



OCTAVE® CLOUD SERVICES END USER AGREEMENT

This Octave® Cloud Services End User Agreement ("Agreement") is between Intergraph Corporation (formerly doing business as Hexagon Asset Lifecycle Intelligence division but now branding as Octave), having its principal place of business at 305 Intergraph Way, Madison, AL 35758 USA (hereinafter referred to as "Octave") and Customer entity purchasing the Cloud Services as identified on the Quote (hereinafter referred to as "Customer") and entered as of the Effective Date.

1. DEFINITIONS

The following definitions are used throughout this Agreement and, unless otherwise defined therein, including any and all Policy Documentation.

- 1.1. "Acceptable Use Policy" and "AUP" means Octave's acceptable use policy for use of Cloud Services. The AUP is a Policy Documentation.
- 1.2. "Affiliate" means any entity which is directly controlled by the Customer. Control for the purposes of this definition means that Customer owns in excess of fifty percent (50%) of the ownership interest of the entity or owns a majority of the voting shares of the entity.
- 1.3. "AI Functionality" means any machine learning or model-based capability embedded in or delivered with a Software Product, excluding third-party AI features independently selected and operated by Customer.
- 1.4. "Application(s)" means Octave mobile applications available for purchase or included with the Cloud Services that enable users to use a Software Product license utilizing a Device. Applications may be included with the Software Products procured hereunder or purchased separately under this Agreement. Unless separately identified, Applications are included in the Software Products definition.
- 1.5. "Authorized User" means any individual user authorized by the Customer in accordance with this Agreement to use Cloud Services on behalf of the Customer and in relation to whom an account is or has been set up by or on behalf of Customer to access Cloud Services.
- 1.6. "Cloud Environment" means the Octave multi-tenant engineering environment delivered via a public cloud platform (as determined by Octave) which operates on a 24/7/365 basis and is supported by Octave.
- 1.7. "Cloud Incident" means any unplanned interruption to Cloud Services which results in the Authorized Users being unable to access the Customer Environment or launch Software Products and the incident is reported to Octave through Cloud Services Support.
- 1.8. "Cloud Optional Services" means additional services that are available to be purchased separately by Customer to complement the Cloud Services as quoted by Octave.
- 1.9. "Cloud Services" means the standard market offering of Octave cloud based software provided by Octave and ordered by the Customer. Unless otherwise explicitly identified, Cloud Services as used herein includes the Cloud Services' Software Products provided to Customer in return for the payment of the Cloud Services Fees.
- 1.10. "Cloud Service Fees" means, collectively, any of the fees as quoted by Partner and payable by Customer to Partner for the Cloud Services (or any part thereof). Cloud Services Fees include:
 - 1.10.1. The Subscription Fees; and
 - 1.10.2. Non-recurring charges, being either a one-time or one-off expense, charge, or amount payable by Customer to Octave in respect of an element of the Cloud Services provided hereunder as agreed with Customer. Such charges may be required to be paid on a repetitive basis in order for the Customer to continue to receive and/or have access to the relevant element of the Cloud Service.

- 1.10.3. Fees for Cloud Optional Services may be a Subscription Fee or a non-recurring charge depending on the service. Customer Success Services are a Subscription Fee.
- 1.11. “Cloud Service Start Date” means the earlier date in which (i) Octave commences onboarding and configuration of the Customer Environment, or (ii) the first user account and log-in credentials are released by Octave to the first Authorized User via email. Should onboarding and configuration of the Customer Environment or access to the Cloud Services commence part-way through a month, the Cloud Service shall be deemed to have commenced at the beginning of that month for the purpose of calculating the Cloud Service Fees. The Cloud Service Start Date for renewal Subscription Terms shall be the calendar day immediately following the prior Order’s end date.
- 1.12. “Consulting Services” means services not delivered as part of Octave’s commercial off the shelf (“COTS”) core Cloud Services or Software Products and Support, including but not limited to software and system configuration, software and system development (outside of the COTS development), software customization, software and system design (outside of the COTS design), software modifications or software enhancements. Consulting Services are not available through Support.
- 1.13. “Contractor(s)” shall mean any contractors, subcontractors, agents, advisors and consultants who are performing services on behalf of Customer or Customer’s Affiliates.
- 1.14. “Customer Data” means all electronic data or information submitted to, stored in and/or generated in the Customer Environment(s) by Customer.
- 1.15. “Customer Environment” means the Customer’s segment of the Cloud Environment to which the Customer is provided with access and use of as part of the Cloud Services. For the Cloud Services’ Software Products that are multi-tenant, the Customer Environment shall collectively mean the Customers’ tenants.
- 1.16. “Customer Success Services” or “CS Services” means the subscription service in which, for the subscription term, Octave shall provide advisory, relationship-management, and enablement services provided in connection with the Cloud Services in which the CS Services were purchased. CS Services are available as Customer Success Plus (CS+) or Customer Success Digital (CS Digital+) The CS Services are a Cloud Optional Service.
- 1.17. “Data Protection Legislation” means the privacy and personal data legislation applicable to the processing of Personal Data in the jurisdiction where this Agreement is made or performed, including but not limited to the General Data Protection Regulation (Regulation (EU) 2016/679) (the “GDPR”) as may be amended and/or any corresponding or equivalent national laws or regulations, (and in case of discrepancies or contradictions between different rules or regulations, the one which provides the highest degree of privacy and/or information security shall apply).
- 1.18. “Device” means any technical device that can be used for creating, storing, or transmitting information in the form of electronic data including but not limited to a PC, workstation, terminal, personal digital assistant (PDA), tablet, mobile phone, shop floor computer, and handheld scanner.
- 1.19. “Documentation” means the then-current documentation made generally available by Octave relating to the features, functions, and use of the Software Products. Documentation may include user’s guides, installation guides, reference guides, administrator’s guides, customization guides, programmer’s guides, configuration guides, help guides, and product release notes made available to Customer. Not all of the previous types of Documentation are available for each Software Product supplied by Octave. Documentation may be available through Support.
- 1.20. “Effective Date” means the date Customer signs below.
- 1.21. “Emergency Maintenance” means maintenance performed when either (i) a Cloud Incident or Security Incident demands immediate unplanned attention, or (ii) prompt maintenance is required to be carried out by Octave or a Third Party Service Provider, due to an external attack, virus cleansing, and service degradation resolution. Octave shall provide as much notice as possible to the Customer in respect to any Emergency Maintenance.

- 1.22. “Employees” means an individual employed by the Customer or its Affiliate on a permanent or part time basis performing services for Customer or its Affiliate who has access within the Customer’s and/or its Affiliates’ computer network firewall.
- 1.23. “Extensibility Hosting Service” means a Cloud Optional Service available for purchase to host Customer specific product customizations that are developed and maintained by Octave for a fee under a Consulting Services statement of work outside of this Agreement. This Cloud Optional Service is not available for all Software Products.
- 1.24. “Force Majeure Event” is as defined in Subsection 19.10.
- 1.25. “Intellectual Property Rights” means all intellectual property or other proprietary rights, whether registered or unregistered, in any jurisdiction, including all such rights in patents and patent applications, trademarks (including any goodwill therein or relating thereto), service marks, trade names, business names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in trade secrets, and rights in inventions (whether or not patentable).
- 1.26. “Material Adverse Effect” means a change that either individually, or collectively with other changes, has the effect of (i) negatively and materially reducing the Customer’s and/or its Affiliates and/or its/their Authorized Users’ access and/or usage rights in respect of the Cloud Services and which render the Cloud Services unusable by a reasonable person (i.e. a natural person with an ordinary degree of reason who would find the Cloud Services offer no value added to their normal course of business), or (ii) applicable to the Security Policy only, materially increases the security risk to the Customer Data.
- 1.27. “Month” means a calendar month.
- 1.28. “Non-Production” or “Non-Production Use” means use that is limited to the preparing, evaluating, testing, design, internal training, and/or maintenance of the Cloud Services’ Software Products. Use of a Customer Environment where Customer Data (beyond Personal Data required for login or test data) is input, accessed, or created is not Non-Production use.
- 1.29. “Octave Group Company” means a company controlled directly or indirectly by Octave Intelligence plc, an Irish company. Octave is an Octave Group Company.
- 1.30. “Order” means an order for Cloud Services licensed hereunder.
- 1.31. “Parties” means Octave and Customer, and “Party” means either of them individually.
- 1.32. “Partner” means the Octave partner that has been authorized by Octave to resell the Cloud Services to Customer.
- 1.33. “Personal Data” means data or information that relates to an identified, or identifies a natural person, or is defined to be Personal Data under the Data Protection Legislation.
- 1.34. “Planned Maintenance” means any maintenance required, planned, and communicated in advance by Octave for the maintenance of the system and Cloud Services.
- 1.35. “Policy Documentation” means, the Octave Cloud policies found at <https://www.octave.com/about/compliance/cloud-policies>. The link herein may be updated with written notice by Octave.
- 1.36. “Production” or “Production Use” designations means any use that exceeds Non-Production Use. This includes and is not limited to use by a Customer for production/operation (e.g. for the design of new facilities, modification of existing facilities or maintenance or operating facilities; the management of assets; project management).
- 1.37. “Quote” or “Quotation” means a quotation for Cloud Services or Cloud Optional Services issued by Partner (at any given time during the term of this Agreement) to Customer which shall be subject to the term of this the Agreement.

- 1.38. “Result(s)” means any results generated while using or otherwise generated by the Cloud Services, Software Products or functionality therein as output, based on any source content provided to the Cloud Services including without limitation Customer Data. Results includes any results or content generated from any artificial intelligence functionality that may be included in the Cloud Services
- 1.39. “Security Incident” means an event or set of circumstances resulting in a material compromise to the security, confidentiality, availability, or integrity of the Customer Data under Octave’s control. Examples of Security Incidents include security breaches to Octave’s network perimeter or to internal applications resulting in compromise of the Customer Data; severe degradation of Octave’s security controls, methods, processes, or procedures that result in compromise of the security, availability, confidentiality, or integrity of Customer Data; or the unauthorized disclosure of Customer Data.
- 1.40. “Service Operational Time” means twenty four (24) hours a day, three hundred and sixty five (365) days a year (366 days if a leap year).
- 1.41. “Site” means a distinct instance of the Software Product within the Customer Environment. Octave InConcert Core (formerly HxGN SDx) and Octave OnSite (formerly Smart Construction) utilize Sites.
- 1.42. “Service Request” means a problem or question related to a Software Product in the Customer Environment OR a request from an Authorized User with access to Octave Community (formerly called Smart Community), for a service to be performed in the Customer Environment.
- 1.43. “Smart APIs” mean any APIs made available to Customer through or with a Cloud Services subscription. Not all Software Products include Smart APIs. Unless separately identified, Smart APIs are included in the Software Products definition.
- 1.44. “Software Products” means collectively or individually the Octave Group Company software applications identified in the applicable Quote for which Octave is providing access via the Cloud Services and which have been manufactured and are owned or licensed by Intergraph Corporation or an Octave Group Company, but excluding Third Party Software Products. Unless separately identified, Software Products are included in the Cloud Services definition.
- 1.45. “Staff Augmentation” means an extension of the Customer’s Employee base by use of individual persons that are temporarily engaged by Customer or its Affiliate, provided that the access is from within the Customer’s or its Affiliates’ firewall. Staff Augmentation may work onsite or remotely provided they work within Customer’s or Affiliates’ computing infrastructure and access that infrastructure via Customer or Affiliate-provided computing equipment/hardware.
- 1.46. “Subscription Fees” means the annual or monthly subscription fees payable by Customer pursuant to the terms and conditions of this Agreement in order to receive a Cloud Services’ Software Product(s) as stated in the applicable Quote.
- 1.47. “Subscription Term” means the initial or renewal term of the Cloud Services’ Software Product subscription including access to at least one Production Customer Environment. Subscription Terms shall be the number of calendar months or years quoted by Partner. In the event the Quote service start date differs from the Cloud Services Start Date, the Cloud Services Start Date shall govern and the term quoted by Partner shall automatically adjust to reflect the new start date (e.g. if the quote has a 3 year term start date of May 1st but the Cloud Services Start Date is June 1st, the 3 year term shall automatically be deemed adjusted to start June 1st).
- 1.48. “Subcontractor(s)” means parties selected by Octave to provide an element of the Cloud Services and includes (where applicable) a Third Party Service Provider.
- 1.49. “Support” means the Octave provided technical support and assistance in the use of the Cloud Services including the Authorized Users filing of, and Octave’s management and resolution of, Cloud Incidents and/or Service Requests in accordance with the Policy Documentation. For avoidance of doubt Support is included at no additional charge with the Cloud Services.

- 1.50. "Third Party Service Provider" means a third party service provider with whom Octave enters into a subcontract in respect of the cloud platform and/or related services to provide an element of the Cloud Services to Customer (if applicable) on behalf of Octave.
- 1.51. "Third Party Software Products" means, where applicable, pre-requisite third party software products used by Octave in order for Customer to receive the Cloud Services or licensed by Octave and used by the Customer in Cloud Services in order to deliver a Software Product functionality. Prerequisite Third Party Software Products are listed in the Software Products Policy. If required by the owners of Third Party Software Products, Customer shall in good faith review and sign licenses relating to Third Party Software Products.
- 1.52. "Upgrades" means the subsequent releases of applicable Software Products available as Cloud Services. Upgrades may either be an Automatic Upgrade or a Managed Service Upgrade. See the Upgrade and Software Release Policy for which upgrade type applies to which Software Product. Managed Service Upgrades may require some Consulting Services to perform.

2. CLOUD SERVICES

- 2.1. Subject to payment of the Cloud Services Fees, from the Cloud Service Start Date through the applicable Subscription Term(s), Octave will provide the Cloud Services (including the Software Products, Third Party Software Products, Smart APIs, and Applications) to Customer in accordance with the provisions of the Order(s) and this Agreement including the Policy Documentation.
- 2.2. The Cloud Services includes Software and Upgrades. Data, extended configuration and customization that may be required to perform an Upgrade or any other Consulting Services are a separate cost from the Cloud Services Fees.
- 2.3. **Artificial Intelligence Functionality.** To the extent purchased and available with the Cloud Services, Customer may access and use the AI Functionality. Use of the AI Functionality shall be governed by the Artificial Intelligence Terms of Use available at <https://www.octave.com/about/compliance/cloud-policies> which are incorporated into this Agreement by reference. The use of AI Functionality by Customer is optional and is not required to use the Services; it may be disabled at any time by request.
- 2.4. **Applications.** To the extent purchased and available with the Cloud Services, Customer may access and use the Applications. Use of the Applications shall be governed by the Mobile Applications Terms of Use Policy located at <https://www.octave.com/about/compliance/cloud-policies> and incorporated herein by reference.

3. LICENSE GRANT AND CUSTOMER RESPONSIBILITY

- 3.1. For the Cloud Services purchased by the Customer, Octave hereby grants to Customer, and its Affiliates, a personal, non-exclusive, non-transferable, worldwide (subject to compliance with applicable laws) right to access and use the Cloud Services (including any Software Products, Applications, and Smart APIs contained or delivered therewith) to the Customer solely for Customer's and its Affiliates' own internal business purposes.
- 3.2. Customer shall ensure that:
- 3.2.1. Except where Contractors are allowed under a specific license type as stated in the Software Product and Licensing Policy, Authorized Users shall be limited to Customer's and its Affiliates' Employees and Staff Augmentation; and
- 3.2.2. Authorized Users' use of the Cloud Services is limited solely to work for the benefit of Customer and/or Customer's Affiliates; and
- 3.2.3. Authorized Users' access to the Cloud Services shall be promptly terminated upon the cessation of such Authorized Users' services for the Customer and/or Customer's Affiliates.

- 3.3. Customer, on behalf of itself and its Affiliates and its Authorized Users, shall not:
- 3.3.1. license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Cloud Services in any way; or
 - 3.3.2. modify or make derivative works or a competitive product or service based on Cloud Services or the Software Product; or
 - 3.3.3. create other Internet "links" to Cloud Services or "frame" or "mirror" any Software Product on any other server or wireless or Internet-based device other than those forming part of Cloud Services; or
 - 3.3.4. run penetration testing or any other testing that could affect the usability (e.g. increase traffic) of the Cloud Services or put at risk any other Cloud Services customers; or
 - 3.3.5. reverse engineer the Cloud Service.
- 3.4. Notwithstanding the foregoing, to the extent made available to Customer, Customer may use the Smart APIs to develop integrations to the Cloud Services.
- 3.5. Customer shall and shall ensure that its Affiliates and its/their Authorized Users shall:
- 3.5.1. have sole responsibility for the accuracy, quality, integrity, reliability, and appropriateness of all Customer Data;
 - 3.5.2. use commercially reasonable efforts to prevent unauthorized access to or use of Cloud Services, the Customer Environment and the Cloud Environment and shall notify Octave promptly of any such unauthorized access or use;
 - 3.5.3. implement and maintain appropriate technical and organizational security measures to protect and to preserve the security, integrity and confidentiality of the Cloud Services including the Cloud APIs, Software Product, and the Customer Data. These security measures shall prevent the unauthorized access or disclosure of confidential data. Customer shall promptly report any security deficiencies or security incidents that may impact or compromise our users or Cloud Services in writing to smartcloudandisupport.ppm@octave.com.
 - 3.5.4. provide and maintain their own equipment, software, networks, and communications lines, including any public lines required to properly access Cloud Services, content and/or data; and
 - 3.5.5. be aware of and at all times comply with the appropriate provisions of this Agreement (including the Policy Documentation) which includes but is not limited to the provisions regarding ownership; confidentiality; licensing and limitations of usage of the Cloud Services (including this Section 3); warranty disclaimers; limitation of liability; compliance and export control; governing law; and the Acceptable Use Policy.
- 3.6. Customer shall be responsible and liable for all activities that occur in Authorized User accounts in respect of its Affiliates and Authorized Users including any violations of this Agreement.
- 3.7. **U.S. Government Rights.**
- 3.7.1. The Cloud Services, Software Products, and Documentation constitute "Commercial Computer Software" and "Commercial Computer Software Documentation", respectively, as defined in Federal Acquisition Regulation ("FAR") 2.101.
 - 3.7.2. Notwithstanding any other provision of this Agreement, the Cloud Services, Software Products, and Documentation are provided to the U.S. Government solely as commercial items in accordance with FAR 12.212 (for civilian agencies) and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202-1 through 227.7202-4 (for Department of Defense agencies), and their respective successor provisions. Accordingly, the

U.S. Government acquires the Cloud Services, Software Products, and Documentation with only those rights set forth in this Agreement, which are the same rights customarily provided to non-government commercial customers. Any use, reproduction, release, performance, display, or disclosure of the Cloud Services, Software Products, or Documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

- 3.7.3. To the extent that FAR 12.212 or DFARS 227.7202 are determined by a court of competent jurisdiction, a Board of Contract Appeals, the Comptroller General, or the relevant Contracting Officer to be inapplicable to a particular procurement, then: (a) for civilian agencies subject to FAR Part 12, the Government's rights in the Cloud Services, Software Products, and Documentation shall be as set forth in 48 C.F.R. 52.227-19 (Commercial Computer Software License), or any successor provision; and (b) for Department of Defense agencies, the Government's rights in the Cloud Services, Software Products, and Documentation shall be as set forth in DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation), and in technical data, if any, as set forth in DFARS 252.227-7013 (Rights in Technical Data—Noncommercial Items), each as applicable, or any successor provision.
- 3.7.4. To the extent the Cloud Services, Software Products, and Documentation are delivered as cloud-based, hosted, or Software-as-a-Service (SaaS) offerings to U.S. Government customers, such delivery model does not alter the commercial nature of the underlying software or expand the Government's rights therein. Any additional security, data handling, incident reporting, or access obligations applicable to cloud service delivery shall be addressed in a separate Order, Addendum, or applicable government-specific terms, and shall not be deemed to modify the rights limitations set forth in this Section.
- 3.7.5. All Cloud Services, Software Products, and Documentation are developed exclusively at private expense and are proprietary to the Octave Group Companies. The Cloud Services, Software Products, and Documentation contain trade secrets and confidential information and are protected by United States copyright law and international treaty provisions.
- 3.7.6. The Cloud Services, Software Products, and Documentation are proprietary to the Octave Group Companies and are protected by United States copyright law and international treaty provisions. No rights are granted to the U.S. Government except as expressly set forth in this Agreement, and no additional rights shall arise by implication, estoppel, or otherwise. The intent of the Parties is that no intellectual property rights or confidentiality of the Cloud Services, Software Products, and Documentation are lost, diminished, or transferred as a result of the execution of this Agreement.

4. CLOUD SERVICE FEES

- 4.1. The pricing for Software Product licenses in the Cloud Services shall be as stated in the applicable Quote.
- 4.2. In the event of an Order for additional licenses for a Customer Environment, unless otherwise stated on the Quote, the additional licenses shall be co-termed to the current Customer Environment's Subscription Term.
- 4.3. The quantity of Software Products licenses procured under an Order may be added but may not be decreased during a Subscription Term. Once increased, the increased quantity shall remain the quantity during the remainder of the Subscription Term. This limitation applies to all license types including those that have an annual true up.
- 4.4. Approximately sixty (60) days prior to the last day of the current Order's Subscription Term, Partner will submit to the Customer a renewal Quotation of the pricing for the Order's renewal. Customer must send notice in accordance with Section 9.2 if the Customer chooses not to renew otherwise the Cloud Services will automatically renew for an additional Subscription Term based on the Quotation term and pricing.

5. POLICY DOCUMENTATION

- 5.1. Policy Documentation forms part of and is incorporated into this Agreement by reference. Access to and use of the Cloud Services by Customer, its Affiliates and their respective Authorized Users is subject to acceptance and compliance with the Policy Documentation. Octave retains the right to update the Policy Documentation from time to time by notification to Customer, and for such purpose, communications via email shall suffice. If a change made to the Policy Documentation has a Material Adverse Effect to Customer and/or its Affiliates, the Customer and/or its Affiliates shall be permitted to terminate the Agreement by written notice to Octave within thirty (30) days of such change coming into effect. In the absence of such written notice from the Customer to Octave, Customer and/or its Affiliates shall be deemed to have agreed to and accepted such changes to the Policy Documentation.
- 5.2. Notwithstanding the foregoing, any change to the Policy Documentation that affects Cloud Services Fees due to Octave for a Customer Environment during a current Subscription Term shall not apply until the renewal of the Order.

6. WARRANTIES AND DISCLAIMERS

- 6.1. During the Subscription Terms, Octave warrants that each Customer Environment used for Production Use in the Cloud Services will meet or exceed a 99.5% Availability Service Level each Month (see Section 7 on how this is calculated). In the event the Availability Service Level for a Customer Environment falls below the 99.5% service level in a Month, Octave shall apply the following service credits (hereinafter "Service Credits") for the affected Customer Environment for such Month:

Availability Percentage	Service Credits
99.499% - 99.0%	ten (10%) percent of the monthly Subscription Fees
Less than 99.0%	twenty-five (25%) percent of the monthly Subscription Fees

- 6.1.1. The Service Credits apply:
- (a) only to the extent that the affected Customer Environment or portion thereof is used for Production Use;
 - (b) only for the affected Software Product in that Customer Environment;
 - (c) only if Customer logged a Cloud Incident to notify Octave of the problem;
 - (d) only if Customer puts in a request with Octave for the Service Credit within thirty (30) days of the affected month;
 - (e) where Cloud Services are delivered via a public cloud platform, only to the extent available to Octave from a Third Party Service Provider on a pass through basis subject to such notification procedures which may be required by the Third Party Service Provider.
- 6.1.2. To the extent applicable and compliant with this Section 6.1., Service Credits shall be credited by Octave through Partner against subsequent monthly billing periods in respect of the monthly Subscription Fees until such applicable Service Credits have been fully consumed.
- 6.1.3. Octave's and Partner's entire liability and Customer's and its Affiliates' sole remedy under this warranty shall be the Service Credits.
- 6.2. Octave warrants that the Software Products accessed via Production Customer Environments will perform substantially in accordance with the applicable Documentation. If such Software Product does not perform substantially in accordance with the applicable Documentation, Octave's entire liability and Customer's, and its Affiliates' sole remedies under this warranty shall be to obtain the support described in this Agreement. Notwithstanding the foregoing, Customer acknowledges that the Documentation may not have been drafted with the Cloud Services based Software Product in mind and that some functionality of the on-premise Software Product may not be technically feasible in the Cloud Services (e.g. installation,

database access, customization, and configuration availability of the Software Product might be more limited); lack of such functionality shall not be considered a breach of this warranty. Where such Documentation was drafted for the Cloud Services, such Documentation shall supersede any other version of the Documentation.

- 6.3. Cloud Services will use industry standard Virus checking software to avoid transmission of any Viruses to Customer's or an Affiliate's IT environment (except for any Viruses contained in Customer Data uploaded by Authorized Users or otherwise originating from Authorized Users). "Virus" in this provision means anything or device (including any software, code, file or program) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.
- 6.4. The Cloud Services, including but not limited to the Software Products available thereon, is not-fault tolerant and is not designed, manufactured or intended for use as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation, or aircraft communication systems, mass transit, air traffic control, direct life support machines, or weapon systems, in which the failure of the Cloud Services (including the Software Products available thereon), could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, Octave disclaims any express or implied warranty of fitness for High Risk Activities. Customer agrees that Octave shall not be liable for any claims or damages arising from or related to the use of the Cloud Services to the extent used by Customer in High Risk Activities.
- 6.5. The foregoing warranties do not include any engineering reference data, Non-Production Customer Environments, Smart APIs, Applications, Cloud Optional Services, or Results which are provided "AS IS" and without warranty.
- 6.6. Octave does not warrant that the Cloud Services, Software Products, or pre-requisite Third Party Software Products (to the extent accessed by Customer under this Agreement) will meet the Customer's or its Affiliates' requirements or that they will run uninterrupted or be error free. Customer and its Affiliates are responsible for the results obtained from their use of the Cloud Services, Software Products, and pre-requisite Third Party Software Products (to the extent accessed by Customer under this Agreement). Octave has no legal commitment on any future functionality unless explicitly committed to in this Agreement.
- 6.7. The foregoing warranties are void if failure of a warranted item results, directly or indirectly, from a Customer, Affiliate or their Authorized Users': (i) unauthorized modification or enhancement to a warranted item; (ii) unauthorized attempt to repair a warranted item; or (iii) misuse of a warranted item, including without limitation use of a warranted item under abnormal operating conditions or without routinely maintaining a warranted item.
- 6.8. Except as expressly provided in this Agreement, Octave makes no representations or warranties with respect to any products or services provided under this Agreement, express or implied, including the implied warranties of merchantability and fitness for a particular purpose. If under the law ruled applicable to this Agreement any part of the above disclaimer of express or implied warranties is invalid, then Octave disclaims express or implied warranties to the maximum extent permitted by said law.

7. AVAILABILITY SERVICE LEVEL

- 7.1. The Availability Service Level shall be determined on a per Software Product title per Production Customer Environment per Month basis.
- 7.2. The Availability Service Level percentage is calculated as follows: Availability Service Level percentage = Availability divided by Service Operational Time.
- 7.2.1. "Availability" for the applicable Month shall be calculated as the number of minutes in the Month in which the Customer can connect to the Software Product in the applicable Customer Environment.

- 7.2.2. “Service Operational Time” for the applicable Month shall be calculated as (1) the total number of minutes in the Month (i.e., 1,440 minutes per day multiplied by the number of days in a Month), less (2) the total number of minutes of Exceptions experienced by a Customer during the applicable Month for the applicable Software Product title in the applicable Customer Environment.
- 7.2.3. By way of example only: during a Month with 30 days, if (a) the Customer experienced downtime attributable to Exceptions of 30 minutes, and (b) Customer experienced downtime not attributable to Exceptions of 30 minutes, then (c) the percentage of Availability would be 99.93%, because (x) the Numerator would be 43,140 (representing the total minutes that the Customer experienced Availability as defined herein), (y) the Denominator would be 43,170 (representing Service Operational Time, which is the total number of minutes in the Month less minutes attributed to Exceptions), and (z) the Numerator divided by the Denominator is .9993, which, if expressed as a percentage, is 99.93%.
- 7.2.4. “Exceptions” are:
- (a) time expended for Planned Maintenance;
 - (b) time expended for Emergency Maintenance;
 - (c) the inability of the Customer or its Authorized Users to connect to Cloud Services due to problems outside of Octave’s control (e.g. a network or device failure at Customer’s site or between Customer and Octave’s data centers; delays in email or webmail transmission to or from the hosted application; a Force Majeure Event; Outages attributable to the acts or omissions of Customer or Customer’s Authorized Users; or outages that result from Customer’s equipment, software, or other technology and/or third party equipment, software or other technology (other than those which are under Octave’s direct control).
 - (d) Periods of down time at Customer’s request (e.g. to perform Consulting Services);
 - (e) Performance degradation due to Customer’s use of the Cloud Services in excess of the scope of Customer’s license, usage restrictions, or product limitations outlined in this Agreement or the Documentation.

7.3. Monthly reports on the Availability Service Levels are available via the Cloud Services portal or upon request.

8. OWNERSHIP AND INTELLECTUAL PROPERTY

- 8.1. Customer, for itself, its Affiliates, and its and their Authorized Users acknowledges and agrees that all right, title and interest in and included with the Cloud Services (including but not limited the Smart APIs, the Applications the Cloud Environment, the Software Products, the Third Party Software Products) including Policy Documentation, Documentation, data and information and all copies and derivatives of all or any part thereof (in this Section, hereinafter the foregoing collectively the “Product”), are and shall remain vested in Octave or an Octave Group Company or relevant third parties. Customer, its Affiliates and its and their Authorized Users do not have, and shall not attempt to obtain, any right, title, or interest in or to the Product, or Octave’s or an Octave Group Company’s or such third parties’ Intellectual Property Rights, except as expressly provided herein, and shall not decompile, disassemble, or otherwise attempt to gain access to any source code for the Product. Customer, for itself, its Affiliates and Authorized Users, acknowledges and agrees that the Product is comprised of trade secrets, proprietary information, and Confidential Information (as defined in Section 14 herein), and that Customer, and its Affiliates shall not use, distribute, copy, perform, amend, alter, modify, create derivative works, reverse engineer, exploit, sublicense, or assign the Product, or any of Octave’s or an Octave Group Company’s or such third parties’ Intellectual Property Rights or permit such to occur, except as expressly permitted by this Agreement.
- 8.2. During the term of this Agreement, the Customer hereby grants to Octave and the Octave Group Companies a global, royalty-free, sub-licensable, non-exclusive license to use the Customer Data to the extent required by Octave to: (i) provide the Cloud Services to the Customer and fulfil Octave’s obligations under this Agreement, including making necessary disclosures and obtaining all licenses, permits, approvals, or consents required to provide the Cloud Services and comply with applicable law; and (ii) develop, improve, modify and optimize the Cloud Services and Software Products.
- 8.3. Notwithstanding the foregoing, Customer or its Affiliates shall retain their respective full ownership and all rights associated therewith solely to Customer Data and work product input or output generated by the Cloud Services. This ownership shall not extend to any formats or other Intellectual Property Rights provided by Octave under this Agreement that makes a

particular data file intelligent or that structures output, which shall remain the property of Octave or an Octave Group Company or the respective third party that owns said format or Intellectual Property Rights.

- 8.4. This Section 8 governs the ownership of the Cloud Services. Any other provision that conflicts with this Section, including those between Partner and Customer, is null and void.

9. TERM

- 9.1. **Agreement Term.** This Agreement commences on the Effective Date and shall continue until terminated by Party as allowed in Section 10 of this Agreement or until one (1) month after all Orders under this Agreement have expired.

- 9.2. **Order Term and Renewal.** Upon receipt of an Order, each Order shall be subject to a Subscription Term. Thereafter, unless not renewed in accordance with Subsection 9.2.1, each Order shall automatically renew for another Subscription Term in accordance with the pricing stated in Section 4. Unless terminated per Section 10.1, each Subscription Term (including all renewals) are non-cancellable during the Subscription Term quoted and Customer shall be liable and pay for the full amount for the full Subscription Term as quoted.

- 9.2.1. An Order shall not automatically renew if:

- (a) Notice of non-renewal of the Order has been sent to either Party at least thirty (30) days' prior to the current Order's end date (e.g. current Subscription Term ends October 31, to avoid auto-renewal, notice must be sent no later than October 1); or
- (b) The Agreement has been terminated in accordance with Section 10 below.

10. TERMINATION AND SUSPENSION

- 10.1. **Termination for Cause.** If either Customer or Octave:

- (a) commits a material breach of this Agreement and does not remedy such breach within thirty (30) days or receiving notice of breach from the other Party. Non-payment or late payment of Cloud Services Fees shall constitute a material breach under this Section. Notice of an alleged breach of warranty does not constitute notice of material breach for purposes of this Section; or
- (b) enters into liquidation, insolvency or ceases doing business, has a receiver or administrator appointed, makes an assignment for the benefit of its creditors, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, or files a petition seeking reorganization, liquidation, dissolution, or similar arrangement under present or future statute, law, or regulation with immediate effect on the date of notice; or
- (c) is unable to resolve a Force Majeure Event within sixty (60) days of written notice that a Force Majeure Event has occurred;

then the non-breaching Party may, by giving written notice to the other Party, terminate this Agreement (including all Orders procured hereunder) or any Order(s) for cause as of a date specified in the notice of termination.

- 10.1.2. If the Agreement is terminated under this section, the Agreement and, unless the Parties agree otherwise, all Orders in effect (including any Orders placed by Affiliates) shall terminate as of the termination date.

- 10.1.3. If only an Order(s) is terminated, the applicable Order(s) shall terminate as of the termination date. This Agreement and any other Orders shall remain in effect until terminated or non-renewed, as allowed herein.

- 10.2. **Termination by Notice.** This Agreement may be terminated by either Party for new Orders with at least ninety (90) days notice. If the Agreement is terminated by notice, Orders in effect prior to the termination date shall remain in effect through the Order(s)'s Subscription Term.
- 10.3. **Suspension.** Without limitation to its other rights and without incurring any liability to Customer or its Affiliates, Octave may, in its sole discretion, suspend, disable or limit the Customer's, its Affiliates or an Authorized User's, access (or require the Customer to suspend or limit such access) to the Cloud Services, Software Products, or any portion thereof, if: (i) Octave experiences or reasonably believes it will experience a security threat or system failure that jeopardizes the Cloud Environment, the Cloud Services, or Octave's customers or employees; (ii) Octave is directed to do so by any law enforcement or regulatory agency; (iii) the continued performance of its obligations under this Agreement could result in Octave being in breach of applicable laws (e.g. U.S., EU custom and trade regulations or Data Protection Legislation); (iv) Octave reasonably believes the Customer's use of the Cloud Services amounts to excess usage; or (v) the Customer fails to pay the Cloud Services Fees hereunder by the due date. Octave shall, to the extent legally able, use commercially reasonable efforts to provide at least twenty-four (24) hours notice prior to such suspension and, if such threat or issue has been resolved, promptly restore such access.
- 10.4. **Termination Effects.**
- 10.4.1. Upon the termination of this Agreement for any cause, such termination shall not release either Party from its obligation to pay amounts due under this Agreement which accrued prior to such termination.
- (a) In the event of termination by Customer under Subsection 10.1, all fees due up to the date of offboarding, shall continue to be due. Octave shall refund any other prepaid fees.
- (b) In the event of termination by Customer under Subsection 10.2. or termination of this Agreement by Octave, Customer shall remain obligated to payment for the Cloud Services Fees due for all existing Orders through such Orders' current Subscription Terms.
- 10.4.2. No new Orders including any renewals of Orders may be processed under this Agreement after the Agreement has been terminated.

11. OFFBOARDING

- 11.1. In the event of notice to terminate this Agreement or not renew a Customer Environment as allowed in this Agreement, Octave and Partner shall coordinate with Customer in accordance with the Offboarding Policy.
- 11.2. Customer acknowledges and accepts that lack of response or Customer's failure to follow the Offboarding Policy will not affect Octave's following of the Offboarding Policy including the deletion of the Customer Data after the thirty (30) day download period. Octave shall not be liable for any damages due to Customer's failure to respond to Octave or follow the Offboarding Policy.

12. NON-PRODUCTION CUSTOMER ENVIRONMENTS

- 12.1. Non-Production Customer Environments may be provided under this Agreement. Non-Production Customer Environments may include environments provided as an evaluation prior to a Cloud Services Production purchase or may be included with an existing Production Use Customer Environment subscription. If included with a Production Customer Environment, such term of the Non-Production Customer Environment shall not exceed the Production Use Customer Environment term. If made available as a pre-purchase evaluation or beta evaluation, unless otherwise specified in a Quote or statement of work or other writing, the term available to Customer is at Octave's discretion.
- 12.2. Customer acknowledges and agrees that Non-Production Customer Environments shall be used solely by Customer and its Authorized Users for Non-Production Use only. If further limited in use (e.g. identified as "testing" or "academic"), Customer agrees that such use by Customer and its Authorized Users shall be further limited to that specific purpose. Under no circumstance shall a Non-Production Customer Environment be used for Production Use.

- 12.3. Notwithstanding any other provision herein, all Non-Production Customer Environments are provided “AS IS” and Octave hereby disclaims any and all liability, damages, or obligation relating to such Non-Production Customer Environments. Support for Non-Production Customer Environments are provided at Octave’s sole discretion.

13. SECURITY AND BREACH NOTIFICATION

- 13.1. During the term of this Agreement, Octave shall implement and maintain a written plan and process, in accordance with industry standard processes, for preventing, detecting, identifying, reporting, tracking, and responding to Security Incidents. Octave’s plan shall include response and notification procedures, specific contacts in an event of a Security Incident, and each contact’s roles and responsibilities.
- 13.2. In the event of a Security Incident, Octave will submit a Security Incident report to the Customer. The report will be provided as soon as practicable following discovery of a Security Incident as required by applicable laws. Thereafter, at Customer’s reasonable request, Octave will meet with Customer to discuss the cause of the Security Incident and Octave’s response.

13.3. Personal Data.

- 13.3.1. In addition to the other requirements of this Section 13, with respect to any Personal Data in the possession or under the control of Octave and in order to protect such Personal Data from unauthorized access, destruction, use, modification or disclosure, Octave shall:
- (a) develop, implement, and maintain reasonable security procedures and practices appropriate to the nature of the information to protect Personal Data from unauthorized access, destruction, use, modification, or disclosure; and
 - (b) develop, implement, and maintain data privacy and security programs with administrative, technical, and physical safeguards appropriate to the size and complexity of the Octave’s business and the nature and scope of Octave’s activities to protect Personal Data from unauthorized access, destruction, use, modification, or disclosure.
- 13.3.2. Any processing of Personal Data within the meaning of the Data Protection Legislation will be carried out by Octave, Octave Group Companies and their employees, and subcontractors in accordance with Customer’s instructions and to enable Octave to deliver the services contemplated by this Agreement. Customer shall only transmit to Octave the minimum amount of Personal Data as strictly necessary for Octave to perform the Cloud Services procured under this Agreement.
- 13.3.3. In the event of a Security Incident where Personal Data is, or is reasonably believed to have been, acquired by an unauthorized person, Octave shall notify the applicable data protection authority in accordance with the timescales and in the manner mandated pursuant to the Data Protection Legislation.
- 13.4. Octave shall maintain all documentation relating to Security Incidents, whether in written or electronic form, including their identification, processing, and resolution, for two (2) years (unless a shorter period is mandated by law) after final resolution, including the final resolution of any claims arising out of a Security Incident.

14. CONFIDENTIALITY

- 14.1. Octave and Customer, for themselves and on behalf of their Affiliates or an Octave Group Companies (as the case may be) each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other Party or relevant third parties which such Party or relevant third party considers to be confidential, proprietary, a trade secret or otherwise restricted. As used in this Agreement, “Confidential Information” shall mean all information, in any form, furnished or made available directly or indirectly by one Party to the other, which may include third party information, that is marked confidential, restricted, proprietary, or with a similar designation. The terms of this Agreement shall also be deemed Confidential Information This however shall not prevent Octave from disclosing that Customer or its Affiliate is a

customer of Cloud Services. Cloud Services, including but not limited to the Smart APIs, Software Products and Third Party Software Products (to the extent accessed by Customer under this Agreement) and Documentation shall be deemed Confidential Information of Octave. Confidential Information, when properly identified as such pursuant to this Section, also shall include (i) specifications, designs, documents, correspondence, software, documentation, data and other materials and work products produced by either Party or relevant third parties; (ii) with respect to either Party or relevant third parties, all information concerning the operations, financial affairs and businesses, and relations with its employees and service providers; and (iii) for Customer, for itself and its Affiliates, information related to the design, construction and operation of facilities, structures and equipment and the procurement of equipment and materials.

- 14.2. If Confidential Information is disclosed orally by one Party to the other, the disclosing Party may state at the time of disclosure that the information is Confidential but unless and until such confidentiality is confirmed in writing by the disclosing Party to the receiving Party there shall be no obligation of confidentiality on the receiving Party. If Confidential Information is disclosed orally by one Party to the other, but the disclosing Party at the time of disclosure fails to identify the oral disclosure as confidential, then there shall be no liability of the receiving Party if such information is disclosed during the thirty (30) day period between the disclosure and receipt of a written notification that the information is confidential; provided, however, that upon receipt of the written notification, if such notification is received no more than thirty (30) days following the oral disclosure, the receiving Party shall then treat the information as Confidential.
- 14.3. Each Party's Confidential Information shall remain the property of that Party or the relevant third party. Octave and Customer, for themselves and on behalf of their Affiliates, or Octave Group Companies (as the case may be), shall not use the Confidential Information of the other Party for any purpose, except as permitted under this Agreement. Customer and Octave shall each use at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own information of a similar nature. The obligation of confidentiality shall exist during the term of this Agreement and for a period of five (5) years after the termination of this Agreement.
- 14.4. On expiration or termination of this Agreement, each Party and its Affiliates, shall return, delete, or destroy, as the other Party may reasonably direct, all material in any medium that contains, refers to, or relates to the other Party's Confidential Information, and retain no copies unless otherwise permitted in accordance with applicable law or as may reasonably be required for archival or record keeping purposes. Octave and Customer and its Affiliates shall take reasonable steps to ensure that their Affiliates and employees comply with these confidentiality provisions.
- 14.5. This Section shall not apply to any particular information which Octave or Customer, can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (iii) was in the possession of the receiving Party and not subject to confidentiality obligations or use restrictions at the time of disclosure to it; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or (v) was independently developed by the receiving Party without use of or reference to Confidential Information of the disclosing Party. In addition, a Party shall not be considered to have breached its obligations by disclosing Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party promptly and prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.
- 14.6. Should Octave receive a request from a competent government body to disclose Customer Data, promptly upon receiving any such request and to the extent that it may legally do so, Octave shall advise Customer prior to making such disclosure in order that Customer may interpose a legal objection to such disclosure, take action to assure confidential handling of the Customer Data, or take such other action as it deems appropriate to protect the Customer Data.
- 14.7. In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the disclosing Party, the receiving Party shall promptly, at its own expense (i) notify the disclosing Party in writing; (ii) take such actions as may be necessary or reasonably requested by the disclosing Party to minimize the violation; and (iii) cooperate in all reasonable respects with the disclosing Party to minimize the violation and any damage resulting therefrom.

15. OPEN SOURCE SOFTWARE

- 15.1. To the extent Cloud Services contains open source software, it is licensed pursuant to the terms of the applicable open source license agreement. Nothing contained in this Agreement shall restrict any rights provided specifically for any open source software by the open source licensor; however, any rights that are broader than those granted in this Agreement shall be applicable solely to the open source software component. Additional open source license information may be found in the About Box or Readme Files of the applicable software product.
- 15.2. Any open source software is provided “AS IS”, without warranty or liability of any kind, express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose and noninfringement. In no event shall the authors or copyright holders of the open source software be liable for any claim, damages, or other liability, whether in an action of contract, tort or otherwise, arising from, out of or in connection with the open source software or the use or other dealings in the open source software.
- 15.3. Notwithstanding the limitation of damages stated in Section 17, in no event will any copyright holder or any other party who modifies and/or conveys the open source software as permitted under its license, be liable to Customer or its Affiliates for damages, including any general, special, incidental or consequential damages arising out of the use or inability to use the open source software (including but not limited to loss of data, data being rendered inaccurate, losses sustained by Customer, its Affiliates or third parties, or a failure of the open source software to operate with any other programs), even if such holder or other party has been advised of the possibility of such damages.
- 15.4. If the above disclaimer of warranty and limitation of liability provided above for the open source software cannot be given local legal effect according to its terms, reviewing courts shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the open source software, unless a warranty or assumption of liability accompanies a copy of the open source software in return for a fee.
- 15.5. Nothing in the immediately foregoing clauses affects any stated warranty in this Agreement with regard to the Software Product(s) and Cloud Services as a whole.

16. PATENT, TRADEMARK, COPYRIGHT INFRINGEMENT

- 16.1. “Cloud Services” in this Section is limited to only the components of Cloud Services manufactured and owned by Intergraph Corporation or an Octave Group Company and which are used as part of Cloud Services under the Agreement. Octave’s non-infringement assurances hereunder do not include where the claim for infringement is due solely to a Third Party Software Product.
- 16.2. In the event of any proceeding (suit, claim, or action) against Customer or its Affiliate, (in this Section “Authorized Person”) arising from allegations that the Cloud Services or Software Products subscribed to under this Agreement, furnished by Octave (in this Section hereinafter “Product”) infringes a U.S. or an EU patent, copyright, or trademark of any third party, Octave will, if such infringement does not result solely from modifications, enhancements or additions to the Product made by an Authorized Person or any person or entity acting under the direction or control of an Authorized Person, or an Authorized Person’s use of any Product in combination with other products not furnished by Octave, and provided the Authorized Person promptly notifies Octave in writing of said proceeding, Octave shall defend the Authorized Person’s right, or interest in the Product, and said infringement claim at Octave’s expense, and Octave shall pay any judgment or settlement against the Authorized Person resulting from said proceeding. Octave shall make such defense by counsel of its own choosing and the Authorized Person shall reasonably cooperate with said counsel. Octave, in such circumstances, shall have sole control of the defense and settlement of any such claim, but shall consult with the Authorized Person on the status of and strategy for the defense.
- 16.3. If any such infringement is found by a court of competent jurisdiction to be caused by modifications, enhancements or additions to the Product made by an Authorized Person or any person or entity authorized to use the Product, acting under the direction or control of an Authorized Person or an Authorized Person’s use of the Product in combination with other products not furnished by Octave, Customer shall reimburse Octave any reasonable defense expenses inclusive of

reasonable legal fees which may have been expended by Octave in defense of said claim, as well as to pay any final judgment rendered against Octave as a result of said proceedings.

- 16.4. In the event any Product furnished hereunder is, in Octave's opinion, likely to or does become the subject of a claim of infringement of any duly issued U.S. or EU patent, copyright or trademark of a third party, and if Authorized Person's use of any Product is enjoined, Octave may at its option and expense, either procure for the Authorized Person the right to continue using the Product, or modify the Product to make it non-infringing but functionally the same, or replace the Product with a non-infringing equivalent.
- 16.5. The above provisions are in lieu of all other provisions related to patent, trademark, and copyright infringement, express or implied. They, along with the remedies stated above and which are subject to the limitations set forth in Section 19 below, represent the full and total obligation and/or liability of Octave and Customer, and its Affiliates, in relation to the infringement of Intellectual Property Rights.

17. LIMITATION OF LIABILITY

- 17.1. Except for an unauthorized disclosure of Confidential Information, Octave's and any Octave Group Company's total liability under this Agreement in the aggregate to Customer in connection with or related to the Cloud Services or any other matter related to this Agreement shall not exceed the amount of payment that Octave has been paid under this Agreement from the Customer in respect of Cloud Services Fees in the twelve (12) Months prior to the time the claim is made.
- 17.2. Subject to and without limiting to Section 19.1, with respect to an unauthorized disclosure of Confidential Information by Octave or the Octave Group Companies, Octave's and any Octave Group Company's total liability shall not exceed two (2) times amount of payment that Octave has been paid under this Agreement from the Customer in respect of Cloud Service Fees for the twelve (12) Months prior to the time the claim is made.
- 17.3. Notwithstanding anything to the contrary, neither Party shall have any liability to the other or its Affiliates, or an Octave Group Company for any indirect, incidental, consequential, punitive or special damages, including, but not limited to, loss of profit, loss of use or production, loss of data or cost of capital, loss of good will or reputation, losses resulting from missing, contaminated or misdirected emails or corruption of data arising out of or in connection with either Parties' performance or non-performance hereunder, or the use or inability to use Cloud Services or anything provided under this Agreement or any claims or damages of third parties, even if the Parties have knowledge of the possibility of such losses.
- 17.4. Notwithstanding anything to the contrary in this Agreement, in no event shall Octave or an Octave Group Company be liable for any damages, including any direct damages from the use of Non-Production Customer Environment.
- 17.5. Octave or an Octave Group Company shall not be liable for any failure or delay to fulfil its obligations under this Agreement to the extent that such failure or delay is attributable to the Customer's failure or delay to comply with its obligations under this Agreement.
- 17.6. Except where prohibited by applicable law, no claim regardless of form, arising out of or in connection with this Agreement may be brought by Customer more than one (1) year after the event giving rise to the cause of action has occurred. If under the law ruled applicable to this Agreement any part of this Section 17.19 is invalid, then Octave and the Octave Group Companies limit their liability to the maximum extent allowed by said law.

18. EXPORT CONTROL

- 18.1. Customer represents that it is not a sanctioned party due to Customer's or Customer direct and indirect owners' listing on any applicable country's Denied/Restricted Parties List, e.g., SDN, Entity List, EU Designated Persons List.
- 18.2. Some Software Products delivered hereunder, including any technology related to the Cloud Services (hereinafter collectively "Technology"), might be subject to the export control laws and regulations of the United States. Upon request, Octave will confirm which Technology is subject to the export control laws and regulations of the United States. Customer acknowledges and confirms that the Technology, any items produced using such Technology and derivatives of either

(collectively “Subject Items”) shall not be exported, reexported or transferred (in-country), directly or indirectly (including via remote access) to the extent prohibited by applicable export control laws.

- 18.3. Octave will not knowingly support and is not obligated to support any exports, reexports or transfers (in-country) of Subject Items:
- a. in connection with any corrupt business activities, including bribery or extortion;
 - b. in support, directly or indirectly, of terrorist activities, financing terrorist activities or money laundering;
 - c. for end-use in territories where there is a high risk of the activities described in points (i) and (ii), i.e., Cuba, Iran, North Korea, Syria, Russia, or Russian controlled parts of Ukraine including Donetsk People's Republic, Luhansk People's Republic, or Crimea or Sevastopol regions;
 - d. for end use related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other un-safeguarded or sensitive nuclear uses;
 - e. for any end-user targeted individually by sanctions of the United Nations Security Council, United States or European Union to the extent such sanctions are applicable to Octave or any of the Octave Group Companies; or
 - f. in any manner that would expose Octave or any of its affiliated entities in the Octave Group Companies to possible violations of applicable law, including US laws.
- 18.4. Customer is responsible for all Authorized Users access to the Cloud Services and for all technology created in and/or stored by Octave as part of the Cloud Services for Customer, including compliance with applicable US and other countries' export controls and sanctions.
- 18.5. Customer shall hold harmless and indemnify Octave and each Octave Group Company against any causes of actions, claims, costs, expenses and/or damages suffered or incurred by Octave or an Octave Group Company, which arise from a breach by Customer, an Affiliate or an Authorized User of the export restrictions set forth in this Section 18.
- 18.6. Octave is excused from performance and may suspend or terminate any applicable contract or agreement with the immediate effect if Octave determines that an export, reexport or transfer (in-country) of Subject Items would involve Octave supporting any of the above-described activities or determines that it has inadvertently supported such activities without being informed that the export, reexport or transfer (in-country) of Subject Items was in support of such activities.
- 18.7. Any questions regarding export or re-export of the Subject Items should be addressed to Octave's Export Compliance Department, 305 Intergraph Way, Madison, Alabama 35758, USA.

19. MISCELLANEOUS

- 19.1. **APPLICATIONS.** In the event a Software Product provided hereunder includes an Application or a license to an Application is purchased hereunder, in addition to the terms of this Agreement, the terms stated in the Mobile Applications Terms of Use Policy (available and considered a Policy Documentation) shall apply to such Application.

19.2. AFFILIATES.

- 19.2.1. Only Customer may place Orders for Cloud Services licensed under this Agreement.
- 19.2.2. Customer shall have the sole right to bring any claims that it and/or any Affiliate(s) and Authorized User(s) may have against Octave or an Octave Group Company under or in connection with this Agreement. If Customer brings any such claim, action or proceeding, Customer may recover from Octave (in accordance with the

limitations in Section 17) any such costs, damages, or losses which an Affiliate and/or Authorized User would have been entitled to recover had that Affiliate or Authorized User brought such claim.

- 19.2.3. Customer indemnifies Octave against all liabilities, losses, damages, costs, and expenses (including legal fees) payable or incurred by Octave as a result of any claim, action or proceeding under this Agreement which an Affiliate or Authorized User brings in breach of this Section 19.2.

- 19.3. **Legal Notices.** Any legal notice or communication given pursuant to this Agreement shall be in writing, as a document or in electronic form, and deemed received when delivered in person, electronic mail, facsimile, or sent postage prepaid via Express Mail, Federal Express or other private courier, or United States certified mail, return receipt requested. Legal notices to Customer shall be sent to the contact as stated on the Quote. Legal notices to Customer shall be sent to the notice indicated on the signature page of this Agreement. Legal notices to Octave shall be sent to the below. Any and all notices (including notices of termination) must include Partner as a recipient.

Attn: Octave
Address: 305 Intergraph Way
Madison, AL 35758
Email: ppmlegal@octave.com

- 19.4. **SUBCONTRACTORS.** Customer understands that Octave will subcontract certain elements of the Cloud Services including but not limited to Third Party Service Providers and other Octave Group Companies. During the term of this Agreement, Octave may, at its sole discretion provided it is in compliance with applicable laws and personal data provisions in this Agreement, decide to change Subcontractors or Third Party Service Providers.

19.5. **CONSULTING SERVICES.**

- 19.5.1. Provision of Consulting Services is outside of this Agreement and any procured Consulting Services shall be subject to the terms in the applicable Octave statement of work or quotation for such Consulting Services unless a separately negotiated Consulting Services agreement has been executed by the Parties.

- 19.5.2. Maintenance and support of any customized software and/or custom-configured software and/or its source code, which may be delivered by Octave under a Consulting Services scope of work or quote are a responsibility of the Customer and not included in the Cloud Services procured under this Agreement. If Customer requests Octave perform such support, the Parties may enter into a separate support agreement for the maintenance of the customized software and/or custom-configured software and/or source code.

- 19.6. **RELATIONSHIP OF THE PARTIES.** Octave is an independent contractor. This Agreement shall not create any relationship between Customer and its Affiliates and Octave as joint ventures, partners, associates, or principal and agent. Neither Party is granted any right of authority and shall not create any obligation or responsibility for or on behalf of the other Party. Neither Party shall have the authority to bind the other Party.

- 19.7. **WAIVER.** No failure on the part of either Party to exercise any right, power, or privilege under this Agreement, or under any instrument executed pursuant hereto, shall operate as a waiver.

- 19.8. **SEVERABILITY.** If any part of this Agreement is held unenforceable, the rest remains in full force and effect.

- 19.9. **ASSIGNMENT.** This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may, or shall have the power to, assign this Agreement without the prior written consent of the other, except that Octave may assign its rights and obligations under this Agreement without the approval of Customer to an entity which acquires all or substantially all of the assets of Octave, or to any subsidiary, affiliate or successor in a merger or acquisition of Octave or Octave Intelligence plc.

19.10. FORCE MAJEURE. Neither Party will be liable for any failure in performance due to causes beyond that Party's reasonable control which is considered a "Force Majeure Event" in this Agreement (including, but not limited to, national or local emergencies, fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts, omissions, or outages or actions of cloud service providers, Third Party Service Providers, and Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulation or other acts of government that impact the delivery of Cloud Services), utility providers, Viruses, technical impossibility, infectious diseases, epidemics or pandemics (including the impacts of an infectious disease, epidemic or pandemic).) This Section will not, however, apply to Customer's payment obligations under this Agreement. The Party whose performance is prevented or delayed by a Force Majeure Event, shall within fourteen (14) days after the occurrence or detection of such event, give notice to the other Party setting forth in reasonable detail the nature of the Force Majeure Event and the anticipated duration of the delay.

19.11. GOVERNING LAW.

19.11.1. If Customer's address in the signature page is located in the United States of America, this Agreement shall for all purposes be construed and enforced under and in accordance with the laws of the State of Delaware, United States of America. The Parties agree that any legal action or proceeding relating to this Agreement shall be instituted in the appropriate federal or state court in Dover, Delaware.

19.11.2. If Customer's address in the signature page is located outside of the United States of America, this Agreement shall for all purposes be construed and enforced under and in accordance with the Laws of England. The Parties agree that any legal action or proceeding relating to this Agreement shall be instituted in the appropriate court in London, England.

19.12. The Parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceeding. The Parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of this Agreement.

19.13. DISPUTE RESOLUTION. For any controversy or claim that may arise out of or in relation to this Agreement or with respect to breach thereof, the Parties agree to initially seek to solve the matter amicably through discussions between the Parties' points of contact as listed herein. If the Parties fail to resolve such controversy or breach by amicable arrangement and/or compromise within thirty (30) days of the notice of dispute, such dispute should be escalated to Parties' upper management. If the Parties fail to resolve such controversy, claim, or breach by amicable arrangement and/or compromise within thirty (30) days of the dispute being brought to the attention of Parties' upper management, then the Parties may, at their sole discretion, seek resolution through non-binding mediation. If either Party is not satisfied with the result of the non-binding mediation, such Party may seek legal recourse through the courts in the jurisdiction chosen herein. No Party may commence litigation in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by negotiation and mediation, and the mediation has terminated, or the other Party refused to participate in the mediation. Any time period stated in this Section may be reduced for the sole purpose of avoiding the expiration of the Statute of Limitations for the event made the basis of the controversy.

19.14. COMPLIANCE WITH LAWS. Customer and Octave hereby certify that they shall comply with all applicable laws in carrying out its duties under this Agreement, including but not limited to the General Data Protection Regulation, the United States Foreign Corrupt Practices Act, ("FCPA"), the Bribery Act 2010 (pursuant to the laws of England and Wales) and any analogous legislation of other jurisdictions that are applicable or relevant in the country where this Agreement is entered into or to be performed.

19.15. AUDIT.

19.15.1. Octave may audit Customer's compliance with the terms of this Agreement and applicable Quotes. If an audit reveals that Customer has exceeded the permitted scope of use including but not limited to the license quantity procured, then, in addition to any other remedies available to Octave, Customer will promptly pay Octave any underpaid Subscription Fees associated with such overuse based on Octave's then-current list rates.



19.15.2. Some Software Products may require an audit or production of a usage report for Octave to invoice or “true up” for such Software Products usage. Information on Software Products subject to such true up is available in the Policy Documentation.

19.16. **MARKETING.** Customer grants Octave permission to use its name and logo in marketing materials referencing Customer as a customer.

19.17. **SURVIVAL.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.

19.18. **BRANDING.** Octave is currently going through a branding update that includes updating their general business branding from Hexagon’s Asset Lifecycle Intelligence division to Octave and updating product names to reflect the new branding and strategy. Octave confirms this is just a branding change and that any software and documentation that still retain the prior branding sent to Customer are still effective. For a list of the former product names and their new branding, please see <http://octave.com/about/product-naming>.

19.19. **ENTIRE AGREEMENT.** This Agreement and the Policy Documentation, constitute the entire Agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement. In the event of conflict between the text of the Agreement and the Policy Documentation, the text of the Agreement shall take precedence over the text of the Policy Documentation.

Agreed to be Customer:

CUSTOMER (input legal entity): _____

Signature: _____
(Authorized Signatory)

Name: _____

Title: _____

Date: _____

Customer Information:

Customer Headquarters/Principle Place of Business: _____

Customer Notice Contact:

Attn: _____

Address (can leave blank if same as address of headquarters): _____

Phone: _____

Email: _____