



Service Agreement Service Rates and Policies

DirectCARE Ultimate

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.

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 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 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

FULL WARRANTY PERIOD. There will be no charge, for the period stated on the quotation associated with this Agreement, for any action (parts, labor, and travel) deemed necessary by Bayer to service the equipment, excluding those items listed under "Warranty Exceptions." Bayer will perform on-site corrective maintenance during normal working hours of 6:00 a.m. to 9:00 p.m., Monday through Friday and 8:00 AM to 5:00 PM Saturday through Sunday and Holidays, Customer shall pay an additional charge for all field labor and travel time for corrective maintenance performed outside normal hours at Bayer's then current hourly rates.

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

UP-TIME. For any calendar quarter during the term of this Agreement the Product(s) will maintain a level of uptime equal to or greater than 99%.

Uptime is defined as the state when the Product(s) is working and/or available for use. Downtime is defined as the state when the system is not operable. The period of downtime shall be from notification of the manufacturer's service call center (1-800-633-7237) until the Product(s) is returned/presented to the designated Customer representative properly functioning and ready for use. Scheduled routine preventive maintenance, scheduled upgrades of Product(s) or software, operator error in use of the Product(s), failures designated under "Warranty Exceptions", and external failures (i.e., power loss) shall not be considered Downtime.

Uptime will be calculated using the following formula: $Uptime = ((T-TNF) \times 100) / T$

Where "T" is the total number of hours (24 hours/day x 7 days/week x 13 weeks) and "TNF" is the number of covered hours (less any time a loaner or consigned spare part is made available) the Product(s), or any component of the Product(s) is not functional during the quarter. "TNF" will be measured beginning with the time of initial notification to Bayer that the Product(s) is inoperable for clinical use and the time the Product(s) is available again for clinical use. If any portion of the total functionality of the Product(s) is unavailable for operational use, the Product(s) will be considered down.

TNF will not include: (i) hours that are outside of contracted coverage terms, (ii) any malfunction or damage described under "Warranty Exceptions" in the manufacturers extended warranty or extended service agreement terms, (iii) scheduled preventive maintenance, or any other scheduled event, including those for the convenience of Customer, (iv) malfunctions caused by operator error, or (v) abuse of the Product(s), dead batteries, use of the Product(s) beyond its intended use or failure resulting from changes to the operator environment (i.e. scanner software, upgrades, changes, new magnet, room construction, etc.).

Customer will calculate uptime after each calendar quarter and will notify Bayer of any incident of non-conformance within 15 days of any such non-conformance. If uptime is less than 99%, then Bayer, upon verification, will extend the term of the service agreement without charge by one week for every full day that the Product(s) or any component of the Product(s) thereof is not operational beyond the allowable 1% level.

PREDICTIVE MAINTENANCE SCHEDULE. Bayer shall perform two (2) Predictive Maintenance (PM) Certifications per year on the Product(s) during the hours of 6:00 AM and 11:00 PM, Monday through Friday (PM Hours). Bayer will perform Predictive Maintenance at six (6) month intervals beginning within the first sixty (60) days of the effective date of this Agreement or within six (6) months from the last PM provided by Bayer, unless otherwise agreed. For Predictive Maintenance performed outside of standard PM 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).

In all of these out of warranty instances, Bayer will provide service to your product, at your request. However, you 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 you if you have not made payment by the due date or if you do 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 is terminated for any reason Bayer shall refund to you an amount equal to the amount you prepaid for service for that year less the assessed value of any Engineered Predictive Maintenance (EPM) performed and the assessed value of any services provided to date. If the EPM was performed and at least one onsite emergency service event was performed during the Agreement period, the Agreement shall be considered fulfilled and no refund for that service year will be due to you.

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 VIRTUALCARE® REMOTE SERVICE

Customer understands and agrees that in order to be eligible to receive the services provided hereunder, Customer must maintain a consistent connection to Bayer’s remote access platform, which enables VirtualCARE® Remote Support Service. In the event the applicable injection system is disconnected, Customer will re-establish such connection within forty-eight (48) hours. Bayer will provide remote diagnostic and monitoring services on the products under this Agreement using Bayer’s proprietary hardware and software. In the event this Agreement is terminated or expires and Customer does not renew into a subsequent Bayer service program, within sixty (60) days of such termination or expiration, Bayer will restrict the VirtualCARE remote support services so that all auto alerts will be muted, and Bayer will no longer take action on such notices. If the system is muted by Bayer or taken offline by Customer, Bayer will no longer continue its current practice of automatic remote monitoring and error code detection, or proactive event assessment and diagnostics. Customer understands that the remote access platform connection may still exist but that no Customer information will be relayed to Bayer from Customer’s systems.

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.