



emulate

Standard Terms and Conditions of Sale

Version 3.0 — April 12, 2019

Standard Terms and Conditions of Sale

These Standard Terms and Conditions of Sale (“**Standard Terms**”) exclusively govern the purchase, supply and use of Products (and the license, supply and use of Software) of Emulate, Inc. (“**Emulate**”) and override any conflicting or additional terms contained in any User quote, purchase order, invoice or similar document furnished by User to Emulate concerning the purchase, supply or use of the Products (or the license, supply or use of Software), all of which are expressly rejected. Emulate’s failure to object to any such terms will not be construed as acceptance of such terms or a waiver of any term in these Standard Terms by Emulate.

1. Certain Definitions.

1.1 “**Authorized Distributor**” means any third party authorized by Emulate to sell Products.

1.2 “**Consumables**” means any consumable item sold or otherwise made available by Emulate or an Authorized Distributor that is intended by Emulate to be consumed through use of the Hardware. Consumables includes Emulate’s kitted products and all components therein (e.g., Third-Party Consumables, cells, media, reagents, etc.).

1.3 “**Documentation**” means Emulate’s written user manuals, protocols, user guides or similar technical instructions for use of a Product in effect on the date Emulate delivers such Product (either provided with the Product or on Emulate’s website).

1.4 “**Emulate Marks**” means any existing or future trademark relating to Emulate and its Products, Software, Specifications, Documentation and/or services, regardless of the jurisdiction in which such trademark is used or registered, including all associated goodwill, and all applications for trademark registration in any jurisdiction.

1.5 “**Hardware**” means any Emulate-branded instruments, equipment, accessories or peripherals sold or otherwise made available by Emulate or an Authorized Distributor.

1.6 “**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise in existence, now or in the future, under or related to any patent, copyright, trademark, trade secret, database right, database protection or other intellectual property right in any jurisdiction.

1.7 “**Products**” means Consumables and/or Hardware.

1.8 “**Software**” means software and firmware made available by Emulate on or with the Hardware.

1.9 “**Specifications**” means Emulate’s written technical specifications for a Product in effect on the date Emulate delivers such Product (either provided with the Product or on Emulate’s website).

1.10 “**Third-Party Consumables**” means any Consumable that is procured by Emulate from a third-party supplier and is resold to User by Emulate (e.g., cells, cell media, other biological matter included in kitted products, etc.).

1.11 “**User**” means the purchaser or acquirer of Products and/or licensee of Software, as applicable.

2. Order and Supply.

2.1 **Orders.** All orders to purchase Products must be in writing and accepted by Emulate in writing to be binding. User may not cancel or modify accepted orders for Products unless Emulate accepts such cancellation or modification in writing.

2.2 **Shipping.** All shipments will be made FCA Emulate’s manufacturing site or warehouse (Incoterms 2010) to the facility designated by User at the time of ordering (“**User Facility**”), using a carrier designated by Emulate. Title and risk of loss will pass to User when Product is delivered to the carrier. User will be responsible for freight and insurance, which will be added to the invoice for the Products and paid by User. Delivery dates specified in orders for Product or similar documentation are estimates and are not guaranteed.

2.3 **Inspection.** User will have the right to inspect received Products for defects and/or non-conformance with the Product’s Specifications for a period of ten (10) days after the date of receipt at the User Facility (“**Inspection Period**”). A Product will be deemed accepted by User unless User notifies Emulate in writing prior to expiration of the Inspection Period of any such defect or non-conformance. Emulate will, at its option, promptly repair or replace the rejected Product, which are User’s exclusive remedies for rejected

Products under to this Section. If Emulate elects to replace the rejected Product, Emulate will bear the cost of return shipments, with title and risk of loss passing to Emulate upon User’s delivery of the rejected Product to a carrier of Emulate’s choice. User may not reject any Product if Emulate cannot reasonably determine that such Product is defective or non-conforming or if the defect or non-conformance occurred after delivery by Emulate to the carrier. Notwithstanding the foregoing, any use of a Product by User after receipt will constitute acceptance of the Product.

3. Use; Restrictions on Use.

3.1 **Limited License.** Subject to these Standard Terms, User is granted a non-exclusive and non-transferable right and limited license under Emulate’s Intellectual Property Rights to (a) use the Products in the User Facility in accordance with these Standard Terms and the applicable Documentation and Specifications and (b) use Software made available by Emulate with any Product in accordance with the Product’s Specifications and Documentation.

3.2 **Research Use Only.** THE PRODUCTS (AND ALL DATA DERIVED FROM USE OF THE PRODUCTS) ARE FOR RESEARCH USE ONLY AND CANNOT BE USED FOR THERAPEUTIC OR DIAGNOSTIC PURPOSES. For clarity, User will not, and will not permit any third party to, (a) use the Products as, or as a component of, an in vitro diagnostic device or to perform testing of human specimens where results are reported to a patient or healthcare practitioner or for any therapeutic purposes or (b) implant the Products in a human. In addition, User’s use is subject to the exclusions set forth in Section 3.5 (Excluded Research Uses). User acknowledges that the Products have not been subjected to regulatory review or approved or cleared by the U.S. Food and Drug Administration (“**FDA**”) or any other foreign or domestic regulatory authority for any purpose. User must ensure it has all regulatory approvals, permits and licenses that are necessary for its intended uses of the Products and that it uses the Products in strict compliance with applicable laws, rules and regulations.

3.3 **No Commercial Use.** Unless otherwise agreed by Emulate in writing, User will not, and will not permit any third party to, use any Product (or any component thereof) in any commercial application (including contract research services), and will not have the right to sublicense, resell, lease, loan, assign or otherwise transfer any Product (or any component thereof) to any third party.

3.4 **Other Limitations.** User will use each Consumable only one time and, unless otherwise agreed by Emulate in writing, must use the Consumables exclusively with the Hardware. User will not, and will not permit any third party to, (a) disclose, transfer or otherwise make available to any third party the Software, Documentation, Specifications or any information/data Emulate provides to User in connection with training or otherwise supporting User on use of the Products (to the extent such Software, Documentation, Specifications and information/data are not generally available to the public), (b) reproduce, modify or create derivative or transformative works of any Product or the Software, Documentation or Specifications, (c) extract any Software from any Hardware and/or use any Software independent of the Hardware, (d) perform compositional, functional or other analysis of or reverse engineer, any Product or Software, (e) access the source code of the Software or defeat, deactivate or otherwise circumvent any protection mechanisms in the Software (or attempt to do any of the foregoing), (f) use the Products for purposes of competitive analysis or for any other benchmarking or (g) remove, alter or obscure any Emulate Mark or any other source, product or ownership identification, disclaimers or Intellectual Property Rights notices or markings contained in, displayed by or provided with any Product, Software, Documentation or Specifications.

3.5 **Excluded Research Uses.** [Reserved].

3.6 **Software.** All Software, whether provided separately,

installed on or embedded in a Product, is licensed to User and not sold. This license will terminate thirty (30) days after delivery of written notice by Emulate to User of User's failure to comply with these Standard Terms (if User has failed to cure such breach within the 30-day period) and, upon such termination, User will immediately cease use of the Software. User acknowledges that the Software may be subject to the terms and conditions of third parties if the Software includes third-party code. Such third-party terms and conditions will apply only to the applicable third-party code contained in the Software and only to the extent such third-party terms and conditions do not directly conflict with these Standard Terms.

4. Safety.

4.1 USER ACKNOWLEDGES THAT THE PRODUCTS, OR THEIR COMPONENTS, MAY CONSTITUTE OR CONTAIN BIOLOGICAL MATTER THAT SHOULD BE REGARDED AS POTENTIALLY INFECTIOUS AND HAZARDOUS AND HANDLED ACCORDINGLY.

4.2 User is solely responsible for (a) ensuring that the Products are suitable for User's intended use and conducting any research necessary to learn the potential hazards involved with such use and (b) warning third parties who may use or come in contact with the Products of any risks involved in using or handling the Products.

4.3 User will (a) use reasonable care in using, handling, storing, transporting and disposing of the Products (including by wearing appropriate protective equipment) and (b) ensure the Products are used and handled only by qualified laboratory personnel under User's immediate and direct control who have been trained to use the Products.

5. Payment Terms; Taxes.

5.1 **Invoices.** Emulate will invoice upon delivery of a Product in accordance with Section 2.2 (Shipping). User will pay all invoiced amounts within thirty (30) days after the date of such invoice using the payment method set forth in the invoice unless otherwise agreed by Emulate in writing. All payments will be invoiced and paid in U.S. dollars. If a payment is made by wire or other electronic funds transfer, User is solely responsible for any bank or other fees charged and will reimburse Emulate for any such fees. All prices are subject to correction for typographical or clerical errors. Each order for Products is an independent transaction, and User has no right of set-off against other orders or other transactions with Emulate. Emulate may, from time to time, adjust the price of a Product. A transaction in which a Product is purchased will in no manner suggest that the price for the Product will be the same in a subsequent transaction.

5.2 **Late Payments.** If any payment is not made when due, Emulate may (a) charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted by applicable law and (b) exercise any right or remedy available by law or in equity. User will reimburse Emulate for all reasonable costs incurred by Emulate in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.

5.3 **Taxes.** All prices and other amounts payable by User to Emulate are exclusive of, and are payable without deduction for, any taxes and other assessments claimed or imposed by any foreign or domestic governmental authority, including sales, use, value-added (VAT), goods and services (GST) and other similar consumption, privilege and excise taxes. User will be responsible for paying all such taxes and assessments; provided, however, User will not be responsible for paying taxes on Emulate's net income. In the event Emulate is required by law, rule or regulation to pay any such taxes or assessments, such amount will be added to the purchase price and/or subsequently invoiced to User. Emulate will remit any payments from User for such taxes and assessments directly to the appropriate taxing authorities, except where local legislation requires User to remit such payments to the taxing authorities. If User is exempt from the payment of such taxes or other assessments, User will provide Emulate with documentary proof of such exemption at the time User places an order to purchase Products. Any amounts for any such taxes and assessments listed on a quotation, if any, are for reference purposes only and are not binding on Emulate.

5.4 **Security Interest.** User grants Emulate a purchase money security interest in each Product ordered in the amount of the

unpaid balance of the purchase price until paid in full. Emulate may file a financing statement for such security interest, and User will sign any such statements or other documentation necessary to perfect Emulate's security interest.

5.5 **Confidentiality.** User may not disclose any prices or other financial terms of any transaction related to the Products or any service rendered by Emulate to any third party without the prior written consent of the Emulate, except to the extent required by applicable law.

6. Intellectual Property.

6.1 **Emulate Intellectual Property Rights.** The Products and their use may be covered by one or more U.S. or foreign patents owned or controlled by Emulate. Except for the limited license expressly granted in Section 3.1 (Limited License), no right or license under any Intellectual Property Rights of Emulate is granted to User, whether by implication, estoppel or otherwise, and all such rights are expressly reserved to Emulate and its affiliates. Title to and ownership of the Intellectual Property Rights embodied in, and related to the manufacture or use of, the Products will at all times remain the property of Emulate or its licensors, as applicable. User agrees that the contents and methods of operation of the Products are proprietary to Emulate and where the Product contains or embodies trade secrets of Emulate, User will maintain such trade secrets in strict confidence.

6.2 **Third-Party Intellectual Property Rights.** Without limiting the limited license expressly granted under Section 3.1 (Limited License), User is solely responsible for determining whether it has all Intellectual Property Rights that are necessary for its intended uses of a Product and whether it may be required to obtain any additional Intellectual Property Rights from a third party.

6.3 **Improvements.** Unless otherwise expressly agreed in writing by Emulate, Emulate will exclusively own all Intellectual Property Rights in any improvement, modification or derivative of a Product or Software, whether or not patentable or copyrightable or made or conceived solely or jointly with others ("**Improvements**"). User will promptly notify Emulate of any such Improvements in writing. User, on behalf of itself and its affiliates and its and their agents, hereby assigns exclusively to Emulate all right, title and interest in and to the Improvements and any and all related Intellectual Property Rights in all jurisdictions and appoints any officer of Emulate as its duly authorized agent to execute, file, prosecute and protect the same before any government agency. Upon request of Emulate, and without further compensation, User will, and will cause its affiliates and its and their agents to, execute such further assignments, documents and other instruments as may be necessary or desirable to effect Emulate's foregoing ownership rights. Except as otherwise required by law or as necessary to comply with its obligations in this Section, User will, and will cause its affiliates, to keep all Improvements confidential.

6.4 **Emulate Marks.** User will not, without the prior written consent of Emulate, use or attempt to register any logo, mark or name that is likely to be similar to or confused with any Emulate Mark. All goodwill resulting from the use of the Emulate Marks will inure solely to Emulate.

7. **Data.** Unless otherwise expressly agreed in writing by User, any data, which arises directly out of User's use of the Products, will be exclusively owned by User.

8. **Publicity.** User agrees that, without Emulate's written consent, it will not issue any press release or make any public statement, including any opinion or technical review, about Emulate or the Products, nor will User publicly disclose any images of the Products. Emulate may identify User publicly as a customer of Emulate on its website and in marketing materials and press releases, including by using and displaying a description of User and/or its business name and logo.

9. **User Information; Feedback.** User acknowledges that Emulate may maintain and use a database of orders and account information regarding User for purposes of order processing, maintaining records, assisting with User's future orders and compliance with laws, rules and regulations. User grants to Emulate a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense, to use and commercialize in any manner, all feedback, suggestions, ideas or

comments provided by User to Emulate regarding the Products and Software.

10. Product Warranty.

10.1 General. All product warranties given by Emulate in this Section 10 ("**Product Warranty**") are personal to User and may not be transferred or assigned to a third party. All warranties are specific to the User Facility and do not transfer if the Product is moved to another facility, unless Emulate otherwise agrees in writing. Emulate makes no warranty of any kind that the Products will satisfy User's or any third party's intended uses or requirements.

10.2 Warranty for Consumables. Emulate warrants that Consumables, other than Custom Consumables, will conform to their Specifications until the later of (a) three (3) months after the delivery date or (b) any expiration date pre-printed on the Consumable by Emulate, but in no event later than twelve (12) months after the delivery date. With respect to any Consumable made by or on behalf of Emulate to specifications or designs provided by or on behalf of User ("**Custom Consumables**"), Emulate exclusively warrants that such Custom Consumables will be made and tested in accordance with Emulate's standard manufacturing and quality control processes.

10.3 Warranty for Hardware. Emulate warrants that Hardware, other than Upgraded Components, will conform to their Specifications for twelve (12) months after the delivery date unless the Hardware is installed by Emulate in which case the warranty period begins on the earlier of (a) the date of installation or (b) sixty (60) days after the date the Hardware is delivered. "**Upgraded Components**" means Emulate-provided components, modifications or enhancements to Hardware provided pursuant to the foregoing Hardware warranty. Upgraded Components will conform to their Specifications for a period of ninety (90) days after the date the Upgraded Components are provided by Emulate unless an Upgraded Component is installed by Emulate in which case the warranty period begins on the earlier of (i) the date of installation or (ii) sixty (60) days after the date the Upgraded Component is delivered.

10.4 Exclusions. The Product Warranty does not apply to, and Emulate expressly disclaims any express, implied or statutory warranty for, (a) any third-party products that may be acquired or used with the Products, including Third-Party Consumables, (b) Software and (c) any service provided to User by Emulate. For all third-party products, User must look directly to the relevant third-party manufacturer or supplier for warranty coverage. The Product Warranty also does not apply to, and Emulate will have no liability for, any Product non-conformance or defect that is attributable to (i) normal wear and tear, abuse, misuse, neglect, negligence, accident, improper storage, improper handling, unauthorized alterations, modifications or tampering or use contrary to the Documentation, Specifications or these Standard Terms, (ii) relocation, installation, maintenance or repair (other than if performed by Emulate's personnel or with Emulate's written authorization), (iii) failure to maintain the Hardware in accordance with the Documentation or Specifications, (iv) any Force Majeure Event or other external cause, such as damage from excess moisture, contamination, battery leakage, theft, power surge or blown fuse or (v) use with a third-party product (other than Third-Party Consumables), unless the Documentation or Specifications expressly state such third-party product is intended for use with the Product or Emulate otherwise agrees in writing.

10.5 Exclusive Remedies for Warranties. This Section describes User's exclusive remedies, and Emulate's exclusive obligations, under the Product Warranty. Emulate will, at its option, repair or replace any non-conforming Product that is covered by the Product Warranty, provided that Emulate can reasonably identify and confirm such non-conformance. If Emulate cannot reasonably identify and confirm that a Product is non-conforming, Emulate will have no liability under the Product Warranty. The warranty period for replaced Consumables is three (3) months after the delivery date, or the remaining period on the original Consumables warranty, whichever ends later. Hardware may be repaired or replaced by Emulate with functionally equivalent, reconditioned or new Hardware or components (if only a component of Hardware is non-conforming). If the Hardware (or a component thereof) is replaced, the warranty period for the replacement Hardware or Hardware component, as applicable, will either be (a) three (3) months after the delivery date (unless the Hardware or component is installed by Emulate, in which case such warranty period will begin on the earlier of (i) the date of

installation or (ii) sixty (60) days after the date the Hardware or component is delivered), or (b) the remaining period on the original Hardware warranty, whichever ends later.

10.6 Warranty Procedure. In order to be eligible for repair or replacement under the Product Warranty, User must (a) contact Emulate's support department to report the non-conformance and make a warranty claim during the applicable Product Warranty period, (b) cooperate with Emulate in confirming or diagnosing the non-conformance (including by providing requested documentation and granting Emulate's personnel full and free access to the Product to confirm the non-conformance) and (c) if Emulate confirms the non-conformance, return the Product to Emulate following Emulate's instructions (in which case Emulate will bear the cost of return shipments) or, if requested by Emulate, grant Emulate's authorized repair personnel full and free access to the Product to make repairs. Any failure by User to comply with its obligations in this Section will relieve Emulate, for the duration of such failure, of any liability for failures or delays in performing its Product Warranty obligations. If a Product is returned to Emulate, but the problem with the Product is not covered under the Product Warranty, Emulate will notify User, the Product will be returned to User and User will be responsible for all shipping charges. ANY ACTION OR LAWSUIT FOR BREACH OF WARRANTY OR CONTRACT MUST BE COMMENCED BY USER WITHIN TWELVE (12) MONTHS AFTER THE LATER OF THE DELIVERY OR, IF APPLICABLE, INSTALLATION BY EMULATE OF THE PRODUCT. ALL ACTIONS AND LAWSUITS WILL BE BARRED AFTER THIS PERIOD.

10.7 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE PRODUCT WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 10, ALL PRODUCTS, SOFTWARE, SPECIFICATIONS AND DOCUMENTATION ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND, TO THE EXTENT PERMITTED BY LAW, EMULATE DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY EMULATE OR ITS REPRESENTATIVES WILL CREATE ANY OTHER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF EMULATE'S PRODUCT WARRANTY OBLIGATIONS EXPRESSLY SET FORTH IN THIS SECTION 10. ANY WARRANTY THAT CANNOT BE DISCLAIMED UNDER APPLICABLE LAW WILL BE LIMITED IN DURATION TO THE APPLICABLE WARRANTY PERIOD.

11. Training; Technical Support and Other Services.

11.1 Training. Emulate may provide a certain number of technical training sessions to User for use of the Products, as set forth in the Product order. Training sessions will occur on such dates and times as mutually agreed upon by the parties.

11.2 Technical Support. During the applicable warranty period for a Product, Emulate may provide limited technical support to User at no additional charge during its regular U.S. business hours, including (a) telephone, email or internet-based technical support services and resources, (b) limited on-site preventative maintenance, (c) relocation of Hardware, (d) Software and Hardware updates, upgrades, error corrections, bug fixes or other changes and (e) updated Documentation. User will provide Emulate with full and free access to any Hardware to the extent necessary or convenient to enable Emulate to perform the limited technical support. Any failure by User to comply with its obligations under this Section will relieve Emulate, for the duration of such failure, of any liability for failures or delays in rendering technical support.

11.3 Extended Warranty. User may purchase an extended warranty for Hardware, including maintenance and technical support ("**Extended Warranty**"), but only pursuant to a separate maintenance and technical support services contract to be mutually agreed upon by the parties.

11.4 Other Services. Emulate may provide other services, such as consulting services, in connection with User's purchase and/or use of the Products. Additional terms and conditions may apply to such services, as mutually agreed upon by the parties in writing. Emulate will have no obligation to provide such services and no liability

for any failure or defect in providing such services.

12. LIMITATION OF LIABILITY.

12.1 TO THE EXTENT PERMITTED BY LAW, (A) IN NO EVENT WILL EMULATE OR ITS AFFILIATES AND ITS AND THEIR SUPPLIERS AND LICENSORS HAVE LIABILITY TO USER OR ANY THIRD PARTY FOR CONSEQUENTIAL, EXEMPLARY, ENHANCED, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR STATUTORY DAMAGES UNDER ANY LEGAL THEORY OF ANY KIND, INCLUDING CONTRACT, TORT (INCLUDING NEGLIGENCE OR INTENTIONAL MISCONDUCT), STRICT LIABILITY, FRAUD OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OR USE OF ANY PRODUCT OR THESE STANDARD TERMS, HOWEVER ARISING OR CAUSED AND WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR SUCH LOSSES WERE OTHERWISE FORESEEABLE AND (B) EMULATE'S TOTAL AND CUMULATIVE LIABILITY TO USER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH PRODUCT PURCHASES OR THESE STANDARD TERMS, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WILL IN NO EVENT EXCEED THE LESSER OF (I) THE AMOUNT USER PAID TO EMULATE FOR THE PARTICULAR PRODUCT(S) THAT DIRECTLY CAUSED OR RESULTED IN THE LIABILITY OR (II) US \$1,000,000.

12.2 Emulate does not warrant, guarantee or suggest under any circumstance that any particular compound, substance, material, drug, drug candidate, active pharmaceutical ingredient or therapeutic or diagnostic agent that User uses with a Product ("User Candidate") will be effective or safe or will be suitable for any further research or development, testing in humans, further commercialization, obtaining marketing approval from the FDA or any other regulatory or governmental agency or authority of any country, or any diagnosis or treatment of any patient, irrespective of the results from the use of any such User Candidate with the Product. Emulate expressly disclaims and makes no representation or warranty whatsoever that the results from the use of any such User Candidate with the Products will be predictive of the performance or non-performance of such User Candidate in any other application, research or test, including in any clinical test or test on humans or animals, or the safety or efficacy of such User Candidate, or lack thereof, in humans or animals or of any future commercialization or regulatory approval of any such User Candidate. If the testing of a User Candidate is reasonably related to submission of information to a governmental agency or authority of any country under any law regulating the manufacture, use or distribution of drugs, User shall so document this fact.

13. Indemnification.

13.1 **Indemnification by Emulate.** Subject to these Standard Terms (including Sections 13.2 (Indemnification Exclusions) and 13.3 (Indemnification Procedure)), Emulate will defend, indemnify and hold harmless User against any third-party claim, action, settlement, demand and loss of any kind (including reasonable attorneys' fees) ("Action") alleging that a Product when used in accordance with these Standard Terms infringes the valid and enforceable U.S. Intellectual Property Rights of a third party. In the event any Action is asserted or commenced against User or, in Emulate's opinion, is likely to be asserted against User, for which Emulate may have an indemnification or defense obligation under this Section, Emulate may, at its option and expense: (a) procure the right from the applicable third party to use the Product; (b) replace or modify the Product so that it is non-infringing; or (c) accept return of the Product (and terminate User's applicable Software license) and credit User the purchase price paid for the Product, less reasonable depreciation for use, damage and obsolescence. Failure of User to accept any of the above remedies in lieu of the infringing Product will relieve Emulate of any liability or obligation to defend, indemnify or hold harmless User as described in this Section. In addition, Emulate will indemnify, defend and hold harmless User against any third-party Action that arises from or relates to negligence or intentional misconduct of, or breach of these Standard Terms by, Emulate.

13.2 **Indemnification Exclusions.** Emulate will have no liability for or obligation to defend, indemnify or hold harmless User or its affiliates for any Action that relates to or arises from: (a) any third-party product (including Third-Party Consumables), (b) any Custom Consumables, (c) use, export, re-export, release or transfer of a

Product, Software, Specifications and/or Documentation other than in accordance with these Standard Terms, (d) use or combination of a Product or any component thereof with any third-party product, including a User Candidate (other than a Third-Party Consumable), (e) User's failure to install updates, upgrades, error corrections or improvements provided by Emulate or (f) the negligence or intentional misconduct of, or breach of these Standard Terms by, User. User will indemnify, defend and hold harmless Emulate against any third-party Action that arises from or relates to any the items under clauses (b) to (f) of this Section.

13.3 **Indemnification Procedure.** The parties' indemnification obligations are strictly conditioned upon the party seeking indemnification (a) promptly notifying the other party in writing of such Action, (b) giving the other party exclusive control and authority over the defense and settlement of such Action to the extent it relates to its indemnification obligations herein, (c) not admitting infringement of any Intellectual Property Right without the other party's prior written consent, (d) not entering into any settlement or compromise of any such Action or other proceeding without the other party's prior written consent (or indicating a willingness to the party asserting the claim to enter into any such settlement or compromise) and (e) providing reasonable assistance to the other party in the defense of the Action or other proceeding; provided, that, the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance.

14. **Remedies for Breach.** In addition to any remedies specified elsewhere under these Standard Terms, and any remedies available to Emulate under law or in equity, in the event User breaches the terms in these Standard Terms, Emulate may do any, all, or any combination of the following: (1) terminate or cease or suspend performance of any outstanding order, including cease further shipments of Product, (2) terminate the rights and licenses granted to User herein, (3) terminate any services and any service contracts then in effect for the affected Product, (4) terminate any remaining Product Warranty for the affected Product and/or (5) require User to immediately pay any unpaid invoices.

15. **Governing Law.** These Standard Terms, and all claims relating to or arising out of these Standard Terms, or the breach thereof, will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to any choice of law principles that would require the application of the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not govern these Standard Terms. If the parties are unable to settle a dispute relating to these Standard Terms, the dispute will be adjudicated exclusively in the state or federal courts located in the Commonwealth of Massachusetts (Suffolk County), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

16. **WAIVER OF JURY TRIAL.** USER IRREVOCABLY WAIVES, AND WILL CAUSE ITS AFFILIATES TO WAIVE, ANY AND ALL RIGHTS ANY OF THEM MAY HAVE, NOW OR IN THE FUTURE, TO HAVE ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THESE STANDARD TERMS, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BE HEARD OR DECIDED BY A JURY IN A TRIAL.

17. **Export Compliance.** The Products, Software and related technology and information furnished to User by Emulate may be subject to restrictions and controls imposed by U.S., UK, EU and other laws, rules and regulations, including but not limited to those enforced by the U.S. Department of Commerce Bureau of Industry and Security and the U.S. Department of Treasury Office of Foreign Assets Control. User will not (and will not permit any third party to) export, re-export, release or transfer any Product, Software or related technology and/or information to any third party or any country in violation of such laws or any other applicable laws, rules or regulations.

18. Miscellaneous.

18.1 These Standard Terms contain the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral agreements and understandings with respect to the subject matter hereof; provided, however, any confidentiality agreement between the

parties will remain in effect.

18.2 No amendment to these Standard Terms or waiver of any right, condition or obligation herein will be effective unless made in a writing signed by both parties that specifically references these Standard Terms. The failure of either party to exercise any right granted herein or to require performance of any term or the waiver by either party of any breach will not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term. For avoidance of doubt, no custom, practice or prior course of dealing of the parties at variance with the terms hereof will constitute a waiver of any right, condition or obligation.

18.3 Nothing herein will constitute or create a joint venture, partnership or any other similar arrangement between the parties, and neither party will have the authority to assume, incur or create any liability or obligation on behalf, or in the name, of the other party. There are no third-party beneficiaries to this Agreement.

18.4 All notices must be in writing and delivered personally, emailed (with a read receipt requested) or mailed by overnight U.S. mail, postage prepaid, by certified U.S. mail, return receipt requested, postage prepaid or sent by Federal Express (billed to sender), to a party's address specified in an order for the applicable Product or such other address as specified by a party in writing. Any notice will be deemed to have been given or made on the earlier of the date on which it is actually received or (a) on the date on which it is delivered if personally delivered or sent if sent by email (with written acknowledgement of receipt) and (b) three (3) days after the date it is mailed if mailed by certified or overnight U.S. mail or Federal Express.

18.5 User may not assign or otherwise transfer any of its rights or obligations under these Standard Terms without Emulate's prior written consent. Any attempted assignment or delegation in violation

of this Section will be null and void.

18.6 Any actions or obligations that may be performed or exercised by Emulate may be performed or exercised by Emulate itself or by any of its affiliates or subcontractors. Emulate will remain fully responsible for such affiliates' and subcontractors' compliance with the applicable terms of these Standard Terms.

18.7 If any provision of these Standard Terms is held invalid or unenforceable, such provision will be enforced to the maximum extent permitted by applicable law so as to give effect to the intent of the parties, and the remaining terms will continue in full force and effect.

18.8 Emulate will not be responsible or liable for failing to perform any of its obligations under these Standard Terms to the extent caused by circumstances beyond Emulate's reasonable control, including reasons of strike, lockouts or other labor shortages, disturbances or disputes; inability to procure materials; failure of utilities; mechanical breakdowns; judicial orders or decrees; riots, insurrection or war; terrorism; natural disasters; accidents; disease; changes to or re-interpretations of any applicable laws or regulations; acts of God or User's fault or negligence ("**Force Majeure Event**").

18.9 Emulate may cease performance of its obligations under these Standard Terms immediately without liability if User becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors.

18.10 For purposes of the UK Contract Terms Act 1977, these Standard Terms and any transaction related thereto will be considered an "international supply contract."