

# Software Subscription Agreement

## Bayer CT Injection Systems Essential Software Solution Plan (the “Plan”)

### BACKGROUND

Bayer HealthCare LLC is referred to herein as “Bayer” and agrees to provide services to Customer (referred to herein as you or Customer) under the terms set forth in this Agreement. For purposes of this Agreement, “CT Injection System(s)” shall mean either the MEDRAD® Centargo CT Injection System or MEDRAD® Stellant FLEX CT Injection System as designated on the applicable Quotation.

### MODIFICATIONS

The prices and terms on this Agreement are not subject to verbal changes or other agreements unless approved in writing by the parties.

### ACCEPTANCE

Bayer’s software and services are licensed only under the terms and conditions stated in this Agreement. This Agreement commences and becomes effective upon Bayer’s receipt of a signed copy of the quotation associated with this Agreement (the “Quotation”) and Purchase Order Number. These terms and conditions shall control in all instances. Any additional terms and conditions in any purchase order or other document issued by either party affecting the service of products covered by this Agreement shall be of no force and effect.

### TERM

The Plan term shall begin on the date of the installation of the Licensed Software of the CT Injection System or the effective date listed on the associated Quotation (as applicable) and shall continue through the term (1, 3, 5 or 7 years) stated on such Quotation (the “Term”). Notwithstanding the foregoing, Customer agrees and acknowledges that such Licensed Software must be installed within ninety (90) days of the CT Injection System installation date or the PO date (as applicable). In the event the Licensed Software is not installed during such ninety (90) day period through no fault of Bayer, the Term of this Plan shall automatically begin at the expiration of such ninety (90) day period.

### PAYMENT

Bayer will invoice Customer per the payment frequency listed in the associated Quotation during the Term. All payments are due thirty (30) days from invoice on the total invoiced amount. Unless otherwise agreed to in writing by the parties, payment should be received into Bayer’s bank by the due date of the invoice via Electronic Funds Transfer (EFT) transmission only. Please contact Bayer’s collection team at [Bayercollect@bayer.com](mailto:Bayercollect@bayer.com) for assistance with the EFT enrollment process.

### PRICING

Prices are based on minimum order threshold, costs and conditions existing on the date of this Agreement and are valid until the expiration date listed on the Quotation. The pricing for services provided pursuant to this Agreement may reflect or be subject to discounts, rebates, or other price reduction programs. Please be advised that Customer is obligated to: (a) fully and accurately disclose the amount of any such discounts, rebates or other price reductions in Customer’s cost reports or claims for reimbursement to Medicare, Medicaid, or health care programs requiring such disclosure; and (b) provide such documentation to representatives of the Secretary of the Department of Health and Human Services and state agencies upon request. Unless noted otherwise, the value of any service listed as \$0.00 on this Agreement may constitute a discount that Customer should evaluate when filing such reports. Customer may request additional information from Bayer in order to meet Customer’s reporting or disclosure obligations by writing to the address set forth in this Agreement.

**PLAN INCLUSIONS.** The Plan includes the following:

### SOFTWARE SUBSCRIPTION LICENSE

Subject to the software subscription license terms contained herein, Customer may select a software subscription license to: (i) a Bayer curated software package, or (ii) up to three (3) individual software offerings, as identified on the Quotation (collectively, the “Licensed Software”). Certain Licensed Software selected by Customer may require Customer to sign a separate subscription license agreement with Bayer containing additional terms and conditions.

Bayer grants to Customer a non-exclusive, non-transferable, non-assignable, and non-sublicensable subscription license to use such Licensed Software solely in connection with Customer’s eligible CT Injection System and for internal purposes only during the Term of this Agreement. Customer is receiving only a license to use the Licensed Software under this Agreement during the Term, and no title or ownership of such software or any portion thereof is transferred by Bayer to Customer hereunder. All rights, title and interest in and to the Licensed Software are and will remain with Bayer. Customer shall not copy, translate, disassemble, or decompile nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Licensed Software. Customer is not permitted to modify or make derivative works of the Licensed Software and ownership of any unauthorized modification or derivative work shall vest in Bayer. All rights not expressly granted to Customer herein are reserved by Bayer. For the avoidance of doubt, Customer can exercise its license rights hereunder through its employees, agents, contractors, consultants and representatives who perform services for Customer in its ordinary course of business (“Authorized Users”) provided, that Customer will be responsible

for each such Authorized User's use of the Licensed Software and compliance with the terms of this Agreement. Upon termination or expiration of this Agreement or any breach of these license terms by Customer, Customer shall immediately cease use of the Licensed Software and such Licensed Software shall be deinstalled by Bayer.

## **SOFTWARE SUBSCRIPTION SUPPORT**

1. During the applicable Term of this Agreement, Bayer will provide the following software support and maintenance services to the Licensed Software:

1.1 Updates to the Licensed Software which will be provided during normal business hours (8:00 a.m. - 5:00 p.m. local time); and

1.2. Services of a qualified representative of Bayer to attempt to correct (which may consist of providing a suitable fix or workaround) ("Error Correction") any non-conformance of the Licensed Software with the specifications (each an "Error") which has been brought to the prompt attention of Bayer by Customer. Customer will co-operate with Bayer in providing information about the Error, a suitably qualified contact person at Customer site who is knowledgeable about the Error and available for discussions, and access (remote or on-site, if necessary) to the designated site as required by Bayer to provide such services.

2. Bayer will provide Customer with telephone access, as outlined herein to technical experts for technical assistance ("Assistance") and Error Correction. Customer will use commercially reasonable efforts to submit and track all support requests through its project coordinator or another qualified individual who is reasonably knowledgeable in the use of the Licensed Software and is capable of responding to general inquiries from Authorized Users. Customer must promptly permit Bayer to install, each Update provided by Bayer. Bayer shall only provide support for the Licensed Software if the latest Update has been installed. Bayer will provide all support via remote access to the applicable CT Injection System.

3. For purposes of these terms, "Update" means a new update, modification, enhancement or correction to the Licensed Software or documentation that improves the performance of the Licensed Software and that is generally made available by Bayer from time to time at no additional charge to its licensees receiving maintenance and support. The parties agree that "Update" will not include any new commercially available product, which will possess a discernible and significant difference in intended use and functionality when compared to the Licensed Software and that Bayer licenses and price separately from the Licensed Software or for which Bayer generally charges additional fees to its licensees receiving maintenance and support. Bayer may, in its sole and absolute discretion, include in Updates or other products certain features or functionalities suggested or requested by or on behalf of Customer at any time, including any customizations or modifications that may be required during the installation of the Licensed Software that Bayer agrees to perform, and Bayer will exclusively own all such features and functionality and may provide them to other licensees with or without charge, without any compensation due to Customer, unless otherwise specifically agreed in writing between the parties.

4. For the purposes of providing, installing and configuring the Licensed Software, or providing support hereunder Bayer will use our remote connectivity platform. This platform will enable an encrypted connection between a Bayer support representative and a customer device hosting the Licensed Software. Bayer will follow a defined process for site access and interaction with the applicable CT Injection System as agreed to with Customer when providing support.

5. Software Subscription Support does not include:

5.1 Errors resulting from the use of Licensed Software other than at the designated sites (if applicable) or otherwise in violation of the License Software restrictions or not in accordance with specifications;

5.2 Errors resulting from any modifications or alterations made to the Licensed Software by any party other than Bayer or an authorized representative of Bayer;

5.3 Errors attributable to failure or errors in the customer's environment or failure, errors or use of other third party software or hardware not supplied by Bayer hereunder or network, power or connectivity outages; or

5.4 Accident, neglect, or misuse of the Licensed Software or failure by Customer to maintain its environment any other causes beyond Bayer's control.

6. In the event Customer requests any service that is not a part of the Software Subscription Support services, including any problem arising from the exclusions noted above, Bayer may provide such service, at its discretion, at its standard hourly rate.

7. Third Party Software. For purposes of this Agreement, the term Third Party Software shall mean all third party software provided to Customer by Bayer to enable the Licensed Software to perform as intended. The Third Party Software will be provided on an "as is" basis and Bayer does not warrant that the Third Party Software will be error free or operate without interruption.

8. Bayer does not grant access to the OS or underlying software that powers the Certegra® Workstations or Workflow Hub.

## **CANCELLATION OF AGREEMENT**

Bayer may terminate this Agreement by providing written notice to Customer if Customer does not make payment by the due date and does not cure within thirty (30) days of written notice. Either party may cancel this Agreement by providing written notice to the other party and such cancellation shall take effect at the end of the month in which such notification is provided. In the event of such early cancellation, Bayer shall provide to Customer a prorated refund of any unused portion of the prepaid annual Plan fees. If the Agreement is terminated early or expires and Customer does not enter into a new license for the Licensed Software, Bayer will remotely deactivate Customer's access to such Licensed Software. In the event the Customer disconnects its remote access prior to the deactivation of the Licensed Software, Bayer will be required

to deactivate the license onsite at Customer's facility and Customer will be charged an additional fee.

## **WARRANTY EXCLUSIONS**

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

THE MAXIMUM TOTAL LIABILITY OF BAYER FOR ANY CLAIM UNDER OR RELATING TO THE AGREEMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION CLAIMS FOR BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO DIRECT, PROVABLE DAMAGES NOT TO EXCEED THE AMOUNTS PAID HEREUNDER BY LICENSEE TO BAYER FOR THE PRODUCTS OR SERVICES THAT IS THE SUBJECT OF THE APPLICABLE CLAIM. IN NO EVENT WILL BAYER BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF REVENUE OR BUSINESS PROFITS, BUSINESS INTERRUPTION, DELAY OR INABILITY TO USE THE LICENSED SOFTWARE, LOSS OR CORRUPTION OF DATA OR INFORMATION, MALFUNCTION OR SHUTDOWN, OR ANY OTHER COMMERCIAL LOSS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The Licensed Software does not provide medical advice and is not intended to be a substitute for professional medical judgment, diagnosis or treatment.

The remedies provided in the Agreement are the sole and exclusive remedies of the parties and shall apply even if Customer's remedies under this Agreement fail of their essential purpose. Customer agrees that any breach by it of any restrictions on use or confidentiality obligations contained in the Agreement may cause serious and irreparable harm to Bayer and that in the event of such a breach by Customer, Bayer will be entitled to seek injunctive relief as well as any and all other remedies available at law or in equity.

## **INDEMNITY**

Bayer will defend Customer from any claim by a third party that any Licensed Software furnished and used in accordance with this Agreement infringes a third party's valid United States patent, trademark or copyright provided such alleged infringement does not result from (a) any modification of the Licensed Software not made by Bayer, or (b) use of the Licensed Software in combination with any software, hardware or data not provided by or approved in writing by Bayer, or (c) failure of Licensee to install and use all updates provided by Licensee; and further provided that Customer (i) gives Bayer prompt written notice of such claim; (ii) allows Bayer to direct the defense and settlement of the claim; and (iii) cooperates with Bayer as necessary for defense and settlement of the claim. In the event the Licensed Software is held by a court of competent jurisdiction to be, or is believed by Bayer to be, infringing, Bayer will have the option, at its expense, to: (x) obtain for Customer the right to continue using the Licensed Software; (y) replace or modify the Licensed Software so that it becomes non-infringing; or (z) terminate the License and no additional fees will be due. THE INDEMNITY AND REMEDIES PROVIDED IN THIS SECTION CONSTITUTE BAYER'S ENTIRE OBLIGATION AND LICENSEE'S EXCLUSIVE REMEDY REGARDING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

## **REMOTE CONNECTIVITY AND TECHNICAL SUPPORT SERVICES**

Bayer will provide ongoing remote diagnostics and technical support on the CT Injection System and/or software license features covered under this Plan using Bayer's proprietary hardware and software. Customer understands and agrees that maintaining a consistent connection to Bayer's remote access server is required to receive the support services provided in connection with this Plan, including remote software configuration, remote installation of cybersecurity patches, and remote diagnostics and technical support. In the event the CT Injection System is disconnected from the remote access server, Customer will make reasonable efforts to re-establish connection within five (5) business days. Bayer will also provide standalone cybersecurity patches for products under this Plan if Bayer's assessment of third-party vulnerabilities determines that there is an uncontrolled or unacceptable risk that requires a standalone patch. If the risk is considered controlled and acceptable based on existing security controls, patches will be incorporated into the next scheduled software release. If the CT Injection System is taken offline by the Customer, Bayer will cease providing remote diagnostic services and associated technical support.

## **FORCE MAJEURE**

Neither party will be responsible for delays or non-performance directly or indirectly caused by any acts of God, fire, explosion, flood, war, accident, action by governmental authority, quarantine, global or national health issues, shortage of or inability to procure supplies and raw materials, delays in transportation, work stoppage, court order, and other causes beyond a party's reasonable control.

## **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and

transferees. This Agreement may not be assigned, transferred or novated, in full or in part, by either party to any other party without the prior written consent of the other party hereto; provided, however, that Bayer may assign, transfer or novate, in full or in part, its rights and obligations hereunder without the prior written consent of the other party to (a) any affiliated entity, or (b) to a successor or transferee, whether by merger, consolidation, purchase or otherwise, of the business or assets of Bayer, or parts thereof, to which the subject matter of this agreement relates.

#### **DEFAULT**

Bayer shall not be required to perform its obligations under this Agreement if Customer has defaulted (e.g., failed to pay) under this Agreement.

#### **HIPAA**

Bayer represents that, unless otherwise noted, it is not a Business Associate as defined in the Health Insurance Portability and Accountability Act ("HIPAA"). The functions Bayer is required to perform hereunder do not require the use or disclosure of Protected Health Information ("PHI"). To the extent any disclosure of PHI does occur, it is incidental and covered under the incidental disclosure rule found in 45 CFR 164.502(a)(1). In addition, to the extent any such incidental disclosure does occur, Bayer agrees to keep all such information confidential.

#### **RECORDS**

If the value or cost of products or services rendered to Customer by Bayer or by an organization related to Bayer is Ten Thousand Dollars (\$10,000) or more over any twelve (12) month period during the Term, Bayer and Customer agree that until the expiration of four (4) years after the furnishing of such Services, Bayer and Customer shall, upon written request, make available to the Secretary of the Department of Health and Human Services of the United States (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement and such books, documents and records as may be necessary to certify the nature and extent of the costs of such Services. This provision shall also apply to any subcontractors Bayer hires to perform the Services hereunder.

#### **DEBARMENT**

Bayer represents that neither Bayer nor any employee of Bayer: (a) is debarred by the FDA pursuant to its authority under Sections 306(a) and (b) of the U.S. Food, Drug, and Cosmetic Act (21 U.S.C. § 335(a)), or (b) to the best of its knowledge, is the subject of any investigation or proceeding which may result in debarment by the FDA. Neither Bayer nor any employee of Bayer is: (i) included in the List of Excluded Individuals/Entities (maintained by the U.S. Department of Health and Human Services Office of Inspector General) or the List of Parties Excluded from Federal Procurement and Nonprocurement maintained by the U.S. General Services Administration, or (ii) to the best of its knowledge, is the subject of any investigation or proceeding which may result in inclusion in any such list.