End User License Agreement – Protein Metrics

THIS END USER SOFTWARE LICENSE AGREEMENT ("AGREEMENT") GOVERNS YOUR (AS DEFINED BELOW) USE OF CERTAIN PROTEIN METRICS INC. ("PROTEIN METRICS") SOFTWARE PRODUCTS THAT ARE (AS APPLICABLE) (i) LISTED IN OUR OR OUR DISTRIBUTOR'S QUOTATION TO YOU AND WITH RESPECT TO WHICH YOU HAVE ISSUED A PURCHASE ORDER, OR (ii) SET OUT IN A SCHEDULE TO A BINDING AGREEMENT BETWEEN YOU AND PROTEIN METRICS (OR OUR DISTRIBUTION PARTNER) (AS APPLICABLE, THE "ORDER"). SUCH SOFTWARE MAY INCLUDE OUR BYOSPHERE ENTERPRISE PRODUCT, OUR BYOS™, PREVIEW™, BYONIC™, BYOLOGIC®, BYOMAP™, INTACT MASS™, SUPERNOVO™ OR OTHER PROPRIETARY SOFTWARE PRODUCT(S), OR SPECIFIC MODULES OF THE FOREGOING, ALL AS SET OUT IN THE ORDER. EACH USAGE OF SOFTWARE REQUIRES BOTH A VALID LICENSE KEY FROM PROTEIN METRICS THAT CORRESPONDS TO THE RELEVANT ORDER, AND YOUR ACCEPTANCE OF THIS AGREEMENT, PRIOR TO YOUR USE OF THE SOFTWARE. SUCH SOFTWARE MAY BE LICENSED FOR USE ON AN ENTERPRISE, PER-SEAT, OR OTHER BASIS AS SET OUT IN THE ORDER.

PROTEIN METRICS IS WILLING TO LICENSE THE SOFTWARE IDENTIFIED IN THE ORDER TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS AGREEMENT. PLEASE READ THE AGREEMENT CAREFULLY. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST NOT USE THE SOFTWARE. BY USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THE TERMS OF THIS AGREEMENT AND AGREE TO THEM, AND YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT.

This Agreement was last updated on September 21, 2020. It is effective between you and us as of the date you accept this Agreement ("Effective Date").

1. **Definitions.** In this Agreement, the following terms have the following meanings:
    a. "Computer" means a physical or virtual computer device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.
    b. "License Key" means the electronic key that we issue to you to activate your purchased use of the relevant Software.
    c. "Party" means either you or us, and "Parties" means both you and us.
    d. "Software" means any software we grant you the license to use under the terms of Section 2 (Grant of License; Restrictions) hereof, and any components and documentation distributed therewith. For the avoidance of doubt, Software includes all code and any updates and upgrades delivered to you under the terms of our separate Support Agreement. All Software is confidential and (whether provided under this Agreement or under the Support Agreement) is subject to Section 3 (Confidentiality) of this Agreement.
    e. "We," "us," and similar terms mean Protein Metrics Inc.
    f. "You," "Your," and similar terms mean you individually and the corporation, university, non-profit, or other legal entity for which you are accepting this Agreement.
2. **Grant of License; Restrictions.**
    a. Pursuant to the terms of this Agreement and conditioned on your continued adherence to its terms and payment of all fees in the Order, we hereby grant you a non-exclusive, non-transferable, non-sub-licensable license to install, execute and use a copy of the Software listed in the applicable Order for the term set out therein, solely for your internal business, internal research, academic research, and research done solely by you on behalf of your customers. Your use of the Software is further subject to all of the usage restrictions and limitations that apply to the type of license that you have purchased, and/or that are specified in the Order. Such restrictions and limitations may include, as

non-exclusive examples: usage limitations tied to the number of Computers for which you have purchased License Keys at any one time; limits on the number of physical cores in the integrated circuit central processing unit (CPU) of the Computer on which the Software is used; limits on the number of simultaneous users; specified geographic limits; and limits on the use of Software to specified cloud environments or servers. Our seat licenses are managed by a Hosted License Server controlled by us, or by a Local License Server installed by you; such Local License Server is licensed for use solely to manager your seat licenses. Additionally, you must use the licensed Software only in a manner and for the purposes for which the Software was designed as set out in Protein Metrics' documentation.

b. You may make one copy of the licensed Software and any accompanying documentation for backup and archival purposes only. All copies of the Software and any related documentation, in whole or in part, will contain Protein Metrics' restrictive and proprietary notices in the form and content as they appear on or in the original, and all such copies will remain our property.

c. You may not use, reproduce (other than as permitted in the preceding paragraph), transmit, modify, distribute, adapt, or translate the Software or any License Key, in whole or in part. You may not reverse engineer, decompile, disassemble, or create derivative works based on the Software. You may not alter, remove or cover copyright or proprietary notices in or on the Software, or storage media or use the Software or any License Key in any unlawful manner whatsoever. Other than cloud-based versions of the Software installed by us, you may not use the Software or any License Key in any manner whatsoever with the result that access to the Software or any License Key may be obtained through the Internet including, without limitation, any web page. You may not use the Software on behalf of third parties (other than as expressly permitted under Section 2(a) above, or offer, rent, lease, license, transfer, distribute, share, assign, sell or otherwise provide access to the Software or any License Key to third parties, in whole or in part, on a temporary or permanent basis, including on a time-share, for-hire, or similar basis, unless we have granted you our express written permission to do so.

3. **Confidentiality.** You acknowledge that, as a result of this Agreement, you shall gain access to certain Confidential Information of Protein Metrics. "Confidential Information" means the terms of this Agreement and any technical or non-technical information related to the products, technology, services and business of Protein Metrics disclosed, or otherwise made available in any manner, to you or to which you may gain access in the performance of this Agreement, whether disclosed orally, visually or in writing, provided that such information is either marked or designated as "proprietary" or "confidential" or is information that you know to be confidential, or should reasonably consider to be confidential under the circumstances of its disclosure. The Confidential Information of Protein Metrics includes, for example, the Software. You agree: (i) to hold Protein Metrics' Confidential Information in confidence, using the same degree (but no less than a reasonable degree) of care and protection that you exercise with your own Confidential Information of a similar nature; (ii) not to directly or indirectly disclose or otherwise make available any of Protein Metrics' Confidential Information to a third party; and (iii) not to copy or use Protein Metrics' Confidential Information for any purpose other than as necessary to fulfill your obligations or exercise your rights under this Agreement. You will be allowed to disclose Protein Metrics' Confidential Information to the extent that such disclosure is approved in writing by Protein Metrics, necessary for you to enforce your rights under this Agreement, or required by law or by the order or a court of similar judicial or administrative body, provided that you notify Protein Metrics of such required disclosure promptly and in writing and cooperates with Protein Metrics, at Protein Metrics' reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. The provisions of this Section shall survive beyond the expiration or termination of this Agreement. The obligations of this Section will not apply to Confidential Information if such information: (i) is publicly available prior to or at the time of disclosure, or later becomes publicly available through no fault of yours; or (ii) was, prior to disclosure hereunder, rightfully known to you (other than in connection with this Agreement)

without confidentiality restriction. You agree that upon any termination or expiration of this Agreement, you will promptly deliver to Protein Metrics all Confidential Information, in any form, excepting only your copy of this Agreement and any Confidential Information that is subject to a continuing license. You will notify Protein Metrics promptly upon learning of any unauthorized disclosure or use of Protein Metrics' Confidential Information and will cooperate fully with Protein Metrics to protect such Confidential Information.

4. **Intellectual Property.**

    a. You acknowledge that the Software is a proprietary product of Protein Metrics and is protected by United States and foreign copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. You further acknowledge that PROTEIN METRICS, BYOSPHERE, BYOS, PREVIEW, BYONIC, BYOLOGIC, BYOMAP, INTACT MASS, and SUPERNOVO are trademarks that belong to Protein Metrics. Solely for convenience, these marks may be used in this Agreement with or without the "™" or "®" symbol.

    b. Subject to the limited rights expressly granted hereunder, Protein Metrics reserves all rights, title and interest in and to the Software, including all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

    c. 3. You agree to provide general feedback to us with respect to the Software product and, upon termination, to allow us to collect general, non-specific usage data that our Software may record in the ordinary course of its usage. You grant us a perpetual, irrevocable, royalty-free and paid up, non-exclusive, transferable and sub-licensable worldwide license to use such feedback and usage data freely in connection with our and our successors' and assignees' businesses.

5. **Third-Party Software.** The Software may contain or be accompanied by software owned or authored by third parties that requires notices or additional terms and conditions. These notices or additional terms and conditions are included in the [PMI Software Acknowledgments.txt] file distributed with the Software and are made a part of and incorporated by reference into this Agreement. To the extent such third-party software is licensed under an open source license, the terms of such open source license, and not this Agreement, govern such use. All such third-party software is provided AS-IS WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **Support.** We have no obligation under this Agreement to support the Software. We offer support pursuant to separate terms and conditions (the "Support Agreement").

7. **Warranties; Disclaimers.** Each Party represents and warrants that it, and the entity on whose behalf it enters this Agreement, if any, has the legal power and authority to enter into this Agreement. You further represent that you are not otherwise prohibited from using or receiving the Software. THE SOFTWARE IS PROVIDED AS-IS WITHOUT ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT ERROR OR THAT IT WILL RUN WITHOUT INTERRUPTION, OR THAT YOUR DATA WILL NOT BE LOST OR COMPROMISED. 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, (ii) ANY LIMITATIONS OF YOUR CLOUD ENVIRONMENT, OR (iii) 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 NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BY USING THE SOFTWARE, YOU ASSUME THE ENTIRE RISK OF THE RESULTS AND PERFORMANCE OF THE SOFTWARE.

8. **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 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 THE THEN-CURRENT TERM OF YOUR LICENSE TO USE THE SOFTWARE UNDER THE RELEVANT ORDER. YOU SHALL BRING NO ACTION FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF ANY CLAIM. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE FOREGOING DISCLAIMER FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGE SO SOME OF THE TERMS ABOVE MAY NOT BE APPLICABLE TO YOU.

9. **Indemnity for Software Use.** You will be solely responsible for, and will indemnify, defend and hold us harmless from all damages, liabilities, charges and expenses (including reasonable attorneys' fees) from all claims, lawsuits, or other proceedings arising out of or relating to:

    a. Your use of the Software in a manner not permitted by this Agreement, including maintaining the Software by updating it with its most current Software and/or maintenance release;

    b. any acts or omissions by you, your employees, agents or any person or entity who has access to the Software through you; or

    c. an infringement of any right resulting in any way from the use of the Software with other software or materials that we have not approved or licensed to you.

10. **Term and Termination.** This Agreement is effective for the term of your purchased use of the Software as set out in the Order, until terminated in accordance with this Section. You may terminate this Agreement at any time by destroying all copies of the Software, but no refund is owed and the full amount of fees under the Order up to the date of termination remain due. This Agreement will terminate immediately without notice from us if you fail to comply with any provision of this Agreement. We may terminate the Agreement immediately should any Software become, or in our opinion is likely to become, the subject of a claim of infringement of any intellectual property right, and in such case we shall provide a pro-rata refund of prepaid but unused license fees (subject, in the case of a perpetual license, to a five-year straight line depreciation). Upon any termination, we reserve the right, on a remote basis, to prevent further usage or, at our option, to allow the Software to be accessed only in view-only mode to allow you to extract data (but you remain solely responsible for backing up your data). You must cease all use of the Software and destroy all copies of the Software in your possession or under your control (including in the cloud). Sections 2(c), 3, 4, 5 and 7 through 12 shall survive any termination, and no termination shall affect any causes of action or sums accrued before such termination.

11. **Export Regulations.** All Software and technical data delivered under this Agreement are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain such licenses to export, re-export, or import as may be required after delivery to you.

12. **Miscellaneous.**

    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. Subject to the following, 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. We reserve the right to seek immediate injunctive relief in the event of a breach or threatened breach of the licenses granted herein, or of your negative covenants to us in this Agreement. Otherwise, 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 and 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. Entire Agreement. This Agreement, together with the terms and conditions of the Order and the Support Agreement, 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. Restricted Rights. The Software is a "commercial item" comprised of "commercial computer software" and "commercial computer software documentation," as those terms are defined in 48 C.F.R. § 2.101 and 48 C.F.R. § 227.7202, and any use, duplication, or disclosure by the United States federal government is subject to the restrictions applicable to commercial computer software, commercial computer software documentation and commercial items generally in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. For purposes of use, duplication, or disclosure by the United States federal government, the "Contractor" and author of the Software is Protein Metrics.

f. Assignment. You may not assign or transfer this Agreement (whether directly, by operation of law, or otherwise) without our express, prior, written consent, except that you may assign this Agreement without our consent, in the context of a merger or sale of all or substantially all of your assets to the surviving entity of such merger of the acquirer of such assets, provided that within ten business days of such event you (i) provide written notice to Protein Metrics of such assignment and (ii) the assignee's written your company's disposition. This Agreement shall be binding upon and will inure to the benefit of the Parties, their successors and permitted assigns.

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

h. Relationship of the Parties. This Agreement does not establish any relationship between the Parties except that of independent contractors. This Agreement does not create a

partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

i. Notices. 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.

j. Interpretation. 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.

k. Audit. You agree that, with two (2) business days' notice, we may audit your usage of our Software, including your facilities and cloud environments where our Software is in use to confirm your adherence to this Agreement.