

## OCTAVO SYSTEMS ENGINEERING SAMPLE AGREEMENT

**CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE REQUESTING OR USING THE ENGINEERING SAMPLES. DO NOT REQUEST OR USE THE ENGINEERING SAMPLES IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. REQUESTING OR OTHERWISE USING ANY ENGINEERING SAMPLES INDICATES ACCEPTANCE AND AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

This Octavo Systems Engineering Sample Agreement (this "**Agreement**") is entered into by and between Octavo Systems LLC ("**Octavo**") and you ("**Purchaser**") as of the date of your purchase of Octavo engineering samples ("**Engineering Samples**"). Octavo and Purchaser are herein referred to collectively as the "**Parties**."

WHEREAS, Purchaser has agreed to purchase Engineering Samples from Octavo; and

WHEREAS, Engineering Samples are products that have not been completely tested by Octavo in all electrical and functional characteristics, and therefore should only be used for functional evaluation and proof of concept and should not be used in any production, commercialized, or end-user products.

**NOW, THEREFORE**, in partial consideration of the sale of the Engineering Samples by Octavo to Purchaser, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby acknowledge and agree as follows:

**1. Disclaimer of Warranties.** THE ENGINEERING SAMPLES ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. OCTAVO MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ENGINEERING SAMPLE PRODUCT, AND OCTAVO EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Without limiting the disclaimers set forth in this Section 1, Engineering Samples sold by Octavo are not authorized for use in life safety, life support, life sustaining, search/rescue, surgical, human implant, nuclear, military, or aircraft applications or for any other use or application in which the failure of a single component could cause harm to persons and/or property (each such use or application, a "**Prohibited Use**"). Unless the Parties have entered into an agreement specifically governing use of the Engineering Samples in connection with a Prohibited Use (in which case, Purchaser shall use the Engineering Samples in strict adherence with the terms and conditions set forth in such agreement), Purchaser shall not cause or permit the Engineering Samples to be used in connection with any Prohibited Use.

**2. Limitation of Liability.** IN NO EVENT SHALL OCTAVO BE LIABLE TO PURCHASER, ITS AFFILIATES, BUSINESS PARTNERS, LICENSORS, EMPLOYEES, OR AGENTS, OR TO ANY THIRD-PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH PURCHASER'S USE AND/OR INABILITY TO USE ANY ENGINEERING SAMPLES, EVEN IF OCTAVO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO THE FOREGOING, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF OCTAVO TO PURCHASER FOR ENGINEERING SAMPLES, HOWEVER ARISING, EXCEED THE PURCHASE PRICE ACTUALLY PAID BY PURCHASER FOR THE PRODUCTS, REGARDLESS OF THE LEGAL THEORY ASSERTED FOR SUCH LIABILITY, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE.

Any cause of action against Octavo with respect to Engineering Samples must be instituted within one (1) year from the date of purchase.

**3. Indemnification.** Notwithstanding anything herein to the contrary, Purchaser hereby: (i) acknowledges and agrees that Purchaser is solely and personally responsible and liable for its use of, and/or inability to use, the Engineering Samples, and (ii) agrees to indemnify, defend and hold harmless Octavo, its business partners, licensors, employees, agents, and third-party providers from and against all claims, losses, expenses (including reasonable attorneys' fees), damages (including, without limitation, direct, indirect, incidental, consequential, special, punitive, and/or exemplary damages) and costs resulting from or arising out of Purchaser's: (a) use of the Engineering Samples, (b) misuse of the Engineering Samples, (c) inability to use the Engineering Samples, and/or (d) actions or inactions in violation of this Agreement (including, without limitation, in each instance (a) – (d) in connection with any third-party claims)

**4. General Provisions.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. The Agreement may not be amended except by a written instrument executed by each of the Parties. No waiver by Octavo of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. If any part of the Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination will not impact any other provision of the Agreement, each of which shall remain in full force and effect. Any and all disputes relating to the Agreement, the Engineering Samples, or Purchaser's use, misuse, and/or inability to use the Engineering Samples (collectively, "**Disputes**") shall be governed by, and will be interpreted exclusively in accordance with, the laws of the State of Texas, without regard to any conflict of laws principles. The Parties expressly acknowledge that the 1980 United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, and any subsequent revisions thereto, shall not apply to this Agreement. The Parties hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Houston, Texas, for the adjudication of any Dispute, and Purchaser hereby irrevocably submits to the personal jurisdiction of such courts for that purpose. No rights, duties, agreements or obligations hereunder, may be assigned or transferred by operation of law, merger or otherwise, without the prior written consent of Octavo. The obligations, rights, terms and conditions hereof will be binding upon and inure solely to the benefit of the Parties hereto and their permitted respective successors and assigns.