

## ITAMAR MEDICAL SERVICE LEVEL AGREEMENT

PLEASE READ THE TERMS AND CONDITIONS OF THIS ITAMAR MEDICAL SERVICE LEVEL AGREEMENT (“**SLA**”) CAREFULLY BEFORE ACCESSING THE ITAMAR MEDICAL’S SOLUTION (DEFINED BELOW) AND RECEIVING ANY SUPPORT SERVICES PROVIDED HEREUNDER.

THIS SLA IS AN INTEGRAL PART OF THE ITAMAR MEDICAL LTD.’ OR ITS APPLICABLE AFFILIATE (“**ITAMAR MEDICAL**”) STANDARD AGREEMENT, (INCLUDING WITHOUT LIMITATION, ITAMAR MEDICAL’S PRIVACY POLICY, AVAILABLE AT OUR WEBSITE WWW.ITAMAR-MEDICAL.COM, ENTERED INTO BETWEEN YOU (“**YOU**”) AND ITAMAR MEDICAL IN RESPECT OF THE SOLUTION (“**AGREEMENT**”).

BY CLICKING “I ACCEPT” BELOW OR BY ACCESSING OR USING THE SOLUTION IN ANY WAY OR MANNER, YOU AGREE TO BE BOUND BY THIS SLA. IF YOU ARE ENTERING INTO THIS SLA ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO BIND SUCH ENTITY TO THIS SLA. IN ANY EVENT, REFERENCES HEREIN TO “YOU” MEANS YOU OR SUCH ENTITY (AS THE CASE MAY BE). IF YOU DO NOT AGREE TO THIS SLA, YOU SHOULD NOT ACCESS OR USE THE SUPPORT SERVICES AND/OR THE SOLUTION.

Itamar Medical may unilaterally change or add to the terms of this SLA at any time. In the event of a material change, Itamar Medical shall notify You by means of a prominent notice on the Itamar Medical website available at: <https://www.itamar-medical.com/support/downloads/#>, which You should check periodically. By continuing to use the Solution following such modifications, You agree to be bound by such modifications.

### 1. DEFINITIONS

- 1.1. “**Agreement**” shall have the meaning ascribed to such term in the preamble of this SLA.
- 1.2. “**Business Day**” means any day on which banking institutions in the place where the applicable Itamar Medical entity performing the Support Services hereunder is located are authorized or required by law to close.
- 1.3. “**Business Hours**” means 9:00AM to 5:00PM in Israel, or 7 AM to 8 PM Eastern Time U.S, as applicable, according to the place where the applicable Itamar Medical entity performing the Support Services hereunder is located, with the exception of patients using the WatchPAT™ device which are entitled for 24/7 support.
- 1.4. “**Customer Portal**” means the internet portal site designated by Itamar Medical to which You may direct Errors or questions.
- 1.5. “**Error**” means any verifiable and reproducible failure of the Solution to substantially conform to its published specifications. Notwithstanding the foregoing, “Error” shall not include any failure caused: (i) by the use or operation of the Solution with any other hardware, software or programming languages or in an environment other than intended by Itamar Medical; (ii) by any bug, defect, error or malfunction in any hardware or software used with the Solution and not provided by Itamar Medical or any other failure of any such hardware to conform to its published specifications; (iii) due to modifications, alterations or repairs to the Solution not made by Itamar Medical; (iv) due to misuse, negligence, abuse, misapplication, accidents or improper installation or maintenance not performed by Itamar Medical; (v) due to failure to install provided Updates or patches; or (vi) by an Ineligible Component (including without limitation, expired probes).
- 1.6. “**Error Resolution**” means either one of the following, at Itamar Medical’s sole discretion:
  - (a) Temporary workaround;
  - (b) Code or patch release that will be delivered according to a time schedule determined by Itamar Medical;
  - (c) Solution enhancement or a new feature that will be delivered according to a time schedule determined by Itamar Medical.
- 1.7. “**Hardware**” means the hardware components that are included in the Solution provided by Itamar Medical.
- 1.8. “**Ineligible Component**” means all consumable items, such as probes, probe connector, adhesives,

accessories, connector, oximeter, snoring/body position sensor, wristband etc., or any component that Itamar Medical determines, in its reasonable discretion, after failure analysis of the component that such component is an ineligible product or component. Replacement of Ineligible Components are not covered by the Support Services, and may be replaced according to Itamar Medical's standard price list unless You purchase an extended Support Service plan as set forth in Section 4.8 below or in the Device Protection Plan, if applicable, according to Your Agreement, and in accordance therewith.

- 1.9. **"Itamar Medical"** shall have the meaning ascribed to such term in the preamble of this SLA.
- 1.10. **"Quotation"** means a sales quotation that specifies the Solution and/or Support Services available for purchase by You, or applicable order documentation.
- 1.11. **"Response Time"** means the time period between (a) Itamar Medical's confirmation of the Error/service call, provided based on information from You regarding the Error/service call, and (b) the initial response by Itamar Medical in respect of the Error/service call.
- 1.12. **"Solution"** means the applicable Itamar Medical proprietary [WatchPAT™ diagnostic (WatchPAT200, WatchPAT300, WatchPAT ONE), CloudPAT offering, zzzPAT, or EndoPAT™,], solution respectively, to which You have purchased a license and/or support and maintenance services under the Agreement.
- 1.13. **"SLA"** shall have the meaning ascribed to such term in the preamble of this Itamar Medical Service Level Agreement.
- 1.14. **"Support Services"** means the maintenance and support services for the Solution offered by Itamar Medical, as described in this SLA.
- 1.15. **"Update"** means a modification or revision made to the Solution to make minor improvements upon or repair existing functionality and features within the Solution. Updates do not include new functionality, features or options.
- 1.16. **"Uptime"** means the Solution is up and available for access, excluding: (a) downtime caused by You or Your agents, including downtime caused by Your configurations, software, hardware, API, web services or other technologies used by You; (b) scheduled downtime for maintenance or support; (c) use of the Solution that is not in accordance with Itamar Medical's user manual or the terms of the Agreement; (d) downtime resulting from denial of service attacks, virus attacks, hacking attempts; (e) any other circumstances that are not within Itamar Medical's reasonable control, including the availability of the internet or electricity; (f) any failure of Your own hardware, software or network connection; (g) Your bandwidth restrictions; (h) Your acts or omissions; and/or (i) non-availability of certain features or functions of the Solution that do not materially impair the use of the Solution.
- 1.17. **"You"** shall have the meaning ascribed to such term in the preamble of this SLA.

## 2. FEES

Upon termination of the applicable warranty period specified in the Agreement, and in consideration for the Support Services provided under this SLA, You agree to pay the Support Service fees due for the Support Services to Itamar Medical in accordance with the payment terms set forth in the applicable Quotation and/or the Agreement. Subject to Your payment of the applicable fees for the Support Services following the applicable warranty period specified in the Agreement, Itamar Medical will provide the Support Services to You for the support term determined in accordance with the Quotation. In the event that You fail to pay for Support Services on a timely basis, then without limiting Itamar Medical's other rights and remedies, Itamar Medical reserves the right to immediately suspend or discontinue the Support Services. Notwithstanding anything to the contrary, Itamar Medical's extended Support Services set forth in Section 4.8 below are subject to payment of the applicable extended services fees (unless according to the Quotation You are a CPT Client, in which case you are automatically entitled to extended Support Services), including without limitation during the applicable warranty period set forth in the Agreement.

## 3. SUPPORT TERM; TERMINATION

The term of the Support Services will commence on the effective date of the applicable Agreement and will continue until the later of: (i) the end of the warranty period specified in the Agreement; or (ii) the end of the period specified in the Quotation (subject to Section 2 above), unless earlier terminated in accordance with the Agreement and/or this SLA. The term of the Support Services will automatically terminate upon the termination or expiration of the Agreement.

## 4. BASIC SUPPORT OBJECTIVES

- 4.1. Itamar Medical will provide support services for You, with such level of support to be based on the Support Services applicable to You, via telephone, e-mail, Itamar Medical's website "Contact Us" option, chat or its Customer Portal. Such support will be provided solely to: (i) Your users who are designated by You to serve as customer service contacts for Itamar Medical, or (ii) in the event of Support

Services for the WatchPAT™ Solution, any patients using the WatchPAT™ (subject to the terms of the Agreement), and will consist of answering questions regarding the proper operation of the Solution, providing troubleshooting assistance, and rendering general information, advice, and instructions in connection with the use of the Solution, as further detailed herein.

- 4.2. Troubleshooting assistance in respect of the software that is embedded in the Solution includes, as may be determined at Itamar Medical's sole discretion, software installation, software interface operation, study analyses, report generations and response to reported Errors, in accordance with this SLA.
- 4.3. Itamar Medical will use commercially reasonable efforts to respond to each reported Error. Such response may take the form of an Error Resolution, Updates, procedural solutions, correction of documentation errors, Hardware replacement, Hardware repair, or other remedial measures as Itamar Medical may determine, at its sole discretion, to be appropriate.
- 4.4. Hardware troubleshooting assistance includes, as may be determined at Itamar Medical's sole discretion, system integrity testing, analysis of clinical performance issues, identification of problems related to accessories and connections to the system, or interface testing.
- 4.5. To the extent that Itamar Medical determines that a Hardware replacement is the appropriate response to a reported Error, Itamar Medical will use commercially reasonable efforts to deliver a replacement for such component to You within a reasonable timeframe. Customer is responsible for providing Itamar Medical Your current and correct contact information, including the shipping address name, and phone number of the key contact at the applicable location.
- 4.6. You will be responsible for shipping any replaced component(s) to Itamar Medical within ten (10) Business Days after receipt of the replacement. Replacement Hardware may be refurbished and/or a different model but will be functionally equivalent to the Hardware being replaced. All replaced Hardware components will be deemed part of the Solution. You will bear all costs of shipping related to the replacement of a component under this Section 4.6.
- 4.7. If You wish to receive support other than that specified under this SLA, Itamar Medical may choose to offer such support on a time and materials basis at Itamar Medical's then-current fees.
- 4.8. **Extended Support Services Plan.** You may choose to acquire Itamar Medical's extended Support Services, subject to payment of the applicable extended support fees, unless according to the Quotation You are a CPT Client, in which case You are automatically entitled to extended Support Services. The extended Support Services include the following additional services: preventive maintenance parts replacements, cable/connector/tubing replacements as a result of normal use, device inspection and problem assessment at Itamar-Medical's laboratory, subassembly level repair at Itamar-Medical's laboratory, loan equipment replacement (subject to availability), and free shipping to You, as detailed in Sections 4.8.1- 4.8.2 below.
  - 4.8.1. Subassembly Level Repair Service. This module offers a free exchange of defective system subassemblies (circuit boards, LCD display, connectors and internal parts) with fully functional, factory-tested parts.
  - 4.8.2. Loan Equipment Replacement.
    - 4.8.2.1. Itamar Medical will provide loan equipment replacement as necessary, to maintain core system functionality in the event that Hardware components must be sent for factory repair. Loan equipment replacement is provided based on Itamar Medical's determination of the core functionality necessary to maintain clinical operations and availability within Itamar Medical's inventory. No additional fees will be charged for loan replacement equipment even if they are newer than the returned equipment.
    - 4.8.2.2. Loan equipment replacement (when applicable and available) will be shipped to You within two (2) working days after the broken equipment has been shipped by You to Itamar Medical, and a proof of shipment has been emailed to Itamar Medical. You shall obtain an RMA number from Itamar Medical which includes Your pro-forma invoice to be shipped together with the equipment. Itamar Medical, at its sole discretion, has the right to leave the loan equipment as a permanent replacement to equipment sent for repair. Shipment costs to You shall be borne by Itamar Medical. You shall pay postage costs to Itamar Medical.
- 4.9. **Product Specific Terms.** This SLA is superseded solely where specific terms are defined within the Solution-Specific Coverage attached as Appendix A hereto.

**5. UPTIME**

5.1. Itamar Medical will make reasonable efforts to provide an Uptime for the Solution of no less than 99.6% in any given calendar month. Measurement of Uptime shall be determined solely by Itamar Medical in accordance with its systems.

**6. SUPPORT SERVICES CONTACT METHODS**

6.1. You may contact Itamar Medical with support requests through the following channels:

6.1.1. Telephone: 1 888 748 2627

6.1.2. Itamar Medical’s website “Contact Us” option: <https://www.itamar-medical.com/contact-us/>

6.1.3. Customer Portal and Customer Portal’s chat option.

6.2. You shall promptly and without any undue delay notify Itamar Medical of any Error and provide Itamar Medical with any information requested by Itamar Medical, which information shall at a minimum include: account name and number, the type of Solution, Hardware or the component that was affected, full description of the Error/service call, the date the Downtime duration occurred, users affected by the Downtime, details about the site where such Error has occurred, business impact description and contact information. You shall cease use of the Solution until it is repaired or replaced. For the purpose of this Section 6.2, “**Downtime**” means the period of time that the Solution or any part thereof is not able to: (i) produce clinically acceptable results; or (ii) perform substantially in accordance with the applicable documentation, as recorded by You. Downtime begins, when a call is placed to Itamar Medical indicating that Downtime is occurring, and lasts until the earlier of : (a) In the event of a software Solution, the Solution is able to produce clinically acceptable results, (b) You receive loaner equipment, or (c) In the event of a Hardware solution, Itamar Medical returns the equipment to You and the equipment is able to produce clinically acceptable results and perform substantially in accordance with the applicable documentation.

**7. SUPPORT SERVICES RESPONSE TIME**

7.1. Itamar Medical will make reasonable efforts to provide an initial response to Your service calls regarding Errors according to the table below:

<b>Severity Level</b>	<b>Estimated Response Time during Business Hours</b>
<b>Critical Severity</b> - One of the Solution's major functions is not operating due to an error causing system hangs indefinitely or causes unacceptable or indefinite delays of resources and business activity cannot continue without an alternative solution.	1 Business Day
<b>High Severity</b> – One of the Solution's major functions is not operating due to an error pursuant to which operation can continue in a restricted fashion.	3 Business Days
<b>Low Severity</b> – One of the Solution's functions is not operating due to an error that causes loss of service. The issue is an inconvenience when using a specific feature.	7 Business Days

**8. LIMITATIONS**

The Support Services are subject to the prohibited activities, device protection plan terms and conditions as set forth in the Agreement, Your and Your patients compliance with the Operational Manual or user guide provided by Itamar Medical and/or available on Itamar Medical’s website and Your representations and warranties under the Agreement, customer responsibilities set forth in Section 11 below and to the following:

8.1. There must be a support ticket documenting the Error/service call within twenty-four (24) hours of the

Error.

- 8.2. Your account must be in good standing with all invoices paid and up to date.
- 8.3. The Support Services do not include on-site technical support, consulting services (e.g. redesigning, re-architecting or reconfiguring Your network), support for Ineligible Component or third-party products, training, professional services or related out-of-pocket expenses.
- 8.4. Support Services shall apply only to the then-current Solution's software version, provided that You are current in installing all Updates provided to it.
- 8.5. Provision of Support Services by Itamar Medical is Itamar Medical's sole and exclusive liability and Your sole and exclusive remedy. In any event, Itamar Medical's aggregate and total liability relating to the Agreement and this SLA shall be subject to the exceptions, disclaimers and limitation on liability set forth in the Agreement and shall not exceed the limitation on liability amounts set forth therein.
- 8.6. It is clarified that the Support Services in respect of the CloudPAT Solution are limited with respect to those patients of Yours who are registered for the CloudPAT service in accordance with the Agreement.

## **9. UPDATES**

- 9.1. As part of the Support Services provided by Itamar Medical hereunder, Itamar Medical may make available to You Updates to the software of the Solution or documentation, if and when Itamar Medical makes such Updates generally available for no additional charge to its other customers then covered by maintenance services with similar terms as the terms of this SLA. Itamar Medical shall have no obligation hereunder to make any modifications to the Updates to conform the same to any modifications of the software of the Solution or documentation made by any person or entity other than Itamar Medical. Certain Updates may require the use of new or upgraded Hardware or software. Such Hardware and/or software is not included under the Support Services and must be purchased separately. Itamar Medical will have no obligation under this SLA to furnish any changes or modification to a Solution that adds new and distinct functionality to the Solution (whether Hardware or Software) and such modifications may be made available by Itamar Medical to You for an additional fee and will be subject to separate terms and conditions. The provision of any Update to You will not operate to extend the original warranty period on the Solution. All Updates, enhancements, and other bug fixes and modifications to the Solution provided by Itamar Medical will be deemed part of the Solution and licensed to You under the Agreement. Updates apply only to the Solution that was purchased with the original Hardware configuration or added by subsequent purchases from Itamar Medical. Replacement Hardware is not included with Updates.
- 9.2. The following is a list of Support Services included within the provision of an Update:
  - 9.2.1. Software portion of preventive maintenance testing.
  - 9.2.2. Installation of new Updates in all devices, i.e. computer workstations, front end, etc.
  - 9.2.3. Release notes and documentation regarding the Update.
  - 9.2.4. Modifications to system software configuration notes and reports as necessary to maintain existing features and formats.

## **10. SUPPORT LIFECYCLE**

In its discretion, Itamar Medical may provide different levels of support depending on whether a Solution is in its lifecycle. Information on Itamar Medical's product lifecycles and related Support Services may be set forth in Itamar Medical's policies, a copy of which may be in Itamar Medical's website, available at: <https://www.itamar-medical.com/terms-and-conditions/>. Itamar Medical reserves the right to update or amend its policies from time to time.

## **11. CUSTOMER RESPONSIBILITIES**

- 11.1. You acknowledge that for timely response and attempted resolution by Itamar Medical, You must enable Itamar Medical's support team support tunnel access or remote access using tools consistent with industry standards. Your inability or unwillingness to do the foregoing will materially impair Itamar Medical's ability to provide Support Services on a timely basis, if at all.
- 11.2. You will cause all Your technical personnel who are designated by You to serve as Your service contacts for Itamar Medical to complete such Solution-related training and instruction as Itamar Medical may reasonably require from time to time.

- 11.3. You will cooperate with Itamar Medical to the extent that such cooperation would facilitate Itamar Medical's provision of Support Services hereunder, including without limitation provide Itamar Medical, at its request, with reasonable access to appropriate personnel, records, network resources, and maintenance logs. Without limiting the foregoing, You will keep a detailed operations log for the Solution and will document any Errors that arise.
- 11.4. You shall be solely responsible for the operation and general maintenance of Your computing environment. You will also be responsible for activities related to data backup and will ensure that all necessary data backup functions have been performed. The required configurations You must have to access the Support Services include Internet connection with adequate bandwidth and Internet browser (e.g. latest versions of Google Chrome, FireFox or Microsoft Edge).
- 11.5. Itamar Medical will have no obligation to provide any Support Services to You to the extent that such Support Services arise from or relate to any conditions that are listed as warranty exclusions in the Agreement.
- 11.6. Customer should follow the preventive maintenance guidelines issued with the Solution to ensure proper Solution operation. Failing to follow the preventive maintenance guidelines may result in repair charges in case the Solution is serviced at Itamar Medical's lab. See Appendix A for a list of Solution-specific preventive maintenance actions included within this SLA.

## **12. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL ITAMAR MEDICAL, ITS AFFILIATES, LICENSORS AND AGENTS BE LIABLE UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS IN CONNECTION WITH THIS AGREEMENT EVEN IF ITAMAR MEDICAL IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, ITAMAR MEDICAL, ITS AFFILIATES, LICENSORS AND AGENTS' LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE PAYMENTS MADE TO ITAMAR MEDICAL BY YOU DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM SOLELY IN RESPECT OF THE INVOICE FOR THE SPECIFIC SOLUTION THAT GAVE RISE TO THE CLAIM.

## **13. WARRANTY DISCLAIMER**

ITAMAR MEDICAL HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ITAMAR MEDICAL DOES NOT GUARANTEE THAT ERRORS WILL BE ABLE TO BE FIXED OR THAT ANY SUPPORT SERVICES, ERROR RESOLUTION, ENHANCEMENT, RELEASE, OR UPDATE WILL REMEDY ANY ERRORS. ITAMAR MEDICAL DOES NOT WARRANT THAT ANY SUPPORT SERVICES OR ERROR RESOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE.

## **14. RESERVATION OF ITAMAR MEDICAL IPR.**

Notwithstanding anything to the contrary, Itamar Medical (and its licensors) own all right, title and interest in and to all Itamar Medical's and its affiliates' Solutions, software, products, Support Services, other services, Error Resolutions, and all modifications, enhancements and derivatives thereof and all Intellectual Property Rights (defined below) in connection therewith ("**Itamar Medical IPR**"). Nothing herein contained shall be construed as granting You or any third party any

rights in and to Itamar Medical IPR. “**Intellectual Property Rights**” shall mean all worldwide, whether registered or not (i) patents, patent applications and patent rights; (ii) rights associated with works of authorship, including copyrights, copyrights applications, copyrights restrictions; (iii) rights relating to the protection of trade secrets and confidential information; (iv) trademarks, logos, service marks, brands, trade names, domain names, goodwill and the right to publicity; (v) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; (vi) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vii) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

## Appendix A

### Solution-Specific Coverage

#### 1. WatchPAT 200

- WatchPAT Device – refers to WatchPAT of any model
- WatchPAT Software (zzzPAT)
- **Coverage Description.** Includes subassembly level Hardware repair and free replacement of cables and sensors if found to be broken through normal use.
- **Preventive Maintenance.** Preventive Maintenance includes replacement of the following items after 200 sleep studies or when found to be faulty: battery pack, PAT-probe cable, Oxi-sensor. Upon request, Itamar Medical will mail the replacement part to You for self-installation. Shipment is not included.

#### 2. WatchPAT 200U

- WatchPAT Device – refers to WatchPAT of any model
- WatchPAT Software (zzzPAT)
- **Coverage Description.** Includes subassembly level Hardware repair and free replacement of cables and sensors if found to be broken through normal use.
- **Preventive Maintenance.** Preventive Maintenance includes replacement of the following items after 200 sleep studies or when found to be faulty: battery pack, and PAT-probe cable. Upon request, Itamar Medical will mail the replacement part to You for self-installation. Shipment is not included.

#### 3. WatchPAT 300

- WatchPAT Device – refers to WatchPAT of any model
- WatchPAT Software (zzzPAT)
- **Coverage Description.** Includes subassembly level Hardware repair and free replacement of cables and sensors if found to be broken through normal use.
- **Preventive Maintenance.** Preventive Maintenance for WatchPAT includes replacement of the following items after 200 sleep studies or when found to be faulty: PAT-probe cable. Upon request, Itamar Medical will mail replacement part to You for self-installation. Shipment is not included.

#### 4. WatchPAT ONE

- WatchPAT Device – refers to WatchPAT of any model
- WatchPAT Software (zzzPAT)
- **Coverage Description.** Includes replacement of device if found to be broken through normal use.

#### 5. EndoPAT

- EndoPAT 2000 Device
- EndoPAT 2000 Software
- **Preventive Maintenance.** Preventive Maintenance for EndoPAT includes replacement (upon request) of the pneumatic tubes (pneumatic cables) after 1,000 studies or when found to be faulty. Shipment is not included.