responsibility for any loss of tax benefits that you may suffer as a result of any transactions that we carry out for your *portfolio*. In addition we shall not be liable for any loss or damage of any direct or indirect nature caused by the retraction, by HM Revenue & Customs of the *EIS* status and/or *BIR* status of any holdings within your *portfolio* (or for failure to grant *EIS* status and/or *BIR* status), or for any other changes in legislation or in the interpretation of any legislation by HM Revenue & Customs, or from corporate action or inactivity.

27.5 Where we are liable to you under this agreement, subject to the provisions above, our liability shall be limited to the replacement of the assets or cash held in your *portfolio* (including interest) lost or foregone as an immediate result of our action or failure to act. We will not be liable for any consequential, indirect, special, incidental, punitive or exemplary loss, liability or cost which you may suffer or incur arising out of our acts or omissions,

however that loss, liability or cost is caused and regardless of whether it was foreseeable or not.

This means that we will not be liable for any losses that are indirectly associated with the specific incident which has caused you to claim (for example, loss you may incur from not being able to sell your investments where the prices of such investments are falling or from not being able to purchase investments where the price of investments are rising, loss which may arise from our not being able to complete transactions for your portfolio, loss of profits, loss of business or loss of data).

28. INTERPRETING THESE TERMS

- 28.1 The agreement is based on our understanding of current law and the applicable rules. It is governed by and is to be construed in accordance with English law. The English Courts have non-exclusive jurisdiction in respect of any claim between you and us.
- 28.2 Nothing in the agreement shall exclude or restrict any obligation which we may have to you under the applicable rules.
- 28.3 Neither party intends any provision of our agreement to be enforceable by any person other than themselves or their permitted successors or assigns unless provided expressly to the contrary under the agreement. Save as otherwise provided under this clause, a person who is not a party to the agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

- 28.4 If any part of the wording of these terms will become or is declared to be illegal, invalid or unenforceable for any reason, such part or wording will be deleted and will be divisible from the rest of these terms, which will continue in force. Our failure to exercise or delay in exercising a right or remedy provided by these terms or by law does not constitute a waiver of other rights or remedies.

29. NOTICES

- 29.1 We may send any communications to you at the address which you provide to us in the application form (or to any other address that you may notify to us in writing from time to time). You may communicate with us at: **Octopus Investments Limited, 33 Holborn, London EC1N 2HT.**

Notice sent by first class post is deemed to have arrived on the second business day after posting. Notice sent by fax or email or hand delivered is deemed to be delivered immediately (or on the next business day if sent after 5pm on a business day or on a day which is not a business day). Our telephone number is: **0800 316 2295.**

Telephone calls may be recorded or monitored for our mutual protection.

Section 2 – Glossary

This section of the terms sets out the defined terms that are used throughout these terms.

Any reference in these terms to any statute, statutory provision, or rule (including, without limitation, a reference to the applicable rules) includes reference to any statutory modification, or amendment of it or any re-enactment, or replacement that supersedes it, and to any regulation or subordinate legislation made under it (or under such a modification or re-enactment).

References to these terms, the agreement, or to any other document shall include any permitted variation, amendment, supplement to, or replacement of, such document(s).

References to the plural shall include the singular and vice versa. Any reference to a person shall be to a legal person of whatever kind, whether incorporated or unincorporated.

Any reference to a “clause” is to a clause in these terms.

adviser: means the appropriately qualified and authorised investment adviser that you may appoint from time to time to provide you with investment advice.

agreement: the agreement between us as described in clause 1.1 and 1.2 of these terms.

AIM: the market of that name operated by The London Stock Exchange plc.

annual management charge: means the fee that we will take at the intervals set out in the *brochure* and/or *application form*. It is made up of the discretionary fee which is Octopus' fee for managing your *portfolio*.

approved bank: means HSBC Bank plc or such other bank, credit institution, or other regulated institution selected by us to hold client money in accordance with the *FCA rules*.

applicable rules: means the *FCA Rules*, *FSMA*, the *MLR* and the *DPA*, and all other applicable laws, regulations, rules, evidential provisions and the directions of any

applicable regulatory body (including, without limitation the *FCA*).

application form: means the separate document referred to in clause 1.1 that is applicable to your *EIS service*, which you need to complete in order to apply for your *EIS service*.

associate: means any holding, or subsidiary company of Octopus.

Bank of England base rate: means the rate that the Bank of England charges banks and financial institutions for loans with a maturity of one day as specified from time to time.

BIR: means Business Investment Relief, as introduced by the Finance Act 2012, set out in sections 809VA to 809VO of the Income Tax Act 2007 and available in certain prescribed circumstances to eligible individuals who have claimed the remittance basis of taxation (please review the BIR supplement for further definitions if this is applicable to you).

BIR supplement: means the separate document referred to in clause 1.1 that is applicable only to those investing in the *Octopus EIS BIR service*.

brochure: means the separate document referred to in clause 1.1 that is applicable to your chosen *EIS service*, published by us from time to time.

business day: means any day on which The London Stock Exchange is open for business.

care and maintenance: means administration services and selling down the holdings of deceased investors where, in the interests of prudent management, Octopus has decided to sell down all holdings in an investment across all portfolios. In such an eventuality, the sold down holdings of deceased investors will not be re-invested.

conflicts policy: the conflicts policy published by us from time to time and which is available on our website: octopusinvestments.com.

DPA: means the Data Protection Act 1998.

EIS: means the Enterprise Investment Scheme as set out in the Income Tax Act 2007 and Part IV and Schedule 5B of the Taxation of Chargeable Gains Act 1992.

EIS service: means the Octopus products referred to in clause 3.1 and further described in the relevant brochure for that product.

EIS relief: means Enterprise Investment Scheme tax relief as provided for in Part 5 of the Income Taxes Act 2007 and Part IV and Schedule 5B of the Taxation of Chargeable Gains Act 1992.

eligible custodian: means any third party custodian (including an associate) whom may be appointed by us from time to time to hold the assets and/or cash in your *portfolio*.

FCA: means the Financial Conduct Authority, which expression shall include any replacement or substitute and any regulatory body or person succeeding, in whole or in part, to the functions of the *FCA*; or any other relevant supervisory body.

FCA handbook: means the handbook of rules, and regulations and guidance issued by the *FCA*.

FCA rules: means the rules issued by the *FCA*, including (without limitation) the *FCA* handbook.

FSMA: means the Financial Services and Markets Act 2000.

MLR: means the Money Laundering Regulations 2007.

nominee company: means the Octopus nominee company appointed to hold assets in your portfolio.

Octopus EIS BIR service: means the *Octopus EIS service* that has been tailored to allow eligible individuals retail investors to access the *Octopus EIS service* using offshore funds for investment (please review the *BIR supplement* for further definitions if this is applicable to you).

Octopus EIS service: means the product referred to in clause 3.1 and further described in the relevant *brochure* for that product.

Octopus Eureka EIS service: means the product referred to in clause 3.1 and further described in the relevant *brochure* for that product.

order execution policy: the execution policy published by us from time to time and which is available on our website: octopusinvestments.com.

portfolio: means the portfolio of assets (including uninvested cash) subject to our management in accordance with the *agreement*.

qualifying investment: means a prescribed investment into a company which is a qualifying company for the purposes of *EIS* and/or *BIR* as the case may be.

retail client: has the meaning given by the *FCA Handbook*, being in summary, a categorisation prescribed by the *FCA* which may be applied to clients and which affords the highest levels of protection under the UK regulatory regime.

Intentionally left blank

Intentionally left blank

