# Software License Agreement

- Software Copyright/License Documents

Version 005

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## 1  BRUKER BIOSPIN CORPORATION

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## 2  SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT (hereafter "AGREEMENT") BETWEEN THE CUSTOMER ENTERING INTO THIS AGREEMENT BELOW ("Customer", 'you') AND BRUKER BIOSPIN CORPORATION (hereafter "BRUKER").

For the purposes of this AGREEMENT, the term "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party to this Agreement, including, without limitation, a Party's parent and subsidiaries, if any; whereby "control" means the ownership of or more than fifty per cent (50%) of the voting rights or comparable interests in such entity.

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Subject to the provisions contained herein, BRUKER hereby grants to you a worldwide, revocable, non-exclusive license to use the proprietary software (the 'SOFTWARE') and documentation ('DOCUMENTATION') provided to you by BRUKER in accordance with the sales agreement. As described below, your use of the SOFTWARE, when enabled, is limited to a specified number of simultaneous users or seats, depending on the technical type of license issued.

## 4  SOFTWARE AND DOCUMENTATION

BRUKER shall furnish the SOFTWARE to you on media in machine-readable object code form or pre-installed in the hardware and may also provide the DOCUMENTATION containing instructions for operation and use of the SOFTWARE. Unless pre-installed, all items will be delivered via electronic means such as internet download (e.g., via FTP).

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Depending on the relevant sales agreement and delivery process for the SOFTWARE, you may or may not require a registration number to enable the SOFTWARE. If a registration number is required for the SOFTWARE but not included upon delivery, BRUKER shall provide you with such a registration number corresponding to the number and type of licenses listed on your purchase order or BRUKER's sales order or invoice.

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## 6 LICENSE TERM AND CHARGES

The term of this license commences upon delivery of the SOFTWARE to you and lasts for the SOFT-WARE product life specified by BRUKER unless earlier terminated for default by one of the parties or as otherwise set forth herein. If there is a fee charged for this license, the license fee is based upon the number of permitted concurrent users (the 'Permitted Users').

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## 9 LIMITED WARRANTY - License Fee

This Section is applicable if you pay a license fee. BRUKER warrants that for a period of ninety (90) days from the date of delivery, the SOFTWARE will achieve the functionality described in the DOCUMENTA-TION. BRUKER further warrants that the SOFTWARE does not contain any viruses, worms or other code designed to harm your systems or data. BRUKER does not warrant, however, that your use of the SOFTWARE will be uninterrupted or that the operation of the SOFTWARE will be error-free. BRUKER also warrants that the media containing the SOFTWARE, if provided by BRUKER, is free from defects in material and workmanship and will so remain for ninety (90) days from the date of delivery. BRUKER's sole and exclusive obligation and liability for any breach of these warranties shall be, in BRUKER's sole discretion: (i) to replace your defective media; (ii) to repair or correct your defective media so that it will conform to the above warranty; (iii) to advise you how to achieve substantially the same functionality of the SOFTWARE as described in the DOCUMENTATION through a procedure different from that set forth in the DOCUMENTATION; (iv) to provide a bug fix for the SOFTWARE; or (v) to refund the purchase price paid by you for the license for the defective SOFTWARE. Repaired, corrected, or replaced SOFT-WARE shall be covered by this limited warranty for the period remaining under the warranty that covered

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the original SOFTWARE or, if longer, for thirty (30) days after the date (a) of shipment to you of the repaired or replaced SOFTWARE, or (b) the date BRUKER advised you how to operate the SOFTWARE so as to avoid the difficulty that you were having in achieving functionality. Only if you inform BRUKER of the problem with the SOFTWARE during the applicable warranty period will BRUKER be obligated to honor this warranty. You must contact BRUKER by letter (including letter sent via electronic mail) to inform BRUKER of the problem. If any modifications are made to the SOFTWARE by you during the warranty period; if the media is subjected to accident, abuse or improper use; or if you violate the terms of this AGREEMENT, then this warranty does not apply to the extent the non-conformity is caused by any of the foregoing. This warranty shall not apply if the SOFTWARE is used with hardware or programs other than the unmodified version of hardware and programs with which the SOFTWARE was designed to be used as described in the DOCUMENTATION or the hardware and programs provided by BRUKER in connection with providing the SOFTWARE.

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By entering into this AGREEMENT, you agree to comply with all applicable laws and regulations with respect to your use of the SOFTWARE. You acknowledge and agree in particular that the SOFTWARE and any related technical data and/or services (individually, an "Item" and, collectively, the "Items") are subject to export control, customs, economic sanctions, and anti-boycott laws, regulations, rules, and associated executive orders enacted, issued, entered, promulgated, or enforced by the United States, the European Union and/or its member states, Switzerland the United Nations, and the country where you are located (provided such applicable local laws or regulations do not conflict with applicable regulations of the United States, Switzerland, the European Union and/or any of its member states (each individually, an "Export Control Law" and, collectively, the "Export Control Laws"). By entering into this AGREEMENT, you further agree that you will comply with all applicable Export Control Laws and not provide access to the SOFTWARE or to any other Item, directly or indirectly, (1) to anyone in Cuba, Iran, North Korea, Su-

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dan, Syria and the Crimea Region, or in any other destination that is subject to an applicable embargo (an "Embargoed Destination") or to a representative of an Embargoed Destination, (2) to anyone listed on (or owned or controlled by anyone listed on) a sanctions list issued based on Export Control Laws, including, without limitation, the Specially Designated Nationals and Blocked Persons List and the Entity List (a "Sanctioned Person"), or (3) for a purpose prohibited under any Export Control Law, including the research on or development of chemical, biological or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities (a "Prohibited End Use"). By entering into this AGREEMENT, you represent and warrant that you are not (and that none of the users accessing the Software under this license) is or will be located in any Embargoed Destination, acting for anyone in an Embargoed Destination, or a Sanctioned Person, and that you will not use the SOFTWARE or any other Item for a Prohibited End Use, or otherwise in contravention of any applicable Export Control Law. You further represent and warrant that you will only use the SOFTWARE for peaceful, non-military purposes, unless otherwise specifically agreed to by BRUKER in writing. In addition to any other remedy it may have, BRUKER may terminate this AGREEMENT immediately and without notice, and cancel the download, activation and/or provision of the SOFTWARE, any other ITEM, and any maintenance or other customer service involving any Item if (a) BRUKER has not received all export-related documentation requested by BRUKER or (b) BRUKER believes that such activity may violate any Export Control Law or BRUKER's own compliance policies. You shall indemnify BRUKER for all losses, costs, claims, damages and expenses (including attorneys' fees and expenses) arising from your violation or alleged violation of any applicable law or regulation, including, without limitation, any Export Control Law.

## 14    REMOTE DIAGOSIS CAPABILITIES

The SOFTWARE may contain capabilities for remote diagnosis of software processes and operational status of connected hardware ("Remote Diagnosis Feature"). If such a functionality is provided in the SOFTWARE, you can technically enable or disable it. Please refer to the DOCUMENTATION for more detailed information on the activation process. If you enable the Remote Diagnosis Feature, you agree that the SOFTWARE shall collect, process, and transfer to BRUKER and/or its Affiliates data from the connected hardware. Such data may include, but is not limited to, (a) hardware monitoring data (e.g. board temperatures, power consumption, ventilation settings, vent speeds, spectrometer configurations, data from automatic calibration procedures (e.g. pulse length, shim settings) and (b) spectrometer usage data (e.g. idle time, usage of specific modules). You hereby grant BRUKER, and BRUKER hereby accepts, a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of the data collected by BRUKER via the Remote Diagnosis Feature, and to sublicense the foregoing rights to our Affiliates. The Remote Diagnosis Feature operates in accordance with applicable data protection laws and does not collect, process and/or transfer any information in relation to the hardware user(s) that would enable BRUKER to identify the individual user(s). For additional information on the processing of personal data by BRUKER please refer to our Privacy Notice at *https://www.bruker.com/privacy-policy.html*.

## 15    NO LIABILITY

To the maximum extent permitted by applicable law, in no event shall BRUKER and its suppliers be liable for any damages other than direct damages (including, without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption, loss of business information, or any other loss) arising out of the use of or inability to use the SOFTWARE or otherwise under this Agreement, even if BRUKER has been advised of the possibility of such damages. In any case, BRUKER's and its suppliers' entire liability under this Agreement shall be limited to the amount actually paid by you for the SOFTWARE. Without limiting the generality of the foregoing, you shall be solely responsible for your use of the SOFTWARE for any purpose of any nature whatsoever and for knowing the limits of such use, and BRUKER shall have no responsibility therefor, whether with

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respect to you or to any third party, and you shall defend, indemnify and hold harmless BRUKER from any claims of any nature whatsoever brought by any such third party with respect to your use of the SOFTWARE.

## 16    TERMINATION

You may terminate this AGREEMENT immediately upon written notice to BRUKER at any time. Either party may terminate this Agreement in the event of default by the other party that is not cured within 30 days after written notice is provided describing the default. Upon any termination of this AGREEMENT, you shall immediately discontinue use of the SOFTWARE and shall return to BRUKER all available copies of the SOFTWARE and DOCUMENTATION or, at BRUKER'S request, you will destroy the SOFT-WARE and DOCUMENTATION and all copies thereof. Your obligation to pay accrued charges and fees, as well as any other sections of the AGREEMENT that, either explicitly or by their nature, must remain in effect beyond the term of this AGREEMENT (e.g. the license granted by Customer to BRUKER relating to the Remote Diagnosis Feature),shall survive any termination of this AGREEMENT.

## 17    MISCELLANEOUS

This AGREEMENT represents the complete and exclusive statement of the agreement concerning the SOFTWARE between the parties and supersedes all prior agreements and representations between them. It may be amended only by a writing executed by both parties. THE ACCEPTANCE OF, AND PURCHASE ORDER PLACED BY YOU, FOR THE SOFTWARE AND/OR DOCUMENTATION IS EX-PRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND BRUKER WILL FURNISH THE SOFTWARE AND DOCUMENTATION ONLY UPON THESE TERMS AND CONDITIONS AND NOT THOSE CONTAINED IN YOUR PURCHASE OR-DER. Please note that if you subscribe to additional services of BRUKER in connection with the SOFT-WARE, the terms and conditions of these services will complete or amend this AGREEMENT.

If any provision of this AGREEMENT is held to be ineffective, unenforceable, or illegal for any reason, such decision shall not affect the validity or enforceability of the remaining provisions hereof and such provision shall be reformed to, and only to, the extent necessary to make it effective, enforceable and le-gal. All headings are solely for convenience and shall not be considered in interpreting this AGREE-MENT. This Agreement shall be governed by and construed in accordance with the laws of the Com-monwealth of Massachusetts.

The SOFTWARE may utilize a number of open source software packages. These packages are subject to their own license terms. For example, GPL (GNU public license) or LPGL (Lesser GNU public license) lists their own license terms that also include additional underlying license terms. A list of these packages is accessible in the SOFTWARE's "Help" menu and the respective license terms are available for view-ing.

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