



1. Definitions:

Adverse Event means any untoward medical occurrence, unintended injury disease or injury, or any untoward clinical signs (including an abnormal laboratory finding) in subjects, users or other persons whether or not related to the Bayer Radiology Product or medical device. This includes events related to the procedures involved.

Bayer Radiology means the radiology business Imaxeon Pty Ltd (ABN 93 093 950 906).

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales or, for deliveries of Products, at the place of delivery.

Contract means a contract for sale as referred to in clause 2.6.

Customer means a person who orders Products from Bayer Radiology, whether by telephone, facsimile, email, in person, through Bayer Radiology's online ordering system or otherwise.

Force Majeure means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under these Terms.

GST has the same meaning as in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) (as amended).

Insolvency Event means circumstances in which Customer is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Bayer Radiology; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeks protection or is granted protection from its creditors, under any applicable legislation.

Order means a purchase order for Products which has been accepted by Bayer Radiology but excluding any terms or conditions printed on or referred to in Customer's purchase orders or other documentation unless expressly agreed to in writing by Bayer Radiology.

PPSA means the *Personal Property Securities Act 2009* (Cth) (as amended from time to time).

Products mean the goods purchased or to be purchased by Customer from Bayer Radiology which are the subject of a Contract.

Product Technical Complaint means any report (written, electronic or verbal communication) about a potential or alleged failure of a Bayer Radiology product in its quality (including the identity, durability, reliability, safety, efficacy or performance) or suspected counterfeit. The complaint may or may not represent a potential risk to Customer, a patient, or other member of the public.

Recall means the recall or withdrawal from sale of a Product.

Terms means these terms and conditions of sale and any further terms or conditions included in any annexures to these terms and conditions. With respect to a Customer's purchase of eligible injector systems from Bayer Radiology, the terms and conditions in Annexure A will apply concurrently with all other terms and conditions in this document until the earlier of:

- (a) Customer opting out of VirtualCARE; or
- (b) until such time as Customer ceases to own an eligible injector system.

2. Orders

2.1 All orders for Products must be placed in the manner and form required by Bayer Radiology from time to time.

2.2 Bayer Radiology may in its absolute discretion determine from time to time a "Specified Order Quantity", being the minimum order value or quantity for each order of Products to be supplied to Customer.

2.3 All orders will be subject to acceptance by Bayer Radiology, which may, in its absolute discretion, decline or accept an order in whole or part. Customer acknowledges that acceptance of an order by Bayer Radiology does not imply that Bayer Radiology will accept any future order(s) placed by Customer.

2.4 Once accepted by Bayer Radiology, it will begin fulfillment of the Order and such Order may not be cancelled by Customer (except with the express consent of Bayer Radiology).

2.5 Upon acceptance of each Order by Bayer Radiology, a separate contract of

RADIOLOGY TERMS AND CONDITIONS OF SALE

sale will arise. Each Contract will comprise the accepted Order and these Terms. If there is any inconsistency between these Terms and another provision in a Contract then the provision in the Contract will prevail only to the extent of the inconsistency.

- 2.6 No terms or conditions of Customer, including any terms or conditions printed on or referred to in Customer's offer to purchase or order, are accepted by or will be binding on Bayer Radiology or have any legal effect.

3. **Quotations**

- 3.1 All quotations provided by Bayer Radiology will be unchanged for a period of 30 days from the date of the quotation, except where:

- (a) Customer requests, and Bayer Radiology agrees, any variation to the Products or any other subject matter of the quotation; or
- (b) if the quotation relates to imported third party Products and:
 - (i) the exchange rate used in the quotation changes between the date of the quotation and the date of the applicable Contract;
 - (ii) the transfer price offered for the Products by the third-party supplier changes;
 - (iii) any other taxes or duties applied to the Products changes; or
 - (iv) freight costs charged by third party suppliers change,

in which circumstances the quotation will be deemed to be effectively adjusted in accordance with such changes.

- 3.2 Customer indicates acceptance of the quotation by placing an Order in accordance with clause 2.

4. **Price and Payment**

- 4.1 The price for the Products (including any charges for freight and handling costs) is specified in the Contract. If there are changes in pricing, Bayer Radiology will communicate such change to the Customer prior to acceptance of an

order.

- 4.2 Customer must pay GST or any other tax duty, levy, tariff or charge applicable to the supply of the Products in addition to the price. Bayer Radiology will provide Customer with a tax invoice as required by law.
- 4.3 Customer must pay for Products supplied to it within 30 days of the date of the invoice for such Products.
- 4.4 Customer must not withhold payment or make any deduction from the invoiced price or any other amount owing to Bayer Radiology without Bayer Radiology's prior written consent.
- 4.5 Receipt of any amount will not constitute payment until such time as the amount owing to Bayer Radiology is paid or honoured in full.
- 4.6 Bayer Radiology may in its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoice.
- 4.7 Bayer Radiology may charge interest on any overdue monies at the rate which is 2% above the rate then charged by Bayer Radiology's major banker for commercial overdraft balances of over \$100,000, calculated from the due date for payment of the outstanding amount until the date of payment by Customer. Any payment made by Customer will be credited first against interest that has accrued.
- 4.8 Customer will pay to Bayer Radiology all reasonable legal and other costs incurred by Bayer Radiology arising from Customer's default in payment and the collection of any overdue monies.

5. **Delivery Terms**

- 5.1 Timeframes estimated by Bayer Radiology for delivery of the Products are estimates only. Bayer Radiology will use its reasonable endeavours to supply the Products in the quantities specified in the relevant Contract.
- 5.2 Bayer Radiology will not be liable for any loss suffered by Customer arising out of any delay or failure to deliver Products (or any part of them) or failure to deliver in the requested quantities.
- 5.3 Bayer Radiology may refuse to deliver

RADIOLOGY TERMS AND CONDITIONS OF SALE

- Products to Customer if it owns Bayer Radiology any outstanding monies.
- 5.4 Delivery of the Products will be made in the manner and at the place specified in the relevant Contract. If not specified, delivery will be made as determined by Bayer Radiology.
- 5.5 Customer agrees to accept delivery of the Products at any time between 9.00am to 5.00pm on a Business Day.
- 5.6 If Bayer Radiology fails to deliver some or all the Products pursuant to a Contract, provided such delay is communicated to the Customer in advance, Customer may not cancel that Contract or any other order, Contract or delivery. Bayer Radiology will not be obliged to accept any claims for shortages of deliveries or non-conforming Products unless written notice providing reasonable details of the claim is given to Bayer Radiology within 10 Business Days after delivery and provided that Bayer Radiology (acting reasonably) acknowledges such shortages or non-conformance.
- 5.7 If Bayer Radiology supplies the Products pre-packed and labelled, Customer must not sell, supply or otherwise deal with the Products unless the packaging and labelling remains intact, and Customer must not alter, remove, conceal or tamper with any batch numbers or other means of identification used in relation to the Products.
- 5.8 If Bayer Radiology delivers the Products in accordance with clause 5.5 above, and Customer does not, or indicates to Bayer Radiology that it will not, accept delivery, then the Products will be deemed to have been delivered at the time Bayer Radiology was willing to deliver them.
- 5.9 Bayer Radiology reserves the right to deliver Products by instalments. Each instalment may be invoiced separately and will be deemed to be a separate contract under the same provisions as the main Contract.
- 5.10 Bayer Radiology may suspend or cancel delivery of the Products if Bayer Radiology reasonably believes that the Products may cause injury or damage (including for technical, scientific, medical or efficacy reasons) or may infringe the intellectual property rights of any person, or if payments owing from Customer to Bayer Radiology remain outstanding. Bayer Radiology's suspension or cancellation in these circumstances will not constitute any admission of liability or fault by Bayer Radiology.
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- 6. Containers and Pallets**
- 6.1 Any pallets or containers used for the delivery, storage or display of Products are not included in the price unless otherwise specified, and will remain the property of their owner.
- 6.2 Customer must promptly return or exchange the pallets and containers in its custody on the day of delivery (unless otherwise agreed with Bayer Radiology) or reimburse Bayer Radiology the cost of replacement or repair of lost or damaged pallets or containers.
- 6.3 Bayer Radiology may charge a deposit to Customer for a pallet or container, which will be credited in full if the pallet or container is returned to Bayer Radiology within 3 months of dispatch in good order and condition.
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- 7. Risk and Title**
- 7.1 Legal and beneficial ownership in the Products will not pass to Customer until Customer has paid for those Products in full.
- 7.2 Risk of loss of or damage to Products will remain with Bayer Radiology only until delivery of the Products by Bayer Radiology to Customer in accordance with clause 5. Thereafter risk of damage to, or loss or deterioration of, the Products from any cause whatsoever passes to Customer.
- 7.3 Until all outstanding monies have been paid to Bayer Radiology for Products delivered to Customer:
- (a) Customer must separately store those Products in such a way that makes it clear that they are the property of Bayer Radiology;
- (b) in the event of a default under clause 14, Bayer Radiology or its representative may enter premises occupied by Customer to remove any of those Products and may dispose of or retain such Products as Bayer Radiology sees fit without being required to give notice or account to Customer. If Products or any of them are wholly or partially attached to or

RADIOLOGY TERMS AND CONDITIONS OF SALE

- incorporated in any other product, Bayer Radiology may disconnect them in any way necessary to remove Products; and
- (c) all reasonable costs and expenses incurred by Bayer Radiology as a result of taking action in accordance with clause 7.3(b) must be paid by Customer to Bayer Radiology on demand.
- 7.4 Until title to Products passes to Customer, Customer acknowledges and agrees:
- (a) the Products supplied and not resold are held by it as a bailee for Bayer Radiology;
- (b) Customer may resell the Products without the right of Customer to bind Bayer Radiology to any liability to any third party (whether contractual or otherwise);
- (c) any resale of the Products must only be made on the condition the purchaser is expressly made aware of the existence of Bayer Radiology's rights under this clause 7;
- (d) if the Products have been resold by Customer, Customer will hold so much of the proceeds of sale as does not exceed the outstanding monies on trust for Bayer Radiology immediately when they are receivable or received;
- (e) when the proceeds held in trust for Bayer Radiology under clause 7.4(d) are received they must either be paid immediately to Bayer Radiology or held in a separate bank account as trustee for Bayer Radiology and they must not be used by Customer in any other way; and
- (f) the authority conferred on Customer by clause 7.4(b) may be revoked by written notice from Bayer Radiology at any time if Bayer Radiology reasonably considers the credit of Customer to be unsatisfactory or if Customer is in default in the performance of its obligations under any Contract, these Terms or any other agreement between Bayer Radiology and Customer.
- 7.5 This clause 7 creates a purchase money security interest in the Products, any goods in which the Products are used as a component, and all proceeds from their respective resale by Customer. The security interest is granted to secure Customer's proper performance of the Agreement, and comes into effect when the Customer takes possession of the Products.
- 7.6 For the avoidance of doubt the Customer acknowledges and agrees that it grants to Bayer Radiology a security interest in all goods supplied by Bayer Radiology to the Customer whether now or in the future and in any proceeds from the sale of those goods.
- 7.7 The parties agree that pursuant to sections 115(1) and 115(7) of the PPSA the following sections of the PPSA will not apply to these Terms and any related Contract (to the extent permitted by law): Sections 95, 96, 117, 118, 121(4) 125, 127 129, 130, 132, 134(2) 135, 136(3), 136(4), 136(5), 137, 142 and 143.
- 7.8 For the purposes of section 14(6) of the PPSA the parties agree that any payments received by Bayer Radiology from the Customer pursuant to or in any way connected with this agreement will be applied in such order as Bayer Radiology deems fit in its absolute discretion.
- 7.9 Customer consents and agrees that:
- (a) it must sign all documents and take all steps as Bayer Radiology may reasonably require in connection with the registration, perfection and enforcement of this purchase money security interest; and
- (b) the security interest created by this agreement or any other document relating to the subject of this agreement may be registered with the relevant authority or public register; and
- (c) Bayer Radiology is not obliged to give any notice or documents under the PPSA unless the relevant obligation cannot be excluded. Customer waives its right to be provided with verification statements pursuant to section 157 of the PPSA.

RADIOLOGY TERMS AND CONDITIONS OF SALE

8. Warranties

8.1 Bayer Radiology warrants that all Products manufactured by Bayer Radiology or a Bayer Radiology group company and supplied to Customer will, subject to this clause 8, comply with Bayer Radiology's specifications for those Products (or if no such specifications exist, will be free of defects in materials and manufacture):

- (a) until the end of the registered shelf life of such Product; or
- (b) if there is no registered shelf life, for a period of 12 months from the date of either delivery of the Products by Bayer Radiology to Customer or where applicable, the date of installation of the Products by Bayer Radiology (where the Products require installation),

(the **Warranty Period**).

8.2 If a Product does not comply with the warranty set out in clause 8.1 and Customer notifies Bayer Radiology in writing of the defect during the Warranty Period within 10 Business Days of the defect coming to its notice, Bayer Radiology will, at its option, either exchange the Product for a new Product, or refund the price paid for Product.

8.3 When a refund is given pursuant to clause 8.2, the Product for which the refund is provided must, at Bayer Radiology's option, be destroyed or returned to Bayer Radiology by Customer, at Customer's expense, and if returned becomes the property of Bayer Radiology.

8.4 The warranty in clause 8.1 does not apply:

- (a) as a result of any acts or omissions by any person other than Bayer Radiology, or any external cause;
- (b) if the defect is due to the Product being used for purposes other than for purposes for which it was intended or which do not fall within the scope of any regulatory approval;
- (c) to a Product that has been modified without the written permission of Bayer Radiology;
- (d) if the Product has not been stored

or transported in accordance with Bayer Radiology's recommendations; or

(e) if the defect in or malfunction of the Product is caused or contributed to by:

- (i) the use of equipment disposables (including, but not limited to, syringes, tubing sets, extension sets, patient lines and transfer devices) that have not been manufactured by Bayer Radiology or Bayer Radiology's authorised manufacturer; or
- (ii) abuse, misuse or spilling of contrast media (contrast fouling), blood or other substances, including the re-use of syringes, that causes leakage and abnormal pressure, flow rates or volumes that are not compatible or agree with Bayer Radiology injector settings; or
- (iii) a failure to follow specific provisions of any operation manual relating to the Products;
- (iv) a repair, modification or installation with other equipment interfaces that have not been authorised or approved in writing by Bayer Radiology.

8.5 The benefit of the warranty in clause 8.1 is personal to Customer and is not assignable without the prior written consent of Bayer Radiology.

8.6 Except as expressly set out in these Terms, and subject to any terms, warranties or conditions that by law may not be excluded (including those under sections 51, 52 and 53 of the Australian Consumer Law), all conditions, warranties, terms, and obligations expressed or implied by law or otherwise relating to the performance of Bayer Radiology's obligations under these Terms, or any goods or services supplied, or to be supplied, by Bayer Radiology under these Terms, are excluded and the rights set out in this clause 8 are the sole and exclusive remedies of Customer with respect to

RADIOLOGY TERMS AND CONDITIONS OF SALE

defective Products.

9. Credits

- 9.1 Credits sought for returned Products are at Bayer Radiology's discretion. No Products for which the shelf life is within 6 months of expiring will be accepted for return.
- 9.2 Products, in respect of which a credit is sought and approved by Bayer Radiology, must be returned to Bayer Radiology's premises freight free in good and saleable condition in the original containers and packaging in which they were supplied, and accompanied by the number and date of Bayer Radiology's supplying invoice.

10. Assistance and Materials Supplied by Bayer Radiology

- 10.1 Subject to obligations imposed on Bayer Radiology by the law which cannot be excluded or modified by these Terms, and subject to any contrary express provisions in a Contract, any advice, recommendation, information, assistance or service provided by Bayer Radiology in relation to Products and their use or application is given in good faith but is provided without liability or responsibility on the part of Bayer Radiology and without intention that Customer should rely thereon.
- 10.2 Any material supplied by Bayer Radiology for advertising and display is issued to Customer for use in its own business and is not intended for circulation or distribution to the public. Such material will remain the property of Bayer Radiology, must be returned by Customer to Bayer Radiology upon request and must not be modified without Bayer Radiology's prior consent.

11. Pharmacovigilance and Recalls

- 11.1 Customer agrees to nominate and provide to Bayer Radiology the contact details (including phone and email) of at least one Customer personnel (e.g. a healthcare professional, pharmacovigilance, quality or safety related representative) to receive safety or recall information in connection with the Products from Bayer Radiology.
- 11.2 Customer agrees to provide Bayer Radiology with a written report of any Adverse Event or Product Technical Complaint regarding Products that come

to its attention in connection with the services performed under this agreement, by email to drugsafety.anz@bayer.com within one Business Day of receipt of such information.

- 11.3 Customer agrees to inform Bayer Radiology immediately by email to ricustomercomplaints@bayer.com upon becoming aware of any Product Technical Complaint or Adverse Event with Bayer Radiology medical device products and equipment disposables or any information about:
- (a) a malfunction or deterioration in the characteristics and/or performance of the device; or
 - (b) any inadequacies in the labelling or the instructions for use which, directly or indirectly, might lead to or might have led to the death of a patient, user, or other persons or to a serious deterioration in their state of health.
- 11.4 Customer agrees that, unless otherwise required by law or applicable regulatory authority, Bayer Radiology shall be solely responsible for determining whether a Recall should occur. Customer agrees to co-operate to the fullest extent possible to diminish any risk to the public from an Adverse Event or Product Technical Complaint, including taking the following actions (as directed by Bayer Radiology):
- (a) reasonably assisting Bayer Radiology and providing information regarding traceability to affected Products;
 - (b) removing Products that may be affected by a Recall from offer for sale to the public;
 - (c) complying with all laws, regulations and notice requirements in relation to any Recalls;
 - (d) complying with any reasonable directions and corrective action required by Bayer Radiology in relation to a Recall;
 - (e) recalling the Products that may be affected by a Recall where they have been sold; and
 - (f) disseminating information, that has been approved in advance by Bayer Radiology, to its customers

RADIOLOGY TERMS AND CONDITIONS OF SALE

which is necessary to limit any harm, loss or damage that may be caused in any way in relation to the Recall.

12. **Limitation of Liability**

- 12.1 Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.
- 12.2 Subject to clause 12.1, where any terms, conditions or warranties are implied by law into these Terms which the law expressly provides may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of Bayer Radiology to Customer under such implied terms, conditions or warranties is limited, at the option of Bayer Radiology, to the repair or replacement of goods, or payment of the cost of repairing or replacing the goods.
- 12.3 Except as expressly provided in these Terms, to the extent permitted by law, Bayer Radiology will have no liability to Customer, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity.
- 12.4 To the extent permitted by law, Bayer Radiology shall not be liable for any clinical, safety and technical failures of its Products resulting from or in connection with the use of non-Bayer Radiology equipment disposables.

13. **Indemnities**

- 13.1 If Customer gives instructions to Bayer Radiology with respect to the manufacture, packaging, sale or supply of the Products, Customer warrants to Bayer Radiology that adherence by Bayer Radiology to any such instructions will not infringe the intellectual property rights of any other person.
- 13.2 Customer releases and indemnifies Bayer Radiology, its related bodies corporate, and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may

be brought against them, whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of or in connection with a breach of Customer's warranties or obligations contained in these Terms, and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand.

14. **Default**

- 14.1 If an Insolvency Event occurs in relation to Customer or any other event occurs which gives Bayer Radiology reasonable grounds for concern regarding the creditworthiness of Customer, Bayer Radiology may by notice to Customer, at its option and without prejudice to any other right it may have, suspend or terminate a Contract or require payment before or on delivery of the Products (notwithstanding the terms of payment applicable to the Products), or cancel any undelivered or uncompleted Products under a Contract, and may retain any monies paid by Customer in relation to the Contract and apply such monies against any loss or damage incurred by it in relation to the default by Customer.

15. **Force Majeure**

- 15.1 Neither party will be liable for any delay or failure to perform its obligations under these Terms (other than payment obligations) if such delay is due to Force Majeure.
- 15.2 If a delay of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

16. **Confidentiality**

- 16.1 The provisions of all Contracts are confidential and must not be disclosed by Customer to any third party without Bayer Radiology's prior written consent unless such disclosure is required by law (other than section 275(1) of the PPSA).
- 16.2 The parties agree that the provisions of this clause are a "confidentiality agreement" referred to in section 275(6)

RADIOLOGY TERMS AND CONDITIONS OF SALE

- of the PPSA.
- 16.3 The restrictions contained within this clause 16 do not apply to any of these Terms or provisions of Contracts that Bayer Radiology has itself placed in the public domain.
17. **Privacy**
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- 17.1 Bayer Radiology has a published Privacy Policy which is incorporated into these Terms by reference and can be viewed at www.bayer.com.au/en/privacy-policy-au.
- 17.2 Bayer Radiology's collection and use of your personal information may be for purposes including:
- (a) to process and administer your dealings as a customer, including assessing your credit worthiness;
 - (b) to provide you with the Products and services you have requested and assist you with further relevant information including Product related information ; and
 - (c) to administer the transactions contemplated by the Terms.
- 17.3 Bayer Radiology will:
- (a) use personal Information provided to it for the purposes relating to the terms of this agreement;
 - (b) use personal information collected by it in accordance with its Privacy Policy and the Privacy Act 1988 (Cth) (the **Privacy Act**); and
 - (c) not sell, trade, give or pass on to any third party any personal information unless such disclosure is contemplated by and directly related to the purpose outlined by the terms of this agreement, or the Customer has consented to such a disclosure or such disclosure is required by law.
- 17.4 Customer authorises Bayer Radiology to disclose Customer's personal information to third party contractors and service providers who require that information to assist Bayer Radiology to operate its business and fulfil the terms of this agreement (such as contractors and service providers involved in services including but not limited to the processing of orders, order fulfilment and the collection of outstanding debts).
- 17.5 By entering into this agreement Customer:
- (a) acknowledges that it has read Bayer Radiology's Privacy Policy and consents to its terms;
 - (b) acknowledges that Bayer Radiology is a global organisation and some of the activities necessary to fulfil the terms of this agreement may be conducted by Bayer Radiology entities located outside of Australia, and Customer consents to the overseas transfer of its Personal Information for the purpose of those activities, and that of its employees, consultants and agents provided by Customer to Bayer Radiology.
- 17.6 Customer warrants that it shall comply with the provisions of the Privacy Act and shall not (as far as practicable) knowingly do anything or permit anything to be done which might lead to a breach of any such legislation.
18. **General**
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- 18.1 Customer must comply with all applicable laws, regulations, industry standards and codes of conduct in Australia and any other relevant jurisdiction in relation to all matters contemplated (whether expressly or implicitly) by these Terms.
- 18.2 Any notice in connection with these Terms or any Contract will be deemed to have been given when made in writing and delivered or sent by post or email to the party to whom such notice is intended to be given, at the address of that party in the Contract (or to such other address as may from time to time be notified in writing to the other party). A notice is deemed to be given and received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, 3 Business Days after the date of posting, or 6 Business Days if sent to or from another country; or
 - (c) if sent by email, when the sender's email system generates a message confirming successful transmission of the message.
- 18.3 If any provision of these Terms is invalid, illegal or unenforceable, these Terms

RADIOLOGY TERMS AND CONDITIONS OF SALE

take effect (where possible) as if they did not include that provision.

- 18.4 Any failure by Bayer Radiology to insist upon strict performance by Customer of any provision in these Terms will not be taken to be a waiver of any existing or future rights of Bayer Radiology in relation to the provision.
- 18.5 Customer must not assign or otherwise deal with its rights or obligations under these Terms or a Contract without the prior written consent of Bayer Radiology.
- 18.6 These Terms and Contracts are governed by the laws of New South Wales. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 18.7 These Terms (together with the Contracts) contain the entire agreement of the parties with respect to its subject matter and may only be amended in writing. For the avoidance of doubt, this includes any prior or subsequent terms and conditions attached and/or related to any purchase order, quotation, invoice or the like.
- 18.8 These Terms do not create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.
- 18.9 The parties agree that subject to the provisions of these Terms, the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 do not apply to the supply of Products under these Terms.

RADIOLOGY TERMS AND CONDITIONS OF SALE

Annexure A: VirtualCARE™ Terms and Conditions

All VirtualCARE eligible devices installed for the Customer are within the scope of these Terms.

With the order and purchase of Bayer Radiology injector systems, Customer acknowledges and agrees to and Bayer Radiology commits to the installation of VirtualCARE™ (hereinafter: 'VirtualCARE') as described in clause 1, on certain injection systems according to the following conditions:

1. VirtualCARE

1.1 Bayer Radiology developed a technology to enable remote service on certain Bayer Radiology Products under the name 'VirtualCARE™' which will be offered as a standard feature on the following injection systems:

- MEDRAD® MRXperion
- MEDRAD® Stellant
- MEDRAD® Avanta
- MEDRAD® Intego
- MEDRAD® Mark 7 Arterion
- MEDRAD® Spectris Solaris
- MEDRAD® Centargo
- MEDRAD® Stellant FLEX

Note: Bayer Radiology may add or delete injection systems from the list above at its sole discretion at any time.

1.2 VirtualCARE has the following functionalities, provided by the Bayer Radiology technical support team based on remote access:

- vErrorAlert: Proactive Alert Monitoring – System error codes monitored and flagged for immediate attention.
- vDiagnostics: Remote Diagnosis and Troubleshooting – Errors identified and either fixed remotely or dispatched for a highly efficient on-site repair.
- vServiceRequest: Request Service from Display – Ability to request service directly from the display
- vRepair: Remote Support and Software Updates – Enables the Technical Support Team to

upload software without an on-site visit.

Note: Some functionalities may not yet be available to all devices referred to at subsection 1.1. and may be extended to other devices as well as in terms of the content of the described functionalities.

1.3 During the installation of an eligible Bayer Radiology injection system, VirtualCARE with all its functionalities will be activated and maintained at no additional cost.

1.4 If applicable, the VirtualCARE connection is necessary for 'Pay-per-procedure' agreements or similar set-ups by which the customer is charged per procedure.

1.5 Through the VirtualCARE connection Bayer Radiology will collect certain data as described in Annex I. The collected data will be used to monitor the correct functioning of the injection system, to enhance the forecasting of products and thus optimizing production and supply especially in the light of potential stockouts or expiry of current inventory of consumables. For the avoidance of doubt, Bayer Radiology will not collect any data that contains patient data or other personal information, clinical data or information about the use of competitor's products.

1.6 Bayer Radiology will not disclose any information or results to any third party unless technically necessary for the processing of the data or for repair and maintenance purposes.

1.7 After the expiration of the manufacturer's warranty on the injection system Customer can subscribe to an annual service program such an annual service contract or an annual preventive maintenance contract (PM). Such a service program will be covered by a separate agreement. The VirtualCARE connection will enable

RADIOLOGY TERMS AND CONDITIONS OF SALE

Bayer Radiology to supply certain services more efficiently, thus reducing potential downtime of the device.

1.8 If Customer chooses not to subscribe to any annual service program after the expiration of the manufacturer's warranty, the Customer acknowledges and agrees that the remote connection with the injection system will be maintained but only in order to provide information to Bayer Radiology about the use and correct functioning of the injection system and to provide upgrades remotely, reducing travel and other costs.

1.9 Customer may request Bayer Radiology to uninstall VirtualCARE by giving Bayer Radiology at least 30 days' written notice.

2. RESPONSIBILITIES OF CUSTOMER AND BAYER RADIOLOGY

2.1 Customer is responsible for ensuring a VirtualCARE Remote Support Facility Preparation Checklist ('**Preparation Checklist**') is completed with correct information and returned to the Australian Technical Assistant Centre ('**AUTAC**') at Bayer Radiology, prior to the installation of VirtualCARE. Bayer Radiology will provide the Preparation Checklist to Institution.

2.2 The IT department of Institution is responsible to apply the settings to allow the connection to the Enterprise Server at the Institution's facility, as per the Preparation Checklist.

2.3 Trained Bayer Radiology Local Representative or AUTAC will confirm the successful connection to Enterprise Server.

2.4 Injection System – Alerts:
All Injection Systems Alerts are monitored by AUTAC

team to evaluate potential unexpected issues and promptly react to mitigate Injection Systems Downtime risks. AUTAC informs the local Bayer Radiology Service Representative ('**Field Rep**').

2.5 "Push for Service" requests notifications: AUTAC promptly inform the local Service Representative and may also call the Requester to collect further details or supply technical advice if requested language is currently available in AUTAC Team.

2.6 After the expiration of the manufacturer's warranty, the Customer will be responsible for repairs, installation and service of the equipment unless a service program with Bayer Radiology or a Bayer Radiology appointed third party service provider (usually a distributor) is in place.

3. INTELLECTUAL PROPERTY

3.1 The Customer acknowledges and agrees that Bayer Radiology owns, or has a licence to, all intellectual property rights in the software of Bayer Radiology's injection system and VirtualCARE ('**Software**') at all times.

3.2 Nothing in these Terms constitutes a transfer of any intellectual property rights.

3.3 Customer must not:

- (a) permit any third party to use the Software;
- (b) reproduce, make error corrections to or otherwise modify or adapt the Software or create any derivative works based upon the Software; and

RADIOLOGY TERMS AND CONDITIONS OF SALE

(c) de-compile, disassemble or otherwise reverse engineer the Software or permit any third party to do so.

5.3 Bayer Radiology shall have no liability or responsibility for any connectivity problems or cybersecurity threats to and from the injection system.

4. REPRESENTATIONS AND WARRANTIES

4.1 Customer represents and warrants that:

- (a) it is duly incorporated and existing under the laws of the jurisdiction in which it is incorporated;
- (b) the person signing these Terms on its behalf has full power and authority to enter into and perform the obligations herein;

4.2 The Customer warrants that the information provided in the Preparation Checklist is true and correct.

4.3 To the extent permitted by law, Bayer Radiology makes no warranty or representation of any kind whatsoever, expressed, or implied, including warranties of merchantability or fitness for any purpose in relation to VirtualCARE.

5. LIMITATION OF LIABILITY

5.1 To the extent permitted by law, Bayer Radiology shall not be liable for any clinical, safety and technical failure of its injection system and VirtualCARE resulting from the use of non-Bayer Radiology equipment or unauthorized use of the Software.

5.2 Bayer Radiology shall have no liability however arising and under any cause of action or theory of liability in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity.

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Annexure B: Description of Data collected by Bayer Radiology via remote connection on injection systems

Check annex I at the following link:

https://veeva-vault.prod.cdp.int.bayer.com/7817c6a6-b094-4028-ac98-fef34b85ba42/12ac78a1-498c-40fc-85fb-23c4b2d29d3e/12ac78a1-498c-40fc-85fb-23c4b2d29d3e_source_v.pdf

Or scan the code:

