

**OCTAGOS HEALTH
GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions (“Terms and Conditions”) shall apply to: (i) any agreement (“Agreement”) between Octagos Health, Inc. (“Octagos”) and any party who or which enters an agreement for Software and/or services with Octagos (“Octagos Customer”), and (ii) any party to whom an Octagos Customer contracts to provide access to Octagos Software and/or services to a user outside of Octagos Customer in a manner permitted by its contract with Octagos (such end user referred to herein as “Distributor Customer” and collectively with Octagos Customer, “Customer”). These General Terms and Conditions are fully incorporated into any Agreement between Octagos and Octagos Customer, and shall be incorporated into any Agreement between an Octagos Customer and Distributor Customer and, by mutual agreement of the parties or through any Agreement language, are to be treated as if set forth in full in the Agreement.

1. **DEFINITIONS.** Capitalized terms not otherwise defined in these Terms and Conditions or the Agreement shall have the meanings below:
 - 1.1. “Addendum” or “Addenda” means a writing addressing an order of a specific set of products or services executed by authorized representatives of each party. An Addendum may be a Statement of Work, Exhibit, or another writing the parties intend to be incorporated by reference into the Agreement.
 - 1.2. “Customer Data” means data in electronic form managed or stored by Octagos, which is entered or transmitted by Customer and received by Octagos.
 - 1.3. “Intellectual Property” means trade secrets, copyrightable subject matter, patents, and patent applications and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.
 - 1.4. “Master Licensor” means the owner of the title of any Software provided to Customer.
 - 1.5. “Professional Services” means professional services that Octagos provides under the Agreement.
 - 1.6. “Protected Health Information” or “PHI” shall have the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.
 - 1.7. “Reporting Services” means collectively the different programs or tools Octagos provides for Customer to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking, or any other reporting tool.
 - 1.8. “Software” means any computer program, programming, or modules provided or sublicensed to Customer by Octagos, regardless of the owner thereof.
 - 1.9. “Software Schedule” refers to an Addendum in which a Customer has ordered Software.
 - 1.10. “Statement of Work” or “SOW” refers to an Addendum in which Customer has ordered Professional Services or other described services from Octagos.
 - 1.11. “User” means any individual who uses Octagos’ systems on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.

2. **SOFTWARE LICENSE.** This Article 2 shall only apply to Customers who license the right to use one or more types of Software, and shall not apply to Customers who contract only for services:
- 2.1. Grant of License. During the term of this Agreement, Octagos is granting Customer a nonexclusive sublicense to access and use the Software; provided that, Customer complies with the Restrictions on Use (Section 2.2) and other limitations contained in this Agreement.
 - 2.2. Restrictions on Use. Except as provided in this Agreement or as otherwise authorized by Octagos, Customer has no right to: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute, or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify, or create derivative works based upon the Software either in whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party. The rights granted under the provisions of this Agreement do not constitute a sale of the Software. Octagos and/or the Master Licensor retain all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer's rights to access, use, or copy the Software during the Term of this Agreement. Customer recognizes that the Software and its components are protected by copyright and other laws.
 - 2.3. No Third Party Access. The Customer acknowledges and agrees that the license granted hereunder permits Customer only to use the Software and any related services provided by Octagos exclusively within Customer's organization. Customer may not share, lease, sublicense, or otherwise make the Software available to any third parties that are not employees of Customer without Octagos' prior written consent. The Customer commits to implementing reasonable security measures to protect against unauthorized access, use, or disclosure of the Software and to immediately notify Octagos of any such unauthorized use. In the event of unauthorized third-party use, the Customer will indemnify Octagos against any related claims or damages and acknowledges that Octagos reserves the right to terminate the Agreement immediately and pursue legal remedies, including injunctive relief and damages. Octagos may also conduct audits to ensure compliance with these terms, with full cooperation from the Customer. This provision is crucial for protecting Octagos' proprietary interests and the confidentiality of the Software and its data, and it remains in effect even after the Agreement's termination or expiration.
 - 2.4. Delivery. Octagos shall use commercially reasonable efforts to deliver the Software and/or grant Octagos Customer access to the Software promptly after the effective date of the Agreement (the "Effective Date"). In the case of a Distributor Customer, the Effective Date for each Distributor Customer shall be the effective date of the agreement between Distributor Customer and Octagos Customer which grants such Distributor Customer access to the Octagos software.
 - 2.5. Third-Party Software. Software may incorporate software and other technology owned and controlled by third parties ("Third-Party Software"). All Third-Party Software falls under the scope of this Agreement. Notwithstanding the foregoing, Octagos shall assign any Third-Party Software warranties to Customer, to the extent such warranties are assignable. If such Third-Party Software warranties are not assignable, Octagos will provide reasonable assistance to Customer in enforcing such warranties.

3. **HOSTING, SLA & SUPPORT SERVICES.** This Article 3 shall only apply to Customers who license the right to use one or more types of Software, and shall not apply to Customers who contract only for services:

- 3.1. Hosting & Management. Octagos shall be responsible for hosting and managing the Software, as well as performing device interrogations required to provide data to the Customer.
- 3.2. Outages. No credits shall be given in the event Customer's access to Software is delayed, impaired or otherwise disrupted (collectively, an "Outage"). If such Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 95% for thirty-one (31) consecutive days (collectively, "Uptime Commitment"), then Customer shall have the option to immediately terminate this Agreement and cease any access to Octagos Software and Service. This is Customer's sole remedy for Octagos' breach of the Uptime Commitment.
- 3.3. Scheduled Downtime. In the event Octagos determines that it is necessary to intentionally interrupt the Software or that there is a potential for the Software to be interrupted for the performance of system maintenance (collectively, "Scheduled Downtime"), Octagos will use good-faith efforts to notify the Octagos Customer of such Scheduled Downtime at least 24 hours in advance and will ensure Scheduled Downtime occurs during non-peak hours (midnight to 6 a.m. Central Time). In no event shall Scheduled Downtime constitute a failure of performance by Octagos.

4. **TERM AND TERMINATION**

- 4.1. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and continue for the period set forth in the applicable SOW or, if none, for one (1) year. Thereafter, the Term will renew for successive one-year periods, unless either party opts out of such renewal by providing at least sixty (60) days' written notice before the scheduled renewal date.
- 4.2. Termination for Cause. Either party may terminate this Agreement or any individual SOW for the other party's material breach by providing written notice. The breaching party shall have thirty (30) days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.
- 4.3. Effect of Termination.
 - 4.3.1. If this Agreement or any Addendum is terminated by Customer prior to the expiration of its then-current term, for any reason other than Octagos' breach, Customer agrees to immediately remit to Octagos an amount equal to the expected fees (including, if applicable, reimbursements from third party payers) that would have become payable to Octagos during the remainder of the Term. The expected fees shall be calculated by pro rating the fees earned by Octagos from the Effective Date until the termination date over the remaining period of the Term.
 - 4.3.2. Upon termination of this Agreement or any Addendum, Customer shall delete, destroy, or return any Confidential Information received from Octagos, except as required by law.
 - 4.3.3. Termination of this Agreement is without prejudice to any other right or remedy of the parties and shall not release either party from any liability (a) which at the time of termination, has already accrued to the other party, (b) which may accrue in respect of any act or omission prior to termination, or (c) from any obligation which is intended to survive termination.

- 4.4. Electronic Health Record (EHR) Integration Services. In consideration of Customer's usage of the Software and timely payments for a period of at least one (1) year from the Effective Date, Octagos agrees to provide EHR integration services to Customer at no additional charge. The estimated cost of these services is \$25,000.00. Customer acknowledges and agrees that Octagos has granted this EHR integration concession in consideration of Customer's commitment to utilize the services as intended for a minimum of one (1) year and of Customer's prompt and full payment of all invoices. If Customer terminates services with Octagos, does not utilize the services as intended, or fails to make timely payments before the completion of one (1) year from the Effective Date of the Agreement, Customer agrees to reimburse Octagos the full cost of the EHR integration services in the amount of \$25,000.00. This reimbursement is required as less than one year of services is insufficient for Octagos to recoup the cost of the integration. If Customer terminates services at the one (1) year mark but before the completion of two (2) years from the Effective Date, Customer agrees to pay a prorated payback amount of \$10,000.00. If Customer maintains services with Octagos for two (2) years or more, no reimbursement for EHR integration services will be required, and the cost is considered fully recouped by Octagos. Notwithstanding the foregoing, in the event Octagos Customer contracts with a Distributor Customer to provide Octagos' Software or services, Octagos Customer shall not be eligible for the EHR integration services concession and Octagos Customer shall remain liable for any recoupment Octagos requests due to early termination by the relevant eligible Distributor Customer.
- 4.5. Delivery of Data. If Customer requests its data within sixty (60) days of expiration or termination of this Agreement, Octagos will provide Customer access to Customer Data for a commercially reasonable fee. Octagos is under no obligation to retain Customer Data more than sixty (60) days after expiration or termination of this Agreement.

5. FEE ADJUSTMENT FOR ACCESS RESTRICTIONS.

- 5.1. Customer Obligations. Customer shall be required to provide Octagos with access to information Octagos deems necessary for Octagos to perform the services intended under the Agreement.
- 5.2. Adjustment of Fee Structure. In the event that Customer does not provide the appropriate access to information necessary for Octagos to generate revenue based on the fee structure described in the Agreement, Octagos reserves the right to switch Customer to the default fee structure described in Section 5.3 upon written notice to the Customer. Further, if Customer's volume of billable transmissions or active patient count falls below the minimum acceptable threshold as determined by Octagos from time to time, Octagos will have the right to switch the Customer to the default fee structure described in Section 5.3 or terminate the Agreement upon written notice to Customer.
- 5.3. Default Fee Structure. Unless otherwise specified in the Agreement, Customer shall pay the monthly subscription fee negotiated and confirmed in writing between the parties. This fee will entitle Customer to access the Software, technician review, remote monitoring scheduling, and full-service patient calls performed by Octagos personnel.

6. CONFIDENTIALITY

- 6.1. Confidential Information. "Confidential Information" refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five (5) business days; (c) all elements of any Software furnished to Customer hereunder and any documentation pertaining thereto, whether or not designated confidential; and (d) any other nonpublic, sensitive information reasonably

considered a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of a party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) is required to be disclosed by law; or (vi) PHI, which shall be governed by the Business Associate Agreement rather than this Article 6.

- 6.2. Nondisclosure. The parties shall not use Confidential Information for any purpose other than to fulfill the terms of this Agreement (the "Purpose"). Each party: (a) shall ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein; and (b) shall not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. The receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.
- 6.3. Injunction. Each party agrees that breach of Section 6.2 would cause the disclosing party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the disclosing party will be entitled to injunctive relief against such breach or threatened breach, without the disclosing party proving actual damage or posting a bond or other security.
- 6.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto.
- 6.5. Open Records and Other Laws. Notwithstanding anything in this Article 6 to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order.

7. CUSTOMER DATA & PRIVACY

- 7.1. Ownership of Data & Reports. Customer will not copy, reproduce, republish, upload, post, transmit, export, or distribute in any way any material, data, or other information, except as specifically provided in this Agreement, without prior written approval from Octagos. Customer covenants that Customer will only supply, and authorize any applicable third parties to supply, PHI that Customer has the right to supply for the purposes set forth in this Agreement. Octagos does not claim any ownership right in PHI, although Octagos will have the right to utilize the PHI as permitted by the Business Associate Agreement between the parties and this Agreement. Customer hereby grants Octagos a nonexclusive royalty free license to use PHI to create de-identified data in accordance with 45 CFR § 164.514(a)-(c) ("De-identified Data") for any and all legally permissible purposes.
- 7.2. Use of Customer Data. Except as provided by this Agreement, unless Octagos receives Customer's prior written consent, Octagos: (a) shall not access, process, or otherwise use Customer Data; and (b) shall not intentionally grant any third-party access to Customer Data, including without limitation Octagos' other Customers, except subcontractors that are subject to a reasonable nondisclosure agreement or authorized participants. Notwithstanding the foregoing, Octagos may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or by proper legal or governmental

authority, and Customer shall promptly provide any and all patient demographic data requested by Octagos for such purposes. Octagos shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

- 7.3. Anonymized Data. Notwithstanding any provision herein, to the maximum extent permitted by applicable law, Octagos may, without restriction, use, reproduce, license, or otherwise exploit De-Identified Data and/or Anonymized Data; provided that such Anonymized Data and/or De-Identified Data does not contain and is not PHI. "Anonymized Data" means any aggregate information, analysis, rule, projection, statistic or similar summary or conclusion that Octagos has obtained through processing or analysis of any Customer Data or PHI (but excluding the original PHI); provided that Anonymized Data shall be rendered anonymous in such a way that the data subject is no longer identifiable. Customer obtains no ownership right, title, or interest from Octagos in or to De-identified Data and/or Anonymized Data.
- 7.4. Risk of Exposure. Customer recognizes and agrees that the services described hereunder involve risks of unauthorized disclosure and that Customer assumes such risks. Customer is responsible for obtaining, maintaining, and securing its connections to the Internet. Octagos makes no representations regarding the reliability, performance, or security of any network or provider.

8. INDEMNIFICATION

- 8.1. Octagos shall defend and indemnify Octagos Customer from any damages, costs, liabilities, and expenses (including reasonable and actual attorney's fees) ("Damages") actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each an "Indemnified IP Claim"). If an Indemnified IP Claim under this Article occurs or if Octagos determines that an Indemnified IP Claim is likely to occur, Octagos shall at its option: (a) obtain a right for Octagos Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent; or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably available, either party may, at its option, terminate this Agreement and/or relevant Software Schedule. Octagos will refund any pre-paid Fees on a pro-rata basis for the allegedly infringing Software provided. Notwithstanding the foregoing, Octagos shall have no obligation hereunder for any claim resulting or arising from: (i) Distributor Customer's use of the Software or services, (ii) Customer's breach of this Agreement; (iii) modifications made to the Software that were not performed or provided by or on behalf of Octagos; or (iv) the combination, operation, or use by Customer or anyone acting on Customer's behalf of the Software in connection with a third-party product or service (the combination of which causes the infringement). This Section 8.1 states Octagos' sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement by the Software.
- 8.2. Customer shall indemnify, defend and hold Octagos, its affiliates and their respective directors, officers, shareholders, employees, representatives, agents, successors, and permitted assigns ("Octagos Indemnified Parties") harmless from and against any and all third party claims, that arise out of or in connection with: (a) a breach or inaccuracy of any representation, warranty, or covenant made by Customer in this Agreement; (b) a material breach of this Agreement by Customer; (c) any negligence, willful or reckless actions or misconduct of Customer, its affiliates or any of their respective employees, agents or subcontractors; (d) any personal injury, including death, or damage to tangible property caused by the negligent or intentional acts of Customer, its affiliates or any of their respective employees, agents, or

subcontractors; or (e) any breach of Customer's confidentiality obligations under Article 6, the Agreement, or any Business Associate Agreement entered by the parties. Notwithstanding the foregoing, Customer shall not be liable for any third party claims to the extent caused by grossly negligent or willful acts or omissions of the Octagos Indemnified Parties.

- 8.3. Distributor Customer. In the event Octagos Customer contracts with a Distributor Customer for Octagos Software or Services, Octagos Customer shall remain liable to Octagos and shall indemnify, defend, and hold Octagos and Octagos Indemnified Parties harmless from and against any and all third party claims, that arise out of or in connection with Octagos Customer's contract or agreement with Distributor Customer.
- 8.4. Indemnification Procedures. Upon becoming aware of any matter which is subject to the provisions of the Agreement or these General Terms and Conditions (a "Claim"), the party seeking indemnification (the "Indemnified Party") must give prompt written notice of such Claim to the other party (the "Indemnifying Party"), accompanied by copies of any written documentation regarding the Claim received by the Indemnified Party. The Indemnifying Party shall compromise or defend, at its own expense and with its own counsel, any such Claim. The Indemnified Party will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that the Indemnifying Party will have the right to control such settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at the Indemnifying Party's expense.

9. PHI ACCURACY & COMPLETENESS

- 9.1. Octagos gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded, or disclosed to Octagos by Customer.
- 9.2. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through Octagos and/or the Software. Customer agrees that the Agreement between the Parties includes the Disclaimer at <https://www.octagos.com/termsandconditions> which is hereby incorporated as if fully set forth herein.

10. FEEDBACK RIGHTS & WORK PRODUCT

- 10.1. Feedback Rights. Octagos will not treat as confidential any suggestion or idea for improving or otherwise modifying Octagos' products or services ("Feedback") that Customer provides to Octagos. Nothing in this Agreement will restrict Octagos' right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensation or crediting Customer. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to Article 6 (Confidential Information).
- 10.2. Work Product Ownership. In the event Customer hires Octagos to perform Professional Services, Octagos alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of Software made by or for Customer (if applicable). Customer hereby explicitly

acknowledges and agrees that nothing in this Agreement or a separate SOW gives the Customer any right, title, or interest to the intellectual property or proprietary know-how of the Deliverables.

11. LIMITATION OF LIABILITY

- 11.1. Limitation of Damages. UNDER NO CIRCUMSTANCES SHALL OCTAGOS OR CUSTOMER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTION OR IMPAIRMENT OF USE, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS.
- 11.2. Limitation of Liability. OCTAGOS' MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER WITHIN THE PRECEDING 12-MONTH PERIOD.
- 11.3. Applicability; Allocation of Risk. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR OCTAGOS' SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12. MISCELLANEOUS

- 12.1. Distributor Customer Acknowledgment and Agreement. In the event Octagos Customer contracts with a Distributor Customer to provide Octagos' Software or services, Octagos Customer shall provide Distributor Customer with these General Terms and Conditions and shall require Distributor Customer agree to and sign these General Terms and Conditions prior to requesting Octagos provide Distributor Customer access to Octagos' Software or services.
- 12.2. Independent Contractors. The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no Octagos employee or contractor is or will be considered an employee of Customer.
- 12.3. Taxes and Fees. The Agreement is exclusive of all taxes, if applicable. Customer is responsible for and will remit (or will reimburse Octagos upon Octagos' request) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on Octagos' income) related to this Agreement.
- 12.4. Audit Rights. Octagos may regularly audit Customer's use of the Software and charge Customer a reasonable fee if Customer's usage has increased beyond the allowable maximum contracted for in the current Software Schedule or otherwise assess additional reasonable fees.

- 12.5. Notices. Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party's principal place of business, (b) hand delivered, (c) facsimile with receipt of a "Transmission Confirmed" acknowledgment, (d) e-mail, or (e) delivery by a reputable overnight carrier service. The notice will be deemed given on the day the notice is received.
- 12.6. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter, or any other document addressing the Software or services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.
- 12.7. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 12.8. Assignment & Successors. Customer may not assign, subcontract, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the Octagos' prior written consent. Octagos may assign, subcontract, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, or may contract with third parties to perform any of its obligations hereunder, by providing notice to, but without the need for consent from, Customer. Either party may, without the prior consent of the other, assign all its rights under this Agreement to (i) a purchaser of all or substantially all assets related to this Agreement, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating (collectively, a "Change in Control"); provided however, that the non-assigning party is given notice of the Change in Control.
- 12.9. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party.
- 12.10. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event lasts longer than thirty (30) days, the other party may immediately terminate the applicable SOW or, if none, this Agreement.
- 12.11. Marketing. Upon prior written approval, Customer hereby grants Octagos a license to include Customer's primary logo in any customer list or press release announcing this Agreement.

- 12.12. Waiver & Breach. Neither party will be deemed to have waived any of its rights under this Agreement unless it is an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 12.13. Survival of Terms. Unless otherwise stated, all of Octagos' and Customer's respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.
- 12.14. Ambiguity. This Agreement will not be construed against any party by reason of its preparation.
- 12.15. Governing Law. This Agreement, any related addenda, and any CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND OCTAGOS, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "Dispute") will be governed by the laws of the State of Texas, without regard to conflicts of law. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees under § 38.001 of the Texas Civil Practices and Remedies Code.
- 12.16. Venue. The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in Harris County, Texas. The parties agree to submit to the personal jurisdiction of such courts. Notwithstanding the foregoing, in the event Customer is a U.S. city, county, municipality or other U.S. governmental entity, then any Dispute shall be brought exclusively in the state or federal courts located in the county where Customer is located.
- 12.17. Bench Trial. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.
- 12.18. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST ANY OTHER CUSTOMER(S), OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- 12.19. Dispute Resolution. Customer and Octagos will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within thirty (30) days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.
- 12.20. Order of Precedence. In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the Agreement; (2) these General Terms and Conditions and the Disclaimer; (3) any Business Associate Agreement; (4) the applicable SOW, if any, with most recent SOWs taking precedence over earlier ones; and (5) any other Octagos policy posted online, including without limitation its privacy policy.
- 12.21. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.

- 12.22. Signatures. Electronic signatures on any Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

OCTAGOS HEALTH DISCLAIMER

This disclaimer (“Disclaimer”) shall apply to: (i) any agreement (“Agreement”) between Octagos Health, Inc. (“Octagos”) and any party who or which enters an agreement for Software and/or services with Octagos (“Octagos Customer”), and (ii) any instance whereby an Octagos Customer contracts to provide access to Octagos Software and/or services to a user outside of Octagos Customer (“Distributor Customer” and collectively with Octagos Customer, “Customer”). This Disclaimer is fully incorporated into any Agreement between Octagos and Octagos Customer, and shall be incorporated into any Agreement between an Octagos Customer and Distributor Customer and by mutual agreement of the parties, is to be treated as if set forth in full in the Agreement.

1. **TERMS OF USE.** The software and/or services to be provided to Customer under any Agreement between Octagos and the Customer (collectively, the “Services”) is/are offered to Client conditioned upon Client’s acceptance, without modification, of the terms, conditions, and notices contained herein. By utilizing any software or services provided by Octagos, Customer hereby agrees to all of the terms and conditions contained in this Disclaimer.
2. **PURPOSE.** The Services offered by Octagos are for the specific purpose of providing and/or interpreting medical information and data on behalf of medical providers. The Services provided to Customer may not be utilized for any other use or purpose, including but not limited to any unlawful purpose. To the maximum extent permitted by law, Octagos is neither liable nor responsible for any bodily injuries or damages, up to and including death, which occur as a result of any other manufacturer’s product, the function of the software provided to Customer, or Customer’s use of data received from Octagos.
3. **LIMITATION OF LIABILITY.** In no event shall Octagos, its affiliates or any of their licensees, service providers, members, managers, employees, agents, officers or directors be liable in any manner whatsoever for any consequential, direct, indirect, special, punitive, incidental, or other damages arising out of or in connection with the use or misuse of the Services. Further, in no event shall Octagos be liable for any lost profits, goodwill, interruption or impairment of any services that medical provider provides as a result of the use of any software provided to Customer or the interpretation of any data extracted through Customer’s use of such software. Under no circumstances is Octagos responsible or liable for any personal bodily injury, up to and including death, of any patient caused directly or indirectly by Customer’s use of the Services. Any liability incurred as a result of patient treatments or interactions which include the use of the Services is entirely borne by the Customer and not by Octagos. Octagos is not responsible for any mishandling, misuse, or unauthorized reproduction of any data extracted from software provided to Customer. Furthermore, Octagos is not responsible for any type of data breach or release of any personal and confidential information obtained through the use of the software provided to Customer except as required by applicable law. Octagos makes no representations nor bears any responsibility for any interpretation or communication of any data extracted from the software provided to Customer or received as part of the Services. Customer is solely responsible for any and all professional malpractice claims or similar causes of action, and expressly releases Octagos from any liability with respect to any such claim. Customer’s use of any software and/or services represents Customer’s agreement to these provisions. To the maximum extent permitted by law, Customer hereby waives any and all rights to future claims against Octagos. This limitation of liability cannot be waived and is based on and includes any and all damages that may arise under any legal theory, whether such theory rests on principles of contract, tort (including negligence) or strict liability.

4. **ASSUMPTION OF RISK.** Customer understands and assumes the risks associated with the use of the Services. Customer acknowledges that Customer has entered into the Agreement, including this Disclaimer, freely and at Customer's own risk. Customer understands that there is an inherent risk of using and relying on the data and/or any interpretations of data Octagos may provide as part of the Services. Customer expressly assumes all risks of using the Services. Customer further assumes any and all risks associated with interpretation of the data and the effects such reliance has on the services Customer renders to its patients. Customer further expressly releases Octagos from any and all liability for any damage to Customer's business, reputation, medical licensing, or any other direct or indirect damages incurred through Customer's use of software provided by Octagos, any data extracted through Customer's use of such Software, or any interpretations of data Octagos provides to Customer.
5. **INDEMNIFICATION.** To the maximum extent allowed by law, Customer shall indemnify and hold Octagos, its owners, affiliates and their respective directors, officers, shareholders, employees, representatives, agents, successors and permitted assigns ("Octagos Indemnified Parties") harmless from and against any and all third party claims, that arise out of or in connection with: (a) any harm, damages, or personal injury, up to and including death, incurred by a third party as a result of Customer's use of any software provided by Octagos, any services rendered in reliance on the data extracted from such software or the services rendered by Customer in reliance on Octagos' interpretation of any patient data; (b) any negligence, recklessness, or willful misconduct of Customer, its affiliates or any of their respective employees, agents, or subcontractors; (c) any loss of profits, injury to business or reputation or any other harm incurred by a third party as a result of Customer's use of the Services; or (d) any misuse or misappropriation of data extracted from software provided as part of the Services by Customer or any third party. Furthermore, Octagos shall have the right but not the obligation to control the defense or settlement of any claim or lawsuit covered by Customer's indemnity hereunder and, at Octagos' option, Customer shall at Customer's expense (I) defend all actions based thereon, or (II) pay Octagos all attorney's fees and all other costs and expenses arising from the defense and settlement thereof by Octagos Indemnified Parties.
6. **DISTRIBUTOR CUSTOMER.** In the event Octagos Customer contracts with a Distributor Customer to provide Octagos' Services, Octagos Customer shall provide Distributor Customer with this Disclaimer and shall require Distributor Customer agree to and sign this Disclaimer prior to requesting Octagos provide Distributor Customer access to Octagos' Services.
7. **ACKNOWLEDGMENT AND UNDERSTANDING.** Customer understands that Customer's use of the Services constitutes an express understanding and agreement to the terms of the entirety of this Disclaimer and the Agreement. Customer understands that Customer is giving up substantial rights, including but not limited to Customer's right to sue Octagos. Customer understands and acknowledges that Customer's use of the Services is entirely voluntarily and that Customer's use of the Services serves as an unconditional release of all liability to the greatest extent allowed by law.
8. **SEVERABILITY.** Customer expressly agrees that the foregoing waiver and assumption of risk detailed in this Disclaimer is intended to be as broad and inclusive as is permitted by the law of the State of Texas and that if any portion of this Disclaimer is deemed to be invalid, the remaining portions of the Disclaimer shall nevertheless continue in full legal force and effect.
9. **MISCELLANEOUS.** No course of dealing between the parties or any waiver of or a breach of any provision of this Disclaimer shall constitute a waiver or breach of any other provision. Should any provision of this Disclaimer be held invalid or unenforceable, the remaining terms will remain in full force and effect, consistent with terms of the Disclaimer and the Agreement taken as a whole.