

**Service Agreement  
For  
Recruiting Services**

This Service Agreement for Professional Services (“Agreement”) effective as of the effective date listed on Exhibit A attached hereto (the “Effective Date”) between the Bayer entity executing this document below (hereinafter referred to as “Bayer”) and the recruiting company executing this document below (hereinafter referred to as “Supplier”), is for the performance of recruiting services as further described in Exhibit A.

Bayer and Supplier agree as follows:

**PURPOSE OF THE AGREEMENT**

Supplier desires to provide Bayer with recruiting services as described herein and in Exhibit A.

**ARTICLE I  
SERVICES**

Supplier shall perform recruiting services (the “Services”) for the position identified in Exhibit A, incorporated herein by reference and made a part of this Agreement (hereinafter referred to as the “Project”). If there are any conflicts between the terms and conditions specified in this Agreement, and those specified in Exhibit A, those specified in this Agreement shall govern.

With regard to further services outside the scope of Exhibit A, the parties will enter into amendments documenting such changes in scope, and Supplier shall only be entitled to claim remuneration if an arrangement to this effect has been agreed to in writing between Supplier and Bayer. Any such agreement shall also constitute a separate and independent contractual obligation between Supplier and Bayer.

Supplier represents and warrants that it will interview and qualify each referred candidate in person and/or conduct a phone or video interview and that Supplier will confirm each candidate's employment history as set forth in his/her resume and confirm his/her eligibility to work in the United States prior to submitting the candidate to Bayer. Supplier further represents and warrants that it will speak with each of the individuals identified as references in a candidate's resume and provide a written report to Bayer for the candidate(s) who are hired. Supplier represents and warrants that all unfavorable information it receives from any references regarding any candidate will be shared in writing with Bayer.

Supplier represents and warrants that each candidate shall have consented to representation by Supplier prior to submitting candidate's resume to Bayer.

Bayer shall not consider any candidate who was initially presented by Supplier for a position other than that for which Supplier presented the candidate, unless Bayer has received Supplier's prior written consent.

This Agreement shall be non-exclusive. Bayer reserves the right to authorize other agencies or other entities to search for candidates for any position for which Supplier is authorized to recruit. Supplier reserves the right to conduct searches for candidates for other employers.

Supplier shall not recruit or otherwise solicit any employee of Bayer or any Bayer affiliate during the term of this Agreement.

**ARTICLE II  
TIME OF PERFORMANCE**

This Agreement shall be in effect for a period of one (1) year from the Effective Date.

**ARTICLE III**  
**SUBCONTRACTING**

Supplier shall not subcontract Services without the prior written approval of Bayer.

**ARTICLE IV**  
**RATES AND PAYMENT**

Bayer shall pay Supplier for the successful performance of its Services under this Agreement at the rate indicated in Exhibit A multiplied by the candidate's gross starting annual base salary, exclusive of benefits, bonuses, stock options or grants, commissions and any other forms of compensation.

Supplier shall not submit an invoice in connection with a particular search until: (i) the candidate has actually commenced work at Bayer, and (ii) the Supplier has received a purchase order number from Bayer.

Bayer will issue the purchase order number approximately 2-3 weeks after Bayer receives (at the Bayer address indicated in Exhibit A): (a) two (2) originals of this Agreement with Exhibit A attached, executed in ink by Supplier; and (b) a properly completed W-9 form for Supplier.

Each invoice must contain a purchase order number. If an invoice is submitted without containing a purchase order number, or if Supplier does not submit a properly completed W-9 at the same time it sends the executed Agreement to Bayer, payment to Supplier may be delayed beyond the payment terms in this Article IV.

Supplier will submit the invoice to the address specified in Exhibit A.

An accurate invoice, submitted in accordance with the requirements in this Article IV and received by Bayer between the 1<sup>st</sup> and 15<sup>th</sup> of a month, will be processed on the 16<sup>th</sup> of such month, and paid sixty (60) days after the processing date. An accurate invoice, submitted in accordance with the requirements in this Article IV and received by Bayer between the 16<sup>th</sup> and the end of a month, will be processed on the 2<sup>nd</sup> of the following month, and paid sixty (60) days after the processing date. Bayer will make the payments due hereunder to the Supplier address specified in the invoice.

In the event the employee resigns or is terminated for cause within ninety (90) calendar days of the hire date, Supplier shall refund all fees paid within thirty (30) calendar days of the date of termination to the address specified by Bayer.

**ARTICLE V**  
**ADMINISTRATION**

Any notice required or permitted to be given hereunder shall be in writing and delivered in person or sent by overnight mail or certified mail, return receipt requested, and given to or made upon the respective parties as follows (or such other addresses as the parties may notify each other from time to time):

If to Bayer:

Bayer Business and Technology Services LLC  
HR/direct Recruiting  
ATTN: Director of Recruiting  
100 Bayer Road  
Pittsburgh, PA 15205

With a copy to:

Bayer Business and Technology Services LLC  
ATTN: Human Resources Procurement  
100 Bayer Road  
Pittsburgh, PA 15205

If to Supplier:

To the Supplier address indicated in the invoice, unless otherwise indicated in the lines below:

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**ARTICLE VI**  
**ASSIGNMENT/CHANGE OF CONTROL/NAME CHANGE**

Any attempt by Supplier to assign its rights or to delegate its obligations under this Agreement without the prior written consent of Bayer shall be null and void.

Supplier must give Bayer at least ninety (90) days' prior written notice of any Change of Control of Supplier. Unless Bayer consents in writing to the Change of Control, Bayer may elect to terminate this Agreement by providing written notice to Supplier specifying the effective date of termination. A "Change of Control" shall be defined as a change in ownership and/or voting control of at least 50% of the ownership interests of Supplier.

Supplier must notify Bayer within ten (10) days of any change in its legal name.

**ARTICLE VII**  
**STATUS OF SUPPLIER**

It is agreed Supplier is an independent contractor for the performance of all Services under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a relationship of employment, or of principal and agent, partnership, co- or joint employer or joint venture, and Supplier shall not permit any of its officers, directors, agents, employees, representatives, supervisors, successors, assigns, employees, or subcontractors to represent or hold out itself or themselves as agents, supervisors, servants, employees, or representatives of Bayer or as authorized to make any commitment to incur any obligation on behalf of Bayer.

Supplier shall be solely and entirely responsible and liable for its acts and omissions and contractual obligations under this Agreement, and for all acts and omissions and contractual obligations arising from or relating to this Agreement of its employees, directors, officers, supervisors, agents, representatives, successors, assigns, suppliers, subcontractors and any other person or entity that Supplier retains to perform any obligations pursuant to this Agreement. Nothing contained in this paragraph shall be construed as conferring third party or intended beneficiary rights on any person or entity.

Nothing contained herein shall be construed to prohibit Supplier from contracting to provide or perform similar services for other customers at other locations while Supplier is under contract with Bayer.

Supplier shall be solely responsible for all employee/labor relations matters pertaining to its employees performing the work described herein, including, but not limited to, the selection, hire, training, supervision, discipline, direction, transfer, lay off, recall, promotion, reward, adjustment of grievances, compensation, and retention in its employ of such personnel as Supplier deems necessary in Supplier's reasonable judgment to fulfill its duties and obligations herein. Bayer will not be involved in the employee/labor relations of Supplier and, with respect to all persons employed by Supplier, will not exercise any of the foregoing employee/labor relations responsibilities.

None of the benefits provided by Bayer to its employees, including but not limited to compensation, insurance and unemployment insurance, are available from Bayer to the employees, agents or servants of Supplier, and Bayer has no obligation to furnish any such benefits.

#### **ARTICLE VIII** **PERSONNEL**

Bayer reserves the right to bar from its premises any employee, officer, director, agent, representative, supervisor, successor, assignee or subcontractor of Supplier for any reasonable cause.

#### **ARTICLE IX** **CHOICE OF LAW**

This Agreement shall be construed, interpreted and controlled by the laws of the Commonwealth of Pennsylvania, and all claims arising out of or related to the parties' obligations created by this Agreement, whether sounding in contract, tort or otherwise, shall be governed and decided pursuant to the laws of the Commonwealth of Pennsylvania, including Pennsylvania's statutes of limitations but not including its choice of laws rules. The parties agree that the Commonwealth of Pennsylvania has a substantial relationship to the parties to this Agreement. The parties agree that any lawsuit, action or other proceeding which relates in any way to this Agreement or the Services shall be brought only in a state or federal court located in Allegheny County, Pennsylvania. The parties agree that Allegheny County, Pennsylvania is a reasonable and convenient forum for the resolution of any dispute that may arise between the parties under this Agreement. The parties waive their right to object to venue in Allegheny County, Pennsylvania.

#### **ARTICLE X** **SUBSEQUENT ALTERATIONS**

No change, modification or alteration of this Agreement shall be valid unless it is made in writing and signed by the parties, and ***no course of dealing or performance between the parties, and no usage of trade, shall be construed to alter the terms hereof.***

#### **ARTICLE XI** **TAXES**

Supplier agrees to comply with all applicable federal, state and local laws and regulations with respect to compensation paid to its employees or with respect to this Agreement, and assumes exclusive liability for filing reports and making payment of all taxes or contributions as required by such laws or regulations including, but not limited to, social security taxes, state unemployment insurance taxes, gross receipt taxes, and federal, state and local withholding taxes. Supplier agrees to indemnify Bayer should any taxing entity claim that Bayer is responsible for Supplier's tax obligations and this indemnity shall include attorney's fees and costs that Bayer incurs in having to address and/or resolve any such tax issue.

**ARTICLE XII**  
**WARRANTY CLAUSE**

Supplier warrants that the Services shall comply with Applicable Law (defined below) as in effect at the time the Services are provided or known by Supplier or in the industry to become effective after such date. Supplier warrants that the Services shall be performed in conformity with the highest industry standards practiced by professional firms in performing work of a similar nature at the time the Services herein are performed and in the same place as the Services hereunder are provided, and that Supplier shall use its best efforts in the performance of the Services and its other obligations hereunder. To the extent Supplier is supplying goods or materials in connection with the performance of Services, Supplier warrants that the goods or materials shall be free of defects in materials, workmanship or design for a period of two (2) years from the date of final acceptance of the particular goods or materials by Bayer.

“Applicable Law” means any law, statute, ordinance, code, rule, regulation, published standard, permit, judgment, decree, writ, injunction, ruling, order, administrative guidance or other requirements of or promulgated by any Governmental Authority (defined below), whether existing at present or later enacted, applicable to the performance of this Agreement or in any manner affecting the Services, including without limitation any laws relating to HSE, the U.S. Foreign Corrupt Practices Act and the Federal Food, Drug and Cosmetic Act. “Governmental Authority” means any applicable federation, nation, state, sovereign or government, any federal, supranational, regional, state, local or municipal political subdivision, any governmental or administrative body, instrumentality, department, or agency or any court, administrative hearing body, arbitrator, commission, or other similar dispute resolving panel or body, and any other entity exercising executive, legislative, judicial, regulatory, taxing or administrative functions of a government with jurisdiction over the applicable matter.

**ARTICLE XIII**  
**GOVERNMENTAL LAWS**

Supplier agrees to comply with all Applicable Laws including, without limitation, the Fair Labor Standards Act and all other laws related to discrimination. Supplier shall not discriminate against any employee or applicant for employment because of age, race, color, creed, national origin or sex, or on the basis of any other recognized status or category protected under federal or state law. Supplier shall also comply with all Applicable Laws related to fair employment practices including, without limitation, all provisions of Executive Order 11246 as amended; Section 503 of the Rehabilitation Act of 1973 as amended; and the Vietnam Era Veterans Readjustment Assistance Act of 1974, 38 U.S.C. Section 4212, and any amendments thereto, as well as their implementing regulations at 41 C.F.R. Chapter 60.

Any clause required to be in a document of this type by any Applicable Law shall be deemed to be incorporated herein.

**ARTICLE XIV**  
**INSURANCE**

Supplier, at its own expense, shall at all pertinent times during the term of this Agreement possess the insurance coverages set forth below. Supplier's fulfillment of the obligations of this article shall not, of itself, in whole or in part satisfy or fulfill its indemnity, liability or other obligations owing under this Agreement or applicable law. It is further expressly understood that Bayer does not, in any way, represent that the types and minimum limits of insurance herein specified are sufficient or adequate to protect Supplier's interests or liability.

Supplier warrants and represents that, at its own expense, it has or shall obtain insurance of the following types: Commercial General Liability, on an “occurrence” coverage form basis, including coverage for Products/Completed Operations, Blanket Contractual, and Broad Form Property Damage; Automobile Liability covering all owned, non-owned and hired vehicles; and Workers Compensation as required by Federal, State and Local law. Employers Liability Deductible amounts under the foregoing policies shall be paid by Supplier. Supplier shall obtain a waiver of its insurer's right of subrogation against Bayer and other vendors working at the

site, and Supplier shall name Bayer as an additional insured on its Commercial General Liability and Automobile Liability policies. It is expressly understood that Bayer does not, in any way, represent that the amount of insurance obtained by Supplier is sufficient or adequate to protect Seller's interests or liability.

**ARTICLE XV**  
**INDEMNITY**

a) Supplier shall indemnify, defend and hold harmless Bayer, its predecessors, successors, parent and affiliated entities, insurers, officers, directors, managers, employees, agents, representatives and assigns, from and against any and all Losses (defined below) and threatened Losses arising from, in connection with, or based upon any Claim (defined below) against any of them that results from, occurs or arises in connection with the acts or omissions of Supplier or any of its officers, directors, managers, agents, employees, representatives, supervisors, successors, assigns, subcontractors, or anyone acting on any of their behalf or by any third party, arising from, or related to the performance of Supplier's obligations under this Agreement. Such acts and omissions may include but are not limited to negligence, strict liability, breach of contract or warranty, or statutory violation. The Supplier shall endeavor to amicably settle all Claims asserted by any other person or entity arising from such acts or omissions. Notwithstanding Supplier's obligation to attempt in good faith to amicably settle all Claims that may be covered by this Agreement, Bayer and Bayer's affiliates retain the absolute power to settle or otherwise compromise any and all Claims related to this Agreement, without affecting Bayer's or Bayer's Affiliates right to seek indemnity, defense, or hold harmless protection for any such settled claims or damages. Supplier's payments for attorneys' fees, litigation costs, and/or settlement provide prima facie evidence that Supplier was liable for the expenditures, and that such expenditures were reasonable in amount.

**b) THIS INDEMNITY PROVISION INCLUDES, BUT IS NOT LIMITED TO, CLAIMS FOR, ON ACCOUNT OF, OR ARISING FROM PERSONAL INJURIES OR DEATH ACTUALLY OR ALLEGEDLY SUSTAINED BY EMPLOYEES OF THE SUPPLIER OR ITS SUBCONTRACTORS OR OTHER ENTITIES ACTING ON SUPPLIER'S BEHALF. SUPPLIER HEREBY EXPRESSLY WAIVES, FOR PURPOSES OF THIS INDEMNITY PROVISION, ANY IMMUNITY IT MAY HAVE UNDER ANY APPLICABLE LAW FROM LIABILITY FOR SUCH PERSONAL INJURY CLAIMS BROUGHT BY BAYER PURSUANT TO THIS INDEMNITY; PROVIDED HOWEVER THAT SUCH WAIVER SHALL NOT APPLY TO CLAIMS ASSERTED BY SUPPLIER'S EMPLOYEES AGAINST SUPPLIER.**

c) "Claims" means any suit, claim, demand, charge, allegation, complaint, cause of action proceeding or government enforcement action, of any and every kind, nature and character made, brought or asserted, including, without limitation, by government or quasi-government authorities.

d) "Losses" means all losses, liabilities and damages and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation and litigation and costs of settlement and judgment and interest and penalties).

**ARTICLE XVI**  
**INTENTIONALLY OMITTED**

**ARTICLE XVII**  
**CONFIDENTIAL INFORMATION**

a) Supplier shall keep confidential and agrees not to disclose, divulge or reveal or use for any purpose other than providing services to Bayer, any confidential or proprietary information received from Bayer hereunder ("Confidential Information") to third parties without the prior written approval of Bayer. This obligation of confidence shall not apply to information which (i) is or becomes publicly available by other than a breach hereof (including, without limitation, any information filed with any governmental agency and available to the public); (ii) is known to or in the possession of Supplier at the time of disclosure; (iii) thereafter becomes known to or comes

into possession of Supplier from a third party that Supplier reasonably believes is not under any obligation of confidentiality to Bayer and is lawfully in the possession of such information; (iv) is developed by Supplier independently of any disclosures previously made by Bayer to Supplier; (v) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons or other legal process, or by law, rule or regulation, or by applicable regulatory or professional standards, provided that prior to such disclosure by Supplier, Bayer is given reasonable advance notice of such order and an opportunity to object to such disclosure; or (vi) is disclosed by Supplier in connection with any judicial or other legal proceeding involving Bayer and Supplier (or any members, principals or employees of Supplier) (whether or not such proceeding involves any third party) relating to Supplier's services for Bayer or this Agreement. Supplier shall immediately notify Bayer of any unauthorized disclosure of Confidential Information.

b) Supplier shall carry out its obligations hereunder using the same degree of care that it uses in protecting its own confidential information, but at least a reasonable degree of care.

c) Supplier agrees that it will not provide any subcontractor or other third party with access to the Confidential Information, unless such subcontractor or third party has agreed to be bound by confidentiality, nondisclosure and non-use obligations in a form of an agreement acceptable to Bayer.

d) Supplier acknowledges that during the term of this Agreement, it may develop or be exposed to Confidential Information, trade secrets and know-how of Bayer, its parents or affiliated companies, suppliers, customers and others with whom Bayer has a business relationship. Supplier agrees not to use or divulge any such information during the term of this Agreement except as reasonably required in performing Services for Bayer. Furthermore, Supplier agrees to make no use or disclosure of any such information subsequent to the term of this Agreement for so long as any such information remains confidential, secret or otherwise wholly or partially protectable.

e) All materials and copies thereof developed in connection with Services shall be considered Confidential Information of Bayer subject to the obligations of this article.

f) Upon completion of Services under this Agreement, Supplier shall turn over to Bayer or destroy (in Bayer's sole discretion) all Confidential Information.

g) It is understood and agreed that any information disclosed by Supplier to Bayer will be non-confidential to Bayer and can be used by Bayer as it sees fit without obligation to Supplier. Further, it is Bayer's understanding that such Services and disclosures to Bayer will not breach a confidential or other business relationship with any third party.

h) The only persons from Supplier who are authorized to access Confidential Information shall be the persons who need to know such Confidential Information in order to provide the Services to Bayer.

i) Supplier will comply with all applicable federal, state and local laws and regulations in regard to privacy, protection and confidentiality of Confidential Information, including, without limitation, the Health Insurance Portability and Accountability Act (HIPAA) as currently in effect.

j) In the event that Supplier breaches this Article XVII, damages may not provide an adequate remedy for Bayer. Therefore, Supplier acknowledges that, in the event of a breach or threat of breach of this Article XVII, Bayer may seek injunctive relief, in addition to any other relief available at law or in equity.

#### **ARTICLE XVIII** **RECORDS / AUDIT**

Supplier, its subcontractors, suppliers and its or their affiliates, shall maintain a complete, correct and confidential set of records in connection with this Agreement and shall retain all such records for a period of not less than six (6) years after termination or expiration of this Agreement.

Bayer, its auditors, designated audit-representatives and regulators shall have the right, upon reasonable notice and during regularly scheduled business hours, to inspect and audit such records, and to otherwise audit Supplier's and any subcontractor's compliance with the terms and conditions of this Agreement.

Bayer's claims for omissions, corrections or errors in charges and credits for Bayer's account and overpayment of amounts billed by Supplier, its subcontractors, suppliers and its or their affiliates may be presented anytime during course of this Agreement and before expiration of one (1) year after termination or expiration of this Agreement. A written response to Bayer's claim for such omissions, corrections or errors in charges and credits for Bayer's account shall be made by Supplier as soon as practical, but in no event later than sixty (60) days from date of presentation of any such claims.

Any amount by which payment to Supplier by Bayer exceeds the amount due to Supplier as shown by Bayer's audit shall be forthwith returned to Bayer. Any amount by which payment to Supplier by Bayer does not meet the amount due to Supplier as shown by Bayer's audit shall be forthwith paid to Supplier.

#### **ARTICLE XIX** **TERMINATION PROVISIONS**

Bayer shall have the right to terminate this Agreement at any time immediately upon delivering notice of such termination to Supplier.

In the event that Bayer hires a candidate who was initially presented by Supplier before the termination or expiration of this Agreement, and but for the termination or expiration of this Agreement, Supplier would have been eligible to a fee, Bayer shall pay Supplier such fee.

Bayer shall have no liability to Supplier for any damages, including but not limited to lost overheads or profits or any other lost opportunity costs for terminating this Agreement pursuant to this Article XIX and Supplier shall have no other remedy other than that expressly provided in this paragraph.

#### **ARTICLE XX** **INTEGRATED AGREEMENT**

The entire agreement between the parties with respect to the Services is expressed in the written documents constituting this Agreement between the parties, which supersedes and supplants the terms and conditions of any quotations, proposals, negotiations, representations, promises, acknowledgments, invoices or other alleged understandings, written or oral not expressly set forth herein. This Agreement, which includes any exhibits, attachments and documents referenced herein, shall constitute the entire, final and complete agreement of the parties. No amendment of any provision of this Agreement shall be binding unless the same is set forth in a writing endorsed by the handwritten signature of an authorized representative of the party to be bound. The requirements of a writing and signature may not be satisfied by email or other electronic communications, unless expressly permitted herein. Any waiver of the requirements of this paragraph must comply with the requirements for an amendment.

#### **ARTICLE XXI** **WAIVER**

Either party's exercise or failure to exercise any right or remedy shall not preclude the exercise of that or any other right or remedy at any time. Failure by either party to enforce its rights and remedies shall not constitute or be construed as a waiver or otherwise preclude such party from enforcing the same, or other, rights and remedies in the future.



**ARTICLE XXII**  
**THIRD PARTY BENEFICIARIES**

This Agreement is not intended to and shall not be construed to be for the benefit of any third parties except to the extent such third party is identified in the indemnification provisions contained in this Agreement.

**ARTICLE XXIII**  
**SEVERABILITY**

If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, then such provision shall be equitably reformed in accordance with the intent of the original provision to the extent necessary to make it valid, legal and enforceable. If it is not possible to equitably reform such invalid, illegal or unenforceable provision, then such provision shall be severed from the Agreement, and the remaining provisions given full force and effect. Notwithstanding the foregoing, if reformation or severance of an invalid, illegal or unenforceable provision would cause a material failure of consideration or frustrate an essential purpose of the Agreement, the affected party may elect to void the Agreement in its entirety.

**ARTICLE XXIV**  
**USE OF NAME**

A party shall not in any manner, directly or indirectly, utilize or refer to the other party's name in any advertisements, sales promotions, press releases or releases to professional or trade publications, without the other party's prior express written approval.

**ARTICLE XXV**  
**SURVIVAL**

The terms of this Agreement which by their nature and for any reason are intended to survive and extend beyond the termination, cancellation or expiration of this Agreement, shall remain in effect and be binding upon the parties beyond such time. Such terms shall include without limitation those contained in ARTICLES IV, V, VII, IX, X, XI, XV, XVI, XVII, XIX, XXII, XXIV, XXX.

**ARTICLE XXVI**  
**COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each one of which shall be an original and all of which shall constitute one and the same document.

**ARTICLE XXVII**  
**HEADINGS**

Any headings preceding any of the Articles hereof are inserted solely for convenience of reference, shall not constitute a part of the Agreement and shall not otherwise affect the meanings, content, effect or construction of this Agreement.

**ARTICLE XXVIII**  
**SUPPLIER CODE OF CONDUCT**

Supplier acknowledges that it has reviewed the Bayer Supplier Code of Conduct at <http://www.supplier-code-of-conduct.bayer.com> (the "Code of Conduct"). Supplier represents and warrants that it is in compliance with the Code of Conduct as of the effective date of this Agreement, and covenants that it shall remain in compliance with the Code of Conduct throughout the term of this Agreement. Any violation by Supplier of the Code of

Conduct shall be grounds for "Termination for Cause" under Article XIX, except that the cure period shall not apply and Bayer may immediately terminate this Agreement in its sole discretion.

### **ARTICLE XXIX** **CONSTRUCTION**

Each party has been represented by competent attorneys in regard to the review, negotiation and execution of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring either party because of the authorship of any of the provisions hereof.

### **ARTICLE XXX** **DATA SECURITY**

1. Personal Data. Supplier acknowledges that as a result of this Agreement, Supplier shall obtain access to Personal Data. "Personal Data" means any information that identifies or can be used to identify an individual, including information related to Bayer's personnel (e.g., employees, temporary workers and independent contractors), customers, suppliers and invitees, that is provided to, or obtained, used, accessed, maintained, or otherwise handled by, Supplier in connection with providing Services under this Agreement.

2. Data Safeguards.

(a) Supplier shall at all times comply with and treat Personal Data in accordance with the requirements of this Article XXX (Data Security) and the Data Protection Requirements. "Data Protection Requirements" means all federal, state and local laws or regulations relating to the collection, use and protection of information that identifies an individual or can be used to identify an individual that apply in a jurisdiction in or from which Bayer or Supplier collects, transmits, stores, uses and discloses Personal Data.

(b) Supplier shall hold all Personal Data in strict confidence and shall not, except as permitted in this Article XXX (Data Security), disclose Personal Data to any third party (including its affiliates) or use (directly or indirectly) any Personal Data for any purpose other than to provide the Services to Bayer under this Agreement. In no event shall Supplier: (i) use Personal Data to market its services or those of an affiliate or third party; (ii) sell, rent, disclose or otherwise provide access to Personal Data to its affiliates or third parties; or (iii) transfer Personal Data to, or allow access to Personal Data by, its employees, contractors or other personnel working for or on behalf of Supplier in any location outside the United States unless agreed to in writing and in advance by Bayer.

(c) Before providing Personal Data to a third party, including an affiliate of Supplier or a potential subcontractor or service provider, Supplier shall obtain Bayer's approval for such disclosure. If Bayer consents to Supplier's disclosure of Personal Data to a third party, Supplier shall enter into a written non-disclosure agreement with the third party that includes obligations that are at least as broad in scope and restrictive as those under this Article XXX (Data Security) and such other obligations as Bayer may impose on any third party. Without limiting the generality of the foregoing, at Bayer's election, Supplier shall cause a third party to submit to a data privacy and security audit by Bayer prior to transferring or providing access to Personal Data to such third party. Supplier shall remain accountable and responsible for all actions by, and omissions of, third parties with respect to Personal Data.

(d) Supplier shall: (i) develop, implement, maintain and monitor a comprehensive, written information security program that contains administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Personal Data; and (ii) conduct a risk assessment to identify and assess reasonably foreseeable internal and external risks to the security, confidentiality and integrity of electronic, paper and other records containing Personal Data and evaluate and improve, where necessary, the effectiveness of its safeguards for limiting those internal and external risks.

(e) Supplier certifies and shall ensure that its information security program is consistent with: (i) Bayer's information security practices and requirements as may be issued to Supplier by Bayer from time to time (including, as applicable, enhanced security provisions governing the use of Special Personal Data (defined below) in order to comply with applicable laws); and (ii) the Data Protection Requirements (including the Massachusetts data security regulations (201 Mass. Code Regs. §§ 17.01 – 17.05)). Supplier shall maintain and enforce its information security program at each location and facility from which Supplier provides the Services. "Special Personal Data" means: (a) an individual's name in combination with that individual's: (i) Social Security number, Taxpayer Identification Number, passport number, driver's license number or other government-issued identification number; or (ii) financial account number, such as a credit card or debit card number, with or without any code or password that would permit access to the account; or (b) an individual's name or a unique identification number in combination with race, religion, ethnicity, medical or health information, criminal background information or sexual orientation, in each case, that is provided to, or obtained, used, accessed, maintained, or otherwise handled by, Supplier in connection with providing Services under this Agreement. Special Personal Data is a type of Personal Data.

(f) Supplier shall review and, as appropriate, revise its information security program: (i) at least annually or whenever there is a material change in Supplier's business practices that may reasonably implicate the security, confidentiality or integrity of Personal Data; and (ii) as reasonably requested by Bayer. Supplier shall not alter or modify its information security program in such a way that weakens the program or compromises the confidentiality, integrity and security of Personal Data or that limits Supplier's ability to meet its obligations under this Article XXX (Data Security).

(g) Supplier agrees that: (i) Supplier shall maintain appropriate controls to limit access to Personal Data, including controls to limit access to Personal Data to the minimum number of Supplier employees and personnel who require such access in order to provide the Services; (ii) Supplier's employees and personnel who will be provided access to, or otherwise come into contact with, Personal Data shall be required (including during the term of their employment or retention and thereafter) to protect all Personal Data in accordance with the requirements of this Article XXX (Data Security); and (iii) Supplier shall provide such employees and personnel with appropriate training regarding information security and the protection of Personal Data.

(h) Supplier shall ensure that its information security program covers all networks, systems, servers, computers, notebooks, laptops, PDAs, mobile phones and other devices that process or handle Personal Data or that provide access to Bayer networks, systems or information. Moreover, Supplier shall ensure that its information security program includes industry-standard password protections, firewalls and anti-virus and malware protections to protect Personal Data handled or stored on computer systems.

(i) Supplier shall encrypt, using industry-standard encryption tools and using an encryption strength of at least 128 bit, all records and files containing Special Personal Data that Supplier: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops or storage media; (iii) where technically feasible, stores on portable devices; and (iv) stores on any device, including printers, copiers and scanners, that are transported outside of the physical and logical controls of Supplier. Supplier shall safeguard the security and confidentiality of all encryption keys associated with encrypted Special Personal Data.

(j) Supplier shall regularly dispose of Personal Data that is no longer necessary to provide the Services in accordance with Bayer's document retention policies, except if notified by Bayer that any such Personal Data is subject to a legal hold. If Supplier disposes of any paper, electronic or other record containing Personal Data, Supplier shall do so by taking all reasonable steps to destroy the information by: (i) shredding; (ii) permanently erasing and deleting; (iii) degaussing; or (iv) otherwise modifying the Personal Data to make it unreadable, unreconstructable and indecipherable. Notwithstanding the foregoing, no documents, files or other media that may contain Personal Data that are under a legal hold (as communicated by Bayer to Supplier or otherwise known by Supplier) shall be destroyed or otherwise disposed of until directed by Bayer, and all such documents, files or media shall be maintained.

(k) If Supplier connects to Bayer's computing systems or networks, Supplier agrees that: (i) Supplier shall not access, and shall not permit any other person or entity to access, Bayer's computing systems or networks without Bayer's authorization and any such actual or attempted access shall be consistent with any such authorization; (ii) all Supplier connectivity to Bayer's computing systems and networks and all attempts at same shall be only through Bayer's security gateways and firewalls; (iii) Supplier shall use industry standard virus and malware detection/scanning programs as specified by Bayer prior to any attempt to access any of Bayer's computing systems or networks; and (iv) Supplier shall not download or copy any Personal Data contained in Bayer's computing systems or networks.

(l) Bayer shall have the right, but not the obligation, to perform periodic security assessments of Supplier's and any subcontractor's computing systems and networks that store or handle Personal Data. Supplier agrees that should any such assessment reveal inadequate security by Supplier, Bayer, in addition to other remedies it may have, may suspend Supplier's access to Bayer's computing systems and networks until such inadequate security has been appropriately addressed.

(m) If Supplier is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands or other similar processes) to disclose any Personal Data to a third party, Supplier shall immediately notify Bayer of any such request or requirement (except to the extent otherwise required by Applicable Law) and shall not disclose the Personal Data to the third party without providing Bayer with at least forty-eight (48) hours, following such notice, so that Bayer may, at its own expense, exercise such rights as it may have under law to prevent or limit such disclosure. Notwithstanding the foregoing, Supplier shall exercise commercially reasonable efforts to prevent and limit any such disclosure and to otherwise preserve the confidentiality of the Personal Data, including by cooperating with Bayer to obtain an appropriate protective order or other reliable assurance that confidential treatment shall be accorded to the Personal Data.

(n) Supplier shall assist and support Bayer in the event of any investigation by a government or public authority, including a data protection regulator, if and to the extent that such investigation relates to Personal Data handled by Supplier on behalf of Bayer. Such assistance shall be at Bayer's sole expense, except where such investigation was required due to Supplier's acts or omissions, in which case such assistance shall be at Supplier's sole expense.

(o) Upon Bayer's request, Supplier shall enter into appropriate data transfer agreements with Bayer and its Affiliates as needed to satisfy cross-border transfer obligations relating to Personal Data, such as the Standard Contractual Clauses issued by the European Commission or other similar agreements.

(p) At no time shall Supplier acquire any ownership, license, rights, title or other interest in or to Personal Data, all of which shall, as between Bayer and Supplier, be and remain the proprietary and Confidential Information of Bayer.

(q) Upon termination or expiration of this Agreement for any reason or upon Bayer's request, Supplier shall immediately cease handling Personal Data and shall return to Bayer or transfer to a third party, as directed by Bayer, in a manner and format reasonably requested by Bayer or, if specifically directed by Bayer, shall destroy any or all Personal Data in Supplier's possession, power or control, in a manner required by Article XVII of this Agreement. Upon Bayer's instruction to return or destroy Personal Data, all copies of Personal Data shall be permanently removed from Supplier's and its agents', subcontractors' and third parties' systems, records, archives and backups and all subsequent use of such Personal Data by Supplier, its agents, subcontractors and third parties shall cease. Supplier shall certify to Bayer that all forms of the requested Personal Data have been either returned or destroyed.

3. Information Security Breach.

(a) Subject to the rights of Bayer specified in this Article XXX (Data Security), Supplier shall be responsible for any and all information security incidents involving Personal Data that are handled by, or on behalf of, Supplier.

(b) Supplier shall notify Bayer in writing immediately (and in any event within twenty-four (24) hours) whenever: (i) Supplier reasonably believes that there has been an actual or possible unauthorized acquisition, destruction, modification, use, or disclosure of, or access to, Personal Data; or (ii) Supplier has violated the requirements of this Article XXX (Data Security) or the Data Protection Requirements. Any incident referred to in (i) or (ii) shall be considered an "Information Security Breach". After providing such notice, Supplier shall investigate the Information Security Breach, take all necessary steps to eliminate or contain the exposures that led to such Information Security Breach, and keep Bayer advised of the status of such Information Security Breach and all matters related thereto.

(c) Bayer shall conduct a risk assessment to determine whether an Information Security Breach requires that notice be provided to any individual or entity. Supplier shall provide all information reasonably requested by Bayer to enable Bayer to perform and document such a risk assessment. Supplier shall provide, at Supplier's sole cost, reasonable assistance and cooperation requested by Bayer and/or Bayer's designated representatives, in the furtherance of any correction, remediation or investigation of any such Information Security Breach and/or the mitigation of any damage, including (i) three years of identity theft insurance and credit monitoring services to any individual whose Personal Data was included in the Information Security Breach, and (ii) any other notification or credit reporting service that Bayer may determine appropriate to send or provide to individuals impacted or potentially impacted by the Information Security Breach.

(d) Unless required by law, Supplier shall not notify any individual or any third party other than law enforcement of any potential Information Security Breach involving Personal Data without first consulting with, and obtaining the permission of, Bayer.

(e) Following an Information Security Breach, upon request of Bayer, Supplier shall develop a plan that reduces the likelihood of a recurrence of such Information Security Breach. Subject to Bayer's approval, Supplier shall promptly execute such plan.

(f) Supplier agrees that Bayer may, at its discretion immediately terminate all or any part of this Agreement without penalty if an Information Security Breach occurs, and that no cure period shall apply.

4. Indemnification. Supplier shall indemnify, hold harmless, and defend Bayer and Bayer's Affiliates and its and their officers, directors, employees, agents, successors, assigns and subcontractors from and against any and all Losses and threatened Losses arising from, in connection with, or based upon any Claim against any of them that result from, occur or arise in connection with any of the following: (a) violation of the requirements of this Article XXX (Data Security) or the Data Protection Requirements; (b) any Information Security Breach; (c) any negligence or willful misconduct of Supplier, its personnel, or agents or any third party to whom Supplier provides access to Bayer information or systems, with respect to security or confidentiality of Personal Data; (d) remedial action taken by Bayer as the result of an Information Security Breach; and (e) any other costs incurred by Bayer with respect to Bayer's enforcement of its rights in this Article XXX (Data Security). The obligations of this Section 4 shall not be limited by any other provision of this Agreement. This Section 4 shall survive any expiration or termination of this Agreement.

5. Primary Security Manager. Supplier shall designate an individual as the primary security manager under this Agreement. Supplier's security manager shall be responsible for managing and coordinating the performance of Supplier's obligations set forth in this Article XXX (Data Security).

6. Costs and Expenses. Except as otherwise provided herein, Supplier shall be fully responsible for, and shall pay, all costs and expenses incurred by Supplier or its personnel or agents with respect to the obligations imposed under this Article XXX (Data Security).

7. Survival. Supplier's obligations under this Article XXX (Data Security) shall continue for so long as Supplier continues to have access to, is in possession of or acquires Personal Data, even if all agreements between Supplier and Bayer have expired or terminated.

Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative as of the date set forth below.

SUPPLIER

BAYER

Insert full legal name of Supplier:

Insert full legal name of Bayer:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE TO SUPPLIER:** You must execute two (2) originals of this Agreement in ink and submit both originals with Exhibit A from the *Recruit Alliance* website to the Bayer address indicated on Exhibit A.

Template Approved 7/10/13

Exhibit A

[Position Description and Additional Terms]