



# Bayer Product Terms and Conditions

## GROUP PURCHASING AGREEMENT

If Customer is a member of a group purchasing organization ("GPO") who has a contract with Bayer covering the products and services being purchased or licensed by Customer, the terms of that GPO Agreement will supersede the terms herein.

**The following terms and conditions will not apply to the license of Bayer's Radiation Dose Management software (sometimes referred to as "RDM") and Contrast Dose Management software (sometimes referred to as "CDM"). A separate license agreement will be provided and will govern the license of RDM and CDM.**

## BACKGROUND

Bayer Healthcare LLC is referred to herein as "Bayer" and agrees to provide products and services to Customer (referred to as Customer or you) under the terms set forth in this Agreement.

## 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 products and services are sold only under the terms and conditions stated on this quotation. Acceptance of any Purchase Order is expressly and exclusively made conditional on your assent to these terms and conditions. Any different or additional terms and conditions in any purchase order or other document used by either party affecting the products or services covered by this Quote shall be of no force and effect. Bayer expressly objects to and rejects all inconsistent or additional terms, conditions and limitations contained on any of your forms or other writings. 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 Quote, you will be deemed to have accepted these terms and conditions and they will control in all instances. If the products include embedded software or if you are purchasing software, BY HAVING THE SOFTWARE INSTALLED AND USING THE SOFTWARE PURCHASED HEREUNDER, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS QUOTE, DO NOT INSTALL OR USE THE SOFTWARE AND NOTIFY BAYER IMMEDIATELY.

## PRICING

Prices are based on costs and conditions existing on the date of this Quote and valid until the expiration date listed on this Quote. The pricing for products and services provided pursuant to this Quote may reflect or be subject to discounts, rebates, or other price reduction programs. Please be advised that you are obligated to: (a) fully and accurately disclose the amount of any such discounts, rebates, or other price reductions in your 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 product listed as \$0.00 on this Quote may constitute a discount that you should evaluate when filing such reports. You may request additional information from Bayer in order to meet your reporting or disclosure obligations, by writing to the address set forth in this Quote.

All payments are due net thirty (30) days on the total invoiced amount. In some instances a thirty percent (30%) pre-payment for capital equipment orders may be required. Bayer must approve any payment terms other than net thirty (30) days. **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](mailto:Bayercollect@bayer.com) for assistance with the EFT enrollment process.

If your Quote contains a discount ("Trade Credit") on the device purchase price resulting from the trade-in of an already purchased medical device ("Trade-In Device"), you agree to comply with Bayer's trade-in process as provided to you by your Bayer Sales Representative. Bayer's trade-in process includes the return of the Trade-In Device to Bayer within thirty (30) days of installation of the device purchased under the Quote. You agree that if you fail to comply with Bayer's trade-in process you may be required to pay Bayer an amount equal to the Trade Credit you received under the Quote.

## SHIPPING

All shipping dates are tentative. Bayer will make every reasonable effort to meet shipping dates referenced in this Quote for disposable products. 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.

## INSTALLATION AND INITIAL CLINICAL TRAINING

The cost of installation is not included in the product price and is your responsibility unless otherwise stated. For details

on equipment installation, you should consult with your Bayer Sales Representative or refer to your Products Manual, which is included with your equipment.

If this Quote includes installation of Bayer equipment products Bayer will contact you to schedule installation at a mutually convenient time. If this Quote includes installation of an overhead counterpoise system (OCS) it is your responsibility to ensure a suitable mounting location for the system. The counterpoise ceiling plate is required to be installed prior to Bayer installation of the counterpoise system and installed in accordance with the specifications listed in the installation manual. The OCS ceiling plate should always be installed by a qualified Structural Engineer and/or Architect. In addition, if applicable building codes require the use of a conduit, you are responsible for ensuring that a conduit is available prior to Bayer's installation.

If this Quote includes a Medrad® MRXperion MR Injection System, installation will require a standard power outlet in the scan room, or authorization to install a penetration panel filter kit through the penetration panel. Prior to such install Customer must ensure that a hole is cut in the penetration panel, per Bayer specifications, for the requisite filter kit to be installed.

Included in your equipment purchase is initial clinical training. This training may be provided in person or virtually as deemed appropriate by Bayer.

## LICENSE

If the products or any enhancements provided in connection with a service agreement includes embedded software, or if you are purchasing software, unless otherwise agreed to by the parties, Bayer grants to you a non-exclusive license to use such software provided by Bayer, solely in connection with, or to operate, the products. The license for purchased software may be transferred no more than one (1) time to modality specific equipment purchased from Bayer or upgraded by Bayer depending on the age or version of the software. Notice of Customer's request to transfer an existing license must be given in writing to Bayer prior to the license transfer process and is subject to Bayer's consent; in the event a transfer is approved, additional transfer fees may apply. Use of the software for any other purpose is strictly prohibited. This license is effective on the date you begin using the products and software and will continue in effect unless you return the products or software or if the license is terminated because you breach any provision of these terms. Upon termination you shall immediately cease use of all software and shall return the products and software to Bayer. The software copyright is owned by Bayer and is protected by United States copyright laws and international treaty provisions. Bayer does not transfer title to the software to you, but retains the rights to make and license the use of all copies. You 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 software. You are not permitted to modify or make derivative works of the software and ownership of any unauthorized modification or derivative work shall vest in Bayer.

## PRODUCT WARRANTY

**NEW PRODUCTS:** Bayer warrants that all new Bayer products are free from defects in workmanship or material under proper, normal use and service for a period of one year (12 months) from shipment, unless a longer period is provided on the warranty with the products, or as otherwise provided herein.

**REFURBISHED PRODUCTS:** Bayer warrants that all refurbished Bayer products shall perform in accordance with the documentation provided, under proper, normal use and service for a period of the shorter of: (a) 90 days from installation; or (b) six months from shipment, unless a longer period is provided on the warranty with the products, or as otherwise provided herein.

**REMANUFACTURED PRODUCTS:** Bayer warrants that all remanufactured products purchased from Bayer shall perform in accordance with documentation provided, under proper, normal use and service for a period of one year (12 months) from shipment, unless otherwise provided herein.

**DISPOSABLE PRODUCTS:** If this Quote includes disposable products, Bayer's warranty shall be limited to repair or replacement of any defective disposable product upon receipt of the defective product and a Bayer Return Goods Authorization. You acknowledge that the disposables and the equipment are a system and your actions regarding your equipment may invalidate your warranty on the disposables.

Except as otherwise noted herein, during the warranty period, there shall be no charge for any action deemed necessary by Bayer, including parts, travel, or labor to fulfill the terms of the warranty, during local business hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, except Bayer holidays.

## SERVICES WARRANTY

If this Quote includes a service agreement that covers Corrective Maintenance, there will be no charge, for the period stated on the agreement, for any action (parts, labor, travel) deemed necessary by Bayer to service the equipment, excluding those items listed in the section below entitled "Warranty Exceptions". Bayer will perform on-site Corrective Maintenance during the hours specified on the maintenance program purchased. For services requested by Customer outside of such specified hours, Customer shall pay an additional charge for all field labor and travel time for corrective maintenance performed outside normal hours at Bayer's then current hourly rates.

**WARRANTY ON REPAIRS:** All materials, labor and service provided hereunder are warranted to be free of defects in material or workmanship for ninety (90) days from the date provided.

**PREDICTIVE MAINTENANCE (PM) SCHEDULE:** If this Quote includes a service agreement with coverage for Predictive Maintenance, Bayer shall perform Predictive Maintenance on the covered product(s) during the hours specified in the maintenance program purchased. For injector products, Bayer will perform Predictive Maintenance within the first sixty (60) days of the effective date of the agreement or within twelve (12) months from the last PM provided by Bayer, unless otherwise agreed. For Predictive Maintenance performed outside of standard PM Hours at Customer's request, Customer will be charged Bayer's then current hourly rates for field labor and travel time.

**UPTIME:** If this Quote includes a service agreement that includes an uptime guarantee the following language applies: **THIS PROVISION IS NOT APPLICABLE FOR PRODUCT PURCHASES—CUSTOMERS ARE ONLY ENTITLED TO UPTIME COMMITMENTS IF THEY PURCHASE SERVICE AGREEMENTS THAT INCLUDE AN UPTIME COMMITMENT.** For any calendar quarter during the term of the service agreement the product(s) will maintain a level of uptime equal to or greater than 97%.

Uptime is defined as the state when the product(s) is working and/or available for use. "Downtime" is defined as the state when the system is not operable. The period of downtime shall be from notification of the manufacturer's service call center (1-800-633-7237) until the product(s) is returned/presented to the designated representative properly functioning and ready for use. Scheduled routine preventive maintenance, scheduled upgrades of product(s) or software, operator error in use of the product(s), failures designated under "Warranty Exceptions" of the terms of the service agreement, and external failures (i.e., power loss) shall not be considered Downtime.

Uptime will be calculated using the following formula:  $Uptime = ((T-TNF) \times 100)/T$

Where "T" is the total number of hours (24 hours/day x 7 days/week x 13 weeks) and "TNF" is the number of covered hours (less any time a loaner or consigned spare part is made available) the product(s), or any component of the product(s) is not functional during the quarter. "TNF" will be measured beginning with the time of initial notification to Bayer that the product(s) is inoperable for clinical use and the time the product(s) is available again for clinical use. If any portion of the total functionality of the product(s) is unavailable for operational use, the product(s) will be considered down.

TNF will not include: (i) hours that are outside of contracted coverage terms, (ii) any malfunction or damage described under "Warranty Exceptions" in the manufacturers extended warranty or extended service agreement terms, (iii) scheduled preventive maintenance, or any other scheduled event, including those for the convenience of You, (iv) malfunctions caused by operator error, or (v) abuse of the product(s), dead batteries, use of the product(s) beyond its intended use or failure resulting from changes to the operator environment (i.e., scanner software, upgrades, changes, new magnet, room construction, etc.).

You will calculate uptime after each calendar quarter and will notify Bayer of any incident of non-conformance within 15 days of any such non-conformance. If uptime is less than 97%, then Bayer, upon verification, will extend the term of the service agreement without charge by one week for every full day that the product(s) or any component of the product(s) thereof is not operational beyond the allowable 3% level.

**OTHER SERVICE TERMS:** Some service programs will have different or additional coverages so please refer to the specific terms of your specific service program.

#### **WARRANTY EXCEPTIONS (TO PRODUCT WARRANTY AND SERVICE AGREEMENT COVERAGE)**

Your actions may invalidate this warranty. This or service agreement (if applicable) does not cover:

- a) Malfunction or damage due to abuse, misuse or spillage of contrast, blood or other substance in or on the unit.
- b) Malfunction or damage due to operator error, including failing to follow specified provisions of the Operations Manual.
- c) Products that have been modified, improperly installed, or improperly interfaced with other equipment or software. 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.
- d) Malfunction, damage 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.
- e) Damage by fire, floods, or other disaster commonly known as "Acts of God".
- f) 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).
- g) Failures caused by network outages or improper network configuration.

Specific services plans may include additional exceptions so please review the details of your service plan. In all of these out of warranty instances, Bayer will provide service to your product, at your request. You must agree to pay Bayer for required labor and any materials required at Bayer's then current hourly rates for field labor and travel time.

## **WARRANTY EXCLUSIONS**

EXCEPT AS PROVIDED IN THE ABOVE WARRANTY SECTION, BAYER EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NON INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. IN NO EVENT SHALL BAYER BE LIABLE FOR ANY LOST PROFITS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR OPERATION OF BAYER'S PRODUCT OR SERVICE. BAYER WILL NOT BE RESPONSIBLE FOR DAMAGES THAT EXCEED THE PAYMENT, IF ANY, RECEIVED BY BAYER FOR THE PRODUCT OR SERVICES FURNISHED, OR TO BE FURNISHED, UNDER THIS AGREEMENT. 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 you specific legal rights and you may also have other rights.

## **SOFTWARE WARRANTY**

If the products include embedded software or if you are purchasing software, Bayer warrants that the software will substantially conform to the functional specifications contained in the Operations Manual for one year following delivery. Notwithstanding the foregoing, Bayer warrants that any software provided in connection with a TechCARE NxT service agreement Enhancement will substantially conform for the longer of the term of the TechCARE NxT service agreement or ninety (90) days from the date provided. This warranty shall not apply if you use the software in a manner that is not authorized or not in accordance with the user instructions or if you modify the products or the software or if a party other than Bayer provides service to the products or software. Bayer does not warrant that the software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect its performance. Your sole and exclusive remedy for any damages or loss in any way connected with the software whether due to Bayer's negligence or breach of any other duty shall be, at Bayer's option: (i) to bring the performance of the software into substantial compliance with the functional specifications or (ii) return of an appropriate portion of any payment by you with respect to the portion of the software that is not functioning.

## **INDEMNIFICATION**

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 attorneys' fees) for property damage, or personal injury or death where the product or services provided hereunder were 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.

## **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 or inability to procure supplies and raw materials, delays in transportation, work stoppage, court order, and other causes beyond a party's reasonable control.

## **DEFAULT**

Bayer shall not be required to perform its obligations under this Quote if you have defaulted (e.g., failed to pay) under this Quote.

## **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.

## **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.

## **SERVICE AGREEMENT CANCELLATION**

Bayer may terminate this Agreement by giving written notice to you if you have not made payment by the due date or if you do not give Bayer access to the equipment or accept any required enhancements 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. Except as otherwise described herein and in the event Customer has not received any Enhancements under the applicable service program (if applicable), if the Agreement is terminated for any reason, Bayer shall refund to Customer an amount

equal to the amount you prepaid for service for that year less the assessed value of any Engineered Predictive Maintenance (EPM) performed and the assessed value of any remaining Agreement coverage. If the EPM was performed and at least one onsite emergency service event was performed during the Agreement period, this Agreement shall be considered fulfilled and no refund for that service year will be due to Customer.

## **REMOTE ACCESS SERVER CONNECTIVITY AND VIRTUALCARE® REMOTE SERVICE**

Customer understands and agrees that in order to be eligible to receive the services provided hereunder, Customer must maintain a consistent connection to Bayer's remote access platform, which enables VirtualCARE® Remote Support Service. In the event the applicable injection system is disconnected, Customer will re-establish such connection within forty-eight (48) hours. Bayer will provide remote diagnostic and monitoring services on the products under this Agreement using Bayer's proprietary hardware and software. In the event this Agreement is terminated or expires and Customer does not renew into a subsequent Bayer service program, within sixty (60) days of such termination or expiration, Bayer will restrict the VirtualCARE remote support services so that all auto alerts will be muted, and Bayer will no longer take action on such notices. If the system is muted by Bayer or taken offline by Customer, Bayer will no longer continue its current practice of automatic remote monitoring and error code detection, or proactive event assessment and diagnostics. Customer understands that the remote access platform connection may still exist but that no Customer information will be relayed to Bayer from Customer's systems.

## **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.

## **TechCARE**

**HARDWARE ENHANCEMENT OPTIONS: Customer will be entitled during the term of the TechCARE service agreement to the following enhancements for their existing contracted Medrad® Stellant Dual Injection System or Medrad® Stellant Single CT Injection System, as described below as described below:**

- Control Room Enhancement –Customer may request one Control Room Enhancement during the term of the TechCARE services agreement and Bayer will replace Customer's existing monitor with a Certegra® Workstation 3.0 in accordance with the process outlined below.
- Scan Room Enhancement – Customer may request one Scan Room Enhancement during the term of the TechCARE services agreement and Bayer will replace Customer's existing Medrad® Stellant Dual Injector head or Medrad® Stellant Single CT Injector head (as applicable) with a new Medrad® Stellant FLEX injector head in accordance with the process outlined below. The new injector head will only be compatible with new Bayer syringes as part of our complete injection system. Mounting options (Overhead Counterpoise System (OCS) and Pedestal) are excluded. Scan room enhancement will not be installed on OCS I (OCS I was last sold in 2004). Additional required components, such as the base power supply, may also be replaced by Bayer as part of this entitlement if necessary for compatibility with the Medrad® Stellant FLEX injection system.

**WARRANTY ON ENHANCEMENTS:** All enhancements, materials, labor and service provided hereunder are warranted to be free of defects in material or workmanship for the longer of the term of the TechCARE services agreement or ninety (90) days from the date provided.

**PROCESS FOR ENHANCEMENT:** Unless otherwise agreed to by the parties, the hardware enhancements must be installed during Customer's first annual PM visit. Customer agrees that travel and labor charges may apply if an enhancement is requested at a time other than the scheduled annual PM. may not substitute an alternative and will not be entitled to a refund if it does not accept any offered enhancement. The enhancement may not include accessories other than the injector, such as OCS. Hardware being upgraded must be returned to Bayer. You are entitled to only one Control Room Enhancement and one Scan Room Enhancement. Any training relating to an enhancement will be provided virtually. Additional clinical training or support may be purchased for a charge.

**CUSTOMER COMMITMENTS:** Customer will make reasonable efforts to connect VirtualCARE® Remote Support, which



is included with the TechCare service coverage, to expedite and simplify maintenance, including future upgrades.

**CANCELLATION FOR TECHCARE SERVICE AGREEMENT:** As noted in the standard service terms, either party may cancel this Agreement at any time by giving sixty (60) days prior written notice to the other party. In addition to the provisions noted above, if you terminate for any reason prior to expiration, you will be billed for: (i) any enhancements provided during the term of the Agreement, or (ii) all remaining fees owed under this Agreement, whichever is less.

## TechCARE NxT

**ENHANCEMENT OPTIONS:** In addition to the enhanced service offerings, Customer will be entitled during the term of the TechCARE NxT service agreement to select two (2) out of the following seven (7) enhancements (the "Enhancement(s)") for their existing contracted Medrad® Stellant FLEX Injection System, as described below:

- **Workstation Enhancement** – Bayer will replace Customer's existing workstation monitor with a Certegra® Workstation 3.0 in accordance with the Enhancement process outlined below. Bayer will provide virtual training in connection with the Workstation Enhancement.
- **Automated Documentation Enhancement** – Customer will receive Bayer's current Point of Care Software License + PACS Interface. POC requires Customer to be connected to a Certegra® Workstation 2.0 or 3.0. In connection with the Automated Documentation Enhancement, Bayer will provide one (1) onsite clinical training per Customer location unless virtual training becomes available.
- **Outbound RIS Interface Enhancement** - Customer will receive a license to Bayer's Outbound RIS Interface. Automated Documentation, which includes a POC software license and PACs Interface, is required in order for Customer to receive the Outbound RIS Interface Enhancement. Customer must coordinate with its other third-party vendors to ensure that all Outbound RIS Interface integration requirements are satisfied, and Customer understands that satisfying such requirements may involve additional fees from such third-party vendors.
- **P3T Enhancement** – Customer may select up to two (2) P3T Module Software Licenses to be provided by Bayer subject to the software license terms and conditions contained herein. Bayer will provide one (1) onsite clinical training per Customer location in connection with the selected P3T Enhancement. P3T modules are currently available for: cardiac, pulmonary, angiography and abdomen (liver, pancreas, and kidneys) studies. For the sake of clarity, if Customer selects two (2) P3T Enhancements, Customer will not be eligible to receive any additional Enhancements under this Agreement.
- **Outbound Speech Recognition Interface Enhancement** – Customer will receive a license to Bayer's Outbound Speech Recognition Interface. A POC software license is required in order for Customer to receive the Outbound Speech Recognition Interface Enhancement. Customer must coordinate with its other third-party vendors to ensure that all Outbound Speech Recognition Interface integration requirements are satisfied, and Customer understands that satisfying such requirements may involve additional fees from such third-party vendors.
- **Workflow Solutions //Insights Enhancement** – Customer may select a three (3) year subscription license to Workflow Solutions //Insights effective as of the date of implementation of such subscription license and such implementation must be completed during the term of this Agreement. The Workflow Solutions //Insights subscription license will require that Customer is connected to VirtualCARE® Remote Support and has Point of Care Software on Certegra® Workstation 2.0 or 3.0 via either an Enhancement or within Customer's current infrastructure. If Customer selects the Workflow Solutions //Insights subscription license enhancement, Customer will be required to sign a separate subscription license agreement containing the applicable additional terms and conditions. At the end of the three (3) year license term, the license will expire unless Customer chooses to renew a subscription license agreement (if available).
- **Bar Code Reader** – Customer will receive a Bar Code Reader which will allow Customer to capture and access certain contrast media related data which will vary by contrast brand. In order to utilize the Bar Code Reader, Customer is required to have Automated Documentation, which includes a POC software license to capture the contrast data and a PACs Interface so that the information that is recorded can be visualized in the secondary capture image in PACs (or other intended outbound being utilized).

In order to allow adequate time for implementation, Customer must elect to receive its Enhancements within 12 months from the Agreement effective date and must coordinate in good faith with Bayer to implement such Enhancements within 18 months from the date of selection.

## WARRANTY ON ENHANCEMENTS

Excluding any "Warranty Exceptions" described above, all materials, labor and service provided hereunder are warranted to be free of defects in material or workmanship for the longer of the term of this TechCARE NxT service agreement or ninety (90) days from the date provided.

## PROCESS FOR ENHANCEMENT

During the term of the TechCARE NxT service agreement as further described herein, Customer can exercise their option to obtain an Enhancement. Once Customer elects to receive an Enhancement(s), Bayer will schedule installation of such Enhancement(s) to occur during Customer's next scheduled PM. Customer agrees that travel and labor charges may apply if an Enhancement is requested at a time other than the scheduled annual PM, unless such Enhancement can be delivered remotely via VirtualCARE and Customer already maintains an active VirtualCARE connection. Any control room

hardware being upgraded in connection with a Workstation Enhancement must be returned to Bayer. You are entitled to only two (2) of the Enhancements listed above. Once you elect to take advantage of an Enhancement(s) and it is installed, you will not be eligible for an additional Enhancement, should something new become available. Any training relating to an Enhancement will be provided as described in the Enhancement Options section above. Customer is also entitled to one (1) additional virtual clinical training event during the term of the TechCARE NxT service agreement. Additional clinical training, either onsite or virtual, may be purchased for a charge.

**SOFTWARE MAINTENANCE AND SUPPORT SERVICES.** The following Software Maintenance and Support Services provided in connection with TechCARE NxT services do not apply to any Bayer Radiation Dose Management software (RDM) or Contrast Dose Management software (CDM) licensed by Customer from Bayer.

1. Maintenance and Support Services. Bayer will provide the following maintenance and support services to: (i) Bayer software already installed, or purchased separately and installed during the term of this Agreement, on Customer's Medrad® Stellant FLEX Injection System during the term of this Agreement, and (ii) software selected by Customer as an Enhancement as provided for hereunder during the term of the Agreement for the Automated Documentation, P3T, Outbound RIS Interface, and Outbound Speech Recognition Interface Enhancements, and/or during the term of the applicable subscription license for the Workflow Solutions //Insights Enhancements (collectively, the "Licensed Software"):

1.1 Updates made to any Licensed Software will be provided during normal business hours (8:00 AM - 5:00 PM Local Time). 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; 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 cooperate 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. 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. "Critical Error" means an Error which results in the Licensed Software being entirely inoperable.

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 a 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 Customer's system.

3. For purposes of this TechCARE NxT service agreement, "Update" means a new update, modification, enhancement or correction to the Licensed Software 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 software and maintenance support hereunder Bayer will use VirtualCARE® Remote Support. Remote access via VirtualCARE is required on all Certegra® Workstations. VirtualCARE will provide an encrypted connection between a Bayer support representative and a customer device hosting the Licensed Software. VirtualCARE will utilize agent included in the Licensed Software to establish outbound connectivity to Bayer Central Support servers and facilitate inbound remote connectivity sessions. Bayer will follow a defined process for site access and interaction with Customer's systems as agreed to with Customer when providing support. 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

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 party other than Bayer or an authorized representative of Bayer; or

5.3 Errors attributable to failure or errors in 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 the TechCARE NxT service 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.

The software maintenance and support services provided hereunder do not include services relating to any training, data conversion, customization, development or other activities not specifically described in the associated quote which shall be quoted and billed separately

#### **CUSTOMER COMMITMENTS**

In order to receive the Automated Documentation Enhancement, Outbound RIS Interface Enhancement, Outbound Speech Recognition Enhancement, Workflow Solutions //Insights Enhancement, Bar Code Reader, and the Software Support and Maintenance Services, Customer must connect to VirtualCARE® Remote Support. For all other Enhancements, Customer will make reasonable efforts to connect to VirtualCARE® Remote Support, which is included with the TechCARE service coverage to expedite and simplify maintenance, including future upgrades.

#### **CANCELLATION FOR TECHCARE NxT SERVICE AGREEMENT**

As noted in the standard service terms, either party may cancel this Agreement at any time by giving sixty (60) days prior written notice to the other party. In addition to the provisions noted above, in the event that Customer terminates this Agreement for any reason prior to expiration and Customer has received one (1) or more Enhancement(s), Customer will be charged a cancellation fee in the amount of: (i) the standalone price for each non-subscription Enhancement(s) received under this Agreement plus an amount of \$995.00 if Customer's subscription to the Workflow Solutions //Insights Enhancement was implemented, or (ii) all remaining fees owed under this Agreement, whichever is less. For the sake of clarity, in the event Customer terminates this Agreement after implementation of the Workflow Solutions //Insights Enhancement, Customer's license to this Enhancement shall continue through the remainder of the license term associated with this Enhancement.

#### **FLEXChoice PROGRAM TERMS**

FLEXChoice Enhancement Program is for the Medrad® Stellant Dual Injection System which consists of the Medrad® Stellant Dual Injector and related disposables and is referring to FLEX UPG and FLEX UPG WKS line items.

**FLEXChoice Enhancement DETAILS:** FLEXChoice Enhancements include a new Medrad® Stellant FLEX injector head. The new injector head will only be compatible with Workstation 2.0 and 3.0 and Bayer FLEX syringes as part of our complete injection system. If Customer does not already own a Workstation 2.0 or 3.0, a new Workstation must be purchased to ensure compatibility. The enhancement may not include accessories other than the injector, such as OCS or head extension cabling. The Bayer service engineer will perform an inspection at install to ensure that all necessary accessories (i.e. head extension cable) meet performance specifications. If the Bayer service engineer determines that an accessory will need to be replaced, such replacement will be quoted by Bayer and paid for separately by Customer. Hardware being upgraded must be returned to Bayer. Any training relating to an upgrade will be provided virtually. Additional clinical training or support may be purchased for a charge.

**WARRANTY FOR FLEXChoice Enhancement.** Bayer warrants that products purchased from Bayer shall perform in accordance with documentation provided, under proper, normal use and service for a period of one year (12 months) from shipment, unless otherwise provided herein.

#### **FLEXForward PROGRAM TERMS**

FLEXForward Program is for the Medrad® Stellant Dual Injection System which consists of the Medrad® Stellant Dual Injector and related disposables and is referring to FLEX FWD line items on your quote.

**FLEXForward DETAILS:** FLEXForward includes a new Medrad® Stellant FLEX injector head and a new Workstation 3.0. The new injector head will only be compatible with Bayer FLEX syringes as part of our complete injection system. The enhancement will not include accessories other than the new injector, such as OCS or head extension cabling. Your Bayer service engineer will perform an inspection at install to ensure that all necessary and already existing accessories (i.e. head extension cable) meet performance specifications. If your Bayer service engineer determines that an existing accessory will need to be replaced, such replacement will be quoted by Bayer and paid for separately by Customer. Hardware being upgraded as part of the FLEXForward Program must be returned to Bayer. Any training relating to the new Medrad® Stellant Flex injector and/or the new Workstation 3.0 will be provided virtually. Customer may purchase additional clinical training and/or support for an additional charge.

Under the FLEXForward Program, a Customer has two payment options: (i) divide the total capital payment obligation into two (2) separate annual payments; or (ii) pay the total capital payment at the time of purchase. If Customer chooses option (ii) Customer will receive a discount on the installation of the Medrad® Stellant Flex injector head and the new Workstation 3.0. Both options (i) and (ii) shall be subject to the payment terms contained in Customer's Bayer Quotation.



ONLY IN CONNECTION WITH THE FLEXFORWARD PROGRAM, BAYER EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THOSE EXPRESS WARRANTIES PROVIDED ABOVE, IN ADDITION TO ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. For clarification, the disclaimer contained in this paragraph solely applies to Bayer Customers who choose to participate in the FLEXForward Program. If a Bayer Customer does not choose to participate in the FLEXForward Program then the disclaimer in this paragraph is inapplicable to their purchase.

Nothing contained in the FLEXForward Program Terms is intended to alter, amend, revise, or otherwise change the terms and conditions contained in any service contract Customer may have with Bayer, an original equipment manufacturer, or any third-party service provider.