

DirectCARE ULTIMATE SERVICE AGREEMENT

SERVICE RATES AND POLICIES

MODIFICATIONS. The prices and terms on this Agreement are not subject to verbal changes or other agreements unless approved in writing by Bayer's Corporate Office. Bayer is not responsible for typographical errors.

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 Quotation/Agreement Letter 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.

WARRANTY.

WARRANTY ON REPAIRS. All materials, labour and service provided hereunder 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.

FULL WARRANTY PERIOD. There will be no charge, for the period stated on the Agreement, for any action (parts, labour, travel) deemed necessary by Bayer to service the equipment, excluding those items listed under "Exceptions." Bayer will perform on-site corrective maintenance during normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Bayer observed holidays. Buyer shall pay, as an additional charge for on-site Corrective Maintenance, all field labour and travel time, outside normal hours at Bayer's current service rates, including any appropriate premiums.

VirtualCare **REMOTE SERVICE.** As applicable, Bayer may provide remote diagnostic and monitoring services on the products under this Agreement using Bayer's proprietary hardware and software. The maintenance materials are and will remain Bayer's sole and exclusive property and you do not get any licensed rights in the maintenance materials.

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 Buyer's negligence is not covered by this Agreement. In such a case, Bayer reserves the right to charge an additional fee to cover labour, travel, and parts for any equipment which is non-functional at the time of the initial service or annual predictive maintenance.

b) Pulse Oximetry sensors will be limited to one no charge exchange per contract year. Buyer may choose to have one Pulse Oximetry sensor replaced during the annual PM or during a subsequent service repair. MEDRAD XDS Extravasation Detector sensor pad replacements are not included.

c) Products that have been modified, improperly installed, or improperly interfaced with other equipment. These conditions could jeopardize product operation, safety or reliability. This includes any work

- performed on the product by any party other than a Bayer authorized service provider, or any parts or modules installed on the product not provided by a Bayer authorized service provider.
- d) 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 and products not installed and serviced by a certified and approved Bayer personnel) shall not be covered by this warranty and Bayer is relieved from any further obligation. The use of accessories in connection with the equipment may jeopardize functionality, reliability or operator and patient safety.
 - e) Damage, malfunction, or incorrect injections resulting from using non-Bayer syringes and/or tubing sets (e.g. transfer sets, patient lines, Y-connectors, T-connectors, other extension sets) - i.e., spilling of contrast, leakage, pressure, flow rates, or volumes not agreeing with injector settings, etc.
 - I. This Agreement does not cover injector heads that are damaged due to spilling of contrast (contrast fouling) when non-Bayer syringes and/or tubing are used.
 - II. In the event that non-Bayer syringes and/or tubing are used and the injector head is fouled with contrast, Bayer will provide service to your product, at your request, upon your agreement. However, you will be obligated to pay Bayer for the injector head, if it is deemed unrepairable, up to the effective list prices.
 - III. Upon replacement, the injector head will be warranted for 90 days or the balance of the Agreement in effect, whichever is longer, subject to these Exceptions.
 - f) Malfunction or damage due to abuse, misuse or spilling of contrast, blood or other substances; or operator error in failing to follow specific provisions of the product operation manual.
 - g) Failures caused by network outages or improper network configuration.
 - h) Damage by fire, floods or other disasters commonly defined as “acts of God”.
 - i) Any Injector Head Counterpoise System and any ceiling or wall support structure used to mount or support an Injector Head Counterpoise System. Unless otherwise indicated, Bayer does not warrant these items from damage or failure under this Agreement. All labour, travel and material required to repair or replace any such item will be charged at Bayer standard rates, including applicable premium charges then in effect.

In all of these out of warranty instances, Bayer will provide service to your product, at your request, upon your agreement. However, you must agree to pay Bayer for required labour, either in-house or on-site (including all travel time), and any material(s) required at Bayer’s current list prices and labour rates, including applicable premium charges.

INDEMNITY. Bayer will indemnify, defend and hold you harmless from any liability, loss, expense, cost, claim or judgment, including attorney’s fees arising out of any third party claim 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.

PREDICTIVE MAINTENANCE SCHEDULE. Bayer shall perform Predictive Maintenance on the product(s) during the hours of 8:00 AM and 5:00 PM, Monday through Friday (PM Hours) unless otherwise indicated in the terms of this Agreement. For Injector and Monitor products Bayer will perform Predictive Maintenance within the first sixty (60) days of the effective date of the Agreement or within twelve (12) months from the last PM provided by Bayer, unless otherwise agreed. Predictive Maintenance performed outside of PM Hours will be charged an additional one half (1/2) of Bayer’s current hourly service rate, including any applicable premiums.

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.

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 product at the scheduled time for service. You may cancel this Agreement at any time by giving sixty (60) days prior written notice to the Bayer Service Department. If the Agreement is terminated, you will be responsible to pay Bayer the assessed value (at the time performed) of any Predictive Maintenance performed, all used warranty time plus an administrative fee equal to ten percent (10%) of all such fees. Within thirty (30) days of termination, Bayer shall calculate the amount you owe Bayer and deduct such amount from the amount you've previously paid. Any balance shall be refunded to you.

FORCE MAJEURE. Bayer will not 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, inability to procure supplies and raw materials, delays in transportation, work stoppage, court order, and other causes beyond Bayer's reasonable control.

COMPLIANCE WITH LAWS. In addition to any rights specifically identified here in this Agreement, Bayer shall have all rights and remedies conferred by law. Bayer shall not be required to perform its obligations under this Agreement if you have defaulted (e.g. failed to pay) under this Agreement or any other contract involving Bayer.

These rates and policies apply to service performed in Canada. They may vary in other locations. Consult your Bayer Representative for service rates and policies for your location. All rates are subject to change without notice.