



## MASTER SERVICES TERMS

**Last Updated: OCTOBER 17, 2023**

**THESE MASTER SERVICES TERMS (“Master Terms”)** are entered into by and between Octolan and Client effective as of the Effective Date.

**WHEREAS**, Client desires to obtain access to certain services and software, and Octolan desires to make such services and software available, in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties further agree as follows:

1. **Definitions.** In addition to the terms defined elsewhere in these Master Terms, the below terms shall have the following meanings:

1.1 “**Agreement**” means, collectively, these Master Terms and the Order into which these Master Services are incorporated.

1.2 “**Authorized Users**” means Client’s employees and contractors that are natural persons and have been issued usernames and passwords by Octolan or Client to access or use the Services or Software.

1.3 “**Bankruptcy Event**” means the subject party (i) assigns all or part of its assets for the benefit of creditors, (ii) becomes the subject of a voluntary petition in bankruptcy, (iii) becomes the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) days of filing, or (iv) has any proceeding commenced with respect to it relating to insolvency, receivership, liquidation or composition for the benefit of creditors.

1.4 “**Beta Products**” means beta, evaluation or similarly designated services, software, functionalities or features.

1.5 “**Claims**” means, collectively, any suits, actions, claims, counterclaims or other legal proceedings.

1.6 “**Client**” means the individual or entity identified as the “Client” in the Order, collectively with its affiliates.

1.7 “**Client Content**” means Client’s Confidential Information and Client’s data and information provided and/or made available to Octolan in connection with the Services, Software or this Agreement; provided that it does not include Octolan’s Confidential Information, the Services, Software, Third Party Products or Octolan’s or Octolan Providers’ data or information.

1.8 “**Confidential Information**” means any and all nonpublic, confidential or proprietary information or data which is disclosed or otherwise made available by or on behalf of Disclosing Party to Receiving Party in any form, including, but not limited to, improvements, specifications, trade secrets, product plans, product costs and any other information that is designated confidential or should reasonably be considered nonpublic, confidential or proprietary. Octolan’s Confidential Information shall also include the Software and the terms of this Agreement.

1.9 “**Disabling Code**” means computer code designed to interfere with the normal operation of any hardware or software, including, but not limited to, a virus.

1.10 “**Disclosing Party**” means the party that discloses or otherwise makes available Confidential Information to Receiving Party.

1.11 “**Effective Date**” means the “Effective Date” of the Order.

1.12 “**Fees**” means, collectively, all fees set forth in this Agreement and reasonable expenses incurred by Octolan or Octolan Providers in connection with the Order, the Services and Software.

1.13 “**Octolan**” means Octolan Technology, Inc., a Minnesota corporation.

1.14 “**Octolan Parties**” means, collectively, Octolan, its affiliates and its and their officers, owners, directors, employees, agents, contractors, successors and assigns.

1.15 “**Octolan Providers**” means, collectively, Octolan’s affiliates, employees and contractors.

1.16 “**Order**” means one of the following: (i) a work order signed by authorized representatives of both parties that expressly references these Master Terms, (ii) an online order placed by Client on Octolan’s website that expressly references these Master Terms (an “**Online Order**”), or (iii) if neither of the foregoing are applicable, a statement of work signed by authorized representatives of both parties that expressly references these Master Terms. These Master Terms are hereby incorporated into the Order and deemed a part thereof.

1.17 “**Receiving Party**” means the party to which Disclosing Party discloses or otherwise makes available Confidential Information.

1.18 “**Services**” means the services and Software Octolan shall make available to Client as more fully described in this Agreement.

1.19 “**Software**” means the software, if any, that Octolan shall make available under this Agreement as expressly set forth in the Order and any new releases, updates, upgrades and modifications to such software which Octolan makes available to Client under the terms of this Agreement; provided that it does not include Third Party Products.

1.20 “**Statistical Usage Data**” means data collected through the Services and Software related to the performance of the Services and Software and how Client and Authorized Users access and use the Services and Software; provided that it does not include any data that can be used to identify a particular natural person.

1.21 “**Subscription Period**” means the term of Client’s subscription to the Services and Software.

1.22 “**Third Party Products**” means services and products that are owned, performed and/or supplied by a party other than Octolan and its affiliates.

## 2. Access to Services.

2.1 Access. Octolan shall make the Services available to Client and Authorized Users during the Subscription Period solely for Client’s internal business purposes and in accordance with the terms of this Agreement. All of Client’s and Authorized Users’ rights to the Services are subject to strict compliance with this Agreement.

2.2 On-Premises Software. Client may be allowed to install certain Software on Client’s premises in connection with accessing and using the Services. In such event, Octolan grants Client a limited, non-transferable, non-exclusive, non-sublicensable license to install such Software at the location approved by Octolan and for Client and Authorized Users to access and use the Software (in object code only) during the Subscription Period solely in connection with accessing and using the Services for Client’s internal business purposes and in accordance with the terms of this Agreement. Unless otherwise set forth in the Order, Client shall reasonably cooperate and assist Octolan with the installation and configuration of such

Software. All of Client's and Authorized Users' rights to such Software are subject to strict compliance with this Agreement. Client must immediately deinstall and destroy such Software at the end of the Subscription Period.

2.3 Support and Hosting. Octolan shall make support related to the functionality and operation of the Software available to Client subject and pursuant to this Agreement and Octolan's Support Policy, available at <https://octolan-tech.com/legal-docs/> and/or made available to Client in another form, as adopted or modified from time to time. Octolan shall have no obligation to provide support relating to other matters, including, without limitation, issues arising from Third Party Products or Client's hardware, software, networks or operating systems. Octolan's Service Level Agreement, available at <https://octolan-tech.com/legal-docs/> and/or made available to Client in another form, as adopted or modified from time to time, is incorporated herein by reference and deemed a part hereof.

2.4 Accessibility. Client shall be solely responsible for (i) providing, maintaining and ensuring compatibility with the access requirements for the Services and Software, and (ii) providing reasonably requested assistance and timely access to its data, information, personnel and locations which, in Octolan's reasonable judgment, are required for Octolan to perform its obligations under this Agreement. Octolan shall have no liability for any delays or nonperformance caused by Client or other matters for which Client is responsible.

### 3. Fees.

3.1 Payment. Client agrees to pay all Fees as set forth in this Agreement. Octolan shall invoice Client the applicable Fees monthly via email and all invoiced Fees are due thirty (30) days from the date of the invoice; provided that for Online Orders, Client must pay the applicable recurring Fees monthly in advance and any other Fees as they are accrued or incurred. All Fees must be paid in USD and are nonrefundable except as expressly set forth in this Agreement. Client may not set-off against or make any deduction from payments for any reason. After the initial Subscription Period, Octolan may adjust any recurring Fees on thirty (30) days notice to Client, which notice may be given as part of an invoice, sent via email or provided in any other reasonable manner. All Fees are exclusive of sales and other taxes and Client is solely responsible for payment of (or reimbursement for) any applicable taxes, except for any taxes based on Octolan's net income.

3.2 Overdue Fees. If Client disputes any portion of any invoice, Client shall notify Octolan in writing within fifteen (15) days from the date of the invoice with sufficient detail to allow the parties to resolve the dispute in good faith; otherwise, such invoice shall be deemed approved and undisputed for all purposes. Any overdue amounts under this Agreement shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law, until paid. In the event that any Fees become more than thirty (30) days overdue or Client is otherwise in default hereunder, Octolan may suspend performance of the Services and/or Client's and Authorized Users' access to the Services and Software. Octolan shall have no liability due to such suspension. Client shall be responsible for all charges, fees and expenses (including, but not limited to, reasonable attorney's fees) incurred by Octolan in enforcing or attempting to enforce Client's payment obligations hereunder, regardless of whether suit is commenced.

3.3 Payment Methods. Client's payment method must be approved by Octolan, in its sole discretion. Client is responsible for providing valid and complete payment information when Client registers for payment and when Client makes each payment. Client represents and warrants that Client (and any individual registering or making a payment on behalf of Client) is authorized to use the payment information provided. Client acknowledges and agrees that Octolan may pass payment information to Octolan's service providers to process payments.

3.4 Client Account Credits. Monetary credits issued by Octolan to Client's account, if any, may only be applied to Client's future invoices for recurring Fees and not other Fees, accrued and unpaid interest or any other costs or expenses for which Client is responsible. Monetary credits cannot be exchanged or converted to monetary compensation or a refund. Any monetary credit that remains outstanding for more than one (1) year after issuance shall be voided and all outstanding monetary credits shall be terminated upon the termination of this Agreement. Octolan shall have no liability with respect to the foregoing.

3.5 Use Metrics. If Octolan determines that Client has exceeded any use restrictions, then Client shall promptly pay to Octolan the then current list price for the overage, if any, from the first date of such overage, plus interest at the rate described in Section 3.2 above.

#### 4. Term and Termination.

4.1 Term. This Agreement will commence upon the Effective Date and remain in effect until the termination or expiration of the Subscription Period under the Order. For the avoidance of doubt, in the event this Agreement is duly terminated by either party, the Order and the Subscription Period shall also terminate.

4.2 Subscription Periods. The Subscription Period shall commence on the Effective Date and continue for the initial Subscription Period identified in the Order. Thereafter, unless otherwise specified in the Order, the Subscription Period shall automatically renew for successive periods of twelve (12) months or, if longer, the initial Subscription Period, unless Octolan or Client provides written notice of non-renewal to the other party at least sixty (60) days before the end of the then current Subscription Period. For the avoidance of doubt, the Subscription Period cannot be cancelled except as expressly set forth in this Agreement.

4.3 Termination. Either party may terminate this Agreement for cause if (i) the other party breaches a material term or condition of this Agreement and fails to cure such breach within fifteen (15) days of receipt of written notice of the breach from the non-breaching party for payment obligations or thirty (30) days of receipt of written notice of the breach from the non-breaching party for all other obligations, or (ii) the other party suffers a Bankruptcy Event.

4.4 Effect of Termination. Client shall pay for all Fees incurred and/or accrued up to and including the effective date of termination or expiration of this Agreement. Upon termination or expiration of this Agreement, (i) Client's and Authorized Users' rights under this Agreement shall immediately terminate, and (ii) if terminated by Octolan for cause, the applicable Fees for the remainder of the then current Subscription Period shall immediately become due and owing in full. Client acknowledges and agrees that any amounts which may be incurred in relation to this Agreement or the Services or Software are incurred voluntarily and with full knowledge that this Agreement may be terminated as set forth herein. Octolan shall not be liable to Client for any amounts incurred in anticipation of this Agreement continuing for any period of time. Any sections (or portions thereof) of this Agreement that either expressly by their terms or in order to give full effect to their provisions must survive the expiration or termination of this Agreement shall so survive.

#### 5. Representations and Warranties.

5.1 General. Each party represents and warrants that (i) this Agreement constitutes the legal, valid and binding obligation of such party enforceable against it in accordance with its terms, subject to the principles of equity, bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, (ii) such party has all requisite authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by it, and

(iii) such party's signature, an delivery and performance of this Agreement will not conflict with or constitute a default under any agreement or instrument to which such party is bound or subject.

5.2 Octolan's Warranties. Octolan represents and warrants that (i) Octolan is qualified to make the Services available, (ii) Octolan is the lawful owner of the Software, or, to the extent it is not the lawful owner, it has all rights necessary for it to make the Software available under this Agreement, and (iii) Octolan has used reasonable efforts to scan the Software for Disabling Code.

5.3 Client's Warranties. Client represents and warrants that (i) Client owns or has the rights necessary to license and allow the use and processing of Client Content under this Agreement, and (ii) Client shall not engage in or assist any third party to engage in benchmarking or other competitive uses of the Services or Software, including, but not limited to, creating or providing services or software that are substantially similar to the Services or Software.

5.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (I) OCTOLAN DOES NOT MAKE AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT), AND (II) THE SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS. ALL THIRD PARTY PRODUCTS ARE MADE AVAILABLE ON AN "AS IS" BASIS.

## 6. Confidential Information.

6.1 Confidentiality Obligations. Receiving Party shall (i) keep all Confidential Information confidential, (ii) not use Confidential Information except as permitted under this Agreement or as otherwise necessary to fulfill its obligations under this Agreement, (iii) only disclose Confidential Information to its employees and contractors with a need to know; provided that such contractors are bound by confidentiality obligations not materially less protective than those contained in this Agreement, (iv) use the same degree of care it uses to protect its own proprietary information (but in no event less than a reasonable degree of care) to prevent the unauthorized use or disclosure of Confidential Information, and (v) after the termination or expiration of this Agreement, return to Disclosing Party all Confidential Information in Receiving Party's possession or control, or, if Disclosing Party so requests, destroy any such Confidential Information, and certify destruction to Disclosing Party; provided that this Section 6.1(v) shall not apply to Confidential Information (a) created or stored as part of automatic archival and/or back-up procedures to the extent the return or destruction would be unduly burdensome, (b) to the extent the return or destruction would violate any applicable laws, rules and regulations, orders or other requirements of a governmental agency, or (c) to which the Receiving Party has a continuing license. Octolan may also disclose Client's Confidential Information to Octolan Providers and Octolan's suppliers and sub-processors to make the Services and Software available to Client and to fulfill Octolan's obligations under this Agreement.

6.2 Exceptions. Confidential Information does not include information or data that (i) is or becomes publicly available by any means other than unauthorized disclosure by Receiving Party, (ii) is independently developed by Receiving Party without reliance on any Confidential Information, or (iii) was lawfully disclosed to Receiving Party free of any confidentiality or nondisclosure obligation from a source other than Disclosing Party or its employees, contractors or agents. Receiving Party shall bear the burden of proof for relying on any of the foregoing exceptions. Notwithstanding anything to the contrary, in the event that Receiving Party is legally compelled to disclose any Confidential Information pursuant to a subpoena, order or other requirement of a governmental agency, Receiving Party may disclose such Confidential Information provided that Receiving Party (a) notifies Disclosing Party as soon as practicable about such legally compelled disclosure, (b) provides any reasonably requested assistance to Disclosing Party in

obtaining a protective order (at Disclosing Party's expense), and (c) only discloses that portion of Confidential Information that it is legally compelled or otherwise required to disclose.

6.3 DPA. Octolan's Data Protection Addendum available at <https://octolan-tech.com/legal-docs/> and/or made available to Client in another form, as adopted or modified from time to time (the "DPA"), is incorporated herein by reference and deemed a part hereof. In the event of any conflict between this Agreement and the DPA, the DPA shall control with respect to its subject matter.

6.4 Enforcement. It is recognized that damages in the event of a breach or threatened breach of the covenants set forth in this Section 6 will be difficult, if not impossible, to ascertain. It is therefore agreed that either party, in addition to, and without limiting, any other remedy or right that it might have, shall have the right to seek an injunction against the other party issued by a court of competent jurisdiction, enjoining the other party from violating the provisions of this Section 6 without the need to post a bond or other security.

## 7. Additional Rights, Ownership and Restrictions.

7.1 Credentials. Client and Authorized Users may receive credentials to access and use the Services and Software, including, without limitation, usernames and passwords. Each Authorized User may not have more than one (1) account and may not share credentials with any other individual or entity. Client shall ensure that no unauthorized person accesses credentials and immediately notify Octolan of any unauthorized access or use of which Client becomes aware. Client is responsible for all uses of credentials, whether authorized or unauthorized. Octolan may use and disclose credentials and Authorized User account information if required by applicable laws, rules or regulations or where necessary to enforce this Agreement and/or to protect any of Octolan's or other parties' legal rights.

7.2 Client License Grants. Client hereby grants to Octolan, Octolan Providers and its and their suppliers and vendors a non-exclusive license to use, host, sublicense, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display, (i) Client Content as necessary to make available the Services or Software and/or for the interoperation of any Third Party Products, and (ii) Client's names, logos and/or marks on or in association with the Services and the Software, including, without limitation, for Client branding. Octolan acknowledges that Client is the owner of such names, logos and/or marks and Octolan's uses shall inure to the benefit of Client. If Client submits any feedback, suggestions or similar information regarding the Services or Software to Octolan, Client hereby grants, and/or warrants that the owner of such information has granted to Octolan, a royalty-free, perpetual, irrevocable, worldwide, non-exclusive, transferable, sublicensable (through multiple tiers) license to use such information for Octolan's and Octolan Providers' business purposes.

7.3 Statistical Usage Data. Statistical Usage Data may be collected through the Services and Software. Octolan and Octolan Providers may use such data in an aggregated form to make available, support and improve the Services and Software and for their business purposes, including, without limitation, performance analytics, reporting and development of new features.

7.4 Ownership. Each party acknowledges and agrees that as between Client and Octolan, (i) Client is and shall be the exclusive owner of Client Content, Client's Confidential Information and all intellectual property rights therein, and (ii) Octolan is and shall remain the exclusive owner of the Services, Software, Octolan's Confidential Information and all intellectual property rights therein. Except as expressly recited herein, no rights or obligations are to be implied from this Agreement and no license is hereby granted, directly or indirectly, under any intellectual property right now held by, which may be obtained by or which

are or may be licensable by either party. Each party expressly reserves all rights not expressly set forth in this Agreement. Client is solely responsible for the accuracy, integrity and reliability of Client Content.

7.5 Restrictions on Use. Except as expressly permitted in this Agreement, Client shall not, and shall not allow or assist any Authorized Users or other third parties to, (i) sublicense, rent, lease, sell, transfer, use, permit use of, modify, create derivatives of or make available any part of the Services, Software or Third Party Products, (ii) decompile, reverse engineer or otherwise attempt to discover any underlying code which is part of the Services, Software or Third Party Products, (iii) use the Services, Software or Third Party Products in violation of applicable laws, rules or regulations or other than in accordance with this Agreement, (iv) export any part of the Services, Software or Third Party Products outside of the United States without Octolan's prior written consent and in accordance with applicable laws, rules and regulations, (v) use the Services, Software or Third Party Products to post, upload or transmit any Disabling Code or any data, content or materials of any type that are illegal, threatening, obscene, defamatory, harmful, invasive to privacy or similar rights of Octolan or a third party or that infringe or violate any rights of any party, and/or (vi) use the Services, Software or Third Party Products in a manner that would interfere with or disrupt their accuracy, integrity or reliability.

## 8. Beta Products and Third Party Licenses.

8.1 Beta Products. In the event of any conflict between this Agreement and this Section 8.1, this Section 8.1 shall control with respect to Beta Products. Client understands the risks associated with the access to and use of Beta Products, including, without limitation, that Beta Products may contain bugs and errors and may be updated, suspended or terminated without notice. Client is accessing and using Beta Products voluntarily and at Client's risk. BETA PRODUCTS ARE PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS. IN NO EVENT SHALL OCTOLAN PARTIES BE LIABLE UNDER ANY LEGAL THEORY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO BETA PRODUCTS, WHETHER DIRECT, INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, LOST PROFITS OR PUNITIVE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTION OF BUSINESS. IN THE EVENT THE FOREGOING SENTENCE IS NOT ENFORCEABLE UNDER APPLICABLE LAW AS WRITTEN, OCTOLAN PARTIES' LIABILITY ARISING OUT OF OR RELATED TO BETA PRODUCTS SHALL NOT EXCEED \$100.00 USD IN THE AGGREGATE. Without limiting the foregoing, (i) Octolan shall have no obligation to indemnify, defend or hold Client harmless with respect to Beta Products, (ii) Octolan may suspend or terminate Client's access to and use of Beta Products in Octolan's sole discretion at any time without notice, (iii) Client Content stored in or in connection with Beta Products may be deleted at any time without notice, and (iv) Octolan shall have no liability due to any suspension, termination or deletion described in this Section 8.1.

8.2 Third Party Licenses. Third Party Products made available by Octolan may be subject to license rights and restrictions (collectively, "**Third Party Licenses**"). Client's and Authorized Users' rights to and Octolan's making available such Third Party Products are expressly subject and subordinate to such Third Party Licenses. Third Party Licenses are available at <https://octolan-tech.com/legal-docs/> and Octolan will provide copies of the Third Party Licenses upon request. By agreeing to this Agreement, Client acknowledges access to and an opportunity to review Third Party Licenses. If Octolan's rights provided by a third party supplier are limited, suspended or terminated for any reason, the rights of Client and Authorized Users shall also be so limited, suspended or terminated. To the extent of any conflict between the terms of this Agreement and the terms of a Third Party License, the terms of such Third Party License shall control with respect to the applicable Third Party Product.

## 9. Indemnification.

9.1 Indemnification by Octolan. Octolan shall, at its expense, defend Client against any third party Claims to the extent such Claims allege that the Software infringes its valid and registered United States

patent or copyright. In addition, Octolan shall pay any damages finally awarded by a court (or settlement amounts agreed to in writing by Octolan) with respect to such Claims. Client shall (i) promptly notify Octolan in writing of any such Claims of which it becomes aware, (ii) permit Octolan sole control to defend, compromise or settle such Claims, and (iii) provide reasonable information, assistance and authority, at Octolan's reasonable expense, to enable Octolan to defend such Claims. Subject to the foregoing, Client may otherwise participate in the defense or settlement of any such Claims at its own expense. If the Software (or any portion thereof) is held or is reasonably believed by Octolan to infringe a third party's intellectual property rights, Octolan may, in its sole discretion, (a) modify the Software so that it is non-infringing, (b) replace the infringing portion of the Software with a non-infringing substitute of similar functionality, (c) obtain a license for Client to continue to use the Software, and/or (d) terminate this Agreement upon thirty (30) days notice and provide Client a prorated refund of any prepaid Fees based on the remaining term for which such Fees apply. This Section 9.1 shall not apply to the extent the Claim arises out of a Third Party Product, Client's breach of this Agreement, an unauthorized modification of the Software, Client's or a third party's acts or omissions or use of a non-current release of the Software. THIS SECTION 9.1 STATES CLIENT'S SOLE AND EXCLUSIVE REMEDY AND OCTOLAN'S SOLE AND EXCLUSIVE LIABILITY FOR ANY THIRD PARTY CLAIM THAT THE SOFTWARE INFRINGES A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9.2 Indemnification by Client. Client shall, at its expense, defend Octolan and Octolan Providers against any third party Claims alleging that any Client Content violates or infringes on its patent, copyright, trademark, trade secret or other rights. In addition, Client shall pay any damages finally awarded by a court (or settlement amounts agreed to in writing by Client) with respect to such Claims. Without limiting the foregoing, Client shall indemnify, defend and hold Octolan and Octolan Providers harmless from and against any Claims arising out of or related to any disputes between or among Client, Authorized Users and/or Client's customers, and/or Client's breach of this Agreement.

10. Limitation of Liability. EXCEPT WITH RESPECT TO OCTOLAN'S GROSS NEGLIGENCE OR WILLFULL MISCONDUCT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OCTOLAN PARTIES SHALL IN NO EVENT BE LIABLE UNDER ANY LEGAL THEORY FOR (I) ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, LOST PROFITS OR PUNITIVE DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, THE SERVICES OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTION OF BUSINESS, AND/OR (II) SUBJECT TO SECTION 10(I), ANY DAMAGES EXCEPT FOR ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT, NOT TO EXCEED THE FEES PAID BY CLIENT TO OCTOLAN UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES. THE EXISTENCE OF MULTIPLE CLAIMS SHALL NOT INCREASE THIS LIMIT. Any claims arising in connection with this Agreement, the Services or Software, except for claims arising out of Client's nonpayment, must be brought within one (1) year of the date the cause of action accrued.

11. Relationship. The parties are independent contractors, and nothing in this Agreement shall be construed to make the parties partners, joint venturers, representatives or agents of each other, nor shall either party so represent to any third person. No employer-employee relationship is intended to be created by this Agreement. Octolan Providers may make available the Services (or any portion thereof) in Octolan's sole discretion. Octolan acknowledges and agrees that it is responsible for any Services made available by Octolan Providers. Client acknowledges and agrees that Client is responsible for all acts and omissions of Authorized Users and Client's employees, contractors and agents, and all such acts and omissions shall be deemed Client's acts and omissions.

12. Governing Law and Disputes. This Agreement shall be governed by, construed and enforced according to the laws of the State of Minnesota, without regard to its conflict or choice of law principles. Any action



arising out of or relating to this Agreement shall be brought only in the state or federal courts of Hennepin or Ramsey County, Minnesota, and all parties expressly consent to such courts' jurisdiction and irrevocably waive any objection with respect to the same, including, without limitation, any objection based on convenience. Prior to commencing a legal action or proceeding relating to a dispute arising under or related to this Agreement, a party must notify the other party of the substance of such dispute. The parties shall attempt to reach a resolution of such dispute for a period of at least fifteen (15) days from the date the applicable notice was provided. The foregoing informal resolution process shall not apply to legal actions or proceedings to the extent a party is seeking injunctive or other equitable relief.

13. Successors and Assigns. Neither party may assign this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other party, and any attempted assignment without the other party's prior written consent shall be null and void; provided that Octolan may assign all or any portion of this Agreement to an affiliate, in connection with its merger or restructuring, or to a successor in connection with the sale of substantially all of its assets associated with this Agreement or the assigned portion of this Agreement. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer upon any person other than the parties hereto, third parties expressly named herein, and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

14. Force Majeure. Neither party shall be responsible for delays or failures of performance resulting from acts beyond the reasonable control of such party, except for payment obligations. Such acts shall include, but are not limited to, acts of God, strikes, internet connection failures, acts of war, acts of terror, epidemics, pandemics, government regulations, fire, power failures and other disasters. In such an event, the affected party shall use reasonable efforts to resume performance.

15. Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter hereof. This Agreement may not be amended except in a writing that is duly signed by the parties hereto. To the extent of any conflict between these Master Terms and the Order, the Order shall prevail except if the Order is an Online Order in which event these Master Terms shall prevail.

16. Notices. Except as otherwise provided, notices under this Agreement shall be in writing and shall be deemed provided when (i) delivered personally, (ii) three (3) business days after the date sent by certified mail, postage prepaid with return receipt requested, (iii) on the date receipt is confirmed if sent by e-mail, or (iv) upon written confirmation of delivery by recognized international carrier sent by overnight service. Any notice to Octolan must be sent to Octolan Technology, Inc., Attn: Legal Notices, 1000 County Road E, Suite 250, Shoreview, MN 55126, legal@octolan-tech.com. Any notice to Client must be sent to the mailing or e-mail address identified in the Order. A party may change its notice address upon five (5) days written notice to the other party.

17. Miscellaneous. Section and subsection headings are not to be considered part of this Agreement. They are included solely for convenience and not intended to be full or accurate descriptions of the content hereof. Should any provision of this Agreement be held invalid or unenforceable, such invalidity will not invalidate the whole of this Agreement, but rather that invalid provision will be amended to achieve as nearly as possible the same effect as the original provision and the remainder of this Agreement will remain in full force and effect. The Order may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Each of the parties hereto have been represented by independent legal counsel or afforded the opportunity of representation by independent legal counsel. Either party's failure to insist upon strict enforcement of any provisions of this Agreement shall not be construed as a waiver of any provision or right. To be effective, any such waiver must be in

writing and signed by the waiving party, and shall be effective only in the specific instance and for the specific purpose for which given.