

ADDITIONAL TERMS AND CONDITIONS

These Additional Terms and Conditions (“**Additional Terms**”) relate to, are incorporated by reference into, and are part of, any purchase order or other agreement (“**Agreement**”) entered into between Expression Systems, LLC (“**Company**”) and the person or entity whose name is subscribed as the Client (“**Client**”) on the signature page to the Agreement. The Agreement sets forth the terms and conditions under which Client may purchase or subscribe to products or services offered by Company, and these Additional Terms are hereby incorporated herein. Capitalized terms not defined in these Additional Terms will have the meanings given to them in the Agreement.

1. Purchase Orders; Payments.

(a) Purchase Orders. Client may purchase products or services offered by Company by entering into an Agreement with the Company. Each purchase order will be a part of and governed by these Additional Terms. In the event of any conflict between the provisions of an Agreement and these Additional Terms, the provisions of the Agreement shall control and take precedence.

(b) Payments; Taxes. Client agrees to pay Company the amounts reflected in the applicable Agreement, purchase orders or invoices for products or services ordered by Client. Client shall be responsible for the timely payment of any and all sales, use, ad valorem, personal property, or other taxes, assessments, duties, levies or similar fees and costs imposed by governmental or quasigovernmental agencies (other than taxes based on the net income of Company) applicable to the sale of products or services, and Client shall pay or reimburse Company for all such taxes payable with respect to products or services purchased by Client.

(c) Billing; Payments; Late Fees. Company will deliver an invoice to Client for the applicable products or services ordered by Client. If Client does not give Company written notice of a dispute with respect to any fees or other charges within thirty (30) days of the date of an invoice, such invoice shall be deemed to correct and binding on Client. Unless otherwise mutually agreed to in a purchase order or other Agreement, payments are due thirty (30) days from the date on which Company ships the products to, or performs the services for, the Client, and (ii) if Client does not make full payment within 30 days of such date, a charge equal to one and 1.5% per month (or, if lower, the highest rate permitted by applicable law) of the outstanding unpaid balance shall be added to the balance due. If Client becomes sixty (60) or more days past due, then Client’s access to the products or services may, in Company’s sole discretion, be disabled or revoked until all past due charges are paid. Client shall continue to be responsible for all payments or amounts owed for any period that access to the products or services is suspended. Company may apply any payment received to any delinquent amount outstanding.

2. Confidentiality.

(a) Confidential Information. For purposes of the Agreement (including these Additional Terms), “**Confidential Information**” means any and all proprietary, confidential or trade secret information, in any tangible or electronic form, that are or have been provided by one party (the “**Disclosing Party**”)

to the other party (the “**Recipient**”), whether such materials and information are marked “confidential” or “proprietary” or not. Confidential Information includes, without limitation, documentation, the terms of the Agreement, know-how or other proprietary, confidential or trade secret information regarding the business, operations or activities of the Disclosing Party. Confidential Information shall not include any information or data that: (i) was lawfully available to the Recipient prior to disclosure by the Disclosing Party or from a source other than the Disclosing Party; (ii) through no act or omission on the part of the Recipient is or hereafter becomes generally known or part of the public domain; (iii) is lawfully received by the Recipient from a third party in lawful possession of the information without violation of any duty to Disclosing Party, or (iv) is permitted to be disclosed by the Agreement.

(b) Use; Nondisclosure. Except as contemplated by the Agreement and the rights granted hereunder regarding data and information of the other party, Recipient agrees to hold in confidence and not disclose, sell, license, distribute, transmit, transfer, or otherwise make available any Confidential Information of Disclosing Party to any third party, and to take commercially reasonable measures to protect the confidentiality of the Confidential Information of the Disclosing Party. Notwithstanding the foregoing, Confidential Information may be disclosed as required by law or court order, provided that Recipient promptly notifies the Disclosing Party of the requirement for disclosure and affords the opportunity for Disclosing Party to seek protective actions, and discloses only as much of the Confidential Information as is required. Each party shall be responsible for any unauthorized disclosure or use by such party’s employees or agents of any Confidential Information of the Disclosing Party.

(c) Ownership of Disclosing Party’s Property. All equipment, notebooks, documents, drawings, memoranda, reports, files, samples, books, correspondence, lists, other written and graphic records, and the like, affecting or relating to the business of Disclosing Party or its Confidential Information, which Recipient shall use, observe, possess, or control are and shall remain the exclusive property of the Disclosing Party. Whenever requested in writing by the Disclosing Party, the Recipient shall promptly destroy or return to the Disclosing Party, with written certification thereof provided to the Disclosing Party, all property constituting Confidential Information including, without limitation, all papers, records, documents, summaries, samples, and the like of every kind, and any and all copies thereof, provided to the Recipient or its employees, agents, or representatives, or acquired by the Recipient or its employees, agents, or representatives, in

connection with the evaluations and Discussions, including, without limitation, all papers, records, documents, summaries, samples and the like of every kind (electronic or otherwise), and any and all copies thereof, which the Recipient or its employees, agents, or representatives created based upon the Disclosing Party's Confidential Information.

(d) No License or Other Right. Neither these Additional Terms nor the disclosure by either party hereunder of any Confidential Information shall be deemed by implication or otherwise to grant, convey, assign, or vest in any way in or to the Recipient any license or other right in any property or in any copyrights or patents of the Disclosing Party, including without limitation any rights in or to the Disclosing Party's Confidential Information. Any disclosure made by Disclosing Party to Recipient pursuant to these Additional Terms or any purchase order or Agreement shall not restrict Disclosing Party from disclosing any of its Confidential Information to any third party.

3. Restrictions. Client shall not, and will not allow any third party including customers or other third parties with which Client has a business relationship, to: (i) reverse engineer, modify, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of any software used to provide, or other aspect of, the products or services; (ii) modify, translate, or create derivative works from or based on any component, aspect, or intellectual property of, or relating to, the products or services; (iii) copy, rent, license, sublicense, sell, resell, assign rights to, lease, distribute, transfer, pledge, assign, otherwise transfer or commercially exploit, or make available to any third party, all or any aspect of the products or services, or any intellectual property of Company utilized in connection with the products or services, in any way; or (iv) remove or otherwise alter any proprietary notices or labels from the products or services or any portion thereof.

4. Warranties; Disclaimers and Limitations.

(a) Limitation of Warranty. Unless otherwise provided in a purchase order or other Agreement, all express and implied warranties are expressly disclaimed. To the extent any warranties are set forth in any purchase order or Agreement, or implied under applicable law, such warranties are made and only extend to Client as the original purchaser. Any claim for breach of any warranties must be promptly communicated by Client to Company, but in no event more than thirty (30) days following receipt of such product or service. No party may commence an action arising out of or relating to the Agreement more than one (1) year after the cause of action to which it relates first becomes known (or reasonably should have become known) to the party bringing such an action. Client's exclusive remedy, and the entire liability of Company under any warranty, will be, at Company's option, to repair or replace any defective product or service or to refund any amounts actually paid by Client to Company for such defective products or services.

(b) Services. Company does not warrant or guarantee the accuracy or completeness of the services or results obtained by

use of the services and does not warrant or covenant that it will attempt to verify the accuracy of, or perform any independent investigation with respect to, any information or data received from Client or third parties. Company does not represent or warrant that the services will meet Client's requirements or needs. Company shall not be responsible for interruptions or unavailability relating to matters such as scheduled maintenance, updates and upgrades, or interruptions or any unavailability caused by circumstances beyond the reasonable control of Company. In addition, Company shall not be responsible for any inability to provide the services that results from requested information not being present in the information or data provided to Company.

(c) EXCEPT AS OTHERWISE PROVIDED IN A PURCHASE ORDER OR OTHER AGREEMENT, THE PRODUCTS AND THE SERVICES ARE PROVIDED "AS IS." COMPANY DOES NOT MAKE, AND HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS, ALL WARRANTIES NOT EXPLICITLY STATED, WHETHER EXPRESS, IMPLIED, OR ARISING BY TRADE USAGE OR COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND IMPLIED INDEMNITIES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH ABOVE, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING QUALITY, PERFORMANCE OR ACCURACY OF THE PRODUCTS OR SERVICES, THAT THE PRODUCTS OR SERVICES WILL SATISFY CLIENT'S REQUIREMENTS OR NEEDS, OR THAT THE PRODUCTS AND SERVICES ARE OR WILL BE COMPLETE OR ERROR-FREE, AND DOES NOT ASSUME, AND EXPRESSLY DISCLAIMS, ANY LIABILITY TO ANY PERSON OR ENTITY FOR LOSS OR DAMAGE CAUSED BY ERRORS OR OMISSIONS IN THE PRODUCTS OR SERVICES. CLIENT AGREES TO ASSUME AND TO BEAR ALL RISKS AS TO RESULTS OF ITS USE OF THE PRODUCTS AND SERVICES. THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

(d) THE SERVICES AND PRODUCTS OFFERED BY COMPANY ARE NOT CERTIFIED OR APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION ("FDA"), THE U.S. DEPARTMENT OF AGRICULTURE ("USDA") OR ANY OTHER FEDERAL OR STATE AGENCY, AND ANY TESTING RESULTS PROVIDED TO CLIENT BY COMPANY ARE NOT FDA CERTIFIED AND ARE NOT INTENDED TO SATISFY ANY REQUIREMENTS OF ANY FEDERAL, STATE OR LOCAL AGENCY, LAW, RULE, STATUTE OR REGULATION OR TO REPLACE FDA REQUIRED OR APPROVED TESTING OR ANY OTHER TESTING REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENT OR AGENCY.

(e) UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS RESPECTIVE PERSONNEL, AFFILIATES

OR REPRESENTATIVES BE LIABLE FOR ANY SPECIFIC PERFORMANCE OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL LOSS, EXPENSE OR DAMAGES OF ANY KIND OR NATURE, ARISING OUT OF OR IN ANY WAY RELATED TO THE PRODUCTS OR SERVICES, ANY AGREEMENT OR THESE ADDITIONAL TERMS, WHETHER FOR LOST GOODWILL OR PROFITS, LOSS OF BUSINESS RELATIONSHIPS, LOSS OF DATA OR SOFTWARE, WORK STOPPAGE OR IMPAIRMENT OF OTHER GOODS AND WHETHER BASED ON CONTRACT, TORT, OR OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE, AND WHETHER OR NOT ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

5. Indemnification.

(a) Company Indemnification. Subject to the other provisions of the Agreement, including the warranty and liability limitations set forth above, Company agrees to indemnify and hold Client and its officers, directors, employees and representatives (a "*Client Indemnitee*") harmless from and against any losses, liabilities, costs and expenses (including reasonable attorneys' fees) actually suffered and incurred by any Client Indemnitee ("*Losses*"), arising out of or relating to any claims, actions or proceedings brought by a third party ("*Claims*") against the Client Indemnitee arising out of or relating to any breach by Company of the representations, warranties or covenants of Company made in these Additional Terms. Client shall notify Company promptly upon learning of such Claim, shall give Company the opportunity to assume sole authority to investigate, defend and settle the Claim, and shall use reasonable efforts to mitigate damages and potential expenses relating to the Claim. If Company assumes control over the Claim, then Company will have full and complete control over the investigation, defense and settlement of any such Claim. The Client Indemnitee shall provide reasonable cooperation with Company in defending and resolving such Claim. Company shall not settle any such Claim without the written consent of the Client Indemnitee, which consent shall not be unreasonably withheld or delayed. If Company refuses to assume the defense and settlement of the Claim, then the Client Indemnitee may assume control over the defense and settlement of the Claim, and all expenses and Losses of the Client Indemnitee (including attorney's fees and costs) shall constitute indemnifiable Losses, provided that the Claim is a claim that Company was obligated under these Additional Terms to provide indemnity hereunder.

(b) Client Indemnification. Subject to the other provisions of the Agreement, including the warranty and liability limitations set forth above, Client agrees to indemnify and hold Company and its officers, directors, employees and representatives (a "*Company Indemnitee*") harmless from and against any losses, liabilities, costs and expenses (including reasonable attorneys' fees) actually suffered and incurred by any Company Indemnitee ("*Losses*"), arising out of or relating to any claims, actions or proceedings brought by a third party

("Claims") against the Company Indemnitee arising out of or relating to Client's use of the products or services, any purchase order or other Agreement, these Additional Terms, and any breach by Client of the representations, warranties or covenants of Client. Company shall notify Client upon learning of such Claim and shall use reasonable efforts to mitigate damages and potential expenses relating to the Claim. The Company Indemnitee shall provide reasonable cooperation with Client in defending and resolving such Claim. Client shall not settle any such Claim without the written consent of the Company Indemnitee, which consent shall not be unreasonably withheld or delayed. If Client refuses to assume the defense and settlement of the Claim, then the Company Indemnitee may assume control over the defense and settlement of the Claim, and all expenses and Losses of the Company Indemnitee (including attorney's fees and costs) shall constitute indemnifiable Losses.

6. Governing Law and Forum; Attorneys' Fees; Waiver of Jury Trial. The interpretation and construction of these Additional Terms, and all matters relating hereto, shall be governed by the laws of the state of California applicable to agreements executed and to be performed solely within such state. The parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the federal and state courts in the judicial district in which Sacramento, California is located, for purposes of any action arising out of or relating to these Additional Terms. Each of the parties agrees that it shall not seek a jury trial in any proceeding based upon or arising out of or otherwise related to these Additional Terms or any of the other documents and instruments contemplated hereby and each of the parties hereto waives any and all right to such jury trial. The prevailing party shall be awarded its reasonable attorneys' fees and costs in any lawsuit arising out of or related to these Additional Terms.

7. Terms and Conditions of Service; Changes to Terms and Conditions of Service. Client acknowledges and agrees that Company may include additional terms and conditions binding on the Client concerning the products and services. Client agrees that Company may, from time to time, change or modify such terms and conditions, which shall be binding on Client as a result of Client's continued use or acceptance of the products and/or services or lack of objection thereto. **Client agrees that any and all future changes and modifications to these Additional Terms and such other terms and conditions as Company may from time to time adopt will be binding on Client and will constitute an amendment to these Additional Terms, to the extent applicable. Client further agrees to make all contractors, agents, employees and other third parties with whom Client shares any products and services aware of any and all purchase orders and other Agreements, these Additional Terms, and all other terms and conditions and cause such third parties to consent thereto and shall be responsible to Company for any noncompliance therewith.**