

# Service Lifecycle Bridge Program Agreement (“Agreement”)

## 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. Only the following injection systems are eligible to receive the services provided in connection with this Agreement: MEDRAD® Stellant CT Injection System (Single and Dual syringe model), MEDRAD® Stellant CT Injection System with Certegra® Workstation (excluding Workstation 1,0 which is End of Life), MEDRAD® Spectris Solaris EP MR Injection System, and MEDRAD® Spectris Solaris EP Mobile MR Injection System. Customer understands and acknowledges that due to product obsolescence, lack of spare parts availability and/or technology changes, Bayer may announce the official “End of Life” status for injection systems listed above and that Bayer may discontinue the services or a portion of the services to be provided under this Agreement.

## 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 services are sold only under the terms and conditions stated in this Agreement. This Agreement commences upon Bayer's receipt of a signed copy of this Agreement 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.

## PRICING

Prices are based on costs and conditions existing on the date of this Agreement and are valid until the expiration date listed on the quote. 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 you are obligated to: a) fully and accurately disclose the amount of any such discounts, rebates or other price reductions in your 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 you should evaluate when filing such reports. You may request additional information from Bayer in order to meet your reporting or disclosure obligations by writing to the address set forth in this Agreement. All payments are due net thirty (30) days from shipment 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.

## INDEMNITY

Bayer will indemnify, defend and hold you harmless from any claim by a third party against you for any liability, loss, expense, cost, claim or judgment, including attorney's fees for property damage or personal injury or death where the services provided hereunder are alleged to have caused or contributed to the damage, injury, or death, provided that this indemnification does not extend to injuries damages or death to the extent caused by the negligence, reckless disregard or intentional acts of you or any third party.

## WARRANTY

**LIMITED EMC WARRANTY PERIOD.** For each annual contract year stated on the quotation associated with this Agreement, Customer will be entitled to one non-billable onsite emergency corrective maintenance (EMC) event for the first covered injection system plus an additional non-billable EMC event per every two (2) additional covered injection systems. For illustrative purposes only, if Customer has five (5) covered injection systems, Customer is entitled to three (3) non-billable EMC events in a given contract year which can be used at Customer's discretion. Non-billable EMC events may be used by Customer across all injection systems covered under this Agreement; however, any unused non-billable EMC events in a given contract year will not roll over to the following contract year (if applicable). For non-billable EMC events, there will be no charge for any action (parts, labor, or travel) deemed necessary by Bayer to service the equipment, excluding those items listed below under “Warranty Exceptions.” Note, Bayer will cover non-cosmetic component parts which need to be replaced during a non-billable EMC event, however, Bayer will not replace full modules as further described in the Warranty Exceptions. Bayer will perform on-site EMC during normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Bayer observed holidays. If Customer requests onsite EMC performed outside of normal working hours, such EMC event will be billable at Bayer's then current hourly rate and shall not count towards Customer's pool of available non-billable EMC events.

**WARRANTY ON REPAIRS.** All materials, labor and service provided under this Agreement are warranted to be free of defects in material or workmanship for (90) days from the date provided.

**LIMITED PREDICTIVE MAINTENANCE (LPM) SCHEDULE.** Bayer shall perform Limited Predictive Maintenance on the product(s) during the hours of 8:00 AM and 5:00 PM, Monday through Friday (LPM Hours) unless otherwise indicated in the terms of this Agreement. This Limited Predictive Maintenance will include full calibration, safety testing, and a software update to the latest software version available for the injection system. It will not include cosmetic parts, replacements, or full module replacements as further described in the Warranty Exceptions. For injector products, Bayer will perform Limited Predictive Maintenance within the first sixty (60) days of the effective date of this Agreement or within twelve (12) months from the last Predictive Maintenance or LPM provided by Bayer, unless otherwise agreed. For LPM performed outside of standard LPM Hours at Customer's request, Customer will be charged Bayer's then current hourly rates for field labor and travel time.

## **WARRANTY EXCLUSIONS**

EXCEPT AS PROVIDED IN THE ABOVE WARRANTY SECTION, BAYER EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. IN NO EVENT SHALL BAYER BE LIABLE FOR ANY LOST PROFITS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR OPERATIONS OF BAYER'S PRODUCT OR SERVICE. IN NO EVENT IS BAYER RESPONSIBLE FOR DAMAGES THAT EXCEED THE PAYMENT, IF ANY, RECEIVED BY BAYER FOR THE PRODUCT OR SERVICE FURNISHED, OR TO BE FURNISHED, PURSUANT TO THIS AGREEMENT. SOME STATES DO NOT ALLOW THE EXCLUSIONS ON LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS.

## **WARRANTY EXCEPTIONS**

This Agreement does not cover:

- a) Equipment that is determined by Bayer to be non-functional at the time of initial service or annual predictive maintenance and has become non-functional due solely to Customer's negligence. In such a case, Bayer reserves the right to charge an additional fee to cover labor, travel, and parts for any equipment which is non-functional at the time of the initial service or annual predictive maintenance.
- b) Products that have been modified, improperly installed, or improperly interfaced with other equipment. These conditions may jeopardize functionality, reliability, or operator and patient safety. Therefore, any claim caused by these conditions shall not be covered by this warranty and Bayer is relieved from any further obligation. Bayer must review and authorize all modifications and repairs. This service may be obtained by contacting the Bayer Service Department.
- c) Damage, malfunction, or incorrect injections resulting from using non-Bayer syringes or non-approved accessories (i.e., leakage, pressure, flow rates, or volumes not agreeing with injector settings, etc.). The use of accessories in connection with the equipment may jeopardize functionality, reliability or operator and patient safety. Therefore, any claim caused by the use of non-Bayer or non-approved accessories (such as non-Bayer disposables or in the case of any PET/CT product, the use of vials or vial shields that are not approved by Bayer) shall not be covered by this warranty and Bayer is relieved from any further obligation.
- d) Malfunction or damage due to abuse, misuse or spilling of contrast, blood or other substances in or on the unit.
- e) Malfunction or damage due to operator error, including failing to follow specific provisions of the product operation manual.
- f) Failures caused by network outages or improper network configuration.
- g) Damage by fire, floods or other disasters commonly defined as "Acts of God".
- h) Any ceiling or wall support structure used to mount or support an Injector Head Counterpoise System improper installation of such structure (by anyone other than Bayer) and any failure of such to meet Bayer's requirements in its terms and manual (such as the requirements for level and plumb and/or loading).
- i) Replacement parts that do not impact the injection system's ability to function to OEM specifications (i.e. cosmetic parts)
- j) Full module replacements of any of the following items: MEDRAD® Stellant injector head, MEDRAD® Stellant control room display, MEDRAD® Stellant control room power supply, MEDRAD® Solaris EP head stand assembly, MEDRAD® Solaris EP power box, MEDRAD® Solaris EP display, and MEDRAD® Solaris EP ICBC power supply.

In all of these out of warranty instances, Bayer will provide service to Customer's product, at Customer's request. However, Customer must agree to pay Bayer for required labor, either in-house or on-site (including all travel time), and any material(s) required at Bayer's then current hourly rates for field labor and travel time.

## CANCELLATION

Bayer may terminate this Agreement by giving written notice to Customer if Customer has not made payment by the due date or if Customer does not give Bayer access to the equipment at the scheduled time for service. Either party may cancel this Agreement at any time by giving sixty (60) days prior written notice to the other party.

If the Agreement coverage is terminated for one or more injection systems for any reason and:

- 1) Bayer performed either an LPM or non-billable EMC service on the applicable injection system(s), then the Agreement shall be considered fulfilled, and no refund will be issued to Customer in connection with such injection system(s); or
- 2) Bayer has performed neither an LPM nor non-billable EMC service on the applicable injection system(s), then Bayer shall refund to Customer an amount equal to the amount Customer prepaid for service coverage for that year for the applicable injection system(s) less the assessed monthly value of coverage provided for such injection system(s).

The total number of non-billable EMC events available in the given contract year will not be adjusted if service coverage is cancelled by Customer for a portion of the injection systems during a contract year, however, the total number of available EMC events will reset at the beginning of the next contract year (if applicable) to align with the number of covered injection systems remaining. For illustrative purposes only, if Customer has coverage on 10 injection systems entitling Customer to 5 non-billable EMC events in a given contract year and Customer chooses to cancel coverage on 4 of the 10 injection systems, Customer would continue to have 5 non-billable EMC events available for the remainder of the contract year and the available non-billable EMC events would reset to 3 for the next contract year, if applicable.

## 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.

## DEFAULT

Bayer shall not be required to perform its obligations under this Agreement if you have 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.

## REMOTE ACCESS SERVER CONNECTIVITY AND TECHNICAL SUPPORT SERVICES

Bayer will provide ongoing remote diagnostics and technical support on the products covered under this Agreement 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 Agreement, including remote software configuration, remote installation of cybersecurity patches, and remote diagnostics and technical support. In the event the 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 Agreement 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 system is taken offline by Customer, Bayer will cease providing remote diagnostic services and associated technical support and will not apply any applicable cybersecurity patches until the next scheduled PM visit.

## 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.

## 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 of this Agreement, 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.