

# OKTAWAVE TERMS OF SERVICE FOR BUSINESS USERS

("TERMS OF SERVICE")



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## DEFINITIONS

These Terms of Service define terms and conditions of entering into the Agreement and the rules of use of the Services provided by the Service Provider. The following capitalised words and phrases used in these Terms of Service will have the following meaning, unless the context expressly requires otherwise:

API	Application programming interface enabling the User to manage Services within the scope permitted by the Service Provider, with the use of external tools, including operations that may be performed in the User Account;
Pricing	Information on the prices of Services in a given availability region and the principles of determining the Fee. Separate Pricing is provided for Services in each availability region (current versions are available <a href="#">here</a> ) and is enclosed as Appendix no. 1 hereto, unless the Parties concluded a written agreement and agreed dedicated Pricing. Dedicated Pricing for the User applies to all availability regions, unless stipulated otherwise in writing or in documental form (other forms will be invalid). Other individual pricing arrangements (such as discounts, fixed prices, etc.) apply only to Services provided in the PL-1-WAW availability region, unless stipulated otherwise in writing or in documental form (other forms will be invalid).
Cloud	Organised ICT system composed of, without limitation, hardware, software, and telecommunications connections, enabling provision of services in the form of, without limitation, virtual applications, computational resources, database services, virtual servers, virtual disks, and private networks, intended for storage, sharing and processing of User Data, in accordance with technical conditions defined by the Service Provider;
Personal Data	Data referred to in Article 4(1) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
User Data	Any data, including images, sounds, text, software, transmitted or processed by the User through the Services, and in particular stored with the use of the Services;
Confidential Information	Details of agreements between the Parties concerning the execution and performance of the Agreement, and any and all materials, documents, and information accessible to the Parties, even indirectly, in relation to the execution or performance of the Agreement;
Tariff Units	A Service consisting of the readiness of the Service Provider to provide appropriate Services that enable Pre-Paid Users to use appropriate Services;
CC	Act of law of 23 April 1964 – the Civil Code;
User Account	A service, a platform enabling management of the Cloud access and use of other Services;
Validity Period	The period following the purchase of Tariff Units defined in the Pricing during which the User may use appropriate Services upon redemption of Tariff Units, however, not longer than the term of the Agreement;



Control Panel	Graphical interface for Cloud management available in the User Account through a web browser (compliant with the requirements defined in these Terms of Service);
Support	Standard technical support provided by the Service Provider electronically, by telephone or in other way, including answers to the User's questions deemed by the Service Provider as basic issues, or other support, in the scope directly related to the use of the Services and Cloud functions. The User may be offered an option to purchase separate service consisting of advanced support;
Terms of Service	This document with appendices that constitute its integral part, specifying the principles of Service provision by the Service Provider to the User, constituting an integral part of the Agreement; updated version of these Terms of Service is always available at <a href="https://oktawave.com/en/company/legal">https://oktawave.com/en/company/legal</a> , including in PDF file format;
Service Level Agreement for Business Users (SLA)	Agreement containing Service Provider's declarations as to the guaranteed Service level, enclosed as Appendix no. 2 to these Terms of Service;
Website	Content at <a href="http://www.oktawave.com">www.oktawave.com</a> and its subpages made available by Oktawave to Internet users without access restrictions; information provided by the Service Provider within the Website constitute an invitation to enter into an Agreement in the meaning of Article 71 CC; the Parties expressly exclude application of Article 66 <sup>1</sup> § 1-3 CC.
Parties	Jointly the Service Provider and the User;
Agreement	Agreement concluded between the Service Provider and the User, defining the rights and obligations of the User and the Service Provider with regard to the provision of Services on the principles determined in these Terms of Service;
Service	Services provided electronically as determined in these Terms of Service, consisting of the Service Provider providing to the User functionalities in the form of Cloud resources and the Support, the User Account and other functionalities or packages of services offered by the Service Provider, used by the User for the purposes of its business or professional activities;
Service Provider	Oktawave S.A. with its registered office in Warsaw, ul. Poleczki 13, 02-822 Warsaw, address for correspondence: Puławska 464, 02-884 Warsaw, entered in the Commercial Register of the National Court Register kept by the District Court of the City of Warsaw, 13th Commercial Division of the National Court Register under the number KRS 0000858468, NIP 5213633306; REGON 146197794; share capital PLN 5 397 410,00 (paid in full).



User	Entity having full legal capacity, excluding consumers, which is a party to the Agreement;
Post-Paid User	User that is a party to the Agreement, which must be in writing in order to be valid, not subject to the provisions of Chapter i of these Terms of Service;
Pre-Paid User	User that is a party to the Agreement which is concluded as stipulated in the Chapter i of these Terms of Service;
Fee	Fees charged by the Service Provider to the User as stipulated in the Agreement for the provision of Tariff Units / Services, as applicable, under the Agreement;
Access Suspension	Any situation where the Service Provider restricts User's access to the User Data, pursuant to the Agreement or the law, although User Data are still stored by the Service Provider.

## CHAPTER I – MATERIAL TERMS OF SERVICE PROVISION TO PRE-PAID USERS

### 1. AGREEMENT EXECUTION

- 1.1 The Service Provider provides Services to the User as stipulated in the Agreement.
- 1.2 Agreement execution occurs upon the following conditions being met jointly:
  - a. Registration through the registration form made available on the Website by the Service Provider;
  - b. Acceptance of these Terms of Service by checking in appropriate form that the User accepts these Terms of Service without modifications.
- 1.3 Acceptance of these Terms of Service by the User is equivalent to the User making a declaration that:
  - a. The User has read these Terms of Service and accepts all their provisions without any reservations, and thus enters into the Agreement;
  - b. Data contained in the registration form and statements made in these Terms of Service are true and correct;
  - c. Person who have accepted these Terms of Service on behalf of the User is appropriately authorised to represent the User;
  - d. The content of the Agreement is determined by these Terms of Service only, in particular the Agreement is not composed of any standard agreement or terms and conditions applied by the User.
- 1.4 Following Agreement execution the User may purchase Tariff Units for a Fee and they will entitle the User to relevant Services as specified by the Agreement and oblige the Service Provider to remain ready to provide such Services during the Validity Period.

### 2. SERVICE PROVIDER'S FEE

- 2.1. The Service Provider is entitled to a Fee for the sale of Tariff Units in the amount set out in the Pricing.
- 2.2. The User may purchase Tariff Units by paying the Fee in advance, by bank transfer to the bank account of the Service Provider, or by other payment scheme accepted by the Service Provider. The Service Provider may in particular offer a single click / one click payment based on the data that the User had provided on a different occasion. In such case such payment may be based on the data collected from the User in the course of a card authorisation for a prior transaction or upon account registration (depending on the current functionalities offered by the Service Provider). The User should



be aware that when the Service Provider makes single click / one click payments available, entering card details by the User may mean that the Service Provider will be able to use them, among other things, to facilitate the top-up process. The use of payment systems accepted by the Service Provider may require the User to enter into separate agreements, including with entities other than the Service Provider.

- 2.3. The Tariff Units purchased by the User are displayed in the User Account and are expressed in Polish zloty. Proper performance of the Tariff Unit service by the Service Provider is the moment when the Service Provider displays the purchased Tariff Units in the User Account.
- 2.4. The User may redeem the Tariff Units to use the Services, up to the sum of the Tariff Units, within the period following purchase thereof specified in Pricing. The number of Tariff Units in the User Account is decreased as they are used. Once the Tariff Units are exhausted, the User is no longer able to use them and they are not displayed in the User Account.
- 2.5. Purchase of Tariff Units by the User during the Validity Period of previously purchased Tariff Units will extend the Validity Period of all its Tariff Units to the one applicable to those Tariff Units that are valid the longest.
- 2.6. When the Validity Period expires, the Tariff Units may not be used (they are not available for use and they are not displayed in the User Account) as the Service Provider remained continuously ready to provide the Services.
- 2.7. The Tariff Units are not returnable. The Service Provider will not buy back any Tariff Units.
- 2.8. The Fee is subject to goods and services tax (VAT) at the rate compliant with generally applicable laws and regulations.
- 2.9. The User consents to VAT invoice being issued for the Agreement performance in electronic form, in PDF file format. The User may access VAT invoices in the User Account. The Service Provider may also deliver to the User a visualisation of VAT invoices via email to the address designated by the User.

### 3. AGREEMENT TERM AND TERMINATION

- 3.1. The Agreement is concluded for undefined period of time.
- 3.2. The User may terminate the Agreement at any time with 30 days' notice period. The User may also terminate the Agreement for cause with 7 days' notice period.
- 3.3. The Service Provider may terminate the Agreement with 120 days' notice period in the following circumstances:
  - a. The Service Provider makes a decision to cease Service provision;
  - b. The Service Provider makes a decision to change its business activities in full or in part;
  - c. Other material cause, specifically including business, technological, legal, or economic causes.
- 3.4. The Service Provider may terminate the Agreement with 7 days' notice period in the following circumstances:
  - a. When access to Services is suspended due to circumstances for which the User is responsible and the User failed to remedy such cause of suspension within the period set by the Service Provider, and in any case when suspension of access to Services lasts longer than 30 calendar days;
  - b. The User adopts a resolution on liquidation;
  - c. The User is insolvent and it is affecting its ability to perform its obligations under the Agreement;
  - d. The User violates the law or the Agreement in a way that affects the Agreement performance or situation of the Service Provider or other Service users, provided that the User failed to cease such violation and failed to remedy the effects thereof within the period set by the Service Provider in the notice sent to the User via email, however, such notice will not be required in case of a gross violation of the Agreement;
- 3.5. The provisions of this section will not limit the Service Provider's right to terminate the Agreement in accordance with the law.



### 4. MINIMUM TECHNICAL REQUIREMENTS

- 4.1 For the User to be able to use the Services, it is necessary to fulfil the following minimum technical requirements:
  - a. Having a device with Internet access option and installed web browser (the latest version possible; the Service Provider may not guarantee compatibility with older browser versions due to security concerns) supporting Ajax, HTML5, JavaScript, and SSL protocol;
  - b. Internet access.
- 4.2 In the Oktawave infrastructure we synchronise system clocks with public time servers. Server addresses are available in the Knowledge Database <https://oktawave.com/docs/>. In the event that the Knowledge Database is not available in the English language version, the User can obtain any information by contacting Oktawave directly
- 4.3 It is necessary to create a User Account to use the Services.
- 4.4 The User Account is created and registered through the electronic registration form made available by the Service Provider on the Website upon acceptance of these Terms of Service. Once the requirements referred to in the preceding sentence are met, the Service Provider makes the User Account available.
- 4.5 The User may select Services and modify their parameters through the User Account or API within the limits specified in the Agreement. The Service Provider may impose technical limitations on how the Services are used (including the use of software in virtual machines) or maximum values (limits) for individual Services. Removal of those limitations or activation of Services above the limit will require Service Provider's consent given at a justified request of the User.
- 4.6 Restrictions or limits imposed by the Service Provider, as referred to in section 5, may be applicable globally (to all Users), may apply to individual Users or selected groups of Users. The grounds for restrictions include, without limitation, any specific action by the User, such as the use of Services or functionalities made available by the Service Provider in a way that:
  - a. Disrupts functioning of the Service Provider or the Cloud;
  - b. Is in violation of the law, the Agreement, the custom in a given area, or social co-existence rules;
  - c. Is cumbersome to other Users or to the Service Provider.Where there is a reasonable suspicion that the User committed any activity referred to in sections a. – c. above, the Service Provider will be entitled to suspend any Services being performed, including to block the User Account and the User will have no claim on that account.
- 4.7 The Service Provider starts Service provision, subject to sections 3-5 above, to Pre-Paid Users upon purchase of Tariff Units by them, and to Post-Paid Users upon their activation and selection of their parameters by the Post-Paid Users in accordance with section 5 above.
- 4.8 The Service Provider may use technical measures or other methods to block or restrict access to the Services by the User whose place of residence / stay, registered office or place of business is located outside the European Economic Area, Switzerland, or the United States of America.
- 4.9 The action referred to in section 8 above may occur, without limitation, in relation to the User whose place of residence / stay, registered office or place of business justifies suspicion by the Service Provider (based on prior experience in this regard, etc.) that the Services may be used for unlawful, unfair or unintended use of Services (such as SPAM).
- 4.10 Blocking or restricting access to Services is related to current functionalities of the Services (such as Website, registration form, User Account) and may take the form of cut-off or restriction of access to the internet interface, all types of software, the Website or any part thereof (also before execution of the Agreement).
- 4.11 In case of the User breaching restrictions imposed under section 8 (for example, as a result of providing false data, change of location, application of technical solutions to bypass the restrictions),





the Service Provider will have the rights described in section 6 sentence 3 above, and the User will have no claim on that account.

- 4.12 The Service Provider will have the rights referred to in section 11 also when the User undertakes actions that justify the suspicion that they are aimed at or have already caused a breach of the restrictions implemented by the Service Provider.
- 4.13 The User whose place of residence / stay, registered office or place of business is located outside the territory of the European Economic Area, Switzerland, or the United States of America, will deliver at the Service Provider's request appropriate official documents in Polish or English (notarised, officially certified or otherwise legally certified translation is acceptable) that confirm the place of residence / stay, the location of the registered office or place of business of the User. Should this obligation be breached, section 11 will apply.

## 5. OBLIGATIONS OF THE SERVICE PROVIDER

- 5.1 The Service Provider offers the User an option to access Services and strives to ensure their provision at the level described in the SLA.
- 5.2 The Service Provider provides to the User access to and use of the User Account and the Website, as they are, i.e. without any guarantees as to their functionality or availability, or suitability for the User's purposes, or any guarantee of performance.
- 5.3 The Service Provider applies in the Service Provision methods of data transmission safeguarding customary on the market due to the characteristics of the Cloud and Services provided through the Cloud, i.e. it exercises due diligence to ensure appropriate level of security of the User Data.
- 5.4 The Service Provider is not the initiator of the User Data transmission in relation to the access and use of Services, does not select recipient of User Data transmissions, does not select or modify User Data. The Service Provider only provides technical resources in the form of the capacity to access the Services, and the User is the sole decision maker with regard to their content, form and application. The User Data content is not monitored by the Service Provider.
- 5.5 The User Data are stored by the Service Provider in Poland.
- 5.6 The Service Provider will not disclose any User Data to any third party, unless at the express request of the User or authorised public authorities. Should an authorised public authority request disclosure of User Data in full or in part, the Service Provider will first consult such disclosure with the User, provided that such consultation is allowed by law.

## 6. OBLIGATIONS OF THE USER

- 6.1 The User is obliged:
  - a. To observe the provisions of the Agreement and applicable laws when accessing and using the Services, in particular it is forbidden:
    - to propagate any unlawful content, including fascist content, content promoting totalitarian regimes, inciting hatred, in particular on the basis of nationality, ethnicity, race, religion, or gender;
    - to use the Services to mail unwanted commercial information or including in the User Data any unlawful content, any viruses, worms, trojan horses, spyware or other malicious software or harmful programming codes that may have adverse effect on the Service Provider, other users of the Service or users of the Internet;
  - b. To properly secure access to the User Account and use of the Services, to the extent that depends on the User, which includes creation of a password composed of at least 8 characters (including lowercase and uppercase letters and digits or special characters), regular password change, and protecting the passwords used to access and use the Services and not disclosing them to any unauthorised person; the User is responsible for any User Data breach and other losses caused by improper protection of access to the User Account and the use thereof;





- c. To cooperate with the Service Provider in circumstances specified in the Agreement, i.e., without limitation, when such cooperation is necessary to determine whether Services were accessed or used in a manner contrary to these Terms of Service, the Agreement, or the law;
  - d. To update the information concerning the User in the User Account, including contact details provided in the registration form, the Agreement or the User Account, immediately, within 7 days of a change, otherwise any notice sent to the last known physical and email address will be deemed effectively delivered;
  - e. To immediately, within 7 days of the occurrence, notify the Service Provider of every discovery of any unauthorised access to the User Account or the Services, unauthorised disclosure or access to the data enabling authentication in the Cloud (such as the passwords) or any other security breach that may affect performance of the Agreement;
  - f. To maintain throughout the term of the Agreement at least one current backup copy of the User Data in a different infrastructure than the infrastructure provided by the Service Provider; this obligation will not apply where the User purchases an additional Service consisting of the creation and maintenance of User Data backup copy by the Service Provider;
  - g. When API is used, to use API as follows:
    - without causing excessive and unnecessary load on the Service Provider's servers. The Service Provider is entitled to notify the User that API use by the User is not efficient and it will be binding on the User. In such case the User will be obliged to make every effort to reduce the load on the Service Provider's servers within 7 business days of the notice;
    - in accordance with the API technical specification;
    - for the purposes of the Agreement only, in accordance with the provisions of the Agreement.
- 6.2 The User will be solely liable for the User Data in relation to third parties.
- 6.3 The User declares that the User will use the Services exclusively for civil purposes, including, without limitation, for commercial provision of services with the use of the Services.
- 6.4 Without prior consent of the Service Provider, which must be given in electronic form to be valid, the User undertakes not to use the Services, directly or indirectly, for the purposes of the so called "cryptocurrency mine" or "generating nodes" related to the blockchain technology, including, without limitation, to perform calculations to solve a cryptographic problem to add a new block or verify transactions, or in particular to obtain (mine) cryptocurrency or ensure functioning of other solutions based on the blockchain technology.

## 7. USER DATA

- 7.1 The use of the Services, as services provided electronically, is connected with typical risks of transferring data through the Internet, such as dissemination of User Data, access to User Data by unauthorised parties, or Data Loss.
- 7.2 In the scope in which processing occurs through Personal Data Services, the provisions of Appendix no. 3 to these Terms of Service will be applicable (available for the User on the Service Provider's website or in individual communications), unless the Parties have entered into a dedicated personal data processing agreement.
- 7.3 Upon entering into the Agreement, the User will immediately email (other forms will be invalid) to [customer@oktawave.com](mailto:customer@oktawave.com) a description of the scope of Personal Data to be processed and categories of data subjects and it will replace relevant stipulations of Appendix no. 3 to these Terms of Service. Should the above be not performed, the User acknowledges that stipulations of Appendix no. 3 to these Terms of Service in their current form are compliant with the scope of Personal Data and data subject categories entrusted by the User.
- 7.4 Where the User guarantees that the User Data contain no Personal Data, the User will notify the Service Provider accordingly by email (other forms will be invalid) to [customer@oktawave.com](mailto:customer@oktawave.com). In such case Appendix no. 3 to these Terms of Service will not be applicable between the Parties.



- 7.5 The User undertakes that the scope of the User Data does not and will not require during the term of the Agreement application of any special means for their processing or the Service Provider fulfilling other special requirements (such as obtaining a consent, registration, certification, etc.).

## 8. INTELLECTUAL PROPERTY OF THE USER

- 8.1 To the extent in which Service provision by the Service Provider and use thereof by the User may be related to the Service Provider's use of any intellectual property rights to the User Data (including, without limitation, to activate software other than the Service Provider's software), the User grants to the Service Provider free of charge consents in relevant scope and free of charge, non-exclusive licences to use such intellectual property rights (including software licences), exclusively for the period of Service provision and for the purpose of their proper performance, or, where the User is not entitled to grant such licence, the User undertakes to obtain relevant licences and consents to use such intellectual property rights for the Service Provider for the period of Service performance and for the purpose of their proper performance from the entity which is entitled to grant such licences. Appropriate free of charge licences/consents, as referred to in this section, including to image use, and licences to User Data, if they constitute works in the meaning of Article 1 of the Act on Copyright and Related Rights of 4 February 1994, will be granted to the Service Provider in the areas of use necessary for proper Service performance worldwide, including, without limitation:
- Recording and multiplying: producing copies using magnetic, optical-magnetic, optical and digital recording techniques, including publication in the Internet, servers, other components of network infrastructure and terminal devices (including memory of computers and mobile devices);
  - Dissemination: public performance, display, presentation, reproducing, broadcasting and rebroadcasting, and public sharing in such way that anyone may access it in chosen place and time;
  - Making necessary changes, modifications and adjustments, and also creating compilations and translations.
- 8.2 When the User is obliged to obtain the right to the User Data for the purposes of Service use, including intellectual property rights, for the User and also for the Service Provider in the scope necessary to perform the Services, such User is obliged to release the Service Provider from liability for any third party claims related to those rights to the User Data and to remedy any losses incurred by the Service Provider in relation to the above, awarded by a legally binding order of a common court or that are subject of an arrangement, immediately, within 7 days at the Service Provider's request.
- 8.3 The User, at its own expense, is obliged to do anything that is necessary to indemnify the Service Provider against any third party claims brought against the Service Provider in relation to any rights or infringement of rights to the User Data, and to reimburse the expenses incurred by the Service Provider in relation to such claims against the Service Provider (including reasonable attorneys' fees), provided that the Service Provider will immediately, i.e. within 7 days, notify the User of any such claim and will allow the User to act on its behalf to defend any such claim, and will provide any information, free of charge, which will be necessary to perform the above powers. The User will have the right and obligation to manage and control any dispute with third parties in this regard.
- 8.4 For the purposes of this section, the term Service Provider also includes employees, associates, subcontractors, etc., of the Service Provider.
- 8.5 The provisions of this section will also remain effective following the Agreement expiration, termination or withdrawal by any of the Parties, as applicable.
- 8.6 The User is obliged to update the Service Provider, its subcontractor or associate of the Service Provider on any action undertaken by the User.

## 9. INTELLECTUAL PROPERTY OF THE SERVICE PROVIDER

- 9.1 Any intellectual property rights related to the provision of Services to the User, including, without limitation, graphical elements of the Cloud, such as Oktawave logo, website and individual application



layout, website content, trademarks, trade names and other markings, and to the Cloud technical solutions, its functional concept, functionalities, databases, computer programs, and technical documentation, are held solely by the Service Provider or its associates. The Service Provider declares that it is authorised to use relevant computer programs and other works in the meaning of the copyright laws, which constitute components of the Cloud, under appropriate licences/copyright, and that it is authorised to provide Services as described in the Agreement, including to grant a licence referred to in section 2 below. The Service Provider declares that at the date of this Agreement it provides the Service under, without limitation, the Microsoft Services Provider License Agreement (SPLA).

- 9.2 Without prejudice to the provisions of section 3 below, exclusively to the extent necessary to use the Services and for the term of the Agreement, the Service Provider hereby grants to the User, at no additional compensation and within the limits of the Service Provider's authorisations, a non-exclusive licence to use the software utilized for Service use, worldwide, specifically including the following areas of use:
- a. Recording and multiplying: permanent or temporary, in full or in part, using magnetic or optical recording technique, including placing in any component of the Cloud and technical infrastructure necessary to use the Cloud;
  - b. Use for the purpose of the business activities.
- 9.3 Where the Services are performed by associates of the Service Provider or jointly with the associates of the Service Provider, relevant provisions regarding intellectual property rights of those entities, licences granted by those entities to the User, if any, or licences that must be granted to those entities to perform the Services, if any, are available in the terms of service or agreements concerning service provision by those entities, and each time a link to them will be provided before selecting relevant Services in the User Account. When the Service Provider is clearly not a party to such agreement concluded between the User and a third party, it will not be liable for the performance of such agreement by the parties thereto.

## 10. CONFIDENTIAL INFORMATION

- 10.1 The Parties undertake not to disclose any Confidential Information and not to use them (in full or in part) for any purpose not directly related to the Agreement performance, indefinitely. The Parties deem the following as Confidential Information, without limitation:
- a. Legal, financial, technical, IT, technological, or organisational information with regard to the Services;
  - b. Information of any economic value concerning the Parties;
  - c. Information concerning third parties, including associates of the Service Provider, enterprises with organisational or capital ties, members of their authorities or their shareholders, their associates, clients, former clients and associates of their clients or former clients.
- 10.2 The non-disclosure obligation specified herein will not apply to any Confidential Information:
- a. That are or will become publicly known, without breach of the Agreement or applicable laws;
  - b. That have been obtained by a Party lawfully and in compliance with its obligations, before obtaining such Information from the other Party;
  - c. That have been disclosed under prior written (otherwise invalid) consent of the other Party, in the scope and to the entities specified in such consent;
  - d. That are required to be disclosed under the law to competent public authorities;
  - e. That include statistical data or are derived from statistical data obtained by the Service Provider in relation to the Service provision;
  - f. That consist exclusively of the fact of the collaboration between the Parties.
- 10.3 The Parties will ensure that the above non-disclosure obligation will be observed by all their agents and third parties connected with them in any manner that had an opportunity to obtain the confidential information thanks to that party.



## CHAPTER III – LIABILITY OF THE PARTIES

### 11. COMPLAINTS

- 11.1 The User may report reservations with regard to the access to the Services, use thereof, or their functioning, in the form of a complaint, within 30 days of the occurrence that gives grounds to the complaint.
- 11.2 The Service Provider will process the User's complaints within 14 days of receipt of a complete complaint of the User, provided that this may be extended to 30 days in justified circumstances.
- 11.3 Complaints may be submitted to the Service Provider through the User Account or to the email address: [customer@oktawave.com](mailto:customer@oktawave.com) by sending a filled out complaint form to the Service Provider, or by telephone at +48 22 10 10 555, or to the correspondence address of the Service Provider: ul. Domaniewska 44a; 02-672 Warszawa.
- 11.4 Before taking any legal action, including in case of any reservations of the User regarding the Service quality, the User will attempt to clarify any difference of opinion in the first place through correctly processed complaint procedure.
- 11.5 A complaint should include as a minimum the following data:
  - a. name and surname (business name) and address of the claimant;
  - b. subject of the complaint or period which the complaint concerns with a description of the circumstances justifying the complaint;
  - c. date of the complaint;
- 11.6 The date of complaint receipt is the date when the Service Provider receives a written or electronic claim or the date of receiving a claim by telephone.

### 12. LIABILITY OF THE USER

- 12.1 The User will be liable for the access and use of the Services by any party authorised by the User to access or use the Services or that was given by the User details enabling authentication in the Cloud or in the User Account, including for any action or omission of such parties.
- 12.2 The User will be liable for its actions or omissions related to securing access to the Services, including to the data enabling authentication, and for any action or omission by the parties that obtained access to the User Account or API using the User's authentication data, also if those are parties not authorised by the User, subject to section 3 below.
- 12.3 The User will not be liable for any situation that arises from the access to the Services/User Account being obtained by persons not authorised by the User, through the exclusive fault of the Service Provider.

### 13. LIABILITY OF THE SERVICE PROVIDER

- 13.1 The principles of Service Provider's liability in case of failure to provide guaranteed level of Services, for reasons other than caused by the Service Provider intentionally, are fully and exclusively regulated by the SLA, and the Parties declare that failure to maintain the guaranteed Service level will not be deemed non-performance of the Services or incomplete/incorrect performance of the Services. In the scope not regulated in the SLA, the Service Provider will be liable for the Services provided to the User in accordance with the principles defined in sections 2-10 below.
- 13.2 The Service Provider will not be liable for any tortious act, unless mandatory applicable laws stipulate otherwise.
- 13.3 The Service Provider will not be liable for any non-performance or improper performance of any obligation, subject to the next sentence. The Service Provider will be liable exclusively for any damage caused to the User intentionally.
- 13.4 The fact that an action or omission causing a damage constituted non-performance or improper performance of an obligation excludes any claim of the User for remedy of damage caused by tortious act.



- 13.5 In any case when the contractual or tortious liability of the Service Provider is applicable, it will be limited to the amount of the Fee actually paid by the User in the month preceding occurrence of the event for which the Service Provider is liable, and if the duration of the Agreement is shorter, then for the whole term thereof on account of the provision of:
  - a. Tariff Units redeemed in exchange for those Services in the performance of which the Pre-Paid User suffered damage/injury; or
  - b. Those Services in the performance of which a Post-Paid User suffered damage/injury.
- 13.6 If during the month preceding the occurrence of the event for which the Service Provider is liable the User did not in fact pay any Fee, the last month when the Fee was actually paid will be used to calculate the liability limit referred to in section 5 above. If the event for which the Service Provider is liable occurred during the first billing period of the User, the Fee amount which the User is obliged to pay for the same period will be used to calculate the liability limit referred to in section 5 above. The provisions of section 5(a) and (b) above will apply accordingly in the circumstances referred to in two preceding sentences. In any other case the Service Provider's liability will be limited to PLN 10,000.
- 13.7 Total liability limit of the Service Provider for contractual or tortious damage that occurred in a given calendar year is the total Fee paid to the Service Provider by the User for the period of the last 6 months of Service provision or for the period of actual Agreement validity if it is shorter than the aforementioned 6-month period, unless mandatory applicable laws stipulate otherwise.
- 13.8 The Service Provider will not be liable for any lost profits of the User in any case. Also, the Service Provider will not be liable towards the User on account of any damage or loss related directly or indirectly to the provision of Services to the User and which were caused through the fault or as a result of any claim or action of a third party arising from access to Services or use thereof by the User or its employees / associates.
- 13.9 The Parties will not be liable for any delay, non-performance or improper performance of the Agreement when such delay, non-performance or improper performance is caused from a force majeure event, namely an event that is not under control of the Parties, including, without limitation, war, cataclysm, cyberattacks (including DDoS), provided that such event will not release the User from the obligation to pay the Fee.
- 13.10 The Service Provider will not be liable for any Data Loss, unless the User is provided with Oktawave Cloud Storage or Oktawave Volume Storage or the Data Loss occurred as a result of wilful misconduct – in such case the Service Provider's liability is regulated by the SLA, and the limitations stipulated in this section will apply in circumstances not regulated by the SLA.
- 13.11 For the purposes of this section, the term Service Provider also includes the Service Provider's employees, i.e. any natural person employed by the Service Provider under employment contract or a civil law contract and receiving remuneration from the Service Provider in the form of a salary or other compensation, subcontractors, and entities collaborating with the Service Provider in Service provision.

## 14. SERVICE ACCESS SUSPENSION

- 14.1 The Service Provider may Suspend User's access to the Services or User Data in case of occurrence of even one of the following circumstances:
  - a. Receipt of official notice or reliable information/message that the Services are or have been used in any manner contrary to the Agreement or any laws;
  - b. Failure to cooperate with the Service Provider when such cooperation is necessary to determine whether Services were accessed or used in a manner contrary to these Terms of Service, the Agreement, or the law;
  - c. Justified suspicion of the Service Provider regarding access or use of the User Account or Services that was not authorised by the User;
  - d. Objectively reasonable suspicion of the Service Provider that immediate suspension of the access to Services is necessary to protect the integrity, availability or security of the Cloud or other Users;





- e. Default in payment of the Fee, despite request for payment sent to the User with additional 7-day period starting from sending the email message by the Service Provider;
  - f. Obligation arising by virtue of law or decisions of competent state authorities or courts;
  - g. Other violation by the User of the Agreement.
- 14.2 The User will be notified of the Suspension and grounds thereof immediately, i.e. within 2 business days following the Suspension.
- 14.3 The Service Provider will reinstate access to the Services or User Data, as applicable, immediately, i.e. within 2 business days of establishing that the Suspension grounds ceased to exist, subject to any exceptions stipulated by the law.
- 14.4 The Service Provider is entitled to the Fee for the period of Suspension for its readiness to provide the Services or to process User Data.
- 14.5 When the legitimate interest of the User would require access to certain scope of the User Data during Suspension, the Service Provider may give the User access to such User Data for a time necessary to export such Data, unless it is forbidden by the law and if it is technically possible without extraordinary outlays.

## CHAPTER IV – MISCELLANEOUS

### 15. SUBCONTRACTORS AND ASSOCIATES OF THE SERVICE PROVIDER

- 15.1 The Service Provider may subcontract the Services in full or in part.
- 15.2 The Service Provider may provide Services jointly with associates of the Service Provider or on their behalf.
- 15.3 Some Services may be also provided directly by third parties under separate terms and with separate charges.
- 15.4 Information on collaboration with associates and of the terms and conditions or agreements of such entities that affect the terms of performance of the Services by the Service Provider will be each time available before selection of relevant Services from the User Account level and it will be necessary for the User to read such terms and conditions and agreements and to accept them before using such Services.

### 16. ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER THE AGREEMENT

The User is not entitled to assign any rights or obligations under the Agreement, in full or in part, to any other party, unless with prior consent of the Service Provider. The Service Provider may assign any rights or obligations under the Agreement to its associated entities, including, without limitation, subsidiaries or parent companies, notifying such fact to the User, and the User hereby agrees to that. The Service Provider declares that any such assignment will not affect the quality or continuity of the Services.

### 17. USER'S PERSONAL DATA

- 17.1 The User hereby acknowledges that for the purposes of performance and billing under the Agreement, the Service Provider will process Personal Data of the User or contact persons designated by the User or authorised representatives of the User, and of the payers, in the following scope: (i) contained in the registration form, or (ii) contained in the User Account, and (iii) payment and payer details, (iv) information on Services provided to the User and their billing. The provision of such Personal Data is voluntary, however, it is necessary to execute and perform the Agreement and for payments thereunder. The Service Provider is the controller of such Personal Data. Natural persons whose Personal Data are processed by the Service Provider are entitled to access their data and to correct them. The Service Provider hereby acknowledges that any data of contact persons, authorised representatives of the User, and payers have been obtained by the Service Provider from the User.



- 17.2 The User undertakes to notify any person whose data are disclosed to the Service Provider of the privacy notice available online at: <https://oktawave.com/en/company/legal/privacy-policy> (before the disclosure of data) and of any updates thereof. At the request of the Service Provider, the User will deliver evidence of fulfilling this obligation.
- 17.3 The User may exercise its right to access its Personal Data and to correct them through their verification in the User Account by the User. Additionally, the User and other natural persons whose Personal Data are processed in connection with the provision of the Services to the User, may exercise their right to access and correct their data by contacting the Service Provider via email to [customer@oktawave.com](mailto:customer@oktawave.com) or write to the Service Provider's correspondence address.

## 18. CONTACT WITH THE USER

Unless the Agreement stipulates otherwise, for the purposes of efficient communication between the Service Provider and the User, any notices, information and declarations of the Parties will be communicated in the first place through electronic means of communication (including the User Account or email, to the last email address of a contact person provided by the User or to the addresses designated in the introduction of the Agreement), then by telephone or in writing.

## 19. ERASURE OF USER'S DATA

- 19.1 Following Agreement termination, once all Tariff Units are used or the Validity Period expires, the User will lose access to all User Data and they will be erased, subject to sections 2 and 3 below.
- 19.2 At the request of the User sent to the Service Provider during the notice period of the Agreement via email (otherwise invalid), the Service Provider will allow additional 14 days for the User to export User Data, provided that the User will be obliged to pay the Fee of the Service Provider for that period on the terms stipulated in the Agreement, in particular in case of a request of a Pre-Paid User, the request will be effective exclusively when such User holds sufficient number of Tariff Units within their Validity Period. In case of effective submission of the request referred to in the preceding sentence by the User, the term of the Agreement (its notice period) will be extended by the same 14-day period allowed for exporting the User Data.
- 19.3 Following Agreement termination, once all Tariff Units are used or the Validity Period expires, the Service Provider will be obliged to erase all User Data immediately, i.e. within 14 days. Following Agreement termination, during the aforementioned period, the provisions of the Agreement will apply accordingly. The Service Provider's obligation to erase User Data will not apply in the case and in the scope in which the obligation to further process them is imposed by virtue of law or a decision of competent public authorities.
- 19.4 Following Agreement termination the Service Provider will be obliged to immediately, i.e. within 14 days, erase the User Account. Provisions of section 3 above will apply accordingly.

## 20. AMENDMENT OF THESE TERMS OF SERVICE

- 20.1 These Terms of Service and appendices hereto constitute a standard agreement in the meaning of Article 384 § 1 CC.
- 20.2 The Service Provider may amend these Terms of Service or appendices hereto at any time. Any amendment will be notified to the User by way of a notice sent to the User Account or to the email address, which is deemed by the Parties to be fulfilment of the ease of learning of a modified standard agreement referred to in Article 384 CC. The amendment referred to in the preceding sentence will enter into force 30 days following the date of sending the amendment notice, unless the User submits Agreement termination notice within 15 days from sending the amendment notice. In such case the Agreement will be terminated 30 days from sending the aforementioned Terms of Service amendment notice.





- 20.3 The Service Provider, before introducing any new Services, may determine special rules of their provision in the form of separate terms of service which will have to be accepted to use such new Services and such terms, following prior acceptance by the User, will take prevalence over the provisions of these Terms of Service.

## 21. AGREEMENTS WITH NATURAL PERSONS

- 21.1 The User acknowledges that it is an intention of the Service Provider to provide professional services only, exclusively to entities that are not consumers. Therefore, any User being a natural person acknowledges upon entering into this Agreement that the subject of the Agreement is directly and in full related to the business carried out by the User and is used by the User professionally in relation in particular to the business or professional activities carried out by the User. The User acknowledges in particular that the Services will be used directly in relation to its business or professional activities (e.g. to operate / support key processes of the User related to such activities).
- 21.2 The subject of the Agreement is understood by the Parties as the entirety of the Services used by the User currently or in the future.
- 21.3 When the subject of the Agreement is not compliant with the declaration referred to in section 1, the User is obliged to notify the Service Provider of that fact before entering into the Agreement or at the latest before the commencement of Service provision.
- 21.4 The Parties mutually agree to exclude the Service Provider's liability arising from violation of the obligations referred to in sections 1 or 3 above by the User. The User is obliged to remedy in full any damage caused by executing the Agreement contrary to the declaration in section 1, and where possible to release the Service Provider from liability.
- 21.5 In case of violation by the User of section 1 or 3, the Agreement should be interpreted in such way that the intention of the Parties is for the whole collaboration between the Parties to be carried out as if the declaration of the User in section 1 were true and correct. Section 22.4 will apply accordingly.

## 22. FINAL PROVISIONS

- 22.1 This Agreement will be governed by Polish law. To the widest extent permitted, the application of international law is expressly excluded.
- 22.2 Any dispute arising under or in relation to the Agreement will be resolved by a common court with jurisdiction over the registered office of the Service Provider.
- 22.3 The appendices referred to in these Terms of Service constitute an integral part hereof.
- 22.4 If one or more provisions of the Agreement is or will become invalid or ineffective, it will not affect the validity or effectiveness of the remaining provisions, unless the Parties would not have entered into the Agreement without such provision and it is not be possible to apply the next sentence. The invalid or ineffective provision will be replaced with a provision that is as close as possible to the intention of the Parties.
- 22.5 These Terms of Service will enter into force upon their publication on the Website in its current form or on the date designated in the Agreement concluded with the User. These Terms of Service will replace any prior terms of service/ standard agreements of the Service Provider in the scope covered by these Terms of Service as of its commencement date, and they will govern the relationship between Parties in full unless stipulated otherwise in the Agreement concluded with the User.

## LIST OF APPENDICES

1. Pricing
2. SLA
3. Processing Agreement

