



# Service Agreement Service Rates and Policies

## TechCARE™ NxT Standard

### 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 TechCARE™ NxT Standard Service Agreement (the “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 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 the Enhancements selected include embedded software, BY HAVING THE SOFTWARE INSTALLED AND USING THE SOFTWARE PROVIDED HEREUNDER, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, 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 Agreement and are valid until the expiration date listed on the quote. 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. All payments are due thirty (30) days from shipment 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](mailto:Bayercollect@bayer.com) for assistance with the EFT enrollment process.

### 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 reasonable 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.

### LICENSE

If an Enhancement (as defined below) selected by Customer includes software or embedded software, unless otherwise agreed to by the parties, Bayer grants to Customer a non-exclusive license to use such software provided by Bayer, solely in connection with, or to operate, the Enhancement. The license for such software may be transferred no more than once during the useful life of the purchased software, to other modality specific equipment purchased from Bayer or upgraded by Bayer depending on the age and/or version of the purchased software at the time of transfer request. 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 Customer begins using the Enhancement and software and will continue in effect unless the license is terminated because Customer breaches any provision of this Agreement. Upon such termination, Customer shall immediately cease use of all software and shall return the Enhancement 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 Customer, but retains the rights to make and license the use of all copies. 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 software. Customer is not permitted to modify or make derivative works of the software and ownership of any unauthorized modification or derivative work shall vest in Bayer.

## SERVICE WARRANTY

**FULL WARRANTY PERIOD.** There will be no charge during the period stated in this Agreement or the associated quote, for any action (parts, labor, or 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 normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Bayer observed holidays. 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. On-site travel charges will be calculated from the location of the nearest local field service representative.

**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 of this Agreement or ninety (90) days from the date provided.

**UP-TIME.** For any calendar quarter during the term of this 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 Customer 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" and external failures (i.e., power loss) shall not be considered Downtime.

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

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 Customer, (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.).

Customer 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.

**PREDICTIVE MAINTENANCE (PM) SCHEDULE.** Bayer shall perform Predictive Maintenance on the covered product(s) during the hours of 6:00 AM and 11:00 PM, Monday through Friday (PM Hours) unless otherwise indicated in the terms of this Agreement. 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. Predictive Maintenance performed outside of standard PM Hours at Customer's request, Customer will be charged at Bayer's then current hourly rates for field labor and travel time.

## WARRANTY EXCLUSIONS

EXCEPT AS PROVIDED IN THE ABOVE WARRANTY SECTIONS, 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. 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 OPERATIONS OF BAYER'S PRODUCTS, INCLUDING ENHANCEMENTS, OR SERVICE. IN NO EVENT IS BAYER RESPONSIBLE FOR DAMAGES THAT EXCEED THE PAYMENT, IF ANY, RECEIVED BY BAYER FOR THE PRODUCT, INCLUDING ENHANCEMENTS, OR SERVICE FURNISHED, OR TO BE FURNISHED, PURSUANT TO 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 CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS.

## WARRANTY EXCEPTIONS (SERVICE WARRANTY AND ENHANCEMENT WARRANTY)

The warranty under 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 warranty 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 with respect to such claim.
- 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 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 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.

### **CANCELLATION**

Bayer may terminate this Agreement by giving 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. Except as otherwise described herein and in the event Customer has not received any Enhancements hereunder, if the Agreement is terminated for any reason, Bayer shall refund to Customer an amount equal to the amount Customer 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.

### **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.

### **DEFAULT**

Bayer shall not be required to perform its obligations under this Agreement if Customer have 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.

### **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.

## 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.

## 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.

## **SOFTWARE MAINTENANCE AND SUPPORT SERVICES. The following Software Maintenance and Support 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 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;

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 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.

9. 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

## ENHANCEMENT OPTIONS

In addition to the enhanced service offerings, Customer will be entitled during the term of the 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. A POC software license 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. Automated Documentation, which includes a POC software license and PACS Interface, 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 Agreement or ninety (90) days from the date provided.

If an Enhancement selected includes embedded software, Bayer warrants that the software will substantially conform to the functional specifications contained in the associated operations manual for the longer of the term of this Agreement or ninety (90) days from the date provided. This software warranty shall not apply if Customer uses the software in a manner that is not authorized or not in accordance with the user instructions or if Customer modifies the Enhancement or the software or if a party other than Bayer provides service to the Enhancement 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. Customer's 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 Customer with respect to the portion of the software that is not functioning.

### **PROCESS FOR ENHANCEMENT**

Customer may exercise its option to obtain an Enhancement as further described above. Once Customer elects to receive an Enhancement(s), Bayer will schedule installation of such Enhancement(s) to occur during Customer's next scheduled PM so long as Customer has satisfied any necessary requirements. 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. Customer may not substitute an alternative and will not be entitled to a refund if it does not accept any offered Enhancement. Any control room hardware being upgraded in connection with a Workstation Enhancement must be returned to Bayer. Customer is entitled to only two (2) of the Enhancements listed above. Once Customer elects to take advantage of an Enhancement(s) and it is installed, Customer 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 this Agreement. Additional clinical training, either onsite or virtual, may be purchased for a charge.

### **CUSTOMER COMMITMENTS**

In order to receive the Automated Documentation Enhancement, Outbound RIS Interface Enhancement, Outbound Speech Recognition Enhancement, Workflow Solutions //Insights, Bar Code Reader Enhancement, 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 service agreement coverage to expedite and simplify maintenance, including future upgrades.

### **CANCELLATION FOR TECHCARE™ NxT STANDARD AGREEMENT**

In addition to the terms noted in the Cancellation section 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.