

TERMS AND CONDITIONS OF SOFTWARE LICENSE AND SUBSCRIPTION SERVICES

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SOFTWARE LICENSES AND SUBSCRIPTION SERVICES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. General; Definitions

1.1 Brooks Life Sciences, Inc. ("Brooks") hereby offers to the customer ("Customer"): (a) a license to the Software (including Support Services); and/or (b) a subscription to the Subscription Services (including Support Services), in each case as identified in the applicable Order and on the express condition that Customer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Customer are expressly rejected and if the terms and conditions set forth herein differ from the terms of Customer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Customer's document. Customer's receipt of Software or use of the Subscription Services provided hereunder will constitute Customer's acceptance of these terms and conditions, including any exhibit, which comprises the contract (the "Agreement") between the parties.

1.2 In accordance with the terms and conditions hereinafter set forth, Brooks shall license Software and provide Services to Customer on a non-exclusive basis during the term of this Agreement. Capitalized terms have the meanings set forth or referred to in this Section 1:

"*Content*" shall mean all electronic content, information and data submitted to and stored in the Subscription Services by or on behalf of Customer.

"*Delivery*" shall mean when Brooks provides Customer functional requirements into a deployable configuration and makes that configuration available to the Customer for testing and use.

"*Documentation*" shall mean electronic on-line material, including user manuals, provided by Brooks for the Software and that relate to the functional, operational or performance characteristics of the Software.

"*EAR*" shall mean the Export Administration Regulations of the U.S. Department of Commerce.

"*Indemnified Items*" shall mean damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees).

"*Items*" shall mean any Software and technology, including technical information supplied by Brooks or contained in documents.

"*Marks*" shall mean trademarks, trade names and service marks owned by Brooks.

"*Order*" shall mean a purchase order or statement of work, as applicable, pursuant to which Customer places an order for Software and/or Subscription Services.

"*Proprietary Information*" shall mean information Brooks transfers to Customer during the course of the Agreement that is considered proprietary or confidential in nature. Proprietary Information shall include, but is not limited to, the Software, updates, Documentation, know-how, trade secrets, inventions, financial information, marketing plans, customer lists, the non-public portions of the Subscription Services, network design and documentation, any benchmark testing of the Subscription Services, the terms and conditions of this Agreement, and all Content.

"*Subscription Services*" shall mean the online, standard Web-based application services made generally available by Brooks on a subscription basis and identified on the applicable order.

"*Support Services*" shall mean the maintenance and support services set forth on Exhibit A.

"*Software*" is (1) the current released version of the computer software licensed by Customer and specified on the Order, and (2) at any time after Brooks has delivered to Customer a new version of such computer software as an Upgrade and Enhancement under this Agreement.

“*Subscription Term*” shall mean the term set forth in the applicable Order, including, without limitation, the initial subscription term, or any renewal subscription term agreed by the Parties.

“*Support Schedule*” shall be as described in Exhibit A.

“*Upgrades and Enhancements*” means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software Brooks commercially releases to its end users generally to correct deficiencies or enhance the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules, re-platformed Software or new functionality.

“*User*” shall mean an individual with credentials issued by Customer to log on to the Subscription Services, as more fully described in the applicable order.

2. Software License Terms

2.1 License Grant. For non-subscription based purchases, Brooks hereby grants to the Customer a non-exclusive, non-transferable, nonsublicensable, revocable, perpetual license to use the Software subject to and in accordance with the terms of this Agreement.

2.2 License Fee. Customer shall pay a one-time license fee as specified in the Order. The License Fee includes one year of Support Services and shall be invoiced by Brooks upon delivery of the Software license keys. The payment of the License Fee shall be made by Customer to Brooks within thirty (30) days after the date of invoice issued by Brooks. Payment obligations are non-cancelable. Fees paid are non-refundable. Taxes, in any country, now or hereafter imposed with respect to the transactions contemplated hereunder (with the exception of income taxes or other taxes imposed upon Brooks and measured by the gross or net income of Brooks) shall be the responsibility of Customer, and if paid or required to be paid by Brooks, the amount thereof shall be added to and become a part of the amounts payable by Customer hereunder.

2.3 Installation. Brooks shall deliver the Software to Customer (either electronically or physically) and provide installation, installation assistance and training only to the extent expressly provided in an Order. Customer may install and use the Software on a single computer; OR install and store the Software on a storage device, such as a network server, used only to install the Software on Customer’s other computers over an internal network, provided Customer has a User license for each separate computer on which the Software is installed and run. A license for the Software may not be shared, installed or used concurrently on different computers. The Software may be received in more than one platform, but Customer shall only install or use one platform. If the Software is delivered in multiple versions or languages, Customer may only run one version or language of the Software, and Customer may not run the additional versions in any other language on any other computer.

2.4 Suite License. In the event the Software is distributed along with other Brooks software products as part of a suite of products (collectively, the “Suite”), the license of the Suite is licensed as a single product and none of the products in the Suite, including the Software, may be separated for installation or use on more than one computer.

2.5 Acceptance. BY INSTALLING OR USING THE SOFTWARE, CUSTOMER CONFIRMS ACCEPTANCE OF THE SOFTWARE AND AGREES TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. THIS AGREEMENT IS ENFORCEABLE AGAINST CUSTOMER AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED. IF CUSTOMER OR CUSTOMER’S EMPLOYER OR COMPANY DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THEN BROOKS IS UNWILLING TO GRANT CUSTOMER THIS LICENSE AND CUSTOMER MUST NOT INSTALL OR USE THE SOFTWARE. THE SOFTWARE MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT THE UNAUTHORIZED COPYING AND USE. THE TECHNOLOGY MAY PREVENT CUSTOMER’S USE OF THE SOFTWARE IF CUSTOMER DOES NOT FOLLOW THE ACTIVATION PROCESS DESCRIBED IN THE SOFTWARE AND DOCUMENTATION. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE WILL CEASE TO FUNCTION UNLESS AND UNTIL CUSTOMER ACTIVATES THE SOFTWARE.

2.6 Order Changes. Orders in process may not be changed except with Brooks' written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Software returned without the prior written consent of Brooks.

2.7 **Restrictions.** Customer may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble or otherwise attempt to discover the source code of the Software or otherwise reduce the Software to a human-perceivable form or create derivative works based upon the Software. Customer shall not use the Software to develop any application having the same primary function as the Software.

2.8 **Audit Right.** Brooks may audit use of the Software for compliance with this Agreement at any time, upon reasonable notice. In the event that such audit reveals any use of the Software other than in full compliance with the terms of this Agreement, Customer shall reimburse Brooks for all reasonable expenses related to such audit, in addition to any other liabilities Customer may incur as a result of such non-compliance.

3. Subscription Services

3.1 **Subscription Services.** During the applicable Subscription Term, Brooks will make the Subscription Services available to Customer, and hereby grants Customer the right to permit Users to use the Subscription Services in accordance with this Agreement. The Subscription Services are provided as software-as-a-service and are not customized to Customer's unique requirements, unless otherwise agreed. From time to time throughout the Subscription Term, Brooks may make upgrades, changes and/or improvements to the Subscription Services in order to enhance the Subscription Services generally and/or remedy any issues with the Subscription Services.

3.2 **Subscription Services fee.** To obtain Subscription Services, Customer shall pay a Subscription Services fee as specified in the Order. The Subscription Services fee includes one year of Support Services and shall be invoiced by Brooks upon delivery of the Software license keys, unless payment is made by credit card. Payments by credit card will be charged monthly for the duration of the Subscription Term. The payment of the Subscription Services fee shall be made by Customer to Brooks within thirty (30) days after the date of invoice issued by Brooks. Payment obligations are non-cancelable. Fees paid are non-refundable. Taxes, in any country, now or hereafter imposed with respect to the transactions contemplated hereunder (with the exception of income taxes or other taxes imposed upon Brooks and measured by the gross or net income of Brooks) shall be the responsibility of Customer, and if paid or required to be paid by Brooks, the amount thereof shall be added to and become a part of the amounts payable by Customer hereunder.

3.3 **Privacy and Security.** Brooks is committed to protecting the personal information that Brooks receives from Customer. Brooks will take commercially reasonable and appropriate technical and organizational measures to protect Customer's personal information against unauthorized access, accidental loss or damage and unauthorized destruction. The security provided by Brooks shall be in accordance with good industry practices relating to protection of the types of data typically utilized in the Subscription Services by Brooks' customers. Customer agrees not to share Customer data with Brooks that constitutes sensitive Customer data which includes the following (without limitation): social security number or its local equivalent, driver's license number or state identification card number, account number or credit or debit card number, racial or ethnic origin, religious or philosophical beliefs, trade union membership, political opinions, sexual life, physical or mental health or medical conditions, social insurance or tax identification numbers, credit reports, criminal history information or information about unlawful or objectionable behavior.

3.4 **Users.** User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require use of the Subscription Services. The maximum number of Users and/or other subscriptions of the Services is as set forth in the applicable Order. If Customer wishes to add additional subscriptions for Users or other items, these subscriptions must be purchased in advance of use. Brooks may, from time to time and at its own expense, review Customer's usage of the Subscription Services to determine Customer's compliance with the terms of each order. Brooks will promptly notify Customer if Brooks determines that Customer's usage of the Subscription Services exceeds Customer's subscribed entitlements. Customer will pay for any additional subscriptions required for Customer's actual usage.

3.5 **Content Processing.** Customer shall act as the data controller for any and all Content. Brooks shall act as the data processor on behalf of Customer with respect to such Content and shall carry out the instructions of Customer with regard to the collection, processing and protection of such Content in accordance with this Agreement.

3.6 **Content.** As between Customer and Brooks, all right, title and interest in and to the Content is owned exclusively by Customer. Customer hereby grants to Brooks the right to access and use the Content, solely as reasonably necessary to provide the Subscription Services. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to collect, use,

process and transmit all Content, and acknowledges that Brooks exercises no control whatsoever over any data passing through Customer's site(s) (including any Content). Brooks provides only storage, processing and delivery services for Content, and is not the publisher of Content. Customer is responsible for all activity in User accounts.

3.7 **Brooks' Intellectual Property Rights.** All right, title and interest in and to the Subscription Services (including, without limitation, all intellectual property rights therein and all modifications, extensions, customizations, scripts or derivative works of the Subscription Services provided or developed by or for Brooks) is owned exclusively by Brooks or its licensors. If Customer or any Users provide Brooks with any suggestions, enhancement requests, recommendations or other feedback ("Feedback") regarding the Subscription Services, Customer also grants to Brooks a perpetual, irrevocable, worldwide, royalty-free, fully paid up, transferable and sub-licensable license to use, modify, distribute and incorporate Customer's Feedback into the Subscription Services without attribution of any kind. All Feedback, if any, is provided by Customer without warranties. Customer shall have no obligation to provide Feedback.

3.8 **Customer Obligations.** Customer shall not, and shall procure that Users do not (i) to perform any activity that is unlawful, or that is harmful to or interferes with any use of the Subscription Services, or the network, systems and/or facilities of Brooks or the network, systems and/or facilities of any other provider; (ii) to store, process, publish or transmit any threatening, infringing or offensive material, or material that constitutes Spam/E-mail/Usenet abuse, a security risk or a violation of any party's privacy, intellectual property or other rights; (iii) in a service bureau, outsourcing, renting, sublicensing or time-sharing capacity, or in a manner that permits concurrent use of a single User login; (iv) to perform any activity intended to circumvent the security measures of Brooks or any third party; or (v) other than in connection with Customer's products or services. If Customer becomes aware of any breach of the foregoing, Customer will notify Brooks and remedy the situation immediately, including, if necessary, limiting, suspending or terminating any relevant User's access to the Subscription Services. In the event of a breach or suspected breach of any of the foregoing prohibitions, Brooks reserves the right to suspend Customer's Subscription Services, if reasonably necessary to prevent harm to Brooks, Customer, other customers, and/or Brooks' partners, vendors and suppliers with such notice as may be reasonable in the context of the prospective harm. Customer is responsible for the confidentiality and use of Users' passwords and user names.

3.9 **Changes to Subscription Services.** Customer hereby understands and agrees that throughout the Subscription Term Brooks may make regular and sometimes substantial upgrades, changes and improvements to the Subscription Services in order to enhance the Subscription Services and/or remedy any issues with the Subscription Services, and Customer hereby waives any objection to such upgrades, changes and improvements. Communication with Users about the planned changes may be necessary to ensure Customer's efficient use of the Subscription Services.

3.10 **Renewal.** The Subscription Term shall be automatically renewed for successive one-year periods unless Customer provides notice of non-renewal to Brooks not less than sixty (60) days prior to the end of the initial Subscription Term or renewal Subscription Term, as applicable.

4. Support Services

4.1 During the first year after the initial Software License Subscription Term (the "Initial Support Year") and during any subsequent Subscription Term, the Customer will be entitled to receive the Support Services, subject to the terms and conditions of this Agreement and Exhibit A, and conditioned on Customer's compliance therewith, Brooks will provide the Support Services to Customer in accordance with the Support Schedule.

4.2 The Support Services and Upgrade and Enhancement terms, set forth on Exhibit A and incorporated in this Agreement, are subject to change at Brooks' sole discretion; however, Brooks will not materially reduce the level of Services provided for supported programs during the period for which fees for Services have been paid. Customer may access the current version of the Support Services terms at: <http://www.brooks.com/company/about-brooks/terms-and-conditions>.

4.3 For each year after the Initial Support Year, the non-refundable Support Services fee for any Customer that has licensed perpetual Software will be calculated on the basis of an annual fee of 20% of the cumulative Software license fees purchased by the Customer and shall be due and payable within thirty (30) days following the start of the yearly period.

For each year after the Initial Support Year, the non-refundable Support Services fee for any Customer that has Subscription Services will be calculated on the basis of an annual fee of the cumulative Software license fees purchased by the Customer and shall be due and payable within thirty (30) days following the start of the yearly period. Subsequent renewals will include a 3% annual increase.

In either licensing method, the Support Services shall be automatically renewed for successive one-year periods, unless Customer provides notice of non-renewal to Brooks not less than sixty (60) days prior to the end of each yearly period. Subsequent renewals will include an annual increase not to exceed 5%.

4.4 Brooks represents, warrants and covenants to Customer that during the term of this Agreement, Brooks will perform the Support Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

5. Disclaimer of Warranties

5.1 Disclaimer of Actions Caused by and/or Under the Control of Third Parties. Brooks does not and cannot control the flow of data to or from Brooks' network and other portions of the Internet, and accordingly Brooks disclaims any and all liability resulting from or related to a failure in the performance of Internet services provided or controlled by a third party other than any contractor or agent of Brooks hereunder.

5.2 THE SOFTWARE, THE SUBSCRIPTION SERVICES AND THE DELIVERABLES ARE PROVIDED "AS IS." BROOKS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, BROOKS MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, THE SUBSCRIPTION SERVICES OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER PRODUCTS, SERVICES, TECHNOLOGIES, INFORMATION, MATERIALS OR OTHER MATTER (INCLUDING ANY SOFTWARE, HARDWARE, FIRMWARE, SYSTEM OR NETWORK) EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS".

6. Proprietary Information: Non-Disclosure

6.1 Proprietary Information need not be marked as "proprietary" or "confidential" so long as it is, by its nature, information which might be reasonably considered by a recipient to be proprietary or confidential. The following information shall not be considered Proprietary Information:

- A) Information which is already generally available to the public;
- B) Information which hereafter becomes generally available to the public, through no fault of Customer;
- C) Information which was already known to Customer prior to the disclosure thereof by Brooks;
- D) Information which is developed by Customer independently of and without the aid of the information disclosed by Brooks; and
- E) Information which becomes known to Customer through a third party without such third party breaching its confidentiality obligations to Brooks.

6.2 Customer agrees to hold in confidence, and not disclose, in whole or in part, such Proprietary Information to any third party during the term of this Agreement, and thereafter. Customer shall not use such Proprietary Information except in connection with discharging its obligations under this Agreement. Customer shall cause its affiliates, employees, and agents to maintain the confidentiality of the Proprietary Information.

6.3 Unless otherwise agreed to in writing by Brooks, all designs, specifications, drawings, software, materials, and any other property used by Brooks to furnish the Software to Customer shall be and remain the sole property of Brooks. No rights or licenses with respect to the Software is granted or deemed granted hereunder or in connection herewith, other than those rights expressly granted in this Agreement.

7. Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF BROOKS UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE) SHALL NOT EXCEED THE LICENSE FEE OR AGGREGATE SUBSCRIPTION SERVICES FEES PAID BY CUSTOMER FOR SUCH SOFTWARE OR SUBSCRIPTION SERVICES GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL BROOKS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF GOODWILL, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS), REGARDLESS OF WHETHER BROOKS (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

8. Termination

8.1 This Agreement may be terminated by Brooks in the event that the Customer is in material breach of this Agreement and fails to cure such breach within thirty (30) days of receipt of notice thereof or immediately if the other Party goes into bankruptcy, liquidation, receivership or similar proceedings.

8.2 In the event of any termination:

- i. The Software license will automatically terminate and the Customer shall immediately cease all use of the Software;
- ii. Brooks will immediately cease providing the Subscription Services, if applicable;
- iii. On Customer's request, if applicable, at any time during the thirty (30) day period following the effective date of termination, Brooks will provide to Customer all Content in the Brooks system. Customer data generated by the Brooks system during the Subscription Term will be provided in .csv format, and all other Customer content or materials stored in the Brooks system will be returned in the format in which it was supplied to Brooks by Customer. For the avoidance of doubt, Customer has the right to retrieve its Content at any time during any Subscription Term. After the expiration of the foregoing thirty (30) day period, Brooks will delete all Customer Content, and will confirm such deletion upon Customer request; and
- iv. any and all of Customer's payment obligations under this Agreement for the Services provided through the effective date of termination will immediately become due.

9. Miscellaneous

9.1 Export Restrictions. Customer acknowledges that the Software and Subscription Services, is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the EAR, which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Customer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Customer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Customer shall, if requested by Brooks, provide information on the end user and end use of any Item exported by the Customer or to be exported by the Customer. Customer shall cooperate fully with Brooks in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Brooks harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants, or agents.

9.2. Use of Trademarks and Internet. Customer shall not alter, remove from the Software, or interfere with the Marks. Customer's use of the Marks hereunder shall be subject to such requirements as Brooks believes are appropriate to protect such Marks and Brooks' ownership rights therein, and Brooks shall have the right to monitor such use. Customer hereby does and shall at all times acknowledge Brooks' right, title and interest in and to the Marks

and shall not in any manner represent that it has any ownership interest therein nor will it adopt or use any trademarks, trade names or service marks confusingly similar thereto. Customer shall not at any time do or permit any act to be done which may in any way impair the rights of Brooks in the Marks. Customer shall not use any of the Marks on or in connection with any goods or services other than the Software. Upon termination of this Agreement, Customer will discontinue any and all uses of the Marks.

9.3 Customer may not delegate any duties nor assign any rights or claims hereunder without Brooks' prior written consent, and any such attempted delegation or assignment shall be void.

9.4 The rights and obligations of the Parties hereunder, including any claims arising out of or related to this sale of goods shall be governed, construed and enforced under the laws of the Commonwealth of Massachusetts, excluding its choice of law provisions. Each Party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in Suffolk County, Massachusetts in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise.

9.5 In the event of any legal proceeding between the Brooks and Customer relating to this Agreement, neither Party may claim the right to a trial by jury, and both Parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose.

9.6 The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

9.7 In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain.

9.7 Brooks' failure to enforce, or Brooks' waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

9.8 The parties hereto agree that Customer is not an agent or employee of Brooks. Customer has no expressed or implied authorization to incur any obligation or in any manner otherwise make any commitments on behalf of Brooks. Customer shall employ its own personnel and shall be responsible for them and their acts and in no way shall Brooks be liable to Customer, its employees or third parties for any losses, injuries, damages or the like occasioned by Customer's activities in connection with this Agreement, except as expressly provided herein.

9.9 Neither party hereto shall be liable for default of any obligation hereunder (other than payment obligations) if such default results from the force majeure which includes, without limitation, governmental acts or directives; strikes; acts of God; war; insurrection, riot or civil commotion; fires, flooding or water damage; explosions, embargoes or delays in delivery, whether of the kind herein enumerated or otherwise, which are not within the reasonable control and without the negligence of the party affected.

9.10 Customer expressly agrees that Content shall not include, and Brooks shall have no liability for, any Protected Health Information subject to the Health Insurance Portability and Accountability Act.

9.11 The rights and remedies contained herein shall be exclusive and not cumulative to any rights or remedies at law or equity.

9.12 Brooks reserves the right to change this Agreement in its sole discretion.

9.13 Where applicable, Customer agrees to purchase and maintain any commercial software component license required to use the Software. Customer shall provide evidence of such license upon request by Brooks.

9.14 United States Government Users (Only). If Customer is an agency or instrumentality of the United States Government, the software underlying the Subscription Services is "commercial computer software", and pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use, reproduction and disclosure of such software and any documentation are governed by the terms of this Agreement.

9.15 This Agreement constitutes the entire agreement between the Parties with regard to the matters dealt with herein, and supersedes all prior representations, negotiations, understandings and agreements, oral or written,

between the Parties with respect thereto. All purchase orders, forms of acceptance, invoices and other documentation respecting the subject matter of this Agreement issued by Customer shall be deemed to be issued for its own internal purposes, and any provisions therein that are in addition to the terms of this Agreement shall be of no force and effect except and to the extent the information contained therein is, consistent with and required pursuant to this Agreement.

Exhibit A
Support Schedule

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Exhibit.

1.1 DEFINITIONS

Acceptance of Software: Delivery of the Software Application or where applicable, Delivery of the configured Software Application, unless otherwise agreed.

Business Day: a measurement of time that typically refers to any day in which normal business is conducted, and excludes weekends and public holidays.

Commercially Reasonable Efforts: the same degree of priority and diligence with which Brooks meets the support needs of its other similar end users.

End User Cause: any of the following causes:

- (a) any improper use, misuse or unauthorised alteration of the Software Application by the Customer;
- (b) any use of the Software Application by the Customer in a manner inconsistent with the Software Documentation;
- (c) the use of a non-supported version or release of the Software Application.
- (d) failure, deficiency, or non-compliance toward specifications listed in Software Documentation of Customer infrastructure upon which the Software Application is dependant (e.g. example customer provisioned IT infrastructure, customer automation hardware, database systems, network capabilities, integrated third party systems and software and laboratory instrumentation).

Fault: any condition within the Software Application causing a failure of the system to operate in all material respects in accordance with the Software Documentation.

Help Desk Support: technical activities performed by qualified and experienced Brooks personnel to triage and track any Support Requests from Customer and to respond to general technical inquiries relating to the usage of or configuration of the Software Application.

Main Agreement: the Software Sales and Services agreement to which this Exhibit relates.

Out-of-Scope Services: services provided by Brooks that are consultative in nature, are not included in Support Services, or are in connection with a Fault determined by Brooks to be a result of an End User Cause or a cause otherwise out of Brooks' control.

Resolution: technical activities performed to address a Support Request from Customer, including;

- (a) provision of code changes and bug fixes to remedy or avoid a Fault; or
- (b) changes to system configuration or settings to remedy or avoid a Fault; or
- (c) updates to Software Documentation relevant to the course of action necessary to remedy or avoid a Fault; or

- (d) provision of a replacement of a copy of the Software Application where the original copy has been accidentally damaged; or
- (e) provision of a workaround in relation to a Fault that is reasonably acceptable to the Customer; or
- (f) other recommendations relevant to the course of action necessary to remedy or avoid a Fault to the satisfaction or the Customer.

Software Application: the software products owned or distributed by Brooks to which Brooks grants the Customer licence to use as part of the Main Agreement as well as any product updates provided as part of the Main Agreement.

Software Documentation: the software user manual as well as any other documentary materials provided by Brooks as part of the Main Agreement.

Software Release: A supported version of Software Application published in accordance with a product roadmap and release schedule.

Support Period: the period of time during which Brooks will perform Support Services for Customer

Support Request: request made by the Customer in accordance with this schedule for support in relation to the Software Application or Software Documentation.

Support Services: maintenance and provision of supported versions and releases of the Software Application, including Help Desk Support, but excluding any Out-of-Scope Services.

All other capitalised terms in this schedule shall have the meaning given to them in the Main Agreement.

2. SUPPORT HOURS

- 2.1 Monday to Friday between the hours of 8 am to 5 pm EST with extended hours being available to customers as needed on a case by case basis.

3. SUPPORT FEES

- 3.1 Support fees are due and payable annually in advance, unless otherwise stated in the relevant order or payment plan. Customer payment or commitment to pay is required to access Support Services described in this schedule (e.g. purchase order, actual payment, or other approved method of payment).
- 3.2 Annual Invoices will be issued and sent to a single billing address that Customer designates. Failure to submit payment will result in the termination of the Support Services.
- 3.3 Support fees paid are non-refundable.
- 3.4 Support fees are calculated on the basis of either an annual fee of 20% of the cumulative, acquired Software license fees for Perpetual License or the cumulative Software license fees purchased by the Customer plus an annual increase of up to 5%.

4. SUPPORT PERIOD

4.1 Support Period shall be 12 Months from delivery of the Software License Key or anniversary of delivery of the Software License Key, subject to the Support Fees.

5. SUPPORT SERVICES

5.1 During the Support Period, Brooks shall perform the Support Services during the Support Hours in accordance with the Service Levels.

5.2 The Customer may terminate the Support Services on any anniversary of the delivery of the Software License Key date by giving not less than sixty (60) days' notice in writing.

5.3 As part of the Support Services, Brooks shall:

- (a) provide Help Desk Support by means of the following ticketing system <https://brooks-support.on.spiceworks.com/portal>;
- (b) use Commercially Reasonable Efforts to provide Resolutions as requested under paragraph 6; and
- (c) assess and prioritise Resolutions in accordance with the Service Levels set forth in paragraph 7;
- (d) provide current versions and releases of Software Application to the Customer when they are available

5.4 Brooks has sole discretion in determining the cause of a Fault and the designation of services as Out-of-Scope Services. If Brooks makes any such designation, it shall promptly notify the Customer of that designation.

5.5 Brooks has sole discretion to provide Out-of-Scope Services upon Customer request. In such circumstances, Brooks shall be entitled to charge the Customer for Out-of-Scope Services at its then prevailing rates for such services.

5.6 The Customer acknowledges that Brooks is not obliged to provide Out-of-scope Services.

6. SUBMITTING SUPPORT REQUESTS AND ACCESS

6.1 The Customer may request Support Services by way of a Support Request via entry of a ticket in Brooks Informatics online ticketing system. The current link for the ticketing system is <https://brooks-support.on.spiceworks.com/portal>

6.2 The Customer shall provide Brooks with:

- (a) prompt notice of any perceived Faults; and
- (b) such output and other data, documents, information, assistance and (subject to compliance with all End User's security and encryption requirements) remote access to the Customer system, as are reasonably necessary to assist Brooks to reproduce operating conditions similar to those present when the Customer detected the relevant Fault and to respond to the relevant Support Request.

6.3 The Customer acknowledges that, to properly assess and resolve Support Requests, it may be necessary to permit Brooks direct access at the Customer Site to the Customer System and the Customer's files, equipment and personnel.

6.4 The Customer shall provide such access promptly, provided that Brooks complies with all the Customer's security requirements and other policies and procedures relating to contractors entering and working on the Customer's site notified to Brooks.

7. SERVICE LEVELS

7.1 Brooks shall:

- (a) prioritise all Support Requests as set out below based on its reasonable assessment of the severity level of the problem reported and in conjunction with the severity level definitions; and
- (b) each Support Request will be assessed individually and its severity level assigned based on impact to the ability of the Customer to continue routine business operations; and
- (c) respond to all Support Requests in accordance with the responses and response times specified in the table set out below:
- (d) endeavour to meet or exceed these targets 80% of the time.

7.2 The following table displays the targets for initial review and frequency of updates based on severity. The goals for initial review after a problem with production software is first reported are based on the nature and severity of the problem. The Technical Support Specialist makes every attempt to contact the customer who reported the problem within the response time goals described below. Due to the complex nature of software development and operating environments, Brooks cannot guarantee the time that it will take to resolve a problem. We make our best effort to resolve problems as expeditiously as possible.

ISSUE SEVERITY LEVELS		RESPONSE TIMES	
SEVERITY LEVEL	DESCRIPTION	INITIAL REVIEW	FOLLOW-UP FREQUENCY
Severity 1 Critical	Critical production issues affecting all users, including system unavailability and data integrity issues with no workaround available. Service is down or unavailable. A critical part of the Software infrastructure is unavailable or inaccessible, resulting in total disruption of work or critical business impact. Service crashes or hangs indefinitely causing unacceptable or indefinite delays for resources or response. Data corrupted or lost and must restore from backup. A critical documented feature / function is not available. <i>Support is available for Severity 1 issues during off-hours with a Premium Support contract.</i>	4 hours	Every 24 hours
Severity 2 Major	Major functionality is impacted, or significant performance degradation is experienced. Issue is persistent and affects many users and / or major functionality. No reasonable workaround available. Service is operational but highly degraded performance to the point of major impact on usage. Important features of the Software are unavailable with no acceptable workaround; however, operation can continue in a restricted fashion. Access to a third-party application or service provider deemed noncritical is impacted.	8 business hours	Every 2 business days
Severity 3 Minor	System performance issue or bug affecting some but not all users. Short-term workaround is available, but not scalable. Service is operational but partially degraded for some or all areas, and an acceptable workaround or solution exists. Problem with non-critical feature or functionality.	24 business hours**	Every 3 business days

Severity 4 Cosmetic	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Acceptable workaround available. Minor problem not impacting service functionality. Enhancement requests, missing or erroneous documentation. Minor problem or question that does not affect delivery of service.	24 business hours**	Every 5 business days
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** Business Hours exclude weekends and federally observed US holidays.

- 7.3 The parties may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level response times.
- 7.4 Brooks offers Premium Support to address Severity 1 issues during off-hours for an additional fee which must be established at contract signing. Customers with a Premium Support option will use the following email to engage support for Severity 1 issues during off-hours
- 7.5 Ownership and management of Support Requests is the responsibility of Brooks. When it is agreed (between the Customer and Brooks) that a Support Request has been resolved, the Support Request will be closed in the Brooks system.
- 7.6 Customer Queries not relating to Errors will be resolved with Commercially Reasonable Efforts. Brooks may require customer to attend appropriate training to resolve queries relating to standard operation of the software.
- 7.7 Brooks shall give the Customer regular updates of the nature and status of its efforts to provide a Resolution to a Support Request.