

# Bayer Software Solution Plan(s)

## End User Customer Terms and Conditions (“Agreement”)

### BACKGROUND

Bayer HealthCare, LLC (“Bayer”) is contracted to provide certain software and software support service directly to end user customer (“Customer” or “you”) in connection with a Bayer software solution plan including, without limitation, the Essential Software Solution Plan, Full Service Comprehensive Software Solution Plan and Technology Refresh Program(s) (collectively “Software Solution Plan”), purchased from Bayer by Customer’s contract partner (e.g. Customer’s OEM or distributor) (hereinafter referred to as “Purchaser”). For purposes of this Agreement, “Injection System(s)” shall mean Customer’s Bayer manufactured injection system on which Licensed Software (as defined below) is installed and covered under an applicable Software Solution Plan.

Bayer's software and services are licensed to Customer only under the terms and conditions stated in this Agreement. These terms and conditions shall control in all instances. Any additional terms and conditions in any other document issued by the Purchaser or Customer purporting to affect the service of products covered by this Agreement shall be of no force and effect. BY HAVING THE SOFTWARE PRODUCTS INSTALLED AND USING THE SOFTWARE PRODUCTS PROVIDED HEREUNDER, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE AND NOTIFY BAYER IMMEDIATELY.

### SOFTWARE SUBSCRIPTION LICENSE

Subject to the software subscription license terms contained herein and in connection with the applicable Software Solution Plan, Customer may receive a software subscription license to: (i) a Bayer curated software package, or (ii) certain individual Bayer software offerings (collectively, the “Licensed Software”). Certain Licensed Software selected by Customer may require such 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 of the applicable Software Solution Plan. In the event Bayer must come onsite at Customer’s facility to provide such additional configuration support, Customer shall be billed Bayer’s then current hourly rates for field labor and travel time.

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 of the applicable Software Solution Plan. Customer shall receive only a license to use the Licensed Software under such Software Solution Plan 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 herein. Upon termination or expiration of the Software Solution Plan or any breach of these license terms by Customer, Customer shall immediately cease use of the Licensed Software and such Licensed Software shall be deinstalled by Bayer. Customer agrees that any breach by it of these restrictions on use 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.

### SOFTWARE SUBSCRIPTION SUPPORT

1. During the term of the applicable Software Solution Plan, 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 the Purchaser and/or 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's site who is knowledgeable about the Error and available for discussions, and remote access (or 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. The Purchaser and/or 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 functionality 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;

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 services, 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 the Software Solution Plan, 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<sup>®</sup> Workstations or Workflow Hub.

## **DISCLAIMER OF WARRANTIES**

CUSTOMER ACKNOWLEDGES THAT THE LICENSED SOFTWARE AND ALL SERVICES PROVIDED TO CUSTOMERS IN CONNECTION WITH A SOFTWARE SOLUTION PLAN ARE PROVIDED ON AN "AS IS" BASIS AND BAYER DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR RELATED 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. BAYER MAKES NO OTHER WARRANTIES TO CUSTOMER, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. LICENSED SOFTWARE DOES NOT PROVIDE MEDICAL ADVICE AND IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL JUDGMENT, DIAGNOSIS OR TREATMENT.

## **REMOTE CONNECTIVITY AND TECHNICAL SUPPORT SERVICES**

Bayer will provide ongoing remote diagnostics and technical support on the software license features covered under the applicable Software Solution Plan 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 the Software Solution Plan, including remote software configuration, remote installation of cybersecurity patches, and remote diagnostics and technical support. In the event the Injection System is disconnected from the remote access server, Customer is required to make reasonable efforts to re-establish connection within five (5) business days. Bayer will also provide standalone cybersecurity patches for products under the Software Solution Plan 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 Injection 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 then current hourly rates for field labor and travel rates.

## **CANCELLATION OR EXPIRATION OF SOFTWARE SOLUTION PLAN**

If the applicable Software Solution Plan is terminated early or expires and Customer does not enter into a new license for the Licensed Software, Bayer will remotely deactivate Customer's access to such Licensed Software. In the event Customer disconnects its remote access prior to the deactivation of the Licensed Software, Bayer will be required to deactivate the license onsite at Customer's facility and Customer will be charged an additional fee.

## **THIRD-PARTY PROVIDER DISCLAIMER AND CLAIMS RESOLUTION**

Customer acknowledges and agrees that its contractual relationship is solely with the Purchaser, and not with Bayer. As such, any issues, claims, complaints, or disputes related to the products or services matters (collectively, "Claims"), must be addressed directly with the Purchaser. Bayer does not have, and shall not be deemed to have, any direct obligations to Customer, nor shall Bayer be liable for any Claims Customer may have in connection with the applicable Software Solution Plan. Bayer makes no warranties, representations, or guarantees to Customer, and disclaims any liability arising from or related to the products and services provided, except to the extent expressly agreed to in writing between Bayer and the Purchaser.