

Service Agreement

Bayer Full Service Essential 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, “Injection System(s)” shall mean the Bayer manufactured injection system 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 services are sold 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 effective date listed on the associated Quotation and shall continue through the term stated on such Quotation (the “Term”).

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 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:

CORRECTIVE MAINTENANCE SERVICE WARRANTY. During the Term, there will be no charge for any action (parts, labor, or travel) deemed necessary by Bayer to service the Injection System and any associated Bayer compatible Overhead Counterpoise System, if noted on the Quotation and not designated as end-of-life, excluding those items listed in the section below entitled “Service Warranty 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. 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. Customer acknowledges that response times may be extended in certain remote geographic areas including, without limitation, Alaska, Hawaii, North Dakota, South Dakota, Wyoming, Idaho, Montana, Amarillo, TX and El Paso, TX, Puerto Rico, and the Caribbean Islands. Bayer will use commercially reasonable efforts to deliver timely onsite support in such locations.

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 or ninety (90) days from the date such repair was provided.

PREDICTIVE MAINTENANCE (PM) SCHEDULE. During the Term, Bayer shall perform annual Predictive Maintenance on the Injection System and any associated Bayer compatible Overhead Counterpoise System, if noted on the Quotation and not designated as end-of-life, Monday through Friday during the hours of 6:00 AM to 9:00 PM for MEDRAD® Centargo CT Injection Systems and during the hours of 8:00 a.m. and 5:00 p.m. for all other Injection Systems. Unless otherwise agreed by the parties, Bayer will perform Predictive Maintenance within the first sixty (60) days of the effective date of this Agreement or within twelve (12) months from the last PM provided by Bayer. For Predictive Maintenance performed outside of the standard PM hours listed above at Customer's request, Customer will be charged Bayer's then current hourly rates for field labor and travel time.

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 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 Customer an amount equal to the amount Customer prepaid for service for the applicable Plan year less the assessed value of any Predictive Maintenance (PM) performed and the assessed value of any other services provided by Bayer through the date of termination. If the PM was performed and at least one onsite emergency service event was performed during the service year, the Agreement shall be considered fulfilled and no refund for that Plan year will be due to Customer.

WARRANTY EXCLUSIONS

EXCEPT AS PROVIDED IN THE ABOVE WARRANTY SECTIONS, 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.

SERVICE 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 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 field labor and travel rates.

REMOTE CONNECTIVITY AND TECHNICAL SUPPORT SERVICES

Bayer will provide ongoing remote diagnostics and technical support on the Injection System(s) and/or software license features 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 Injection System is taken offline by Customer, Bayer will cease providing remote diagnostic services and associated technical support. In the event Customer is not connected to Bayer's remote access server and, as a result, requires onsite technical service, Customer will be invoiced at Bayer's current hourly travel and labor rates.

INDEMNITY

Bayer will indemnify, defend and hold Customer harmless from any claim by a third party against Customer 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 Customer or any third party.

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.