

Service Agreement

Bayer Full Service Comprehensive Technology Refresh Program (3, 5 or 7 Year) Terms and Conditions (the “Program”)

BACKGROUND

Bayer HealthCare LLC is referred to herein as “Bayer” and agrees to provide services to Customer (referred to herein as you or Customer) under the terms set forth in this Agreement. For purposes of this Agreement, “Injection System(s)” shall mean the Bayer manufactured injection system designated on the applicable Quotation.

MODIFICATIONS

The prices and terms on this Agreement are not subject to verbal changes or other agreements unless approved in writing by the parties.

ACCEPTANCE

Bayer's services are sold only under the terms and conditions stated in this Agreement. This Agreement commences and becomes effective upon Bayer's receipt of a signed copy of this Agreement and Purchase Order Number (“Effective Date”). These terms and conditions shall control in all instances. Any additional terms and conditions in any purchase order or other document issued by either party affecting the service of products covered by this Agreement shall be of no force and effect.

TERM

This Agreement shall begin on the Effective Date and shall continue from the date of the installation (“Installation Date”) of the Injection System purchased by Customer under the Program through the Program length (3, 5 or 7 years) as designated in the associated quotation (the “Term”). For the sake of clarity, in the event multiple injections systems are purchased by Customer in connection with this Program, the Installation Date may differ for each Injection System purchased and, as a result, the subsequent expiration date of this Agreement with respect to each Injection System may also differ.

PAYMENT

Bayer will invoice annually per the payment plan during the Term beginning on the Injection System shipment date and on the anniversary of the Installation Date annually thereafter. All payments are due thirty (30) days from invoice on the total invoiced amount. Unless otherwise agreed to in writing by the parties, payment should be received into Bayer's bank by the due date of the invoice via Electronic Funds Transfer (EFT) transmission only. Please contact Bayer's collection team at Bayercollect@bayer.com for assistance with the EFT enrollment process.

PRICING

Prices are based on minimum order threshold, costs and conditions existing on the date of this Agreement and are valid until the expiration date listed on the quotation. The pricing for services provided pursuant to this Agreement may reflect or be subject to discounts, rebates, or other price reduction programs. Please be advised that Customer is obligated to: (a) fully and accurately disclose the amount of any such discounts, rebates or other price reductions in Customer's cost reports or claims for reimbursement to Medicare, Medicaid, or health care programs requiring such disclosure; and (b) provide such documentation to representatives of the Secretary of the Department of Health and Human Services and state agencies upon request. Unless noted otherwise, the value of any service listed as \$0.00 on this Agreement may constitute a discount that Customer should evaluate when filing such reports. Customer may request additional information from Bayer in order to meet Customer's reporting or disclosure obligations by writing to the address set forth in this Agreement.

SHIPPING

All shipping dates are tentative. Bayer will make reasonable efforts to meet shipping dates. Bayer will inform Customer of the current lead times for the products purchased hereunder and will coordinate with Customer to install such products and provide the related training as further described herein. Equipment typically requires at least twenty (20) business days lead time to enable scheduling of the install and any related training. Bayer will not be liable for its failure to meet any date specified in Customer's Purchase Order. Customer agrees that travel and labor charges may apply if install and training is requested sooner than the typical equipment lead time.

CUSTOMER PROGRAM REQUIREMENTS. In order to participate in the Program, Customer must agree and adhere to the following requirements:

- Customer understands and agrees the Program includes a Term that is required for all Injection Systems covered under this Program as further described herein, and
- If the associated Program quotation provides for the trade-in of Customer's existing injection system (“Trade-In System”), Customer must provide the complete Trade-In System to Bayer within thirty (30) days of the Injection System Installation Date. If Customer does not provide such complete Trade-In System to Bayer, Customer will be invoiced for the value of such Trade-In System listed on the applicable quotation.

PROGRAM INCLUSIONS. The Program includes the following:

- **Hardware.** Customer will receive one (1) or more of the following Injection System(s) as designated on the quotation:

MEDRAD® Centargo CT Injection System

Item	Catalog	Description
Injection System	CENT-SYS-BAT	MEDRAD Centargo CT Injection System
Injection System	CENT-SYS-OCS	MEDRAD Centargo Overhead Counterpoise System (OCS)
Installation	INS CENT	MEDRAD Centargo Installation
Installation	INS CENT CS	MEDRAD Centargo with OCS Installation

MEDRAD® Stellant FLEX CT Injection System

Item	Catalog	Description
Injection System	FLEX PED	MEDRAD Stellant FLEX CT injection System with Pedestal Mount
Injection System	FLEX OCS	MEDRAD Stellant FLEX CT injection System with Overhead Counterpoise System Mount
Installation	INS FLEX PED	MEDRAD Stellant FLEX with Workstation Installation Charge (Excludes CS)
Installation	INS FLEX OCS	MEDRAD Stellant FLEX with OCS and Workstation Installation Charge

MEDRAD® MRXperion MR Injection System

Item	Catalog	Description*
Injection System	MRXP 200	MEDRAD MRXperion MR Injection System
Installation	INS MRXP	MEDRAD MRXperion Installation

*Excluded: Accessories (Penetration Panel Kit)

- **Installation.** The Program includes installation of the Injection System at a mutually agreeable time which is anticipated to occur within sixty (60) days of the Effective Date.
- **Clinical In-Service Training.** For each Injection System covered under the Program, Customer is eligible to receive one (1) clinical training at a time mutually agreeable to the parties. This training may be provided in-person or virtually, as selected by the Customer and deemed appropriate by Bayer.
- **Comprehensive Solution Maintenance & Support Services.** The Injection System(s) shall be covered under the Comprehensive Solution Maintenance & Support Services further described below for the applicable Term.
- **Software Subscription License.** Subject to the software subscription license terms contained herein, Customer may select a software subscription license to: (i) a Bayer curated software package, or (ii) up to three (3) individual software offerings, as identified on the associated quotation (collectively, the "Licensed Software"). Certain Licensed Software selected by Customer may require Customer to sign a separate subscription license agreement with Bayer containing additional terms and conditions. In the event Customer selects a software offering that includes a Bar Code Reader, Bayer will configure such Bar Code Reader at the time of implementation of the Licensed Software and will provide additional configuration support remotely during the Term.
- **Enhanced Clinical Training.** The Plan includes up to sixteen (16) additional hours of tailored clinical training, which includes onsite case support from a Bayer clinical specialist as selected by the Customer and deemed appropriate by Bayer. In the event that Customer is eligible to receive enhanced clinical training under multiple Plans, Customer understands and acknowledges that Customer is limited to receiving a maximum of forty-eight (48) hours of enhance clinical training services in any given calendar year.
- **Lifetime Value Assurance Credit.** Eligibility limited to Programs with 5-Year or 7-Year Terms.
 - At the expiration of the applicable 5 or 7 year Term, if Bayer has a next generation injection system available, and if Customer is interested in purchasing such technology, Bayer will provide Customer a credit in the amount of \$500 per completed Program year which Customer may apply towards an upgrade to such next generation injection system to replace the Injection System covered under this Program. If Customer is not interested in purchasing the next generation injection system, or if such next generation injection system is not available, Customer may apply the credit toward an eligible multi-year service program covering either the applicable Injection System or the next generation injection system (if available).
 - Following the expiration of the applicable Term, Customer shall promptly provide written notice to Bayer of how Customer wishes to apply its earned credits. All credits must be applied within 180 days of the applicable Term expiration. Any earned credits not applied by Customer during such period will expire and no longer be valid.
 - Customer must trade in the Injection System purchased in connection with this Program in order to apply any earned credits towards Bayer's next generation injection system.
 - If Customer terminates the applicable 5 or 7 year Term early for any reason, Customer will be ineligible to receive any Lifetime Value Assurance credits.

COMPREHENSIVE SOLUTION MAINTENANCE AND SUPPORT SERVICES

CORRECTIVE MAINTENANCE SERVICE WARRANTY. While covered under the Program, there will be no charge for any action (parts, labor, or travel) deemed necessary by Bayer to service the Injection System and any associated Bayer compatible Overhead Counterpoise System that is not designated end-of-life, excluding those items listed in the section

below entitled "Warranty Exceptions." Bayer will perform on-site corrective maintenance Monday – Friday (excluding Bayer observed holidays) during the hours of 6:00 a.m. to 9:00 p.m. for MEDRAD® Centargo CT Injection Systems and during the hours of 8:00 a.m. and 5:00 p.m. for all other Injection Systems. Customer shall pay an additional charge for all field labor and travel time for corrective maintenance performed outside the hours stated above at Bayer's then current hourly rates. Customer acknowledges that response times may be extended in certain remote geographic areas including, without limitation, Alaska, Hawaii, North Dakota, South Dakota, Wyoming, Idaho, Montana, Amarillo, TX and El Paso, TX, Puerto Rico, and the Caribbean Islands. Bayer will use commercially reasonable efforts to deliver timely onsite support in such locations. In the event Customer is trading-in a Bayer manufactured Trade-In System and such Trade-In System requires corrective maintenance within sixty (60) from the Effective Date and is not yet classified as end-of-life, Bayer will also provide corrective maintenance to such Trade-In System at no charge during normal working hours, excluding those items listed in the "Warranty Exceptions."

WARRANTY ON REPAIRS. All materials, labor and service provided under this Agreement are warranted to be free of defects in material or workmanship for the longer of the Term with respect to each Injection System purchased hereunder or ninety (90) days from the date such repair was provided.

PREDICTIVE MAINTENANCE (PM) SCHEDULE. Bayer shall perform annual Predictive Maintenance on the Injection System and any associated Bayer compatible Overhead Counterpoise System during the Term (one during each year of coverage excluding the first year) during the hours of 6:00 AM to 9:00 PM, Monday through Friday (PM Hours). Unless otherwise agreed by the parties, Bayer will perform: (i) the first PM within sixty (60) days of the start of the second year of the Term, and (ii) each subsequent PM approximately one (1) year after the first PM. For Predictive Maintenance performed outside of PM Hours at Customer's request, Customer will be charged Bayer's then current hourly rates for field labor and travel time.

LICENSED SOFTWARE

Bayer grants to Customer a non-exclusive, non-transferable, non-assignable, and non-sublicensable subscription license to use such Licensed Software solely in connection with Customer's eligible Injection System and for internal purposes only during the Term. Customer is receiving only a license to use the Licensed Software under this Agreement during the Term, and no title or ownership of such software or any portion thereof is transferred by Bayer to Customer hereunder. All rights, title and interest in and to the Licensed Software are and will remain with Bayer. Customer shall not copy, translate, disassemble, or decompile nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Licensed Software. Customer is not permitted to modify or make derivative works of the Licensed Software and ownership of any unauthorized modification or derivative work shall vest in Bayer. All rights not expressly granted to Customer herein are reserved by Bayer. For the avoidance of doubt, Customer can exercise its license rights hereunder through its employees, agents, contractors, consultants and representatives who perform services for Customer in its ordinary course of business ("Authorized Users") provided, that Customer will be responsible for each such Authorized User's use of the Licensed Software and compliance with the terms of this Agreement. Upon termination or expiration of this Agreement or any breach of these license terms by Customer, Customer shall immediately cease use of the Licensed Software and shall be deinstalled by Bayer.

SOFTWARE SUBSCRIPTION SUPPORT

1. During the applicable Term of this Agreement, Bayer will provide the following remote software support and maintenance services to the Licensed Software:

1.1 Updates to the Licensed Software which will be provided during normal business hours (8:00 a.m. - 5:00 p.m. Local Time); and

1.2. Services of a qualified representative of Bayer to attempt to correct (which may consist of providing a suitable fix or workaround) ("Error Correction") any non-conformance of the Licensed Software with the specifications (each an "Error") which has been brought to the prompt attention of Bayer by Customer during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Bayer observed holidays. Customer will co-operate with Bayer in providing information about the Error, a suitably qualified contact person at Customer site who is knowledgeable about the Error and available for discussions, and remote access (on-site, if necessary for an additional fee) to the designated site as required by Bayer to provide such services.

2. Bayer will provide Customer with telephone access, as outlined herein to technical experts for technical assistance ("Assistance") and Error Correction. Customer will use commercially reasonable efforts to submit and track all support requests through its project coordinator or another qualified individual who is reasonably knowledgeable in the use of the Licensed Software and is capable of responding to general inquiries from Authorized Users. Customer must promptly permit Bayer to install, each Update provided by Bayer. Bayer shall only provide support for the Licensed Software if the latest Update has been installed. Bayer will provide all support via remote access to the applicable Injection System.

3. For purposes of these terms, "Update" means a new update, modification, enhancement or correction to the Licensed Software or documentation that improves the performance of the Licensed Software and that is generally made available by Bayer from time to time at no additional charge to its licensees receiving maintenance and support. The parties agree that "Update" will not include any new commercially available product, which will possess a discernible and significant difference in intended use and functionality when compared to the Licensed Software and that Bayer licenses and price separately from the Licensed Software or for which Bayer generally charges additional fees to its licensees receiving maintenance and support. Bayer may, in its sole and absolute discretion, include in Updates or other products certain features or functionalities suggested or requested by or on behalf of Customer at any time, including any customizations or modifications that may be required during the installation of the Licensed Software that Bayer agrees to perform, and Bayer

will exclusively own all such features and functionality and may provide them to other licensees with or without charge, without any compensation due to Customer, unless otherwise specifically agreed in writing between the parties.

4. For the purposes of providing, installing and configuring the Licensed Software, or providing support hereunder Bayer will use our remote connectivity platform. This platform will enable an encrypted connection between a Bayer support representative and a customer device hosting the Licensed Software. Bayer will follow a defined process for site access and interaction with the applicable Injection System as agreed to with Customer when providing support.

5. Software Subscription Support does not include:

5.1 Errors resulting from the use of Licensed Software other than at the designated sites (if applicable) or otherwise in violation of the License Software restrictions or not in accordance with specifications;

5.2 Errors resulting from any modifications or alterations made to the Licensed Software by any party other than Bayer or an authorized representative of Bayer; or

5.3 Errors attributable to failure or errors in the customer's environment or failure, errors or use of other third party software or hardware not supplied by Bayer hereunder or network, power or connectivity outages; or

5.4 Accident, neglect, or misuse of the Licensed Software or failure by Customer to maintain its environment any other causes beyond Bayer's control.

6. In the event Customer requests any service that is not a part of the Software Subscription Support, including any problem arising from the exclusions noted above, Bayer may provide such service, at its discretion, at its standard hourly rate.

7. Third Party Software. For purposes of this Agreement, the term Third Party Software shall mean all third party software provided to Customer by Bayer to enable the Licensed Software to perform as intended. The Third Party Software will be provided on an "as is" basis and Bayer does not warrant that the Third Party Software will be error free or operate without interruption.

8. Bayer does not grant access to the OS or underlying software that powers the Certegra® Workstations or Workflow Hub.

CANCELLATION OF AGREEMENT AND SECURED EQUIPMENT

Bayer may terminate this Agreement by providing written notice to Customer if Customer has not made payment by the due date or if Customer does not give Bayer access to the equipment at the scheduled time for service. Either party may cancel this Agreement at any time by giving sixty (60) days prior written notice to the other party.

Notwithstanding the foregoing, if Customer terminates this Agreement prior to the expiration of the applicable Term in connection with the:

(i) **3-Year Program**, then Customer will be invoiced for all remaining fees owed under this Agreement; or

(ii) **5-Year or 7-Year Program**; then

(a) if such termination is for the purpose of upgrading the Injection System provided hereunder to Bayer's next generation injection system, Customer will be invoiced for any remaining fees due hereunder through Year 4 of the Term for the 5-Year Program or through Year 5 of the Term for the 7-Year Program. Customer may apply the Lifetime Value Assurance credits earned through the date of termination towards such upgrade to the next generation injection system; or

(b) if such termination is for any reason other than to upgrade to Bayer's next generation injection system, Customer will be ineligible to receive any lifetime value assurance credits and will be invoiced for: (1) Customer's current contract pricing for the Injection System minus any fees already paid under this Agreement, or (2) all remaining fees owed under this Agreement, whichever is less.

Furthermore, Customer grants Bayer a purchase money security interest in the Injection System(s) (the "Equipment") purchased hereunder and all attachments, accessories, replacements of and additions to the Equipment and any proceeds, accounts, monies or other rights arising out of the sale, lease or other disposition of the Equipment, including any proceeds from the destruction or loss of the Equipment, including any rights to insurance proceeds related to the Equipment, as security for its obligations hereunder and will execute any documents required, including UCC filing statements, to enable Bayer to perfect its purchase money security interest. Customer authorizes Bayer to sign and record Uniform Commercial Code ("UCC") financing statements and other documents that Bayer deems necessary to confirm Bayer's interest in the Equipment. As a precaution, in case this transaction is deemed to be an agreement intended for security, Customer grants to Bayer a first priority security interest in the Equipment (including any and all replacements, substitutions, additions, attachments and proceeds).

WARRANTY EXCLUSIONS

EXCEPT AS OTHERWISE PROVIDED HEREIN, BAYER EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. CUSTOMER FURTHER ACKNOWLEDGES THAT THE LICENSED SOFTWARE AND THE SOFTWARE SUBSCRIPTION SUPPORT SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS AND BAYER DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION. CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING WHETHER THE LICENSED SOFTWARE WILL ACHIEVE THE RESULTS IT DESIRES.

THE MAXIMUM TOTAL LIABILITY OF BAYER FOR ANY CLAIM UNDER OR RELATING TO THE AGREEMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION CLAIMS FOR BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO DIRECT, PROVABLE DAMAGES NOT TO EXCEED THE AMOUNTS PAID HEREUNDER BY CUSTOMER TO BAYER FOR THE PRODUCTS OR SERVICES THAT IS THE SUBJECT OF THE APPLICABLE CLAIM. IN NO EVENT WILL BAYER BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF REVENUE OR BUSINESS PROFITS, BUSINESS INTERRUPTION, DELAY OR INABILITY TO USE THE LICENSED SOFTWARE, LOSS OR CORRUPTION OF DATA OR INFORMATION, MALFUNCTION OR SHUTDOWN, OR ANY OTHER COMMERCIAL LOSS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSIONS ON LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS.

The Licensed Software does not provide medical advice and is not intended to be a substitute for professional medical judgment, diagnosis or treatment.

The remedies provided in the Agreement are the sole and exclusive remedies of the parties and shall apply even if Customer's remedies under this Agreement fail of their essential purpose. Customer agrees that any breach by it of any restrictions on use or confidentiality obligations contained in the Agreement may cause serious and irreparable harm to Bayer and that in the event of such a breach by Customer, Bayer will be entitled to seek injunctive relief as well as any and all other remedies available at law or in equity.

WARRANTY EXCEPTIONS

This Agreement does not cover:

- a) Equipment that is determined by Bayer to be non-functional at the time of initial service or annual Predictive Maintenance and has become non-functional due solely to Customer's negligence. In such a case, Bayer reserves the right to charge an additional fee to cover labor, travel, and parts for any equipment which is non-functional at the time of the initial service or annual Predictive Maintenance.
- b) Products that have been modified, improperly installed, or improperly interfaced with other equipment. These conditions may jeopardize functionality, reliability, or operator and patient safety. Therefore, any claim caused by these conditions shall not be covered by this warranty and Bayer is relieved from any further obligation. Bayer must review and authorize all modifications and repairs. This service may be obtained by contacting the Bayer Service Department.
- c) Damage, malfunction, or incorrect injections resulting from using non-Bayer syringes or non-approved accessories (i.e., leakage, pressure, flow rates, or volumes not agreeing with injector settings, etc.). The use of accessories in connection with the equipment may jeopardize functionality, reliability or operator and patient safety. Therefore, any claim caused by the use of non-Bayer or non-approved accessories (such as non-Bayer disposables or in the case of any PET/CT product, the use of vials or vial shields that are not approved by Bayer) shall not be covered by this warranty and Bayer is relieved from any further obligation.
- d) Malfunction or damage due to abuse, misuse or spilling of contrast, blood or other substances in or on the unit.
- e) Malfunction or damage due to operator error, including failing to follow specific provisions of the product operation manual.
- f) Failures caused by network outages or improper network configuration.
- g) Damage by fire, floods or other disasters commonly defined as "Acts of God".
- h) Any damage to the Bar Code Reader due to abuse, misuse or negligence by the Customer.
- i) Any ceiling or wall support structure used to mount or support an Injector Head Counterpoise System improper installation of such structure (by anyone other than Bayer) and any failure of such to meet Bayer's requirements in its terms and manual (such as the requirements for level and plumb and/or loading).

In all of these out of warranty instances, Bayer will provide service to Customer's product, at Customer's request. However, Customer must agree to pay Bayer for required labor, either in-house or on-site (including all travel time), and any material(s) required at Bayer's then current field labor and travel rates.

REMOTE CONNECTIVITY AND TECHNICAL SUPPORT SERVICE

Bayer will provide ongoing remote diagnostics and technical support on the products and/or software license features covered under this Agreement using Bayer's proprietary hardware and software. Customer understands and agrees that maintaining a consistent connection to Bayer's remote access server is required to receive the support services provided in connection with this Agreement, including remote software configuration, remote installation of cybersecurity patches, and remote diagnostics and technical support. In the event the system is disconnected from the remote access server, Customer will make reasonable efforts to re-establish connection within five (5) business days. Bayer will also provide standalone cybersecurity patches for products under this Agreement if Bayer's assessment of third-party vulnerabilities determines that there is an uncontrolled or unacceptable risk that requires a standalone patch. If the risk is considered controlled and acceptable based on existing security controls, patches for products under this Agreement if Bayer's assessment of third-party vulnerabilities determines that there is an uncontrolled or unacceptable risk that requires a standalone patch. If the risk is considered controlled and acceptable based on existing security controls, patches will be incorporated into the next scheduled software release. If the system is taken offline by Customer, Bayer will cease providing remote diagnostic services

and associated technical support. In the event Customer is not connected to Bayer's remote access server and, as a result, requires onsite technical service, Customer will be invoiced at Bayer's current hourly travel and labor rates.

GENERAL INDEMNITY

Bayer will indemnify, defend and hold Customer harmless from any claim by a third party against Customer for any liability, loss, expense, cost, claim or judgment, including attorney's fees for property damage or personal injury or death where the services provided hereunder are alleged to have caused or contributed to the damage, injury, or death, provided that this indemnification does not extend to injuries damages or death to the extent caused by the negligence, reckless disregard or intentional acts of Customer or any third party.

INFRINGEMENT INDEMNITY

Bayer will defend Customer from any claim by a third party that any Licensed Software furnished and used in accordance with this Agreement infringes a third party's valid United States patent, trademark or copyright provided such alleged infringement does not result from (a) any modification of the Licensed Software not made by Bayer, or (b) use of the Licensed Software in combination with any software, hardware or data not provided by or approved in writing by Bayer, or (c) failure of Customer to install and use all updates provided by Bayer and further provided that Customer (i) gives Bayer prompt written notice of such claim; (ii) allows Bayer to direct the defense and settlement of the claim; and (iii) cooperates with Bayer as necessary for defense and settlement of the claim. In the event the Licensed Software is held by a court of competent jurisdiction to be, or is believed by Bayer to be, infringing, Bayer will have the option, at its expense, to: (x) obtain for Customer the right to continue using the Licensed Software; (y) replace or modify the Licensed Software so that it becomes non-infringing; or (z) terminate the license and no additional fees will be due. THE INDEMNITY AND REMEDIES PROVIDED IN THIS SECTION CONSTITUTE BAYER'S ENTIRE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY REGARDING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

FORCE MAJEURE

Neither party will be responsible for delays or non-performance directly or indirectly caused by any acts of God, fire, explosion, flood, war, accident, action by governmental authority, quarantine, global or national health issues, shortage of or inability to procure supplies and raw materials, delays in transportation, work stoppage, court order, and other causes beyond a party's reasonable control.

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and transferees. This Agreement may not be assigned, transferred or novated, in full or in part, by either party to any other party without the prior written consent of the other party hereto; provided, however, that Bayer may assign, transfer or novate, in full or in part, its rights and obligations hereunder without the prior written consent of the other party to (a) any affiliated entity, or (b) to a successor or transferee, whether by merger, consolidation, purchase or otherwise, of the business or assets of Bayer, or parts thereof, to which the subject matter of this agreement relates.

DEFAULT

Bayer shall not be required to perform its obligations under this Agreement if Customer has defaulted (e.g., failed to pay) under this Agreement.

HIPAA

Bayer represents that, unless otherwise noted, it is not a Business Associate as defined in the Health Insurance Portability and Accountability Act ("HIPAA"). The functions Bayer is required to perform hereunder do not require the use or disclosure of Protected Health Information ("PHI"). To the extent any disclosure of PHI does occur, it is incidental and covered under the incidental disclosure rule found in 45 CFR 164.502(a)(1). In addition, to the extent any such incidental disclosure does occur, Bayer agrees to keep all such information confidential.

RECORDS

If the value or cost of products or services rendered to Customer by Bayer or by an organization related to Bayer is Ten Thousand Dollars (\$10,000) or more over any twelve (12) month period during the Term, Bayer and Customer agree that until the expiration of four (4) years after the furnishing of such services, Bayer and Customer shall, upon written request, make available to the Secretary of the Department of Health and Human Services of the United States (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement and such books, documents and records as may be necessary to certify the nature and extent of the costs of such services. This provision shall also apply to any subcontractors Bayer hires to perform the services hereunder.

DEBARMENT

Bayer represents that neither Bayer nor any employee of Bayer: (a) is debarred by the FDA pursuant to its authority under Sections 306(a) and (b) of the U.S. Food, Drug, and Cosmetic Act (21 U.S.C. § 335(a)), or (b) to the best of its knowledge, is the subject of any investigation or proceeding which may result in debarment by the FDA. Neither Bayer nor any employee of Bayer is: (i) included in the List of Excluded Individuals/Entities (maintained by the U.S. Department of Health and Human Services Office of Inspector General) or the List of Parties Excluded from Federal Procurement and Nonprocurement maintained by the U.S. General Services Administration, or (ii) to the best of its knowledge, is the subject of any investigation or proceeding which may result in inclusion in any such list.