

IMPORTANT – READ CAREFULLY. THE SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT, WHICH IS CONTAINED IN THE SOFTWARE PACKAGE DELIVERED TO YOU, IS A LEGALLY BINDING AGREEMENT BETWEEN YOU (THE LICENSEE) AND BRÜEL & KJÆR SOUND & VIBRATION MEASUREMENT A/S. BY UTILIZING THE LICENSE(S) IN THE ENCLOSED SOFTWARE MAINTENANCE AND SUPPORT CERTIFICATE YOU ARE AGREEING TO BECOME BOUND BY THESE TERMS AND CONDITIONS FOR SOFTWARE MAINTENANCE AND SUPPORT.

Terms and Conditions for Software Maintenance and Support Agreement

1. APPLICATION AND DEFINITIONS

1.1 These Terms and Conditions (“the Terms and Conditions”) apply to the Software Maintenance and Support Agreement between the Licensee and Brüel & Kjær Sound & Vibration Measurement A/S (“Brüel & Kjær”) granting the Licensee the right to receive support and Software Updates and Revisions relating to the License Agreement and as stated on the Software Maintenance and Support Agreement Certificate (“the Certificate”).

1.2 “Software Updates and Revisions” are defined as relevant “Upgrades” (for example, Version 13.0 to 14.0), “Updates” (for example, Version 13.1 to 13.2), and “Patches” (for example, Version 13.2.3 to 13.2.4) released by Brüel & Kjær and which are made available to the Licensee according to these Terms and Conditions. Software Updates and Revisions only cover products licensed by Brüel & Kjær.

1.3 The “Contact Person” is the person or persons appointed by the Licensee, and whose name(s) is submitted in writing to Brüel & Kjær.

1.4 The License Agreement and the Software Maintenance and Support Agreement are two separate and independent agreements, and breach of the Software Maintenance and Support Agreement and these Terms and Conditions will not entitle the Licensee to any remedies regarding the License Agreement, including termination thereof.

2. SCOPE OF SOFTWARE MAINTENANCE AND SUPPORT

2.1 With a valid Software Maintenance and Support Agreement the Licensee shall be entitled to receive:

- Technical User Support regarding the current version and any version released within the last 12 months, see Clauses 3 and 4
- Software Updates and Revisions issued by Brüel & Kjær, see Clause 5

2.2 In order for the Licensee to receive support as outlined in Clause 2.1, the Licensee must install all relevant Software Updates and Revisions issued by Brüel & Kjær.

3. TECHNICAL USER SUPPORT

3.1 Technical User Support consists of answers to the Licensee’s Contact Person’s technical questions. Brüel & Kjær will endeavour to answer the questions within a reasonable time.

3.2 When contacting Brüel & Kjær, the Licensee’s Contact Person must always state the following:

- The License Authorization Code or Host ID/Key ID, which can be found in the related Certificate
- A specific description of the problem(s)

3.3 The Licensee’s Contact Person must follow all Brüel & Kjær’s oral and written directions regarding reinstallation, configuration, or use of the program.

3.4 In addition to the support stipulated in Clause 3.1, Brüel & Kjær has no obligation to provide any form of further maintenance or other error correction, or on-site maintenance.

4. SPECIFIC EXCEPTIONS

4.1 Brüel & Kjær’s sole support obligations are those expressly described in Clause 3. The Licensee shall not be entitled to support regarding:

- Defects that have occurred as a result of changes made to the program by anyone other than Brüel & Kjær
- Defects caused by anything other than the program, that is, the Licensee’s hardware, operating system, modem, etc.
- Issues or defects arising from the installation of the system into an office or other network
- Remedial action resulting from an error in the Licensee’s installation or resulting from the Licensee not having complied with Brüel & Kjær’s documentation material, manuals or other written or oral instructions and directions
- Use of versions older than 12 months if the Licensed Products have not been updated with the latest Software Updates and Revisions issued by Brüel & Kjær
- Any matters relating to third party software
- Recovery of data or other support due to any cause external to the program

5. EXTENT OF SOFTWARE MAINTENANCE

5.1 The Licensee shall be entitled to get access to Software Updates and Revisions for the Licensed Products covered by the Agreement and listed on the Certificate.

5.2 Brüel & Kjær's distribution of Software Updates and Revisions will not include installation.

6. PRICE

6.1 The Licensee shall pay, in advance, an annual fee. Payment for the first term must be made no later than the Start Date shown on the Certificate. The payment of this fee grants the Licensee the right to the services described in Clauses 2.1 and 5.1.

6.2 The applicable fees are stated in the Brüel & Kjær price list valid at the time of purchase and/or annual payment. Discounts for advance payments, quantity, Renewal Option and multi-year agreements can be applied according to the valid price list at the time of purchase or renewal.

6.3 If the Software Maintenance and Support Agreement is entered into later than the License Agreement, or is terminated as a result of other than a material breach by Brüel & Kjær, and the Licensee, thereafter, desires to reinstate maintenance according to the Software Maintenance and Support Agreement, the Licensee shall pay a reinstatement fee. The reinstatement into the Software Maintenance and Support Agreement is subject to possible coverage limitations and separate software upgrade costs.

6.4 If the Licensee does not fulfil the obligations regarding duration and/or Renewal Option the Licensee has to pay the discounts back plus an administration fee according to the current price policy.

7. LIABILITY AND LIMITATION OF LIABILITY

7.1 The aggregate liability of Brüel & Kjær under the Software Maintenance and Support Agreement for any breach of the Software Maintenance and Support Agreement and for any claims made by the Licensee, whether arising from negligence or breach of contract shall in no event exceed the yearly fee payable under the Software Maintenance and Support Agreement. The Licensee acknowledges and agrees that it is better placed to foresee and quantify its own potential losses than Brüel & Kjær and to insure against such risks.

7.2 In no event shall Brüel & Kjær be liable for any loss resulting from indirect damage or consequential damage (or loss of expected profit, loss of data or their recovery, loss of goodwill or any other similar consequential damage) regardless of whether Brüel & Kjær has been informed about the possibility for such a loss and regardless whether Brüel & Kjær can be blamed for the loss due to negligence or similar behaviour on the part of Brüel & Kjær.

7.3 This limitation of liability is mutually agreed between the parties and reflects the nature of the services delivered hereunder and the extent of the fee paid or payable by the Licensee.

8. DURATION AND TERMINATION

8.1 The Software Maintenance and Support Agreement shall be in force from the Start Date to the Expiry Date as stated on the Certificate.

8.2 The Software Maintenance and Support Agreement will either be automatically renewed on an annual basis or will terminate automatically on the Expiry Date stated on

the Certificate. The Licensee shall at the time of purchase select whether the Agreement shall be automatically renewed or if the Agreement shall have a fixed Expiry Date.

8.3 Agreements that are automatically renewed will be renewed for 12 months unless the Licensee terminates the Agreement by notifying Brüel & Kjær in writing no later than 3 months before the Expiry Date stated on the Certificate.

8.4 Agreements with a fixed Expiry Date will automatically expire on the date stated on the Certificate. Prior to the Expiry Date Brüel & Kjær will notify the Licensee of the expiry. If the Software Maintenance and Support Agreement is not renewed by the Licensee before the Expiry Date of the Agreement, the renewal will be subject to the reinstatement terms as stated in Clause 8.5.

8.5 These Terms and Conditions are only valid when the Software Maintenance and Support Agreement is extended prior to the Expiry Date. Reinstatement into an expired Software Maintenance and Support Agreement is subject to a reinstatement fee, possible coverage limitations and separate software upgrade costs.

9. SPECIAL TERMS FOR UNIVERSITIES AND OTHER HIGHER EDUCATION INSTITUTIONS

9.1 Universities and other Higher Education Institutions ("University Licensees") can, at Brüel & Kjær's sole discretion, be offered special terms as defined in this Clause 9.

9.2 With a valid Software Maintenance and Support Agreement and subject to special payment terms the University Licensees shall be entitled to get access to Software Updates and Revisions issued by Brüel & Kjær, see Clause 9.4. Brüel & Kjær's distribution of Software Updates and Revisions will not include installation.

9.3 University Licensees are not entitled to receive any Technical User Support and Brüel & Kjær has no obligation to provide any form of support, maintenance, error correction, or on-site maintenance under these Terms and Conditions.

9.4 University Licensees shall be entitled to receive relevant Software Updates and Revisions for as long as the licensed software is produced by Brüel & Kjær. University Licensees shall only be entitled to receive Software Updates and Revisions to the licensed software, that are versions compatible with the installed version, and compatible with the current computer environment. Software Updates and Revisions do not include any versions, releases, or future products licensed separately by Brüel & Kjær or the upgrade or change of any hardware.

10. GOVERNING LAW

The Maintenance Agreement and these Terms and Conditions shall be governed by Danish law without regard to its conflict of laws, rules or principles, and the competent court of jurisdiction for any disputes arising out of the Agreement shall be the Maritime and Commercial Court in Copenhagen.