Support Agreement – Protein Metrics

THIS SUPPORT AGREEMENT (THIS "SUPPORT AGREEMENT") DESCRIBES THE SOFTWARE SUPPORT SERVICES PROTEIN METRICS INC. ("PROTEIN METRICS" OR "WE") OFFER TO CUSTOMERS WHO HAVE PAID APPLICABLE SUPPORT FEES, AND THE TERMS AND CONDITIONS ON WHICH WE OFFER THESE SERVICES. THIS SUPPORT AGREEMENT SHOULD BE REVIEWED IN CONJUNCTION WITH THE END USER SOFTWARE LICENSE AGREEMENT (THE "EULA"), WHICH GOVERNS THE ORDER AND YOUR USE OF THE APPLICABLE PROTEIN METRICS INC. PROPRIETARY SOFTWARE SUCH AS BYOSPHERE, BYONIC™, PREVIEW™, BYOLOGIC®, BYOMAP™, INTACT MASS™, OR SUPERNOVO™ (THE "SOFTWARE"). FOR THE AVOIDANCE OF DOUBT, THE SOFTWARE INCLUDES ANY UPDATES OR UPGRADES DELIVERED TO YOU UNDER THE TERMS OF THIS AGREEMENT. AS USED IN THIS SUPPORT AGREEMENT, (A) "YOU" OR "YOUR" HAS THE MEANING GIVEN IN THE EULA, (B) "PARTY" MEANS EITHER OF US INDIVIDUALLY AND (C) "PARTIES" MEANS BOTH OF US COLLECTIVELY.

This Support Agreement was last updated on September 21, 2020.

PROTEIN METRICS IS WILLING TO PROVIDE THE SOFTWARE SUPPORT HEREUNDER ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS SUPPORT AGREEMENT. PLEASE READ THE SUPPORT AGREEMENT CAREFULLY. YOU ACKNOWLEDGE THAT YOU HAVE READ THE TERMS OF THIS SUPPORT AGREEMENT AND AGREE TO THEM, AND YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACCEPT THIS SUPPORT AGREEMENT.

1. **Support Term.**
    a. We offer the support services described below to users who have purchased such services pursuant to (as applicable) (i) our or our distributor's quotation to you and with respect to which you have issued a purchase order, or (ii) a binding agreement between you and Protein Metrics (or our distribution partner) (as applicable, the "Order"). The term of our support services under this Support Agreement are as set out in the Order or, if no term is stated in the Order, for one (1) year from the date of our quotation (the "Support Term"). You may renew this Support Term for additional calendar years by paying the then-current fee for the additional term of support (and, if your Support Term has lapsed for any period, all fees that would have been paid, had you continuously been under a binding Support Agreement ("Catch-Up Fees"). We may (but are not obligated to) notify you shortly before your current Support Term expires.
    b. Each Support Agreement covers only one Software license as specified in the Order. The Order may specify different support pricing for each Support Agreement. The Support Agreement may be offered at no change for annual subscription licenses, may be subject to annual re-purchase for enterprise or multi-year subscriptions, etc.
2. **Technical Support.**
    a. Technical support consists of remote email and telephonic support with respect your licensed use of Software. 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. We only support installations or uses of the Software that meet the Software's minimum system requirements for on-premise or cloud-based usage, descriptions of which can be found at http://www.proteinmetrics.com/products/byonic/byonic-manual/#2. We do not support modified versions of the Software, software authored by you or a third party, or your general cloud environment. Unless we specifically agree otherwise in the Order, we do not provide technical support services on your premises. Technical support does not include support for issues that arise from (i) use of the Software contrary to the documentation or noncompliance with the terms of this Support Agreement or the EULA; (ii) modifications or customizations to the Software; (iii) improper installation; or (iv) failure to install Maintenance Releases (as defined below). 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.

c. End-of-Life. We do not support older versions of our Software indefinitely. By default, our support obligations for a particular version of the Software cease three years from its original release. We also do not support our software on operating systems that are obsolete, or no longer under third party support. If we decide to end-of-life a module or part of a Software 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**. From time to time, we will release minor updates ("Maintenance Releases") to the Software to correct bugs, enhance compatibility and so forth. You will be eligible to receive Maintenance Releases that issue during your Support Term free of additional charge, which will be deemed to be Software subject to the applicable EULA.

4. **Upgrades**. We may release new versions of the Software from time to time ("Upgrades"). Subject to your payment of any Catch-Up Fees, you will be eligible to receive Upgrades that issue during your Support Term free of additional charge, which will be deemed to be Software subject to the applicable EULA.

5. **Custom Work**. 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 charge you for such services at our then-current professional services rates. All results of such additional services shall be owned solely by us.

6. **Warranties; Disclaimers**. WE MAKE NO WARRANTY OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO ANY SERVICES, MAINTENANCE RELEASES OR UPGRADES PROVIDED UNDER THIS SUPPORT AGREEMENT, AND WE HEREBY DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT WITH RESPECT TO THE FOREGOING. ALL OF THE DISCLAIMERS IN THE EULA WITH RESPECT TO THE SOFTWARE ALSO APPLY TO MAINTENANCE RELEASES OR UPGRADES PROVIDED UNDER THIS SUPPORT AGREEMENT.

7. **Limitations 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 THIS SUPPORT AGREEMENT.

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 our support services to you in the year of the Support Term in which such liability accrued, and you will bring no action against Protein Metrics for any claim relating to or arising out of this Support Agreement more than one (1) Year after the accrual of such cause of action.

The foregoing limitations will apply, including exclusions, even if the foregoing provision 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.

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

9. **Changes to this Support Agreement**. We may update this Support 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 the Support Agreement and, if applicable, receive a prorated refund of prepaid but unused support fees for the then-current Support Term.

10. **Miscellaneous**.

    a. Governing Law and Venue. This Support 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 Support 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 SUPPORT AGREEMENT.

    c. Severability; Unenforceability. If any provision of this Support 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 Support Agreement shall remain in force.

    d. Entire Agreement. This Support Agreement, together with the EULA and the terms and conditions of the Order, is the entire Support 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 Support Agreement. No modification or waiver of any provision of this Support 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 Support Agreement in connection with a valid assignment or transfer of the EULA and according to its terms.

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

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

h. Notices. All notices required or permitted to be given under this Support 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. Interpretation. The article, section, and subsection headings contained in this Support Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Support Agreement.