



# SOFTWARE SUPPORT AND MAINTENANCE SERVICES TERMS

## 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 and any associated Quote(s).

## 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 upon Bayer's receipt of a signed copy of this Agreement and Purchase Order Number. 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. If you do not communicate your objection to these terms and conditions in writing and within a reasonable time, or if you accept the goods covered by this Agreement, you will be deemed to have accepted these terms and conditions and they will control in all instances.

## SOFTWARE SUPPORT AND MAINTENANCE

Commencing upon the expiration of the Initial Maintenance Period and continuing for the term identified in the Quote, Bayer will provide the Maintenance and Support Services set forth in these terms, subject to Customer's payment of the Annual Maintenance Fees set forth in the Quote. Customer shall submit all support requests directly to Bayer by calling 1-800-633-7237 or other means available through VirtualCare™ Remote Support. Customer must promptly install, or permit Bayer to install, each Update, as defined in these terms, provided by Bayer. Bayer will provide all support via remote access to Customer's system. If Customer requires that Bayer provide on-site support, Customer will pay for Bayer's reasonable travel and labor expenses based on current hourly rates plus any applicable premiums.

## FEES

In consideration for the Software Support and Maintenance Services, Customer will pay Bayer the Annual Maintenance Fees set forth on the Quote, all in accordance with the payment terms set out therein. All payments due hereunder are exclusive of all taxes and duties, which taxes and duties will be the responsibility of Customer.

## LIMITATIONS ON LIABILITY

THE MAXIMUM TOTAL LIABILITY OF BAYER FOR ANY CLAIM UNDER OR RELATING TO THE SUPPORT AND MAINTENANCE SERVICES, 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. IN NO EVENT WILL BAYER BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR ANY OTHER COMMERCIAL LOSS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The remedies provided in these terms are the sole and exclusive remedies of the parties.

## INDEMNITY

Bayer will indemnify, defend and hold you harmless from any claim by a third party against you for any liability, loss, expense, cost, claim or judgment, including attorney's fees for property damage or personal injury or death where the services 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 you or any third party.

## CONFIDENTIAL INFORMATION

The parties may each have access to computer programs, product plans, flow charts, marketing and sales information, customer and supplier lists, patient information, know-how, trade secrets, pricing, product data and other confidential information owned by or entrusted to the other party ("Confidential Information"). Each of the parties agrees: (a) to use commercially reasonable efforts to protect the Confidential Information of the other party from unauthorized use or disclosure and to use at least the same degree of care with regard thereto as it uses to protect its own confidential information of a like nature; (b) to use and reproduce the Confidential Information of the other party only as permitted under these terms as needed to perform its duties hereunder; and (c) not to disclose or otherwise permit access to the Confidential Information of the other party to any third party, without the other party's prior written consent. Information will not be considered to be Confidential Information if it: (i) was known by one party prior to its receipt from the other, (ii) is or becomes public knowledge without the fault of the recipient, (iii) is rightfully received by the recipient from a source other than a party, or (iv) is disclosed with the written consent of the other party.



Notwithstanding the foregoing, a party may disclose the other's Confidential Information to Authorized Users, the employees and contractors of such party or its affiliates and its legal and accounting advisors who require the Confidential Information in connection with the party's rights and obligations and who are advised of and are legally or contractually bound to use and disclosure limitations comparable to those imposed hereunder.

Bayer may create, use and disclose de-identified Confidential Information for any purpose during and after the term of this Agreement if the de-identification of any patient information is in compliance with 45 CFR §164.502(d) and any such de-identified patient information meets the standards and implementation specifications for de-identification under 45 CFR §164.514(a) and (b), or such regulations as they may be amended from time to time. Any such de-identified information shall not constitute PHI and shall not be subject to the terms and conditions of any Business Associate Agreement regarding PHI.

Customer agrees that any breach by it of this confidentiality provision may cause serious and irreparable harm to Bayer and that in the event of such a breach by Customer, Bayer will be entitled to injunctive relief as well as any and all other remedies available at law or in equity.

A party may disclose Confidential Information as required by law (including the rules and regulations of any national stock exchange on which such party's or its affiliate's securities are or may be traded), provided that such party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and assists such other party upon request in seeking relief from or limiting the disclosure.

### **TERM AND RENEWAL**

The services will be provided during the initial term as outlined in the Quote.

### **EARLY TERMINATION**

Either party may terminate the services before the end of the initial term or any renewal thereof by written notice to the other party, if: (a) the other party fails to cure any material breach within a thirty (30) day period after having received a written notice from the non-breaching party detailing such breach; (b) the other party admits in writing its inability to pay its debts generally as they come due, commits an act of bankruptcy or insolvency, or files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors or takes any action in furtherance of any of the foregoing; (c) an involuntary petition is filed under any bankruptcy statute against the other party or a receiver or trustee is appointed to take possession of the properties of such other party unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment; or (d) the other party ceases or threatens to cease carrying on business in its normal course or transfers all or substantially all of its business or assets (whether voluntarily or involuntarily).

### **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.

### **ASSIGNMENT**

This Agreement and the services provided hereunder may not be assigned by either party without the prior written consent of the other, such consent not to be unreasonably withheld, except that Bayer may assign its obligations to an affiliate or successor in interest without prior written consent. The rights and obligations hereunder will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

### **USE OF NAME**

Neither party shall use the name or any logo or trademark of the other and shall not make any public announcement relating to this Agreement without the other party's prior written approval. Notwithstanding the above, Bayer may use Customer's name and the corresponding logo or trademark solely in connection with a representative list of customers.

### **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 of this Agreement, 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.

## **ADDITIONAL TERMS**

The services provided hereunder in consideration of the fees as set forth in the Quote do not include services relating to any training, data conversion, customization, development or other activities not specifically described in the Quote which shall be quoted and billed separately.

## **SUPPORT POLICIES AND RESPONSE TIMES**

1. Maintenance and Support. During the Initial Maintenance Period and for the term of this Agreement, Bayer will provide:
  - 1.1 Updates made to the Licensed Software will be provided during normal business hours (8:00AM-5:00PM 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. 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 access (remote or on-site, if necessary) 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 Licensor to install, each Update provided by Licensor. Bayer shall only provide support for the Licensed Software if the latest Update has been installed. Licensor will provide all support via remote access to Customer's 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 VirtualCare, a PTC-based remote support agent. VirtualCare will provide 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 Customer's systems as agreed to with Customer when providing Support.
5. Maintenance and Support Services do not include:
  - 5.1 Errors resulting from the use of Licensed Software other than at the Designated Sites or otherwise in violation of the License restrictions or not in accordance with Specifications;
  - 5.2 Errors resulting from any modifications or alterations made to the Licensed Software by any Person 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 Maintenance and 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 this Schedule, 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.



## SERVICE RESPONSE TIMES

Bayer will provide Customer with telephone and/or online access to technical experts for technical assistance (“Assistance”) and Errors as follows:

Priority	Hours Available	Response Times
Critical Errors	24x7	Within 2-4 hours
All other errors	8am to 5pm, Eastern time, during business days	Within one – two business days

“Critical Error” means an Error which results in the Licensed Software being entirely inoperable.

Bayer will provide a telephone number as a single point-of-contact for support. Customer will call this number to report all requests for Error Correction. Error Correction, other than Critical Errors can also be reported by e-mail.

Remote access via VirtualCARE is required on all Certegra Workstations. VirtualCARE will utilize agent included in the Licensed Software to establish outbound connectivity to Bayer Central Support servers and facilitate inbound remote connectivity sessions. If VirtualCARE cannot be utilized to facilitate the implementation of Licensed Software, a change order may be required and additional implementation services fees may apply.

Updates, security updates, bug fixes and patches for all Licensed Software and Third Party Software provided by Bayer will be installed as part of Bayer’s normal release cycle. Customer will make no changes to Bayer or the Third Party Software until after consultation with, and upon approval by, Bayer.

The maintenance and support outlined herein is for the Licensed Software only. Any related hardware support must be purchased separately.