

**Calantic® Digital Solutions Subscription Agreement**  
**Standard Terms and Conditions**

The Standard Terms and Conditions is a part of and incorporated into the associated Calantic® Digital Solutions Subscription Agreement and any documents referenced therein (collectively, the “Agreement”) between Bayer Inc. (“Bayer”), and Licensee, as defined in the applicable Agreement, and is effective as of

\_\_\_\_\_. Unless otherwise defined herein, all capitalized terms used hereunder shall have the meanings ascribed to them in the Agreement.

Bayer may update the terms and conditions contained herein from time to time and shall provide notice of such updates to Licensee upon Licensee’s login to the Licensed Software. Licensee’s continued use of the Licensed Software shall constitute acceptance of any updated terms and conditions.

“Licensed Software” as used herein refers to the software components of Calantic™ Digital Solutions, including the Edge server software, inbound and outbound interfaces, the embedded viewer, and the Calantic cloud applications (collectively the “Calantic Software”), and Licensee-selected clinical applications (collectively the “Application Software”). Licensed Software will include all Calantic Software and Application Software listed on Schedule 1 of the Subscription Agreement. The Licensed Software may be updated from time to time upon agreement of the parties. Licensed Software will consist of Bayer owned software (“Bayer Licensed Software”) and software created and owned by Bayer contracted third parties (“Contracted Third Parties”) that is licensed by Bayer for use on the platform (“Third Party Licensed Software”).

1. **Grant of License.** Bayer grants to Licensee a non-exclusive, non-transferable and non-sublicensable license (“License”) to use the Licensed Software for the term described in the Agreement, solely for Licensee’s own internal purposes. For the avoidance of doubt, Licensee can exercise its License rights through its employees, agents, contractors, consultants and representatives who perform services for Licensee in its ordinary course of business (“Authorized Users”). Licensee will be responsible and liable for: (i) each Authorized User’s use of the Licensed Software and Documentation (as defined below) and compliance with the terms of the Agreement; and (ii) any other Person to whom Licensee or an Authorized User may provide access to or use of the Licensed Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

2. **Ownership, Restriction on Use and Licensee Representations.**

2.1 **Ownership.** Licensee is receiving only a license to use the Licensed Software under this Agreement, and no title or ownership of the Licensed Software or any portion thereof is transferred by Bayer to Licensee hereunder. All rights, title and interest in and to the Licensed Software are and will remain with Bayer. Licensee shall use commercially reasonable efforts to safeguard all Licensed Software (including any copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access. Licensee shall promptly notify Bayer if Licensee becomes aware of any infringement of Bayer’s intellectual property rights in the Licensed Software and fully cooperate with Bayer in any legal action taken by Bayer to enforce its intellectual property rights.

2.2 **Restrictions on Copies.** Bayer may provide user manuals, technical manuals and other written materials that describe the installation, operation, use or technical specifications of the Licensed Software (“Documentation”). In accordance with the Documentation, Licensee may access the Licensed Software locally on the Licensee’s Platform and via deployment in the cloud. Licensee will not use or copy the Licensed Software, including any use on behalf of or for the benefit of any other individual or entity (“Person”) (including any affiliate of Licensee) except as expressly authorized in this Agreement. Notwithstanding the forgoing, if any copies of the Licensed Software are made by the Licensee, the copies:

2.2.1 will be the exclusive property of Bayer;

2.2.2 will be subject to the terms and conditions of this Agreement; and

2.2.3 must include all trademark, copyright, patent and other intellectual property notices contained in the original.

2.3 **Additional Restrictions on Use.** Licensee will not, and will require its Authorized Users not to, directly or indirectly:

- 2.3.1 use or copy the Licensed Software or Documentation, in whole or in part, beyond the scope of the License granted under Section 1;
- 2.3.2 remove, alter or obscure any of the trademarks or proprietary notices on the Licensed Software or the Documentation;
- 2.3.3 provide any other Person, other than Authorized Users, either access to or use of the Licensed Software or Documentation;
- 2.3.4 modify, translate, adapt, re-create, reverse engineer, decode, decompile or disassemble or otherwise attempt to derive or gain access to the source code of the Licensed Software or make derivative works or improvements, of the Licensed Software;
- 2.3.5 combine the Licensed Software or any part thereof with, or incorporate the Licensed Software or any part thereof in, any other programs;
- 2.3.6 rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software, or any features or functionality of the Licensed Software, to any person other than Licensee or Bayer ("Third Party") for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;
- 2.3.7 use the Licensed Software or Documentation in violation of any law, regulation or rule; or
- 2.3.8 use the Licensed Software or Documentation for purposes of competitive analysis of the Licensed Software, the development of a competing software product or service, or any other purpose that is to Bayer's commercial disadvantage. All rights not expressly granted to Licensee herein are reserved by Bayer.

2.4 **Licensee Representations.** Licensee represents and warrants that the patient data uploaded to the Licensed Software is obtained from the Licensee's clinical practice (collectively "Patient Data"). Licensee is the entity with custody and control over Patient Data under applicable legislation governing the collection, use or disclosure of personal health information. Licensee will comply with such legislation, as maybe amended from time to time, with respect to its collection, storage, use and disclosure of Patient Data. Licensee represents and warrants that it has the authority to share the Patient Data with Bayer (and any Contracted Third Parties as necessary) for the purposes outlined in the Agreement. Licensee further represents and warrants that it will maintain and monitor a comprehensive, written information security program that contains administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Confidential Information, Patient Data, Licensed Software and the Licensee's Platform ("Information Security Program"). These safeguards must be no less rigorous than accepted industry practices, including ISO/IEC 27000 standards, NIST 800 standards, and Center for Internet Security (CIS) Controls, and any successors thereto.

### 3. **Confidential Information.**

3.1 During the term of the Agreement, the Parties may each have access to computer programs, Documentation, product plans, flow charts, marketing and sales information, contractor 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 this Agreement or 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 to the Agreement, or (iv) is disclosed with the written consent of the other Party.

3.2 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. Bayer may also disclose Licensee's Confidential Information to any affiliate or Contracted Third Party engaged by Bayer in furtherance of the services required hereunder.

#### **4. Limitations of Liability.**

4.1 EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THE AGREEMENT, LICENSEE ACKNOWLEDGES THAT THE LICENSED SOFTWARE AND ALL SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS AND BAYER DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SERVICES WILL MEET LICENSEE'S REQUIREMENTS, BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION. LICENSEE IS SOLELY RESPONSIBLE FOR DETERMINING WHETHER THE LICENSED SOFTWARE WILL ACHIEVE THE RESULTS IT DESIRES. BAYER MAKES NO OTHER WARRANTIES OR CONDITIONS TO LICENSEE, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

4.2 THE MAXIMUM TOTAL LIABILITY OF BAYER FOR ANY CLAIM UNDER OR RELATING TO THE AGREEMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION CLAIMS FOR BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO DIRECT, PROVABLE DAMAGES NOT TO EXCEED THE AMOUNTS PAID HEREUNDER BY LICENSEE TO BAYER FOR THE LICENSED SOFTWARE THAT IS THE SUBJECT OF THE APPLICABLE CLAIM. IN NO EVENT WILL BAYER BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF REVENUE OR BUSINESS PROFITS, BUSINESS INTERRUPTION, USE, INTERRUPTION, DELAY OR INABILITY TO USE THE LICENSED SOFTWARE, DELAYS OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA OR INFORMATION, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR ANY OTHER COMMERCIAL LOSS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.3 THE LICENSED SOFTWARE DOES NOT PROVIDE MEDICAL ADVICE AND IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL JUDGMENT, DIAGNOSIS OR TREATMENT.

4.4 The remedies provided in the Agreement are the sole and exclusive remedies of the Parties and shall apply even if Licensee's remedies under this Agreement fail of their essential purpose.

4.5 Licensee agrees that any breach by it of any restrictions on use or confidentiality obligations contained in the Agreement may cause serious and irreparable harm to Bayer and that in the event of such a breach by Licensee, Bayer will be entitled to seek injunctive relief as well as any and all other remedies available at law or in equity.

#### **5. Indemnity.**

5.1 Bayer will defend Licensee from any claim by a Third Party that any Bayer Licensed Software furnished and used in accordance with this Agreement infringes a Third Party's valid patent, trademark or copyright in Canada provided such alleged infringement does not result from (a) any modification of the Licensed Software not made by Bayer, or (b) use of the Licensed Software in combination with any software, hardware or data not provided by or approved in writing by Bayer, or (c) failure of Licensee to install and use all updates provided by Licensee; and further provided that Licensee (i) gives Bayer prompt written notice of such claim; (ii) allows Bayer to direct the defense and settlement of the claim; and (iii) cooperates with Bayer as necessary for defense and settlement of the claim. In the event the Licensed Software is held by a court of competent jurisdiction to be, or is believed by Bayer to be, infringing, Bayer will have the option, at its expense, to: (x) obtain for Licensee the right to continue using the Licensed Software; (y) replace or modify the Licensed Software so that it becomes non-infringing; or (z) terminate the License and no additional fees will be due.

5.2 THE INDEMNITY AND REMEDIES PROVIDED IN THIS SECTION CONSTITUTE BAYER'S ENTIRE OBLIGATION AND LICENSEE'S EXCLUSIVE REMEDY REGARDING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

**6. Notice.** All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder will be deemed duly given (a) when delivered, if personally delivered, (b) when receipt is electronically confirmed, if e-mailed or (c) one (1) day after deposit with a reputable overnight courier, in each case addressed to the respective parties at the addresses listed above

**7. Force Majeure.** Bayer will not be responsible or liable to Licensee, or deemed in default of this Agreement for any delay or failure to perform its obligations hereunder due to strikes, labor disputes, riots, storms, floods, explosions, act of God, terrorism, war, failure of suppliers or communications systems, pandemics or quarantines, governmental/regulatory actions, fluctuations or non-availability of electrical power, heat, light, air conditioning, internet connectivity, or Licensee equipment, loss and destruction of property or other cause beyond the reasonable control of Bayer, provided Bayer notifies Licensee immediately and in detail of the nature of such cause and the probable consequences thereof, and provided further that Bayer uses its reasonable efforts to render performance in a timely manner.

**8. Assignment.** The Agreement 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 this Agreement to an affiliate or successor in interest without prior written consent. The rights and obligations under the Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

**9. 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 the Agreement without the other Party's prior written approval. Notwithstanding the above, Bayer may use Licensee's name and the corresponding logo or trademark solely in connection with a representative list of customers.

**10. Schedules and Referenced Documents.** All schedules attached to the Agreement and all other documents referenced herein, are hereby incorporated and form an integral part of the Agreement.

**11. General Representations and Warranties.** Each Party represents and warrants to the other as follows:

- 11.1 it has the full right, power, legal capacity and authority to perform its obligations under the Agreement;
- 11.2 the entering into of the Agreement will not conflict with, or result in, a breach of the terms, conditions or provisions of, or constitute a default under, any agreement to which it is bound; and
- 11.3 the person signing the Agreement on its behalf has been duly authorized by all necessary company action, and the Agreement has been duly and validly executed and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.

**12. Legal Compliance.** Each Party will comply with all federal, state, provincial, and local laws and regulations applicable to its performance hereunder, including, without limitation, any applicable laws and regulations governing the security and privacy of personal information, including electronically stored personal health information.

**13. Governing Law.** The Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, without regard to the conflict of laws principles of that or any other jurisdiction. The Parties submit to the non-exclusive jurisdiction of the courts located in the Province of Ontario.

**14. Entire Agreement; Amendment.** The Agreement, including all schedules and other documents incorporated herein, represent the complete statement of the agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations and representations, oral or written, between the Parties with respect to the subject matter hereof. The Agreement may be amended by Bayer from time to time as provided for herein.

**15. Severability; No Waiver.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force. The waiver by either Party of a breach of any provision of the Agreement will not operate as a waiver of any other breach. No delay or failure of Licensee or Bayer to exercise any right or remedy will operate as a waiver, except where specifically provided to the contrary.

**16. Government Restricted Rights.** The Licensed Software and Documentation are "commercial items," as that term is used in 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. § 12.212, and that, consistent with 48 C.F.R. § 12.212 and 48 C.F.R. Subpart 227.72, all U.S. government Licensees and Authorized Users acquire the Licensed

Software and documentation with restricted rights and only those rights set forth in the Agreement. Use, duplication, reproduction, or disclosure by the U.S. government, including any department, agency or unit thereof, is subject to the restrictions applicable under of the Federal Acquisition Regulations and the Department of Defense Supplement thereto, if applicable, or any successor laws, rules or regulations.

## **STATEMENT OF WORK**

### **Implementation Statement of Work**

#### **1.1 Executive Summary**

This Implementation Statement of Work (“SOW”) serves to document the services to be performed and the deliverables to be provided in connection with the implementation and integration of the Licensed Software (“Implementation Project”). A full purchase order for the Licensed Software and associated Professional Services will be provided by the Licensee and execution of this Agreement by Licensee and Bayer (“Completion of Sale”) will be required to initiate the Implementation Project. Unless otherwise stated all Professional Services will be provided Monday – Friday, 8AM – 5PM, Local Time (“Standard Hours”).

#### **1.2 Implementation Strategy**

Each party is responsible for carrying out the work assigned to it in Sections 1.4 and 1.5 of this SOW for the Implementation Project. Unless stated otherwise in this SOW all work to be completed by Bayer will be done from a remote location via Bayer.

#### **1.3 Resource Commitment**

A Bayer implementation team typically consists of a Project Manager, Implementation Specialist and Technical Implementation Lead. Additional resources may be added or substituted by Bayer as needed to meet an implementation timeline or a change in scope of the Implementation Project.

#### **1.4 Implementation Services**

Bayer shall provide services for the Implementation Project in accordance with the Licensed Software purchased by Licensee and summarized in Schedule 1. Bayer and Licensee will work to complete the following Implementation Project tasks:

- Project Management (Joint)
- Deployment of a host server as a Virtual Machine (“VM”) for each server license purchased, and configuration of each VM for network connectivity to allow remote access by Bayer (Licensee)
- Installation of the Windows Server operating system and other Windows software components onto the server VM(s) as specified by Bayer (Licensee)
- Installation of Bayer VirtualCARE remote access onto the VM(s) (Joint)
- Installation of Bayer Licensed Software onto the VM(s) (Bayer)
- Installation of OpenVPN and configuration of Licensee networks to allow connectivity of on-premise and cloud License Software components (Joint)
- Technical configuration of the deployed Licensed Software (Bayer)
- Integration of the VM(s) to DICOM data sources (Joint)
- Integration of the VM(s) to HL7 Order data sources (Joint)
- Configuration and testing of outbound reporting interfaces (Joint)
- Development of relevancy rules (Joint) which once agreed upon shall be referred to herein as “Relevancy Rules”
- Validation testing and acceptance (Joint)
- Go-live support (Joint)

## **1.5 Deliverables**

### **1.5.1 Project Management**

A Bayer Project Manager will oversee and coordinate the Implementation Project using Bayer's standard project methodology. The Bayer Project Manager will also set up weekly or bi-weekly project status report meetings to be conducted via conference call during the Implementation Project.

Bayer will provide prompt notice to Licensee if it determines at any time that there will be any delay in completing the Implementation Project. Licensee acknowledges that Licensee's timely, complete and accurate performance of its obligations hereunder is essential to Bayer meeting any targeted completion date for the Implementation Project.

### **1.5.2 Project Kickoff Meeting**

Initiation typically consists of a Kickoff meeting with introduction of key resources from both organizations. These individuals will review the Bayer Order and SOW deliverables to verify project scope. More specific implementation details will be provided by Bayer, and requests for workflow, clinical and technical data from Licensee will be made by Bayer at the Kickoff meeting. The goal of the Kickoff meeting will be to confirm project scope, deliverables, timeline and a date to begin the Implementation Project.

### **1.5.3 Kickoff Follow-Up**

Upon completion of the project Kickoff meeting, the Bayer Project Manager will document all actions pertaining to requests for technical data, installation, systems integration, validation, and acceptance. Required action items will be highlighted. An installation timeline and task schedule will be provided to Licensee once an agreed upon date for the Implementation Project is identified.

### **1.5.4 Installation**

Licensee and Bayer Technical Implementation Specialists will complete the installation and configuration activities described in section 1.4. The VM(s) provided by Licensee will meet the specifications and requirements as described in Platform Requirements, including the VirtualCARE remote access and OpenVPN requirements.

### **1.5.5 Systems Integration**

Unless otherwise indicated in Schedule 1, the Licensee and Bayer will configure and validate the connectivity of the Licensed Software to one PACS, DICOM Router, and / or (n) modalities of the Licensee, and to one source for Inbound HL7 Order messages. Integration of multiple inbound data sources will be as purchased by the Licensee and summarized in Schedule 1.

Licensee and Bayer Technical Specialist will also configure additional outbound interfaces connecting the Licensed Software to Third Party applications hosted on the Licensee's Local and Wide Area Network. Outbound interfaces connections to PACS and Worklist will be as required by the Application Software listed in Schedule 1. Additional outbound reporting interfaces to EMR/RIS, Speech Reporting, or other components of Licensee infrastructure will be as purchased and referenced in Schedule 1.

### **1.5.6 Relevancy Rules, Data Validation and Acceptance Testing**

Upon completion of installation and integration activities Licensee and Bayer will work collaboratively to develop Relevancy Rules for the Application Software listed in Schedule 1.

Upon completion of development and testing activities for Relevancy Rules Bayer will complete data validation and demonstrate (the "Acceptance Test") that the Licensed Software is capturing License source data, generating results data, and passing results to target applications for reporting purposes (the "Acceptance Criteria"). Licensee will have ten (10) business days from the conclusion of the Acceptance Test (the "Notice Period") to notify Bayer in writing if Licensee in good faith believes that the Licensed Software did not perform in accordance with the Acceptance Criteria.

If Licensee provides written notice to Bayer within the Notice Period of Licensee's belief that the Licensed Software does not perform in accordance with the Acceptance Criteria, including the reasons for such belief in reasonable detail, Bayer will use its reasonable efforts to correct the non-conformity and the Parties will retest the Licensed Software. If Bayer does not correct the non-conformity within 45 days after the end of the Notice Period, then Licensee may for a period of 30 days after the expiration of such 45 day period (the "Termination Option Period") elect to terminate this Agreement upon written notice to Bayer delivered during the Termination Option Period.

The Licensed Software acceptance date (the "Acceptance Date") will be the earliest date on which any of the following occur (a) Licensee notifies Bayer that the Licensed Software has passed the Acceptance Test, (b) Licensee does not notify Bayer in writing during the Notice Period of its good faith belief that the Licensed Software has not performed in accordance with the Acceptance Criteria and (c) Licensee does not notify Bayer in writing during the Termination Option Period of its intent to terminate the Agreement.

### **1.5.7 Licensee Requirements & Site Readiness**

Licensee will be solely responsible for obtaining, implementing and maintaining all required Platform equipment and related systems defined herein, any additional third party software to be provided by Licensee and agreed to by Bayer, network access (including remote access via Bayer VirtualCARE and VPN access between the on-premise and cloud components of the Licensed Software), physical, technical and administrative security controls, and any additional safeguards needed to promote availability, scalability, performance and dependability of any of the foregoing. Licensee will be solely responsible for any and all costs, license fees and taxes relating to the foregoing.

Licensee is responsible for providing a Project Manager and additional technical staff overseeing PACS, Server VMs, Networks, Access Management and Security teams in order to help facilitate the completion of the Implementation Project. Licensee team will participate in the project Kickoff meeting, assist with site readiness tasks, and will be available as needed to support the Implementation Project.

### **1.6 Assumptions**

The following assumptions are a part of the basis for the Implementation Project. If any of these assumptions are determined to be incorrect, changes will be managed using the Change Management Process as described in Section 1.8.

- i. Provision of the Platform as outlined herein
- ii. Bayer VirtualCARE solution will be used by Bayer during all installation and integration activities
- iii. Full administrative rights will persist on all Bayer support accounts utilized by Bayer to provide Professional Services for the Implementation Project and Maintenance and Support Services for the Licensed Software
- iv. Technical Implementation services will be provided during Standard Hours, excluding Alaska and Hawaii Licensees
- v. The Licensee resources assigned to the project shall possess the necessary skill sets and shall be engaged as requested by the Bayer implementation team
- vi. Licensee will provide necessary third-party resources as needed to assist with DICOM configuration and applicable systems integration during the Implementation Project
- vii. Customizations of the Licensed Software including specialty configuration of interfaces used by the Licensed Software are out of scope for this SOW

### **1.7 Risks**

The following are potential risks to the delivery of any of the phases or milestones of this Implementation Project. If a risk is identified with the potential to cause a significant impact on the

delivery and completion of the Implementation Project, it will be managed using the Change Management Process as described in Section 1.8.

1.7.1 Delays in providing Licensee staff needed to support the Installation Project

1.7.2 Delays in providing the Platform requirements as specified herein

1.7.3 Delays in providing Bayer with timely remote access to the Server VM(s), or VPN access between the VM(s) and cloud components

1.7.4 Delays in providing information needed to complete the technical configuration of the Licensed Software or the development of Relevancy Rules

1.7.5 Delays in providing DICOM and HL7 integration resources, from data sources or two data targets, to allow data validation and acceptance

1.7.6 Contention issues with other Licensee projects or day-to-day issues

## **1.8 Change Management Process.**

**1.8.1. Change Order.** Following execution of this SOW, any modification of this SOW or any additional services not specifically outlined in this SOW that are requested by Licensee will be managed by the Change Management Process. Licensee and Bayer will agree and approve a Change Order to provide additional services, or to continue the Implementation Project using a modified SOW. This will ensure that both parties are informed, participating, and in agreement as the Implementation Project moves from initiation to completion.

**1.8.2. Modification of the SOW.** The Bayer Project Manager will provide Licensee with a written Change Order specifying changes to the SOW, additional services to be provided, and any additional fees due from Licensee. Execution of a Change Order will occur when Licensee and Bayer sign the Change Order and Licensee provides Bayer with a Full or Revised Purchase Order that includes the additional fees due by Licensee. The Project Manager will provide Licensee with a revised project plan and service deliverables to reflect the incorporation of the new requirements or modifications made to the SOW by the Change Order. It is important to note that in many situations, project resources must shift their effort from project work in order to properly scope the required change(s).

**1.8.3. Additional Services.** Any services not covered in this SOW shall be treated as Billable Professional Services unless otherwise agreed to by both parties on the Change Order.

**1.9. Client Delays.** If the Licensee causes delays in the implementation beyond a reasonable period, Bayer reserves the right to reallocate implementation resources to another Implementation Project. Bayer resource availability would therefore not be guaranteed once the Licensee is ready to reengage or move forward with the Implementation Project

## MAINTENANCE AND SUPPORT SERVICES SUMMARY

1. **Maintenance and Support Services.** During the term of the Agreement, Bayer will provide maintenance and support services as follows:
  - 1.1. All maintenance and support services will be provided from a remote location via VirtualCare® Remote Support.
  - 1.2. Services of a qualified Bayer representative to provide technical assistance and attempt corrective actions (which may consist of providing a corrective action and/or a workaround solution) (“Error Correction”) of any failure of the Licensed Software to substantially perform the functionality described in the Documentation when hosted on the Licensee Platform and operated by Licensee in accordance with the Documentation (each failure an “Error”), which are brought to the prompt attention of Bayer by Licensee. Licensee will co-operate with Bayer and will make available a suitably qualified contact person who is knowledgeable of each Error and the Licensed Software, and who is available for discussion (“Licensee Coordinator”). Licensee Coordinator will use commercially reasonable efforts to submit and track all support requests. Licensee must permit Bayer to gain remote access to the Licensed Software, to install software and make changes to the Licensed Software that are required to provide Error Correction. Such remote access may result in the Bayer representative having access to Patient Data. Bayer shall continue efforts to provide Error Correction only when these requirements have been met.
  - 1.3. Bayer will also provide application support (“Application Support”) to address clinical questions, including questions about application functionality, clarification on results, or any other questions that are non-technical in nature. This support is not medical advice and should not be a substitute for professional medical judgment, diagnosis or treatment.
2. **Technical Assistance and Error Correction.** Bayer will provide Licensee with telephone and/or online access to request technical assistance (“Technical Assistance”) and Error Correction as follows:

Severity	Definition	Response Time
1	Customer cannot use multiple Models or there is a critical impact on the Customer’s operations for which no known workaround exists and requires immediate attention	Within 2-Hrs 24 x 7
2	Customer can use the Bayer Solution, but an important function is not available, or there has been failure of a single Clinical Application or the Customer’s operations are severely impacted and no known work around exists	Within 2-Hrs M-F, 8-5, Local Time
3	Customer can use the Bayer Solution and Models with some functional restrictions, but it does not have a critical impact on the Customer’s operations, and no known workaround exists	Within 4-Hrs M-F, 8-5, Local Time
4	Minor problem that is not significant to the Customer’s operations, Customer can use solution but desire attention to matter.	Within 8-Hrs M-F, 8-5, Local Time

Technical Assistance for Severity 1 can be requested 24 x 7 via telephone (1-800-633-7237, options 1 x 2 x 1). Technical Assistance for all other severity levels, Application Support may be requested by email at [solutionssupport@bayer.com](mailto:solutionssupport@bayer.com) (email is monitored 8-5 M-F eastern time) or via telephone at the above number.

3. **Updates.** For purposes of the Agreement, “Update” shall mean 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 as an entitlement of the Agreement.

- 3.1. For all Updates associated with on premise components of the Licensed Software, Licensee must promptly install, or at a mutually agreed upon time, agree to install, or permit Bayer to install, each Update provided by Bayer.
  - 3.2. Updates may also include more current versions of existing Third Party Licensed Software, or new Third Party Licensed Software, each provided by Bayer (“Bayer Provided Third Party Software”) that are required to enable the Licensed Software to perform as intended. Bayer Provided Third Party Software will be provided on an “as is” basis and Bayer does not warrant that Bayer Provided Third Party Software will be error free or operate without interruption.
  - 3.3. 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 Licensee at any time, including any customizations or modifications that may be required during the installation of the Licensed Software pursuant to the Agreement 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 Licensee, unless otherwise specifically agreed in writing between the Parties.
- 4. VirtualCare.** Bayer will use Bayer VirtualCare® Remote Support, to provide all on premise support as noted below. Detailed information on Bayer VirtualCare may be found in the VirtualCare Whitepaper.
- 4.1. Remote Access via VirtualCare is required.
  - 4.2. VirtualCare will provide an encrypted connection between a Bayer support staff and the Licensed Software. Bayer will follow a defined process to: (i) initiate Error Correction with the Licensee; (ii) establish remote access with the Licensed Software; (iii) complete diagnostic and root cause analysis; (iv) make changes to the Licensed Software or configuration settings; (v) test and validate Error Correction; and (vi) confirm completion of Error Correction with Licensee at the conclusion of a support session (collectively “Change Control Process”).
- 5. Exceptions.** Bayer Services do not cover:
- 5.1. Errors resulting from any modifications of or alterations to the Licensed Software by anyone other than Bayer or its authorized contractors;
  - 5.2. Errors due to failure by Licensee to install Updates as provided and requested by Bayer;
  - 5.3. Errors resulting from Licensee’s failure to comply with the Platform requirements outlined below and in the Documentation.
  - 5.4. Errors resulting from any installation or use of customer-provided hardware or Third-Party software not specified in the Documentation or expressly authorized by Bayer in writing;
  - 5.5. Errors attributable to failure or errors of the Licensee’s environment, including but limited to outages in power, computing environment network, or other connectivity with the Licensed Software.
  - 5.6. Accident, neglect, or misuse of the Licensed Software or failure by Licensee to maintain the Licensee Platform or any other causes beyond Bayer’s control.

Error correction provided by Bayer including reinstallation of the Licensed Software requested by the Licensee, or as needed to address a failure attributable to this Section 6 may be a billable service and additional fees may apply. Billable Professional Services are payable and due within 30 days of Bayer’s invoice thereof.

**6. MINIMUM PLATFORM REQUIREMENTS FOR LICENSEE ENVIRONMENT.**

Licensee’s Platform shall mean equipment and software owned or utilized by Licensee that is used to host or provide a connection to the Licensed Software, including all associated Licensee third party software and support contracts. Platform specifications are specific to the installed version of the Licensed Software, and will be as indicated in the Documentation for a given release of the Licensed Software and will include requirements relating to the following:

- 7.1 Licensee's Platform must conform with all required inbound and outbound DICOM, HL7 and Web Services interface standards that are supported by the installed version of the Licensed Software. Specifications will be as indicated in the Documentation for the Licensed Software.
- 7.2 Licensee's Platform must conform with all networking and workstation requirements that are needed by the Licensed Software to receive, process, cache, and transmit data within the Licensee's Local and Wide Area Networks, including OpenVPN facilitated communications between on-premise and cloud platform components, and as needed for VirtualCare remote support.
- 7.3 Licensee's Platform must conform to the requirements for physical, technical and administrative security controls (including firewall and intrusion detection software), and additional safeguards needed to promote the availability, scalability, performance and dependability of any of the foregoing.
- 7.4 Licensee's Platform must include any certificates needed to support encryption of data transmissions between the Licensed Software and Licensee's third party software or Licensee users.
- 7.5 Licensee will be solely responsible for any and all costs, license fees and taxes relating to the foregoing.