



MAINTENANCE AND SUPPORT TERMS

(hardware and software)

IF YOU HAVE PURCHASED MAINTENANCE AND SUPPORT FOR BIOPEN PRODUCT AND ACCOMPANYING SOFTWARE AS SHOWN ON THE INVOICE FOR SUCH PRODUCTS, THESE MAINTENANCE AND SUPPORT TERMS (“TERMS”) GOVERN MAINTENANCE AND SUPPORT PROVIDED BY FLUICELL AB (“FLUICELL”) OF THE BIOPEN PRODUCT (“PRODUCT”) AND ACCOMPANYING SOFTWARE (“SOFTWARE”).

1. Definitions. As used in these Terms:

- 1.1. **“Customer”** means the person or entity (as shown on the Invoice) that has purchased the Product and Software from Fluicell.
- 1.2. **“Documentation”** shall mean, as applicable, system specifications, hardware requirements, technical manuals, and user instructions regarding the operation, installation and use of the Product and Software.
- 1.3. **“Error”** shall mean a failure of the Product or the Software to operate in material conformance with its Documentation.
- 1.4. **“Maintenance Services”** means any Software Maintenance, Product Maintenance and Support.
- 1.5. **“Software Error Correction”** shall mean a permanent modification or addition that, when made or added to the Software, brings the operation of the Software into material conformance with its Documentation, without changing the basic functions of the Software. Upgrades may constitute Error Corrections.
- 1.6. **“Software Fix”** shall mean a temporary software patch designed to mitigate the impact of an Error, without changing the basic functions of the Software, notwithstanding that the Error still exists.
- 1.7. **“Software Upgrade”** means improvements or changes to the Software that do not change the basic functions of the Software, but which are designed to enhance operating performance.
- 1.8. **“Software Workaround”** means a temporary set of procedures that users may follow to circumvent or mitigate the impact of an Error, without changing the basic functions of the Software, notwithstanding that the Error still exists.

Capitalized terms used but not defined in these Terms shall have the meanings set forth in the Terms and Conditions of Sale our End User License Agreement, as applicable.

2. Term.

- 2.1. **Maintenance Term and Renewal.** Fluicell will provide to Customer the Maintenance Services for a period of one (1) year following the date of the Invoice for the Products and Software (the “Initial Maintenance Term”). Upon expiration of the Initial Maintenance Term, Customer may, at its option, extend Maintenance Services for additional one (1) year terms (each a “Renewal Maintenance Term”) by providing written notice to Fluicell at least thirty (30) days prior to the expiration of the then current term. Fluicell may increase its fees for a Renewal Maintenance Term by providing notice to Customer at least sixty (60) days prior to commencement of such term.
- 2.2. **Effect of Termination of Maintenance Services.** Termination of Maintenance Services shall not terminate the license granted by Fluicell to Customer for use of the Software, unless explicitly stated by Customer in its notice to Fluicell terminating the Maintenance Services.

3. Maintenance Services.

- 3.1. **Software Maintenance.** Fluicell shall provide (i) all Upgrades and new versions that add functionality by modifying and enhancing operating performance of the Software (“New Releases”); (ii) all necessary and appropriate Software Error Corrections, Software Fixes, and Software Workarounds, to remedy any Errors associated with the Software, as well as updated Documentation addressing such Software Error Corrections, Software Fix or Software Workaround (“Software Maintenance”). If an Error is not corrected by Fluicell (by



implementing a Software Error Correction) within a reasonable period of time after receiving notice of such Error, Fluicell shall implement a Software Fix or Software Workaround designed to reasonably minimize the impact of such Error.

- 3.2. Product Maintenance.** During the Initial Maintenance Term and any Renewal Maintenance Term, if the Product is not functioning to the satisfaction of Customer, Fluicell shall, at its expense, repair or replace the Product (which can be new or factory refreshed parts or Product) (“Product Maintenance”). Customer shall notify Fluicell in advance of the return and shall specifically identify any problems with the Product. All transportation costs in connection with the return of the Product to Fluicell for return or repair and/or replacement will be the responsibility of and paid for by Customer and all transportation costs to return the replaced or repaired Product to Customer shall be the responsibility of and paid for by Fluicell unless otherwise agreed in writing by the parties. Notwithstanding the foregoing, damage to the Product or its parts arising out of misuse, abuse, negligence, accident, disaster, damage from the elements, modification, use of unauthorized service provider or parts, or causes beyond Fluicell’s control are not covered.
- 3.3. Support.** Customer may contact Fluicell to obtain telephone and email consultative support concerning the Software and the Product and to report Errors (“Support”). Fluicell will designate a specific telephone number and email address for Customer’s use for Support.

4. Customer Obligations.

- 4.1. Customer Personnel.** Customer shall designate its technical and administrative contacts to Fluicell and provide members of its technical personnel competent to work with Fluicell, at Customer’s expense, as may be necessary in connection with Fluicell’s Maintenance Services.
- 4.2. Equipment and Access.** Customer shall provide access as reasonably necessary or appropriate to perform the Maintenance Services.
- 4.3. Manner of Use.** Customer shall be solely responsible for the manner in which it uses the Maintenance Services. Customer shall use the Maintenance Services provided by Fluicell to Customer under this Agreement only in compliance with this Agreement and all applicable laws.

5. Warranties.

- 5.1. Professionalism.** Fluicell represents and warrants that it shall perform any Maintenance Services hereunder in a professional and workmanlike manner, using due care, skill, and diligence.
- 5.2. Disclaimer of Warranties.** **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, FLUICELL MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, QUIET ENJOYMENT, ERROR FREE OR UNINTERRUPTED APPLICATION, QUALITY OF INFORMATION OR TITLE/NON-INFRINGEMENT, AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED.**

6. Ownership. All intellectual property rights in the Product and in any Software Error Corrections, Fixes, Upgrades, and Workarounds shall be and remain the exclusive property of Fluicell. Customer’s rights to use any such Software Error Corrections, Fixes, Upgrades, and Workarounds are subject to the End User License Agreement, and all of the same shall be considered Software and Materials thereunder.

7. Effect on Terms of Sale and End User License Agreement. The Terms are intended to supplement the Standard Terms and Conditions of Sale and End User License Agreement (“Product and Software Agreements”) and not supersede them with respect to the provision and receipt of the Maintenance Services. Accordingly, all purchases, maintenance, and work relating to the Product (including purchases of consumables) shall be made under and subject to the rights, obligations, restrictions and limitations contained in the Standard Terms and Conditions of Sale and all maintenance and work with respect to the Software shall be made under and subject to the End User License Agreement.