

CYTEL XACT PORTFOLIO EVALUATION AGREEMENT

BY ACCESSING AND/OR USING THE SOFTWARE (EACH AS DEFINED BELOW) SELECTED IN THE ORDERING PROCESS AND LICENSED BY CYTEL INC. ("CYTEL"), YOU ARE AGREEING ON BEHALF OF THE ENTITY ACCESSING AND USING THE SOFTWARE ("COMPANY") THAT COMPANY WILL BE BOUND BY, AND HAS BECOME A PARTY TO THIS CYTEL EVALUATION AGREEMENT ("AGREEMENT") AND THAT YOU HAVE THE AUTHORITY TO BIND COMPANY. IF COMPANY DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT SELECT THE "I HAVE READ AND AGREED TO THE CYTEL EVALUATION AGREEMENT" BOX AND DO NOT ACCESS OR USE THE SOFTWARE. COMPANY IS NOT AUTHORIZED TO ACCESS OR USE THE SOFTWARE UNLESS AND UNTIL IT HAS AGREED TO BE BOUND BY THESE TERMS. THE "EFFECTIVE DATE" FOR THIS AGREEMENT SHALL BE THE DAY YOU CLICK THE "I HAVE READ AND AGREED TO THE CYTEL EVALUATION AGREEMENT " BOX OR ACCESS AND/OR USE THE SOFTWARE. CUSTOMER AND CYTEL ARE EACH A PARTY TO THIS AGREEMENT.

- (i) **"Evaluation Period"** shall mean the period of time which shall be no longer than thirty (30) calendar days beginning on the date CYTEL provides access to the Software.
- (ii) **"Named Users"** shall mean those individual, named employees of Customer (or consultants, contractors and agents of Customer approved in writing by CYTEL) to whom CYTEL has authorized access to the Software by providing access credentials, in order to perform his or her job functions for the internal business purposes of the Customer.
- (iii) **"Software"** shall mean CYTEL's proprietary software solutions including Software Bundles, system software, and other application software provided by or made available by CYTEL.
- (iv) **"Software Bundle"** shall mean a logical sub-set of the functionality that Cytel makes generally available to its customers.

1. General Terms. Any access and use rights granted to the Software by Cytel are expressly conditioned upon Company's compliance with the terms of this Agreement.

2. Use of the Software.

2.1 Company's use of the Software shall be subject to the terms and conditions of this Agreement and the licenses from third party licensors, if applicable.

2.2 As between CYTEL and Company, the Software and supporting materials, and all worldwide intellectual property rights therein, are the sole and exclusive property of CYTEL and, if applicable, its licensors. Company shall have no right or interest in or to the Software except as provided in this Agreement. Company acknowledges that it is being provided a grant to access and use to the Software FOR THE Evaluation Period. Except to the limited extent required for Company to access and use the Software pursuant to the express grants in Sections 3.1 and 3.2, nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license in any of CYTEL's existing or future intellectual property. All rights not expressly granted by CYTEL under this Agreement are reserved by CYTEL. The Software contains confidential information of CYTEL, and Company agrees to keep the Software in confidence and to take all reasonable precautions to ensure that no unauthorized persons (including CYTEL competitors) have access to the Software.

3. Grant; Access Rights.

3.1 Upon the terms and subject to the conditions in this Agreement, CYTEL hereby grants to Company a non-exclusive, non-transferable, non-sublicensable, revocable, limited right to access and use the Software during the Evaluation Period solely for the purpose of evaluating the suitability of the Software for Company's internal business

purposes (“**Evaluation Purpose**”). Access and use of the Software shall be limited to the Named User(s), the Evaluation Period listed in the applicable order form.

3.2 Upon the terms and subject to the conditions in this Agreement, CYTEL hereby grants to Company a non-exclusive, non-sublicensable, non-transferable, limited license to use the Documentation (as defined below) during the Evaluation Period solely for the Evaluation Purpose.

3.3 Company agrees: (i) to access and use the Software only in connection with bona fide Company projects for the Evaluation Purpose; (ii) to access and use the Software only for internal use and only by Company’s Named Users; (iii) not to reproduce, modify or attempt to modify the Software or any component thereof; (iv) to preserve all copyright and trade secret notices in the Software and documentation provided that CYTEL makes available, generally, to subscribers (“**Documentation**”); (v) not to disclose the Software or Documentation to any third parties; (vi) not to permit parties other than its Named Users to access the Software; (vii) not to attempt to decompile, disassemble, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Software in any respect; (viii) not to rent, lease, distribute, sell, or create derivative works of the Software; or (ix) not to use the Software in order to develop a competing offering to the Software, as applicable. Company acknowledges that it is responsible for all acts and omissions of its Named Users and the security of all access credentials for the Software.

3.4 Notwithstanding anything to the contrary in this Agreement, CYTEL may temporarily suspend Company’s and any Named User’s access to all or any portion of the Software if CYTEL reasonably determines that (A) there is a threat to, or attack on, any of the CYTEL intellectual property; (B) Company’s or any Named User’s use of the CYTEL intellectual property disrupts or poses a security risk to the CYTEL intellectual property or to any other Company or vendor of CYTEL; (C) Company, or any Named User, is using the CYTEL intellectual property for fraudulent or illegal activities; (D) subject to applicable law, Company has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) CYTEL’s provision of the Software to Company or any Named User is prohibited by applicable law or (ii) any vendor of CYTEL has suspended or terminated CYTEL’s access to or use of any third-party services or products required to enable Company to access the Software (any such suspension, a “**System Suspension**”). CYTEL will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Company or any Named User may incur as a result of a System Suspension.

3.6 CYTEL reserves the right, in its sole discretion, to add, exclude and discontinue any functionality of the Software and to make changes and modifications in specifications, construction and design of the Software.

3.7 CYTEL will not provide any support services under this Agreement.

4. Term and Termination.

4.1 This Agreement shall commence on the Effective Date and continue until the end of the Evaluation Period unless terminated earlier by either party upon no less than three (3) calendar days’ prior written notice to the other Party.

4.2 The provisions of Sections 4 through 11 of this Agreement shall survive the expiration or termination of this Agreement for any reason.

5. Representation and Warranties.

5.1 Company represents and warrants that (i) it has obtained all necessary rights, releases and permissions to provide all Company Data (as defined in Section 8) to CYTEL and to grant the rights granted to CYTEL in this Agreement and (ii) Company Data and its transfer to and use by CYTEL as authorized by Company under this Agreement do not violate any laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies.

5.3 THE SOFTWARE IS PROVIDED “AS IS,” WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATION, CONTENT OR RESULTS, OR CONDITIONS ARISING UNDER ANY OTHER LEGAL REQUIREMENT. NEITHER CYTEL NOR ITS SUPPLIERS MAKE ANY WARRANTY OF ANY KIND THAT THE CYTEL INTELLECTUAL PROPERTY, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET COMPANY’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED.

5.4 CYTEL, its suppliers, and licensors provide no warranty or remedy for any Third Party Component; such Third Party Components are provided “AS IS,” “WHERE IS,” “AS AVAILABLE,” “WITH ALL FAULTS,” and to the fullest extent permitted by law, without warranty of any kind.

6. Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL CYTEL AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO COMPANY. CYTEL’S AND ITS LICENSORS’ LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED \$500. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER CYTEL OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

7. Confidentiality. Company acknowledges that the Software and Documentation are confidential information and contain trade secrets of CYTEL. Company agrees to, (i) not disclose the Software or Documentation to any third party for any purpose, and (ii) use at least the same security measures as Company uses to protect its own confidential and trade secret information but no less than reasonable measures to protect the confidentiality of the Software and Documentation. Company agrees and acknowledges that any breach of the provisions regarding ownership or confidentiality contained in this Agreement shall cause CYTEL irreparable harm and CYTEL may obtain injunctive relief as well as seek all other remedies available to CYTEL in law and in equity in the event of breach or threatened breach of such provisions. On the expiration or termination of the Agreement, Company shall promptly return to CYTEL all copies, whether in written, electronic, or other form or media, of CYTEL’s confidential information, or destroy all such copies and certify in writing to CYTEL that such confidential information has been destroyed. Company’s obligations of non-disclosure with regard to confidential information are effective as of the Effective Date and will expire five (5) years from termination or expiration of this Agreement; provided, however, with respect to any confidential information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such confidential information remains subject to trade secret protection under applicable law.

8. Data Usage. Company acknowledges that CYTEL must have access to and use of Company Data for the Software to function as documented, subject to the following terms:

(i) Company Data: For purposes hereof, “**Company Data**” shall mean all data or other information in any medium submitted to the Software by or on behalf of Company, including data submitted by, or relating to, patients, clinical trial subjects, health care providers or vendors of Company. As between CYTEL and Company, all Company Data shall remain the sole property of Company.

(ii) Subscription Use: Company grants to CYTEL a non-exclusive, royalty-free, license to use, modify, copy, process, display and prepare derivative works of the Company Data for purposes of CYTEL performing its obligations under this Agreement. Company may, at any time, request the removal and deletion of the Company

Data from the Software.

(iii) Aggregate Data Use: CYTEL may create aggregated data from Company Data that does not identify Company, or any aspect of the operations of Company. Such aggregate-level data may include data analysis across multiple CYTEL customers and may be used for any lawful purposes, including the operations of Company, to develop industry benchmarks, measures and standards for the benefit of other CYTEL customers or publication in CYTEL reports. Upon creation, as between CYTEL and Company, CYTEL shall own all right, title and interest in and to all such aggregated data.

9. Data Integrity. Company shall ensure that its connection to, and access and use of, the Software, including, without limitation, the medium containing any data or other information provided to the Software, including Company Data, (i) does not include, and (ii) that any method of transmitting such Company Data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or malware, viruses, worms, and Trojan Horses) which may disrupt the proper operation of the Software or any part thereof or any hardware or software used by CYTEL in connection therewith, or which, upon the occurrence of any event, the passage of time, or the taking of or failure to take any action, will cause the Software or any part thereof to be destroyed, damaged or rendered inoperable. Further, until such time as the applicable Company Data is transmitted to, or accessed or received by Company in an approved format, Company shall be responsible for all Company Data submitted to the Software.

10. Data Accuracy. Company accepts sole responsibility for: (i) the accuracy, completeness and integrity of the Company Data; and (ii) the programming, procedures and communication lines established and used by Company for purposes of internet-based or remote access to the Software.

11. Miscellaneous.

11.1 If Company or any of its employees, consultants, contractors, or agents sends or transmits any communications or materials to CYTEL by mail, email, telephone, or otherwise, suggesting or recommending changes to the CYTEL intellectual property, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), CYTEL is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Company hereby assigns to CYTEL on Company's behalf, and on behalf of its employees, consultants, contractors and/or agents, all right, title, and interest in, and CYTEL is free to use, without any attribution or compensation to any Party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although CYTEL is not required to use any Feedback.

11.2 Company shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Software or any Company Data outside the United States.

11.3 This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts without regard to its conflict of laws principles. The Parties agree that this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Any suit or other legal action respecting this Agreement shall be brought exclusively in the U.S. District Court for the District of Massachusetts, and the Parties submit to the exclusive jurisdiction of such courts for all purposes.

11.4 All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case CYTEL and Company agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

11.5 The Parties hereunder are independent contractors. Neither Party shall have any right to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other Party. This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership or other form of a business organization or agency relationship.

11.6 The waiver by either Party of a breach or a default of any provision of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such Party.

11.7 This Agreement and the applicable CYTEL order constitute the entire agreement between the Parties with regard to the subject matter hereof. Terms and conditions on any Company purchase order are expressly rejected and superseded by the terms and conditions set forth in this Agreement. No waiver, modification, alteration or amendment of any of the terms or conditions hereof shall be effective unless and until set forth in a writing duly signed by an officer of CYTEL and by Company. Company may not assign this Agreement or any of its rights hereunder without the prior written consent of CYTEL, which consent shall not be unreasonably withheld.

11.8 If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and such decision shall not affect the validity or enforceability of any or all of the remaining provisions.

11.9 If either Party commences any action or proceeding against the other Party to enforce or interpret this Agreement, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party the actual costs, expenses and reasonable attorneys' fees (including all related costs and expenses), incurred by such prevailing Party in connection with such action or proceeding and in connection with obtaining and enforcing any judgment or order thereby obtained.

11.10 If the Software is used by Company to obtain results that are published in a scientific journal or other publication, Company will acknowledge its use of the Software with an appropriate citation, which shall include CYTEL's full corporate name and the name of the Software product used.

11.11 For agencies of the U.S. Government, use, duplication, or disclosure of the Software by the U.S. Government is subject to restrictions as set forth in provisions of the Federal Acquisition Regulations applicable to "commercial computer software" and/or computer software with "restricted rights." The Software constitutes "commercial computer software" and "commercial computer software documentation," as such terms are used in the Code of Federal Regulations. Consistent with 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth in this Agreement.

11.12 CYTEL shall not be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond CYTEL's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

11.13 All notices to either Party shall be in writing and delivered by hand or by certified mail or overnight delivery service to the address set forth by Company or CYTEL or to such other address as either Party shall give by notice to the other Party. Notices shall be effective when delivered to the applicable address.

11.14 Any notice or other communication under this Agreement given by any Party to any other Party will be in English, in writing and will be deemed properly given when sent to the intended recipient by certified letter, receipted commercial courier or electronically receipted facsimile or e-mail transmission (acknowledged in like manner by the intended recipient) to the respective addresses or facsimile number shown on the order(s). Any Party may from time to time change such address or individual by giving the other Party notice of such change in accordance with this section.