# SUPPORT & MAINTENANCE AGREEMENT

S.T.Japan-Europe GmbH

This S.T.Japan-Europe GmbH ("STJE") Support and Maintenance Agreement (the "Agreement"), including the general terms and conditions is entered into by and between STJE and the customer (the "Customer") with respect to the support and maintenance of STJE Spectra Database products.

The Agreement sets forth the terms and conditions under which STJE is willing to provide support and maintenance to direct licensees of STJE Spectra Database products (i.e. the "Customer"). The Customer has directly purchased the STJE Spectra Database products from STJE. STJE is not obliged to provide support and maintenance to users of the STJE Spectra Database products who did not purchase the Spectra Database directly from STJE. STJE, at its sole discretion, may elect to provide support and maintenance to users of the STJE Spectra Database products who did not purchase the Spectra Database directly from STJE. The Customer hereby agrees that the following terms and conditions shall solely govern the support and maintenance services provided by STJE. By purchasing a STJE Spectra Database product and/or payment of the applicable support fee(s), the Customer hereby agrees to the following terms and conditions, including any attachments or addend hereto:

This Agreement shall only be deemed effective as of the payment date of the Spectra Databases product and/or of the applicable support fee(s), (the "Effective Date").

## 1    DEFINITIONS

Any terms used in this Agreement which are not defined herein shall have the meaning ascribed to them in the License Agreement between the parties.

**(a) "Current Product"** or **"Supported Spectra Databases"** means those Spectra Database products or thereof versions that have been purchased directly from STJE and which have not been discontinued or retired by STJE, and for which STJE offers standard support and maintenance services as described below. A Current Product may become End of Life Product at STJE's sole discretion.

**(b) "End of Life Products"** or **"EOL Products"** means those Spectra Database products or thereof versions which have been discontinued or retired by STJE, and for which STJE no longer offers standard support and maintenance services.

**(c) "Error(s)"** means errors which occur during the installation routine or use of the Spectra Database product in the form provided by STJE that prevent the Spectra Database product from substantially conforming to its published specifications.

**(d) "Fixes"** means additional software, files, information, data, and similar to be integrated with the Spectra Database product to correct an Error or alleviate its effects.

**(e) "Spectra Database product"** means: the STJE Spectra Database product licensed to Customer pursuant to a STJE license agreement and for which the Customer has purchased any Updates, and Upgrades (if applicable) thereto, and any accompanying files, documentation provided by STJE.

**(f) "Supported Configuration"** means the hardware and Spectra Database product environment in which Customer is utilizing the Spectra Database product and for which STJE has agreed to investigate and validate a support request. Such configuration shall consist of: (i) one (1) hardware environment; (ii) the OS and software environment on the computer (iii) the version of the Spectra Database product for which STJE has agreed to provide support and/or maintenance. STJE

**(g) "Update"** means a modification, correction or addition to the Spectra Database product or documentation, including updates and enhancements for Current Products that STJE makes generally available to its commercial customers as a part of support and maintenance under a STJE Spectra Database product support and maintenance agreement without additional charge. The definition of "Update" excludes Upgrades.

**(h) "Upgrade"** means an enhancement or addition to the Spectra Database product other than an Update which STJE does not make generally available to its commercial customers as a part of support and maintenance under a STJE Spectra Database product support and maintenance agreement, but rather is only made commercially available for Current Products subject to payment of a separate incremental license fee, upgrade charge or as part of a subscription license fee.

## 2    MEANS OF SUPPORT AND MAINTENANCE

Subject to the terms and conditions of this Agreement, STJE will provide maintenance and support services ("Services") for the Supported Spectra Databases using the following channels during the Term:

**(a) Telephone Support** - STJE will provide technical telephone support and assistance upon appointment during STJE's business hours excluding public and STJE holidays. Please call +49 (0) 2234 956372 for arranging a support appointment.

**(b) Remote Support** - STJE will provide remote technical support for Supported Spectra Databases during STJE business hours excluding public and STJE holidays. Remote technical support will be provided over a secure Internet connection in most cases. STJE shall not be obligated to provide the Customer remote technical support if the remote access specified in Section 4 of this Agreement is not made available by the Customer.

## 3    DESCRIPTION OF SUPPORT AND MAINTENANCE

Subject to the terms and conditions of this Agreement, STJE will provide the following maintenance and support services ("Services") for Supported Spectra Databases during the Term:

**(a) Installation Issues with Spectra Databases** – The installation routine of the Spectra Database product endeavors to make the installation of Spectra Database product as transparent and decision free as possible. It guides the Customer step-by-step through the process of installing the

Spectra Database product. If nevertheless the Customer encounters issues when initially installing the spectra libraries STJE will assist the Customer in installing the Supported Spectra Databases. STJE, at its sole discretion, may elect to provide service either by email or telephone.

**(b) Transfer of the Supported Spectra Database to a New Computer.** The STJE Spectra Database products are licensed (not sold) on a life-time basis based on the STJE End User License Agreement. The purchased License is linked solely to <u>one</u> computer of the license purchaser, and may not be transferred to a third party or any other system without prior consent of STJE.

The transfer of the Supported Spectra Databases to a new computer is only conditionally possible. Prior to any transfer of the Spectra Databases to a third party or other system the Customer agrees to inform STJE. Further the Customer agrees to provide the obligatory proof that any prior installation of the Spectra Databases has been completely deleted from the initial system.

If the Customer complies with all given conditions, STJE will provide the necessary support to transfer the Spectra Databases.

STJE, at its sole discretion, may elect to provide service in case of changes and updates of the Customer's operating system due to transfer of the Spectra Databases to a new computer.

**(c) Assistance when upgrading OS.** After installing and activating your Spectra Database product, the License Manager saves the activation information on your hard drive. This information may be lost when you are installing a newer operating system or upgrade from a 32-bit OS to a 64-bit version.

STJE, at its sole discretion, may elect to provide service in case of changes and updates of the Customer's operating system.

**(d) Provision and Installation of the Final Access File.** The Spectra Database product is delivered with a time-limited access file, which will expire 60 days after installation. STJE supports the Customer in obtaining and installing the time-unlimited access file for the use of the Spectra Database product.

**(e) Functional Assistance of Supported Spectra Databases** – STJE will answer the Customer's questions and guide the Customer in the use of features and functionality of Supported Spectra Databases excluding questions relating to the Customer's specific instrument/search software.

This service is not a replacement for training associated with the initial installation of Supported Software. If deemed excessive, STJE may deny service at its sole discretion. The Customer can purchase training and customization services at the then-current fees for such services.

**(f) Exceptions**—This Agreement shall not cover: (i) data, software, patches, files and source code not produced or distributed by STJE and/or not bearing the "STJE" brand label; (ii) instruments, supplies and consumables, including without limitation, spectrometers, related accessories and media; (iii) defects that have occurred as a result of changes made to the Supported Spectra Databases by anyone other than STJE (iv) remedial action resulting from an error in the Customer's installation or resulting from the Customer not having complied with STJE documentation material, manuals or other written or oral instructions and directions (v) any matters regarding updates to operating systems, third party software or installation of virus protection software; (vi) service which becomes necessary due to misuse, negligence, improper storage, non-performance of scheduled operator and maintenance items, computer viruses or other causes beyond STJE's reasonable control, or the failure of computer hardware, equipment or programs not covered by this Agreement; (vii) recovery of data or other support due to any cause external to the program or (viii) support for an Error for which a Fix is made available by STJE but is not implemented by the Customer due to Customer's failure to upgrade to the appropriate software or hardware required by STJE.

**(g) Limited Warranty**— STJE's sole and exclusive warranty with respect to the services to be provided hereunder is that such services shall be performed by properly trained employees and that such services shall not violate any applicable law, rule or regulation or to the best of its knowledge any rights of any third parties.

# 4    OBLIGATIONS OF THE CUSTOMER

**(a)** The Customer must provide STJE service personnel access to the Supported Spectra Databases during STJE business hours excluding public and STJE holidays, and shall use best efforts to provide such access after normal business hours as reasonably requested by STJE. Customer acknowledges that STJE will need access to Supported Spectra Databases after the Customer's normal business hours to address certain types of Service issues that cannot be reasonably resolved during the Customer's normal business hours.

**(b)** The Customer must follow operating and maintenance procedures for the Supported Spectra Databases as documented in the Service Manual.

**(c)** The Customer must promptly notify STJE of any Errors for which the Customer is requesting STJE to provide Services hereunder. STJE will then provide the Customer a questionnaire, which the Customer agrees to fill and send back to STJE along with all required information.

**(d)** The Customer agrees to provide STJE with reasonable assistance for diagnosing and correcting Supported Spectra Databases problems by telephone and remote support.

**(e)** The Customer shall use best efforts to provide remote access to its facility. Remote Technical Support requires the Customer to provide a broadband, secure Internet access to Supported Software. Remote technical support functionality may be limited depending on the speed of the Customer's Internet connection. The Customer is responsible for the cost of the broadband connection.

**(f)** STJE remote support services leverage the TeamViewer secure remote access platform to promptly and efficiently diagnose STJ Spectra Database support issues. In certain cases, remote access to the Customer's computer may significantly enhance STJE's ability to diagnose the issue and expedite resolution. In these cases the Customer agrees to install the TeamViewer software and grant STJE access to his computer through the TeamViewer software. Any access by STJE to your computer, database, files, or other electronic equipment is solely for the purpose of diagnosing and attempting to resolve your support issue and will end upon completion of the STJ remote support session.

**(g)** The Customer is responsible for protecting its network environment from viruses and damages resulting from virus infection.

**(h)** The Customer must ensure that all Customer-provided hardware components and third-party software used with Supported Spectra Databases meet STJE's current minimum configuration requirements for running the Supported Spectra Databases.

**(i)** In the event that Fixes require the Customer to upgrade the hardware and/or Customer-provided software or hardware components, any such necessary upgrades shall be the sole responsibility of the Customer.

**(k)** The Customer acknowledges and agrees that its performance of the foregoing obligations is a condition precedent to STJE's obligations under this Agreement. STJE shall not be responsible for any delay caused by the Customer's failure to meet its obligations under this Agreement.

## 5  MAINTENANCE FEES

**(a) Initial Term**—The Maintenance Fee for the Initial Term of 2 years starting from the purchase date of the Spectra Database product is included in the purchase price of the Spectra Database product.

**(b) Support & Service Fee**—The Support & Service Fee after the Initial Term shall be the applicable rates specified in STJE's then-current list price for Support & Service. STJE shall have the right to increase the Support & Service Fee at its sole discretion.

**(c) Additional Spectra Databases**—In the event that the Customer acquires additional Spectra Database licenses after the execution of this Agreement, the parties create an additional agreement setting forth the applicable Support & Service Fee for such additional licenses.

**(d) Additional Services**— In the event that STJE agrees to perform any services that are not included in this Agreement, STJE will invoice the Customer at its then-current Support & Service Fee for such services.

## 6  SUPPORTED SPECTRA DATABASES OBSOLESCENCE

STJE shall provide Services in support of the two most recent Spectra Database versions with a maximum for a period of three (3) years from the release date of the last Spectra Database version.

STJE, at its sole discretion, may elect to extend further such time period for providing the Services.

## 7  TERMINATION

Either party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other party in the event that the other party breaches any of its material obligations hereunder and such breach has not been cured during such thirty-day period. This Agreement shall terminate automatically upon the expiration of the Term if not renewed by the Customer. However, termination or expiration of this Agreement, for any reason whatsoever, will not relieve the Customer from making any payments due to STJE.

## 8  OWNERSHIP OF SERVICE DELIVERABLES

As between the Customer and STJE, STJE shall own, and is hereby assigned, any and all right, title and interest in and to any Fix or other service deliverable provided to the Customer by STJE.

## 9  ASSIGNMENT

Neither party shall assign or otherwise transfer any of its rights under this Agreement without the prior written consent of the other party, and any such attempts without consent shall be void.

## 10  EVENTS BEYOND STJE'S CONTROL

STJE shall not be responsible or liable for any failure to perform hereunder if such failure is caused by acts of God, acts of government, strikes or labor disputes, failures of transportation, fire or flood or other casualty, failures of subcontractors or suppliers, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) that are beyond such party's reasonable control.

## 11  CHOICE OF LAW

This Agreement shall be deemed to have been made within and under the laws of Germany.

## 12  AUTHORIZATION

The Customer acknowledges that, when entering into this Agreement, STJE has relied upon the Customer's representation that the Supported Spectra Databases will be used only by the Customer and only for business purposes. The Customer represents that it has the power to enter into this Agreement and that the person executing this Agreement on behalf of the Customer has been duly authorized and has all required corporate approvals.

## 13  COMPLETE AGREEMENT

This Agreement is the complete agreement of the parties with regard to the subject matter hereof, and supersedes all prior or contemporaneous oral or written proposals, communications, understandings and agreements regarding this subject matter. The waiver of a breach of any provision of this Agreement will not be a waiver of any subsequent breach of the same or any other provision hereof. The terms and conditions contained in any purchase order or other communication sent by the Customer to STJE shall be of no effect.

## 14  LIMITED WARRANTY AND LIMITATION OF LIABILITY

THE STJE Spectra Database are provided "as is" without warranty of any kind, expressed or implied, including, but not limited to warranties of quality, performance, non-infringement, merchantability, or fitness for a particular purpose.

Further STJE does not warrant that the Spectra Database or any related service will always be available. STJE is not responsible for any compatibility conflicts that may occur with 3rd party spectra database or software packages.

Subject to the exceptions listed in the above section and the limitations and disclaimers set forth below, STJE's sole warranty and representation to the Customer is the Services shall be performed in a good and workmanlike manner.

Neither STJE nor STJE's resellers shall be responsible for providing Services to the extent that the issue is caused by (a) Customer's misuse, improper use, mis-configuration, alteration, or damage to the STJE Spectra Database; (b) Customer's use of the STJE Spectra Database with any hardware or software not supplied or supported by STJE; (c) Customer's failure to install an update to the STJE Spectra Database if such update would have resolved the issue; or (d) uses in a manner not in accordance with the Agreement. STJE shall have no responsibility for loss of or damage to Customer's data, regardless of the cause of any such loss or damage.

STJE MAKES NO AND DISCLAIMS ALL OTHER REPRESENTATIONS, GUARANTIES, CONDITIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED OR ARISING UNDER ANY STATUTE, ORDINANCE, COMMERCIAL USAGE OR OTHERWISE, WITH RESPECT TO THE SERVICES PROVIDED HEREIN AND THE PRODUCTS AND MATERIALS PROVIDED IN CONNECTION WITH SUCH SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE MERCHANTABILITY OF THE SERVICE, PRODUCTS AND MATERIALS, OR THEIR FITNESS FOR A PARTICULAR PURPOSE, OR RELATING TO THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT, OR ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES HEREIN. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL STJE BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, OR LIABILITIES TO OTHER PARTIES, HOWEVER CAUSED, WHETHER IN CONTRACT OR TORT, OR BY THE NEGLIGENCE OF THE SERVICE PROVIDER OR OTHERWISE. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT STJE'S LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY IS LIMITED TO THE PERFORMANCE OF THE SERVICES PROVIDED BY THIS AGREEMENT OR THE FAIR MARKET VALUE THEREOF.

STJE DOES NOT WARRANT THAT ANY SOFTWARE PROVIDED IN CONNECTION WITH THE SERVICES WILL OPERATE ERROR-FREE OR UNITERRUPTED, OR THAT THE SERVICES AND THE PRODUCTS AND MATERIALS PROVIDED IN CONNECTION WITH SUCH SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS.

Representations and warranties made by any person, including but not limited to representatives of STJE, which are inconsistent or in conflict with or in addition to the terms of this warranty, shall not be binding upon STJE unless reduced to writing and approved by an expressly authorized officer of STJE.

## 15   ACCEPTANCE

By purchasing STJE product(s) you indicate that you have read and agree the Terms & Conditions, the License Agreement and the Support and Maintenance Agreement.