Support Agreement - Protein Metrics

This Support Agreement (this “Agreement”) describes the software support services Protein Metrics Inc. (“we”) offer to customers who have paid applicable support fees, and the terms and conditions on which we offer these services. This Agreement should be reviewed in conjunction with the End User Software License Agreement (the “EUSLA”), which governs your use of Protein Metrics Inc. proprietary software such as Byonic ™, Preview ™, Byologic ™, Byomap ™, Intact Mass ™, or Supernovo ™ (the “Software”). As used in this Agreement, (a) “you” or “your” has the meaning given in the EUSLA, (b) “Party” means either of us individually and (c) “Parties” means both of us collectively.

This Agreement was last updated on December 18, 2019.

1. **Support Term.**
    a. We offer the support services described below to users who are covered under a current support term of agreement (“Support Term”). Each license of the Software includes a Support Term as specified in the applicable purchase order or agreement. The Support Term is effective on the date you first download the software or as specified in the applicable purchase order or agreement. You may renew this Support Term for additional calendar years by paying the fee for the additional term of support. We may notify you shortly before your current Support Term expires if you have not renewed it. If you request technical support, maintenance releases or upgrades, we may verify your Subscription.
    b. Each Support Term covers one license activation. However, if you would like to discuss alternative support arrangements, please contact info@proteinmetrics.com.
2. **Technical Support.**
    a. Technical support may be reached at support@proteinmetrics.com or by telephone at (650) 412-4210. We strive to respond to email messages within two business days. Technical support is available in English only.
    b. Supported configurations; Exclusions.
        i. Unfortunately, we cannot support installations or uses of the Software that do not meet the Software’s minimum system requirements, a description of which can be found at http://www.proteinmetrics.com/products/byonic/byonic-manual/#2.
        ii. In addition, we are unable to provide support for any modified versions of the Software, or software authored by you or a third party. Unless we specifically agree otherwise, we are unable to provide technical support services on your premises.
        iii. We are unable to offer technical support for issues that arise from
            (a) use of the Software contrary to the documentation or noncompliance with the terms of this Agreement or the EUSLA;
            (b) modifications or customizations to the Software; or
            (c) from improper installation.
    c. End-of-Life.
        i. Because computer software and hardware change frequently, we are not be able to support older versions of our software indefinitely. By default, all of our support obligations for a particular version of the Software will stop three years from its original release. We also do not support our software on operating systems that are obsolete, or no longer under 3rd party support.

ii. If we decide to end-of-life a module or part of our offering, we will notify you using the contact information in our records. No end-of-life will be effective until at least one year following such notification or attempted notification.

3. **Maintenance Releases.**
    a. From time to time, we will release minor updates (“Maintenance Releases”) to the Software to correct bugs, enhance compatibility and so forth. If you hold a current Support Term covering a valid license activation, you will be eligible to receive Maintenance Releases free of charge.
    b. We are unable to offer technical support for issues that arise from any failure to install any Maintenance Releases.
4. **Upgrades.**
    a. We anticipate releasing new versions of the Software from time to time. If you hold a current Support Term covering a valid license key, you will be eligible for upgrade of the copy of the specific Software associated with that license key to the new version free of charge.
5. **Custom Work.**
    a. If you request support services that are not covered by your Support Term, or if you do not have a current Support Term, we may in our discretion offer to perform custom support, development or related services.
    b. Any such services will be provided on price and terms to be agreed, pursuant to a separate statement of work or similar agreement.
6. **Warranty.**
    a. We warrant for ten days after the provision of technical support services under this Agreement that these services have been performed in a commercially reasonable manner. Your sole remedy for our breach of this warranty is our re-performance of our obligations hereunder. WE MAKE NO OTHER WARRANTY OF ANY KIND WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND WE HEREBY DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT. PROTEIN METRICS DOES NOT WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT ERROR OR THAT IT WILL RUN WITHOUT IMMATERIAL INTERRUPTION. PROTEIN METRICS PROVIDES NO WARRANTY REGARDING, AND WILL HAVE NO RESPONSIBILITY FOR, ANY CLAIM ARISING OUT OF: (i) A MODIFICATION OF THE SOFTWARE MADE BY ANYONE OTHER THAN PROTEIN METRICS, UNLESS WE APPROVE SUCH MODIFICATION IN WRITING, OR (ii) USE OF THE SOFTWARE IN COMBINATION WITH ANY OPERATING SYSTEM NOT AUTHORIZED IN THE DOCUMENTATION OR WITH HARDWARE OR SOFTWARE SPECIFICALLY FORBIDDEN BY THE DOCUMENTATION. WE SPECIFICALLY DISCLAIM ANY REPRESENTATION, WARRANTY OR GUARANTEE OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BY USING THE SOFTWARE, YOU ASSUME THE ENTIRE RISK OF THE RESULTS AND PERFORMANCE OF THE SOFTWARE.
7. **Limitation of Liability.**
    a. IN NO EVENT SHALL WE OR OUR LICENSORS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, NO MATTER HOW CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THE USE, MISUSE, MALFUNCTION OF OR INABILITY TO USE THE SOFTWARE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. In no event will our liability to you, whether in contract, tort (including negligence), or otherwise, exceed the amount actually paid by you to us for your Subscription in the year in which such liability accrued, and you will bring no action against Protein Metrics for any claim relating to or arising out of this Agreement more than one (1) Year after the accrual of such cause of action.

c. You will be solely responsible for, and will indemnify, defend and hold Protein Metrics free and harmless from all damages, liabilities, charges and expenses (including reasonable attorneys' fees) from all claims, lawsuits, or other proceedings arising out of or related to:

   i. Your use of the Software in a manner not permitted by this Agreement, expressly not permitted by Protein Metrics, or not in conformance with our then current written documentation and requirements, including maintaining the Software by updating it with its most current Software and/or Maintenance Release;

   ii. any acts or omissions by you, your employees, agents or any persons or entities who have access through you to the Software; or

   iii. an infringement of any right resulting in any way from the use of the Software with other software or materials not approved or licensed to you by Protein Metrics.

   The foregoing limitations will apply, including exclusions, even if the foregoing warranty fails of its essential purpose. Some jurisdictions do not allow the exclusion of incidental or consequential damages, so some of the terms above may not be applicable to you. It is solely your responsibility to back up, secure and preserve your data, and we will have no responsibility for any loss or corruption of any data.

8. **Termination.** This Agreement will terminate automatically and without notice upon any termination of the EUSLA.

9. **Changes to this Agreement.** We may update this agreement in our discretion to reflect our current support offerings. If we make significant changes, we will notify you, and you will have the opportunity to terminate your existing Subscription and receive a prorated refund.

10. **Other Provisions.**

    a. Governing Law and Venue. This Agreement and performance hereunder will be governed by and construed in accordance with the laws of the State of California and controlling U.S. federal law, without giving effect to its conflict of law provisions. You agree to submit to the exclusive jurisdiction of the courts of the County of San Mateo, California.

    b. Dispute Resolution. In the event of a dispute, claim or controversy between the Parties relating to the Software or this Agreement, the Parties shall first negotiate in good faith to arrive at an agreed resolution. If the Parties are unable to resolve the dispute, claim or controversy, the matter will be settled by independent arbitration involving a neutral arbitrator in San Mateo County, California. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Parties understand there is no judge or jury in in an arbitration proceeding and the decision of the arbitrator shall be binding on both Parties and may be entered into any court having jurisdiction. SUBJECT TO THE FOREGOING, EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

    c. Severability; Unenforceability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, contrary to policy or otherwise unenforceable, such provision shall be deemed modified so as to most nearly accomplish the Parties' intent to the fullest extent permitted by applicable law. If the unenforceable provision cannot be rendered enforceable through such deemed modification, then, so long as the fundamental terms of the Parties' bargain remain binding, the unenforceable provision shall be deemed struck and the remainder of this Agreement shall remain in force.

d. Integration. This Agreement, together with the EUSLA and the Invoice Terms and Conditions, is the entire agreement between you and us relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter during the term of this Agreement. No modification or waiver of any provision of this Agreement will be binding, unless in writing and signed by an authorized representative of each Party.

e. Assignment. You may only assign or transfer this Agreement in connection with a valid assignment or transfer of the EUSLA and according to its terms.

f. Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties, and no third party has any rights hereunder.

g. Relationship of the Parties. This Agreement does not establish any relationship between the Parties except that of independent contractor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

h. Notice. All notices required or permitted to be given under this Agreement shall be deemed duly given (i) immediately, if by personal delivery, (ii) one business day after sending, if by electronic mail, or (iii) five business days after sending, if by certified mail. Notices to us shall be sent to P.O. Box 414, San Carlos, CA 94070 USA or legal@proteinmetrics.com. Notices to you shall be sent to the contact information you provided in connection with your registration for or purchase of a license to the Software. Each Party may from time to time update its addresses by sending notice to the other Party, and neither Party shall bear any liability for the other Party's failure to notify it of its updated addresses.

i. Headings. The article, section, and subsection headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement.