

TERMS AND CONDITIONS

Emerald BioSystems Hardware/Operational Software

These terms and conditions shall apply to all equipment (“Hardware”) purchased from Emerald BioSystems, Inc. (“Emerald”) by the party identified on the Quotation (“Quotation”) on the front of this document (referenced herein as “Customer” or “Licensee”). In the event of conflict with terms and conditions presented by Customer, these terms and conditions shall be deemed as controlling by virtue of issuance of a purchase order (“PO”) by Customer that references the relevant Quotation. This document includes terms and conditions applicable to both the hardware and software (“Software”) elements included in the above-referenced purchase. The issuance by the Customer of a PO that references the associated Quotation number on the front of this document shall be deemed acceptance of all terms included herein and shall constitute the full agreement between Emerald and Customer.

HARDWARE TERMS AND CONDITIONS

- 1. Hardware Supply.** All Hardware to be supplied by Emerald to Customer, and any services required with regard to such Hardware, shall be identified on the Quotation associated with this document. Emerald shall have no obligation to supply any Hardware or Software unless identified herein.
- 2. Payments.** Customer agrees to pay Emerald the amounts identified on the Quotation and any exhibits hereto for the Hardware and any related services (“Services”). Amounts due to Emerald for Hardware shall be due and payable 100% net 30 days upon acceptance unless otherwise indicated in the Quotation. Any late payments are subject to 1.5% interest accrued monthly. Payment of such amounts will not prejudice any other remedies available to Emerald. If Customer cancels any order and Emerald has incurred any costs relating to Hardware and services, Customer shall be invoiced and shall pay Emerald all such costs. In the event Customer fails to pay amounts due hereunder, Emerald may, at its option and without prejudice to any other remedies available to it, suspend and/or cancel this Agreement.
- 3. Shipping.** All Hardware will be shipped FOB Emerald shipping point, unless otherwise indicated in the Quotation.
- 4. Change Orders.** In order for any change order of Customer to be effective, such change orders must be submitted in writing by Customer to Emerald and are subject to Emerald’s prior written approval.
- 5. Termination.** Both parties shall have the right to terminate this Agreement upon material breach of any of its terms by the other party. Such right shall be subject to the provision of thirty (30) days notice to the other party, which party shall have such thirty (30) days to cure such breach or to provide commercially reasonable evidence that no breach has occurred.
- 6. Indemnities.** Each party shall defend, indemnify, and hold harmless the other party and such party’s officers, directors, employees, agents and successors against any liability or litigation cost or expense (including attorneys’ fees) arising out of third party claims that result from the indemnifying party’s negligence or willful misconduct in connection with the Hardware or services.
- 7. Force Majeure.** Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service or employment deemed resulting directly or indirectly from Acts of God, civil or military authority, acts of public enemy, war, accident, fire, explosion, earthquake, flood, failure of transportation, strike, or other work interruption by either party’s employees or any similar or other cause beyond the reasonable control of either party.
- 8. Export Control Regulations.** Customer will comply fully with all U.S. Export Control laws and regulations as well as similar laws of other countries as applicable. Customer will also comply fully with all customs requirements of the U.S. and all other countries.
- 9. Governing Law.** This Agreement shall be governed by and interpreted in accordance with the law of the State of Delaware, United States, excluding its conflict of law rules.
- 10. Confidentiality; Right to Publicity.** Neither party shall disclose the amounts due under this Agreement to any third party. Notwithstanding the above, both parties may (a) publicize the existence and general subject matter of this Agreement, (b) disclose such amounts to the extent required to comply with applicable securities laws, and (c) disclose such amounts in the course of obtaining financing relating to its business operations.
- 11. Acceptance.** If Emerald installs Hardware, acceptance shall be deemed to occur upon completion of such installation. If Emerald ships for installation by Customer or a third party, acceptance shall be deemed to occur thirty (30) days after delivery of Hardware unless Customer notifies Emerald of its non-acceptance, along with reasons for non-acceptance prior to such 30th day.
- 12. Computer Configuration.** Emerald supplies or recommends certain configurations of computer hardware, software and peripherals for use with its Hardware. Emerald reserves the right to decline support for or impose extra charges for supporting non-standard computer configurations or components not supplied by Emerald. Emerald also reserves the right to require that computer hardware and software be restored to the standard configuration prior to providing service or technical support. For Hardware having built-in computers or processing units, installing unauthorized hardware or software may void the warranties provided below.

- 13. Limited Product Warranty.** Emerald warrants that all standard components of Hardware (not including consumable or maintenance items, for which no warranty is provided) will be free of defects in materials and workmanship for a period of one year from the date the warranty period begins. Emerald will repair or replace, at its discretion, all defective components during this warranty period. After this warranty period, repair and replacement components may be purchased from Emerald at its then applicable standard rates. Emerald may also provide service agreements for post warranty coverage. Emerald reserves the right to use new, repaired or refurbished equipment, instruments or components for warranty and post-warranty service agreement replacements. Repair or replacement of equipment or components that are under warranty does not extend the original warranty period.
- 14. Warranty Period Effective Date.** Any applicable warranty period hereunder begins on the earlier of the date of installation or ninety (90) days from the date of shipment for Hardware and Software installed by Emerald personnel. For all Hardware and Software installed by Customer or anyone other than Emerald, the applicable warranty period begins the date the Hardware and Software is delivered to Customer. Warranty claims must be made within the applicable warranty period.
- 15. Warranty Exceptions.** The above warranties do not apply to defects resulting from misuse, neglect, or accident, including without limitation: operation with incompatible samples in the system; operation outside of the environmental or use specifications or not in conformance with the instructions for the Hardware; improper or inadequate maintenance by the user; installation of software or interfacing, or use in combination with software or products, not supplied or authorized by Emerald; and modification or repair of the product not authorized by Emerald. The foregoing provisions set forth Emerald's sole and exclusive representations, warranties, and obligations with respect to its products. EMERALD MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR OTHER COMMUNICATION, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
- 16. Warranty Limitations.** The remedies provided herein are Customer's sole and exclusive remedies. Without limiting the generality of the foregoing, in no event shall Emerald be liable, whether in contract, tort, warranty, or under any statute or on any other basis, for direct, indirect, punitive, incidental, multiple, consequential, or special damages sustained by Customer or any other person or entity, whether or not foreseeable and whether or not Emerald is advised of the possibility of such damages, including without limitation, damages arising from or related to loss of use, loss of data, failure or interruption in the operation of any equipment or software, delay in repair or replacement, or for loss of revenue or profits, loss of goodwill, loss of business, or other financial loss or personal injury or property damage. The foregoing exclusion of such damages shall apply regardless of the success or effectiveness of other remedies. No agent, employee, or representative of Emerald or its affiliates has any authority to modify the terms of these warranties or to bind Emerald to any additional warranty or representation not contained herein, and any such warranty or representation is not binding on Emerald unless in a writing signed by an authorized executive officer of Emerald. This warranty is limited to the buyer of the Hardware from Emerald and is not transferable.
- 17. Limitations of Warranty Scope.** Some countries or jurisdictions limit the scope of or preclude limitations or exclusion of warranties, or of liability. In such countries or jurisdictions, the limitation or exclusion of warranties, liabilities, remedies or damages set forth above shall apply to the fullest extent permitted by law, and shall not apply to the extent prohibited by law.
- 18. Damages, Claims, Returns.** If shipping damage to any Hardware is discovered, the shipping carrier should be contacted, and inspection by a local agent should be requested. It is the responsibility of Customer to inspect all shipments upon receipt to determine if any damage in shipment has occurred. Emerald should then be contacted to determine the processing of any claim for damage. Hardware should not be returned to Emerald without prior notification and authorization of Emerald.
- 19. General.** These terms and conditions, together with the Quotation document/Purchase Order to these terms and conditions attached, are the sole and complete document relating to the Hardware and Software. Under no circumstances will any terms and conditions or standard agreement of Customer/Licensee be accepted by Emerald, and any attempt to include such terms and conditions and/or agreement shall be deemed specifically rejected by Emerald. Except to the extent identified on the Quotation document, these terms and conditions supersede all prior agreements and understandings between the parties hereto. No modification of or amendment hereto, nor waiver of any right hereunder, will be effective unless in writing signed by an authorized representative of both parties; however, the parties may agree to terms inconsistent with, or in addition to, these terms and conditions by mutual agreement. Such terms shall be noted on an order signed by authorized signatories of each party.

OPERATIONAL SOFTWARE TERMS AND CONDITIONS

1. Definitions.

"Licensee" as used herein means the single end-user organization taking a license under this Agreement as Licensee; Licensee may also be referenced as Customer.

"Software" means the software identified on the relevant Quotation, and each copy (including copies merged into other software), translation, update, modification, or enhancement of all or any part of the Software, in any medium, delivered to the Licensee under this Agreement.

“End-User Materials” means any written user manuals or documents provided to Licensee under this Agreement for use in conjunction with the Software.

“Activation Code” means a code that is required to complete the installation of the Software on an individual computer system. The Software may be fitted with an electronic mechanism that disables the Software until provided with the Activation Code.

“License Term” means the license term, which shall begin upon the date of completion of the installation of Software at Licensee’s site and shall continue for as long as the Customer owns the Hardware described in the Quotation attached hereto.

“Annual License Fee” means the fee (if applicable) required to maintain a valid Activation Code, that allows the Software to run.

2. Grant of License. Subject to purchase or other transfer of Hardware to Licensee, and payment of any applicable fees and other conditions set forth herein and in the Quotation (including, where applicable, the Annual License Fee, Emerald hereby grants to Licensee (a) a non-transferable license to the Software, and (b) the right to use End-User Materials during the Term subject to the limitations below. Emerald will install one copy of the Software at Licensee’s designated site. This license is granted to permit Licensee to:

(i) Use and execute the Software through one (1) server seat and the number of server client seats identified in the Quotation; and

(ii) Make one (1) copy of the Software in machine-readable, object code form, for nonproductive backup purposes only.

The cost of additional copies of Software, and timing of notification, rights to add client seats, and other terms shall be as set forth in the Quotation.

3. Activating Software. As part of the installation of the Software, if applicable, Emerald will provide Licensee with the Activation Code. The installation of the Software will not be complete, and the Software will not execute, until the appropriate Activation Code is obtained from Emerald and provided to the Software during installation.

4. Binary Code. The Software is provided in and may be used in machine-readable binary code form only.

5. End-User Materials. End-User Materials that accompany the Software are provided solely to support Licensee’s authorized use of the Software. Licensee may not copy, modify, or resell, or distribute the End-User Materials, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Emerald by separate written agreement. The right to use End-User Material only extends as long as the Customer owns the Hardware described in the Quotation attached hereto.

6. Technical Support and Maintenance.

(a) The License granted hereunder provides Licensee with technical support via E-mail. Telephone support may also be provided if indicated on the order attached hereto. Such

technical support shall be unlimited, subject to commercially reasonable best efforts of Emerald to provide such technical support. Licensee will ensure that E-mail support and telephone support (if applicable) is available during the hours between 8:00AM and 5:00PM Pacific Time Monday through Friday. The free technical support will be provided for one year from the date of delivery of the Software. Such Technical Support will preferably be provided by e-mail to ensure that the Software is installed and operating properly. Any on-site technical support will be charged at Emerald’s standard rates, plus reimbursement for Emerald’s reasonable travel costs. Beginning one year after the date of delivery of the Software, Emerald will separately offer annual maintenance on the Software under Emerald’s standard rates and terms. Such annual maintenance will also include any software upgrades developed by Emerald. Licensee will not be obligated to obtain such maintenance from Emerald as a condition of this Agreement; however, Emerald will not be obligated to provide any upgrades unless Emerald purchases such maintenance.

(b) Emerald agrees to provide to Licensee any software upgrades developed by Emerald at any time during which this Agreement remains in effect. Such software upgrades shall be limited to revisions to the Software, which (i) do not require hardware changes or upgrades or (ii) do not materially change the functionality of the Software.

(c) Licensee recognizes that reconfiguring the hardware or software of the computer on which the Software is installed can render the Software inoperative, or otherwise place an undue burden on Emerald to provide technical support. Licensee therefore agrees that if Licensee reconfigures the software by modifying the delivered Software database schema, or a Software database schema upgraded under Emerald’s authorization, Emerald is released from its technical support responsibility hereunder.

7. Licensee Responsibilities. Licensee is responsible for the following actions:

(a) Determining whether the Software will achieve the results Licensee desires;

(b) Providing a proper environment and proper utilities for the computers on which the Software operate, including an uninterrupted power supply

(c) Selecting and training Licensee’s personnel so they can operate computers and so they are familiar with the Software; and

(d) Establishing adequate operational back-up provisions in the event of a defect or malfunction that renders the Software or the computer systems on which they run non-operational. Emerald is not responsible for obsolescence of the Software that may result from changes in Licensee’s requirements.

8. Proprietary Protection. This Agreement does not provide Licensee with title or ownership of the Software, but only a right of limited use. Emerald shall maintain sole and exclusive ownership of all right, title, and interest in and to the Software and End-User

Materials, all copies thereof, and all modifications and enhancements (if any) thereto subject only to the right and license expressly granted to Licensee by this Agreement.

- 9. Limitations on Use, Etc.** Licensee may not use, copy, modify, resell, distribute, or transfer to third parties in any manner the Software (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by this Agreement. Licensee may not reverse assemble, reverse compile, or otherwise translate the Software. Licensee may not install the Software anywhere but in connection with the Hardware without Emerald's prior written consent, provided that Licensee may transfer the Software to another location temporarily in the event of an interruption of computer operations.
- 10. Loss of Data.** Licensee acknowledges that electronic data storage is subject to the possibility of human or machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media that may give rise to loss or damage. Emerald shall not be liable for any such errors, omissions, delays, or losses. Licensee is responsible for adopting reasonable measures to limit the impact of such problems, including backing up data, and adopting procedures to ensure the accuracy of input data; examining and confirming results prior to use; and adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct data. Licensee is also responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any data.
- 11. Indemnification.** If a third party claims that the Software infringes any U.S. patent, copyright, or trade secret, Emerald will (as long as Licensee remains the owner of the Hardware, and is not in default under this Agreement or any other agreement with Emerald) indemnify, defend, and hold Licensee harmless against such claim at Emerald's expense and pay all damages that a court finally awards, provided that Licensee promptly notifies Emerald in writing of the claim, and allow Emerald to control, and cooperate with Emerald in, the defense or any related settlement negotiations. If such a claim is made or appears possible, Emerald may, at its option, secure for Licensee the right to continue to use the Software, modify or replace the Software so they are non-infringing, or, if neither of the foregoing options is available in Emerald's judgment, require Licensee to return the Software. However, Emerald has no obligation for any claim based on a modified version of the Software or their combination, operation, or use with any product, data, or apparatus not provided by Emerald. THIS PARAGRAPH STATES EMERALD'S ENTIRE OBLIGATION TO LICENSEE WITH RESPECT TO ANY CLAIM OF INFRINGEMENT. Except to the extent resulting from a third party claim of infringement as described above, or from breach of warranty by Emerald pursuant to Paragraph 20 or Emerald's negligence or willful misconduct, Licensee will indemnify, defend and hold harmless Emerald, its officers, directors, affiliates, employees and agents from and against any cost, claim, liability, injury, loss, damage or expense resulting from Licensee's possession or use of Software and/or End User Materials, and any results, data or other information resulting from use thereof.
- 12. Termination.** (a) Both parties shall have the right to terminate this Agreement upon material breach of any of its terms by the other party. Such right shall be subject to the provision of thirty (30) days notice to the other party, which party shall have such thirty (30) days to cure such breach or to provide commercially reasonable evidence that no breach has occurred. (b) Upon termination of this Agreement for Licensee's breach, Licensee's license will terminate, and Licensee will be required to return or destroy, as requested by Emerald, all copies of the Software in Licensee's possession (whether modified or unmodified), and all other materials pertaining to the Software, including all copies thereof.
- 13. Complete Documentation.** These terms and conditions, together with the Quotation document/Purchase Order to these terms and conditions are attached, are the sole and complete document relating to the Hardware and
Software. Under no circumstances will any terms and conditions or standard agreement of Customer/Licensee be accepted by Emerald, and any attempt to include such terms and conditions and/or agreement shall be deemed specifically rejected by Emerald. These terms and conditions supersede all prior agreements and understandings between the parties hereto. No modification of or amendment hereto, nor waiver of any right hereunder will be effective unless in writing signed by an authorized representative of both parties; however, the parties may agree to terms inconsistent with, or in addition to, these terms and conditions by mutual agreement. Such terms shall be noted on an order signed by authorized signatories of each party
- 14. Assignment.** Except in connection with the transfer or sale by either party of all or substantially all of its assets to which this agreement applies, or the merger or consolidation of a Party hereto with a third party, this Agreement may not be assigned or transferred by either party (except to such party's affiliates) without the prior consent of the other.
- 15. Export Control Regulations.** Licensee will comply fully with all U.S. Export Control laws and regulations as well as similar laws of other countries as applicable. Licensee will also comply fully with all customs requirements of the U.S. and all other countries.
- 16. Computer Configuration.** Emerald supplies or recommends certain configurations of computer hardware, software, and peripherals for use with its software. These recommendations are set forth in the Quotation to this Agreement. Emerald reserves the right to decline support for or impose extra charges for supporting nonstandard computer configurations or components that have not been supplied or recommended by Emerald. Emerald also reserves the right to require that computer hardware and software be restored to the standard configuration prior to providing service or technical support. For systems that have built-in computers or processing units, installing unauthorized hardware or software may void the warranty.
- 17. Limited Warranty.** The warranty described herein is provided in addition to, and is not intended to supersede, any Technical Support and Maintenance obligations of Emerald. Emerald warrants that for a period of ninety (90) days from the date the warranty

period begins, its software will perform substantially in accordance with the function and features described in its accompanying documentation when properly installed on the Hardware for which it is designated, and that for a period of ninety (90) days from the date the warranty period begins, all media bearing the software product will be free of defects in materials and workmanship under normal use. Emerald will provide any software corrections or “bug-fixes,” if and when they become available, for a period of ninety (90) days from the date the warranty period begins. Emerald does not warrant that the operation of the instrument or software will be uninterrupted or error free.

- 18. Warranty period effective date.** Any applicable warranty period under these sections begins on the earlier of the date of installation or ninety (90) days from the date of shipment for software installed by Emerald personnel. For all software installed by the Licensee or anyone other than Emerald, the applicable warranty period begins the date the software is delivered to the Licensee. Warranty claims must be made within the applicable warranty period.
- 19. Warranty exceptions.** The above warranties do not apply to defects resulting from misuse, neglect, or accident, including without limitation: operation outside of the environmental or use specifications, or not in conformance with the instructions for the Hardware, software, or accessories; improper or inadequate maintenance by the user; installation of software or interfacing, or use in combination with software or products, not supplied or authorized by Emerald; and modification or repair of the product not authorized by Emerald. The foregoing provisions set forth Emerald’s sole and exclusive representations, warranties, and obligations with respect to its products. EMERALD MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR OTHER COMMUNICATION, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

- 20. Warranty Limitations.** The remedies provided herein are the Licensee’s sole and exclusive remedies. Without limiting the generality of the foregoing, in no event shall Emerald be liable, whether in contract, tort, warranty, or under any statute (including without limitation any trade practice, unfair competition, or other statute of similar import) or on any other basis, for indirect, punitive, incidental, multiple, consequential, or special damages sustained by the Licensee or any other person or entity, whether or not foreseeable and whether or not Licensee is advised of the possibility of such damages, including without limitation, damages arising from or related to loss of use, loss of data, failure or interruption in the operation of any Hardware or software, delay in repair or replacement, or for loss of revenue or profits, loss of good will, loss of business, or other financial loss or personal injury or property damage. The foregoing exclusion of such damages shall apply regardless of the success or effectiveness of other remedies. No agent, employee, or representative of Emerald or its affiliates has any authority to modify the terms of this Limited Warranty Statement or to bind Emerald to any affirmation, representation, or warranty concerning the product that is not contained in this Limited Warranty Statement, and any such modification, affirmation, representation, or warranty made by any agent, employee, or representative of Emerald will not be binding on Emerald unless in a writing signed by an authorized executive officer of Emerald. This warranty is limited to the Licensee of the product and is not transferable.
- 21. Limitations of Scope.** Some countries or jurisdictions limit the scope of or preclude limitations or exclusion of warranties, or of liability. In such countries or jurisdictions, the limitation or exclusion of warranties, liabilities, remedies or damages set forth above shall apply to the fullest extent permitted by law, and shall not apply to the extent prohibited by law.