



## **General Terms and Conditions for the Biognosys Software License, Maintenance and Support Agreement for the Spectronaut module provided as node on the Bruker ProteoScape platform.**

**April 1, 2024**

### **1. Definitions**

Capitalized terms used in this Agreement shall have the meanings assigned to them next to the defined term printed in bold letters. In addition, the following terms shall have the meaning defined in this Article 1:

**Affiliate** of Licensee shall mean any legal entity that is directly or indirectly controlled by Licensee, that directly or indirectly controls Licensee or that is directly or indirectly controlled by the same legal entity as Licensee.

**Agreement** shall mean the Biognosys Software License, Maintenance and Support Agreement entered into by and between the Parties, which incorporates the GTC by reference.

**Annex** shall mean any of the annexes to the GTC.

**Article** shall mean any of the numbered articles contained in the GTC.

**Background Materials** shall mean any proprietary information of Licensor, including without limitation, Licensor's proprietary transition or fragment ion lists, assays, diagrams, graphs, analysis reports made available to Licensee during the Term in connection with Licensee's access to or use of the Software and the Documentation.

**Documentation** shall mean any materials, in electronic, written, or oral form, of Licensor made available to Licensee during the Term relating to the Software, including, without limitation, user guides, tutorial and other instruction materials and online help information made available via Licensor's webpage.

**Fee** shall mean the sum of the License Fee (included as part of the Bruker ProteoScape product) and the Maintenance and Support Fee.

**GTC** shall mean these present General Terms and Conditions for the Biognosys Software License, Maintenance and Support Agreement for the Spectronaut module provided as node on the Bruker ProteoScape platform.

**Licensed Materials** shall mean the Software, the Documentation and the Background Materials as well as any other material or information made available to Licensee during the Term under or in relation to this Agreement.

**Licensee** shall mean the Party identified as licensee in the Ordering Document.



**Licensee Data** shall mean Licensee's mass spectrometric data and any other data (including data sets or data files) of Licensee that Licensee uploads into the Software.

**Licensor** shall mean Biognosys AG, Wagistrasse 21, CH-8952 Schlieren, Switzerland.

**Major Release** shall mean the release or publication of a new major version of the software indicated by an increase in the first part of the version number.

**New Version** shall mean any future update, upgrade, patch and new release version of the Software (to implement bug-fixes, changes to functionalities, etc.) generally made available by Licensor to all of its licensees during the Term.

**Ordering Document** shall mean the document provided by Licensor to Licensee which sets forth the license types granted to Licensee, the applicable Fee and payment terms.

**Party** shall mean, as the case may be, Licensor or Licensee, and **Parties** shall mean Licensor and Licensee collectively.

**Perpetual** shall mean up to five (5) years.

**Results** shall mean the Software-generated results of the analysis of Licensee's mass spectrometric data, including, without limitation, any visualization of the data, diagrams, statistical analysis related to signal processing (e.g., peak picking), quantification, or evaluation of statistical significance of or relating to any of the foregoing.

**Site** shall mean the premises of Licensee where the Licensed Materials will be used by Licensee (such as Licensee's headquarter or a specific branch or local office) as identified in the Ordering Document; if no Site is expressly specified in the Ordering Document, the principal address of Licensee identified in the Ordering Document shall be the Site.

**Software** shall mean the Spectronaut module software product provided as node on the Bruker ProteoScope platform developed by Licensor that is identified in the Ordering Document, including any New Versions thereof, but excluding, for the avoidance of doubt, any third party application programming interfaces combined with the Software.

**Support** shall mean responding to a reasonable number technical questions about the Software functionalities and usage, giving advice on installing, activating, and operating the Software, helping understanding and reading information generated by the Software, and identifying and troubleshooting technical problems including bugs. Examples of issues that are not encompassed in the Support are requests for advice on LC-MS conditions, acquisition method customization, sample preparation, experimental design, etc. These examples are illustrative and not inclusive.

**Term** shall mean one year or such other term of this Agreement as identified in the Ordering Document.



## 2. Execution of the Agreement and Activation of Software

This Agreement shall enter into effect between the Parties as of the day (the **Effective Date**) of this Agreement being physically executed by authorized representatives of each of the Parties or by Licensee agreeing to this Agreement as part of an online transaction regarding the procurement of the Software by Licensee (or any of its representatives on its behalf).

## 3. Scope of the License

### 3.1 Limited License Grant

Subject to the restrictions and limitations set forth in Article 3.2 and all other terms and conditions of this Agreement, Licensor hereby grants to Licensee and Licensee hereby accepts a Perpetual and irrevocable (subject to Article 10(c)), non-exclusive, non-transferable, non-sublicensable license, fully paid-up with the payment of the License Fee, to copy and distribute the Licensed Materials solely as necessary for the purpose of making the Agreed Use of the Licensed Materials at the Site(s). **Agreed Use** shall mean, depending upon the applicable license type as stipulated in the Ordering Document, the following:

**Single System License:** to install the Software on one physical Bruker ProteoScope client of Licensee and to use the Licensed Materials solely in order (i) to upload Licensee Data into the Software, (ii) to analyze Licensee Data and to generate Results, (iii) to display, review and analyze the Results, (iv) to share the Results with other users of the Software, and (v) to export, publish and disclose the Results, all of (i)-(v) as provided for by the Software's standard functionality and in accordance with this Agreement and the instructions included in the Documentation, for Licensee's own commercial and non-commercial purposes;

### 3.2 Restrictions and Limitations

The license grant under Article 3.1 shall not include any rights other than those expressly set forth in Article 3.1 and it shall, in particular and without limitation to the generality of the foregoing, exclude the right (i) to make any use of the Licensed Materials that is not the Agreed Use or that is not any of the intended uses of the Licensed Materials, as provided for in the Documentation and the standard functionalities of the Software; (ii) to make any use of the Licensed Materials in a clinical diagnostic setting, to provide a diagnostic service or product, or to otherwise use the Licensed Materials for clinical diagnostic purposes; (iii) to make any amendment or modification to or to create any derivative work of the Licensed Materials or any part thereof; (iv) to make the Licensed Materials or any part thereof available to any third party (other than to Licensee's own employees on a need-to-know basis in accordance with this Agreement); (v) to reverse engineer, decompile, decrypt, disassemble the Software or any part thereof (except as may be permitted under mandatory applicable law); and (vi) to remove or alter any copyright notice or other proprietary rights notices placed on or embedded in the Licensed Materials or any part thereof. Further, Licensee shall not make any unlawful use of the Licensed Materials.



#### 4. Maintenance and Support

Subject to the terms and conditions of this Agreement, Licensor agrees to provide during the Term New Versions to Licensee and certain other support services as set forth in Annex A to this Agreement (collectively referred to as **Maintenance and Support**).

Upon the completion of the first year of the Term, Maintenance and Support will only be provided upon the continual payment of the Maintenance and Support Fee. If the Licensee chooses to forego the Maintenance and Support Fee payment, then no Maintenance and Support will be provided by the Licensor to the Licensee.

#### 5. Additional Services

Subject to the Parties reaching an agreement in relation thereto, Licensor agrees to provide, upon Licensee's reasonable request, certain additional services as set forth in Annex B to this Agreement (the **Additional Services**).

#### 6. Fees

- (a) In consideration for the license grant set forth in Article 3, Licensee agrees to pay to Licensor the license fee applicable to the specific license type, as set forth in the Ordering Document (the **License Fee**).
- (b) In consideration for the provision of Maintenance and Support during the Term, Licensee agrees to pay to Licensor the maintenance and support fee set forth in the Ordering Document (the **Maintenance and Support Fee**). Maintenance and Support is included when purchasing an upgrade to a Major Release.
- (c) If no specific payment terms are set forth in the Ordering Document, the Fee will be invoiced upon the execution of this Agreement.
- (d) All invoices for any fees payable under this Agreement shall be paid by Licensee within thirty (30) days of the date of Licensor's invoice.
- (e) All amounts set forth in this Agreement and in the Ordering Document shall be exclusive of VAT and other taxes, if applicable, and such VAT and/or taxes shall be borne by Licensee in addition to the respective fee.

#### 7. Intellectual Property Rights

- (a) Each Party shall retain all rights to all intellectual property owned by such Party as of the Effective Date or thereafter acquired independently of the other Party.
- (b) Licensee shall own and retain title to all intellectual property rights that may exist in any of the Licensee Data and the Results. In particular, for the avoidance of doubt, the Parties



agree that discoveries that Licensee makes while using the Licensed Materials in conjunction with Licensee Data are not considered to be intellectual property of Licensor. Licensee acknowledges and agrees that it shall itself be responsible for and assume the risk of the accuracy, integrity and legality of Licensee Data and of the means by which Licensee acquires, uploads, transmits and processes Licensee Data.

- (c) Licensee acknowledges that Licensor and, as the case may be, certain third parties own and shall retain all intellectual property rights that may exist in the Licensed Materials, including without limitation any derivative work, improvements or modifications of any of the foregoing, whether or not made by Licensor. The right to any modification to Licensed Materials shall vest in Licensor, independently of whether or not Licensor contributed to such modification. If and to the extent Licensee provides to Licensor any suggestions, improvements, modifications, feedback, error identifications or other information related to the Licensed Materials (**Feedback**), Licensee hereby grants to Licensor a fully paid-up, irrevocable, perpetual, transferable, sublicensable, worldwide, non-exclusive license to: (i) use and exploit such Feedback to modify or improve the Licensed Materials or any other of Licensor's products and services, and (ii) use, copy, prepare derivative works of, display, make, sell and otherwise distribute any products and services incorporating or utilizing such Feedback.
- (d) Licensee acknowledges that certain third party application programming interfaces (the **API**) are combined, and may be made available by Licensor to Licensee, with the Software and that proprietary third party rights may exist in these API. The use of these API is not governed by this Agreement and Licensee's copying, installation, distribution and use of these API is subject to Licensee entering into and complying with an end user license agreement with the respective licensor. The list of API integrated with the Software, the respective licensors and the terms of the third party licensor end user license agreements are accessible via [www.biognosys.com/third-party-libraries](http://www.biognosys.com/third-party-libraries). If Licensee disagrees with the terms of any of these end user license agreements, Licensee may not use the Software.

## 8. Confidentiality

- (a) Information disclosed by a Party (the **Disclosing Party**) to the other Party (the **Receiving Party**) under this Agreement and designated by the Disclosing Party as proprietary or confidential (the **Confidential Information**) shall be kept confidential by the Receiving Party and the Receiving Party shall not, without prior consent of the Disclosing Party, disclose such Confidential Information to any third party (other than its own employees, subcontractors or agents on a need-to-know basis and subject to confidentiality obligations equivalent to those stipulated herein) or use such Confidential Information for any purpose other than as set forth in this Agreement. Notwithstanding the foregoing, Confidential Information may be disclosed by the Receiving Party if and to the extent such Confidential Information (i) is public knowledge at the time of disclosure or thereafter becomes generally known other than through an act of negligence by the Receiving Party; (ii) is already known to the Receiving Party prior to its receipt from the Disclosing Party; (iii) was demonstrably developed by the Receiving Party without using information disclosed by the Disclosing Party to the



Receiving Party; or (iv) was rightfully obtained by the Receiving Party from unrestricted third parties. For the avoidance of doubt, the Parties expressly agree that Licensee Data and the Results shall be Confidential Information of Licensee and the Licensed Materials shall be Confidential Information of Licensor.

- (b) Licensee acknowledges and agrees that the Software, upon launch and thereafter in certain regular intervals, communicates its version number, the user account ID and certain other technical information to Licensor's systems in order to automatically check whether New Versions are available for download and Licensor may collect, analyze and retain such information for its own purposes. Such information provided to Licensor's system will, for the avoidance of doubt, not include any Licensee Data or other content data of Licensee.

## 9. No Warranty, Exclusion and Limitation of Liability

- (a) The Licensed Materials are provided to Licensee as-is and any express or implied representation, warranty or indemnification obligation, including, without limitation, any implied representation or warranty of merchantability, fitness for a particular purpose or non-infringement of IP rights is hereby expressly excluded to the maximum extent permitted by applicable law.
- (b) To the maximum extent permitted by applicable law, Licensor shall not be liable to Licensee for lost profits, any loss occurring from infringement of patent or other IP rights, loss of business, loss of use, lost savings or other consequential, special, incidental, indirect, exemplary or punitive damages.
- (c) The aggregated total liability of the Licensor towards the Licensee in respect of any cause of action relating to or arising out of this Agreement shall not exceed the total amount of fees payable by Licensee to Licensor under this Agreement.
- (d) The Licensee understands and agrees that unless specifically provided otherwise, each right and remedy in this Agreement is in addition to any other right and remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. Each Party agrees that, in the event of any breach or threatened breach, including if the Licensee breaches section 3 of this Agreement, the non-breaching Party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching Party shall, in addition to any other legal or equitable remedies, be entitled to seek an order for specific performance, or an injunction or similar equitable relief against such breach or threatened breach, without the necessity of posting any bond. In any action or proceeding to enforce this Agreement by the Licensor, especially related to the breach of section 3 by the Licensee, the Licensor will be entitled to recover from the Licensee the actual costs, expenses, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, and attorneys' fees that it incurred in connection with such action or proceeding and enforcing any judgment or order obtained.



## 10. Term and Termination

- (a) This Agreement shall be effective as from the Effective Date. It shall remain in force for the duration of the Term as from the Effective Date until the expiry of the Term.

The Agreement may be terminated at any time with immediate effect by giving written notice to the other Party (i) by either Party if the other Party is in material breach of the Agreement and such breach, if curable, remains uncured for more than fifteen (15) days after the terminating Party requesting the other Party in writing to cure the breach; (ii) by either Party if the other Party becomes or is declared insolvent, enters into liquidation or into any debt restructuring or similar proceedings; and (iii) by Licensor if Licensee fails to pay any Fee that is outstanding for more than thirty (30) calendar days and not paid within fifteen business (15) days from the receipt of a reminder from Licensor requesting the payment of the outstanding fees.

- (b) Licensor shall be entitled to terminate Maintenance and Support and/or any Additional Services at any time with immediate effect by giving notice in text to Licensee if Licensee delivers a Notice of Objection as set forth in Article 11.

- (c) The Parties agree that the license grant set forth in Article 3 shall, subject to the following in this Article 10(c), remain unaffected by and continue beyond the expiry or termination of this Agreement; provided, however, that if Licensor terminates the Agreement based on Article 100, the license grant shall terminate with immediate effect and Licensee shall cease all use of Licensed Materials and destroy all copies of Licensed Materials (excluding any Background Materials included in Results) in Licensee's possession or control. For the avoidance of doubt, the Parties agree that a termination of Maintenance and Support and/or any Additional Services by Licensor based on Article 10(b) shall not affect the license grant set forth in Article 3 and that in case of such termination by Licensor, Licensee shall remain entitled to use the Licensed Materials as set forth in this Agreement, but that Licensor shall no longer be obligated to provide Maintenance and Support and/or any Additional Services to Licensee as from such termination based on Article 10(b).

- (d) Except as otherwise expressly provided in this Agreement, Articles 1 (Definitions), 3 (Scope of the License), 7 (Intellectual Property Rights), 8 (Confidentiality), 9 (No Warranty, Exclusion and Limitation of Liability), 10(c) and (d) (Effects of Termination), 12 (General Provisions) and 13 (Governing Law and Place of Jurisdiction) shall survive termination or expiry of this Agreement. The termination or expiry of this Agreement shall not affect the obligations of the Parties accrued during the Term.

## 11. Amendments of the Agreement

During the Term, Licensor shall be entitled to propose modifications to the provision of this Agreement by delivering a notice (a **Modification Notice**) to Licensee at least thirty (30) calendar days prior to the proposed modification becoming effective. If Licensee disagrees with the modification proposed by Licensor, it shall deliver to Licensor a written notice of objection (a **Notice of**



**Objection**) no later than within twenty (20) days from the receipt of Licensor's Modification Notice. If Licensee delivers a timely Notice of Objection to Licensor, this Agreement shall, subject to the right of Licensor to terminate Maintenance and Support and/or any Additional Services as set forth in Article 10(b), remain unchanged. If Licensee does not deliver a timely Notice of Objection to Licensor, Licensee shall be deemed to have accepted the modification proposed by Licensor in the Modification Notice and the Agreement shall be deemed amended accordingly as from the date stipulated in the Modification Notice. If Licensor terminates Maintenance and Support as set forth in Article 10(b), Licensor shall reimburse to Licensee the Maintenance and Support Fee on a pro rata basis for the remainder of the Term.

## 12. General Provisions

- (a) Other than as expressly set forth in this Agreement, no person other than the Parties shall have any rights or benefits under this Agreement, and nothing in this Agreement is intended to confer on any person other than the Parties any rights, benefits or remedies.
- (b) All notices or other communications to be given under or in connection with the Agreement shall be made in writing and in English, and shall be delivered by postal mail, by courier, by email or by telefax to the receiving Party's address indicated on the cover page of this Agreement, in the user account information provided by Licensee or to any substitute address as the Party may notify to the other in accordance with the above by not less than five business days' notice. Any notice to be given hereunder shall be given prior to the expiry of a term or deadline set forth in this Agreement or by applicable law. All notices, communications, documents or other information shall be effective only if received by the Party to whom it is addressed irrespective of whether received prior to or after the expiry of such term or deadline (provided that the notice was timely and duly given in accordance with this Article).
- (c) This Agreement, including the Annexes and any other documents referred to herein, constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof, and shall supersede all prior oral and written agreements or understandings of the parties relating hereto. Any rights of Licensee to use the Licensed Materials granted by Licensor under prior oral and written agreements shall terminate upon the expiry of the Term. All references to this Agreement shall be deemed to include the Annexes hereto.
- (d) No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.
- (e) Licensee shall not assign this Agreement or any rights or obligations hereunder, including, but not limited to, by way of a business transfer (*Vermögensübertragung*) or demerger (*Abspaltung*), to any third party without the prior written consent of Licensor. Licensor may





assign this Agreement or any rights or obligations hereunder to any third party by giving written notice thereof to Licensee.

- (f) Should any part or provision of this Agreement be held to be invalid or unenforceable by any competent arbitral tribunal, court, governmental or administrative authority having jurisdiction, the other provisions of this Agreement shall nonetheless remain valid. In this case, the Parties shall negotiate in good faith a substitute provision that best reflects the economic intentions of the Parties without being unenforceable, and shall execute all agreements and documents required in this connection. If a Party to this Agreement (the **Failing Party**) should fail to take any action to be taken or to deliver any document to be delivered as of a specified date, the other Party shall not resort to any contractual remedies under this Agreement if such failure is promptly and fully cured in good faith by the Failing Party.

### 13. **Governing Law and Place of Jurisdiction**

- (a) This Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland, with the exclusion of the Vienna Convention on the International Sale of Goods dated April 11, 1980.
- (b) The exclusive place of jurisdiction for any dispute, claim or controversy arising under, out of or in connection with or related to the Agreement (or subsequent amendments thereof), including, without limitation, disputes, claims or controversies regarding its existence, validity, interpretation, performance, breach or termination, shall be the city of Zurich, Switzerland.

## **Annex A**

### **Maintenance and Support**

Maintenance and Support shall include the provision of:

- (a) New Versions, from time to time as Licensor deems reasonable in its own discretion, to provide new or amended functionalities, updates, upgrades and bug fixes for the Software;
- (b) User Support including access to:
  - (i) First-level email Support during normal business hours on working days (Monday to Friday, excluding public holidays) 9 am to 5 pm (CET);
  - (ii) Second-level email Support with Licensor agreeing to use, depending on the availability of the relevant Software developer(s) or other professional(s), commercially reasonable efforts to reply to request for second-level Support within three business days;
  - (iii) One of Licensor's online introductory tutorial per year (once for a duration of one hour);
  - (iv) Additional up to two of Licensor's online tutorials or online consultations (duration of one hour) upon reasonable request of Licensee to learn about the latest features of the Software, to review Licensee's usage of the Software and to propose possible improvements to increase the benefit Licensee is taking out of the Software; and
  - (v) Licensor's available documentation for users and for IT personnel.

## **Annex B**

### **Additional Support Services**

Subject to an agreement of the Parties, Licensor is willing to provide the following additional Support services to Licensee, at the following conditions:

- (a) Provision of additional technical Support at a rate agreed upon between the Licensor and the Licensee.
- (b) Provision of on-site trainings:
  - (i) Full training on the Software (four hours on-site introductory tutorial, in one morning or one afternoon), at a rate agreed upon between the Licensor and the Licensee. Charges include preparation and traveling time, business trip costs, and accommodation costs.
- (c) Provision of Data analysis services:
  - (i) Data analysis services are provided on a project basis at a rate agreed upon between the licensor and the Licensee.