



Bayer Leading Terms and Conditions ("LTCs") for Software

Preamble

Client and **Contractor** share the opinion that the subject of underlying purchase order is suited for the **Accelerated Process of Contracting** as defined herein below. Therefore, **Contractor's Standard** will not be negotiated in detail. However, the following clauses which are essential for all software licenses of **Client** shall prevail.

1 Definitions

- 1.1 "**Accelerated Process of Contracting**" means a process by which the negotiation of a contract is substituted by an agreement on clauses in these **LTCs** which overrule the corresponding and potentially contradicting clauses in **Contractor's Standard**.
- 1.2 "**Affiliate Company**" means any entity that, directly or indirectly controls, or is controlled by, or under common control with another entity in the sense of Section 15 ff. of the German Corporations Act (Aktiengesetz).
- 1.3 "**Client**" means, as the case may be, Bayer AG or any of their **Affiliate Companies**, which, by signing a binding order document that makes reference to these **LTCs**, orders a **Solution/Product** from **Contractor**.
- 1.4 "**Client Data**" means any and all materials, data (including personal data), either originally uploaded by **Client/Defined Users** or processed by computing operations of **Contractor's Solution/Product**, other working results derived when using the **Solution/Product** and information made available to **Contractor** by **Client** or by **Defined Users**.
- 1.5 "**Contractor**" means the company that will provide the **Solution/Product**.
- 1.6 "**Contractor's Standard**" shall mean **Contractor's** standard license/SaaS agreement or terms and conditions for the **Solution/Product**.
- 1.7 "**Defined Users**" means the staff, agents, subcontractors, advisors, customers, and suppliers of **Client** and of **Client's Affiliated Companies** that have been authorized by **Client** to use the **Solution/Product** according to the terms of these **LTCs** and **Contractor's Standard**.
- 1.8 "**Grant**" means the volume of use rights admitted by **Contractor** and with or without use restrictions.
- 1.9 "**LTCs**" mean these Bayer Leading Terms and Conditions ("LTCs") for Software
- 1.10 "**Solution/Product**", as described as the subject matter in the underlying purchase order and/or Contractor's Standard.

2 Data Privacy

Data privacy related requirements are stipulated in **Annex Data Privacy**, which forms an integral part of these LTC.

Relevant changes to the data processing, such as the change of subcontractors, service locations, data centers, if any, shall be communicated to the Client sufficiently in advance. Client shall have the right to object to such relevant change in case there are reasonable, data privacy related grounds for such rejection. In case Contractor is not able to continue to provide the Solution/Product after Client's objection to a relevant change to the data processing, Client shall have a right to terminate the agreement with the contractor.

3 Subject Matter of the Agreement

Client shall be authorized to make available the **Solution/Product** to **Defined Users** without geographical restrictions. Client may –limited to the business purposes of Client and Clients Affiliates



Companies – allow third parties to use and operate the **Solution/Product** and documentation, both in dedicated data centers owned by third parties and in shared operating environments owned by third parties, which may be operated as Infrastructure as a Service (IaaS) or Platform as a Service (PaaS) – collectively referred to as cloud services. The **Contractor** supports the operation of the **Solution/Product** and the provision of documentation in the aforementioned third-party operating environments, also with regard to dynamically scaling virtualization technologies for flexible adaptation of the operating environments. The usage of the **Solution/Product** is limited to the business purposes of **Client** and **Clients Affiliates Companies**.

Unless otherwise defined herein, the **Grant of Contractor's Standard** applies.

4 Rights on Data

- 4.1 **Client** shall retain all rights on **Client Data** and all system generated data such as log-in data, counting of load-ups or use of the **Solution/Product**. In particular any disclosure of the data mentioned in this Section 4.1 (neither anonymized nor aggregated) is prohibited without **Client's** prior written consent. The restrictions do not apply if **Contractor** has a legal obligation to disclose respective data to authorities. **Contractor** is obligated to inform **Client** about such disclosure with undue delay. At any time, **Client** is entitled to retrieve the **Client Data** back in an industry standard format.
- 4.2 Thirty (30) calendar days upon termination or expiration of the order and Client's subsequent confirmation that the Client Data has been received and can be construed (deletion approval, email being sufficient), Contractor shall carry out the permanent and irrevocable deletion of any Client Data that is still on the servers and/or any other data carriers if and to the extent that no mandatory further retention of such data is required by any applicable laws and regulations. Subject to the foregoing, Contractor shall have not right to retain Client Data after termination or expiration of the order.

5 Invoicing/Payment Term

The payment term is thirty (30) days after receiving a correct invoice.

6 Minimum Warranty Period and Liability Cap

Unless longer in **Contractor's Standard**, the warranty period is six (6) months starting at the date of installation and/or usage start of the **Solution/Product**. Unless higher in **Contractor's Standard**, the liability cap for damages caused by slight negligence is one-hundred percent (100%) of the fees of a **Solution/Product** to be paid per 12-month period.

7 Duty of Confidentiality: Usage of Logos

- 7.1 **Contractor** must not disclose any part of the order and/or business relation to third parties. This includes the knowledge the **Contractor** obtains in connection with the performance of the order. This section 7.1 persists for a period of 3 years after termination or expiration.
- 7.2 **Contractor** is not allowed to use any Bayer logo, the Bayer name, Bayer brand names or corporate identity for any purposes, especially marketing purposes, without prior written consent from **Client**.



8 Miscellaneous

- 8.1 In the event of contradictions between the provisions of the **LTCs** and other referenced documents in the purchase order (e.g. **Contractor's Standard**), the following order of priority apply:
- (i) Data processing agreement, if any, as concluded pursuant to Section 2 above;
 - (ii) These **LTCs**;
 - (iii) **Contractor's Standard**;
 - (iv) Any other schedules, annexes and additions which are referred to in the purchase order, others than **Client's** terms and conditions, which shall not apply at all.
- 8.2 Should any part of the purchase order violate statutory prohibitions or be or become null and void on any other grounds, the Parties shall be obligated to replace the part concerned with provisions that come close to the intended economic and legal purpose. The validity of the remaining parts of these **LTCs** shall not be affected.



Annex: Data Privacy

1. Definitions

For the purpose of this Annex, the definitions as laid down in Art. 4 of the Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR") apply.

2. Adherence to applicable data privacy laws

Each party shall at all times comply with its respective obligations under applicable data privacy laws (such as, but not limited to, the GDPR).

3. Assessment of Data Privacy Relevance

- 3.1 If during, and in connection with, the performance of the **Solution/Product**, **Contractor** receives (or gets access to) personal data or otherwise processes personal data to which data privacy laws apply ("**Data Privacy Relevance**"), **Client** and **Contractor** agree to negotiate in good faith any additional data privacy agreements which might be required, as determined in more detail in the following clauses.
- 3.2 Insofar as, at the time of the conclusion of this Annex, **Client** and **Contractor** are not able to determine in advance whether a Data Privacy Relevance will materialize during the performance of the **Solution/Product**, **Client** and **Contractor** agree to re-assess the Data Privacy Relevance where there is any change of an existing engagement or any new engagement of **Contractor** under the **Solution/Product** (e.g. of purchase orders, statements of works). If **Client** and **Contractor** – as a result of such assessment – determine a Data Privacy Relevance, they shall proceed as described in clause 3.1 above.
- 3.3 In any case, **Client** and **Contractor** shall not start processing personal data prior to fulfilling the requirements as determined in the following clauses.

4. Commissioned processing

- 4.1 To the extent that during the performance of the **Solution/Product** **Contractor** is commissioned to process personal data on behalf of **Client**, thereby acting as **Client**'s processor, **Client** and **Contractor** agree to negotiate in good faith the conclusion of a corresponding agreement that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the **Client** and **Contractor** (Data Processing Agreement, "**DPA**").
- 4.2 Where such processing on behalf of **Client** is subject to the GDPR, the DPA must follow the mandatory requirements of Art. 28 GDPR.
- 4.3 **Contractor** shall implement appropriate technical and organizational measures which will meet the requirements of applicable data privacy laws and in any case ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.

5. Joint Controllership

- 5.1 To the extent that during the performance of the **Solution/Product** **Client** and **Contractor** jointly determine the purposes and means of processing personal data within the meaning of Art. 26 GDPR



(subject to the applicability of the GDPR), **Client** and **Contractor** shall, in a transparent manner, determine their respective responsibilities for compliance with the obligations under the GDPR. In particular, the Parties shall determine their respective responsibilities in relation to the exercising of the rights of data subjects and **Client's** and **Contractor's** respective duties to provide the information referred to in Art. 13 and 14 GDPR, by means of an arrangement between **Client** and **Contractor** (unless, and in so far as the respective responsibilities of **Client** and **Contractor** are already determined by European Union or Member State law to which **Client** and **Contractor** are subject).

- 5.2 **Client** and **Contractor** agree to negotiate in good faith the conclusion of such an arrangement referred to in clause 5.1, which shall duly reflect the respective roles and relationships of **Client** and **Contractor** vis-à-vis data subjects and designate a central contact point for data subjects.
- 5.3 If **Client** and **Contractor** do not come to an agreement with respect to their responsibilities pursuant to clause 5.1 above, then, as a default position, both **Client** and **Contractor** shall ensure they fully comply with their respective obligations as controllers including, providing all information to data subjects required by Art. 13 and 14 GDPR and responding to any data subject request.

6. Transfers of personal data from EU to Third Countries

- 6.1 To the extent that during the performance of the **Solution/Product Contractor** or any of its affiliates or subcontractors receive (access to) personal data originating from the European Economic Area ("**EEA**"), **Contractor** guarantees that the processing of such personal data will take place exclusively in a Member State of the European Union or another country of the EEA or in a third country that has been determined by the European Commission as ensuring an adequate level of data protection (adequacy decision pursuant to Art. 45 GDPR, including e.g. the EU-US Privacy Shield) or otherwise in compliance with this clause 6.
- 6.2 Any transfer of or giving access to personal data originating from the EEA to any other country than those mentioned in clause 6.1 ("**Third Countries**") requires the prior information of **Client** well in advance and in writing or in electronic format (e.g. e-mail) and must be in compliance with the regulations on transfers of personal data to Third Countries (Art. 44 – 50 GDPR).
- 6.3 Where transfers to Third Countries require the provision of appropriate safeguards, **Client** and **Contractor** agree that the preferred safeguard to transfer personal data to Third Countries is the conclusion of standard data protection clauses adopted by the EU Commission in accordance with Art. 46(2)(c) GDPR. **Client** and **Contractor** agree to negotiate in good faith the conclusion of the latest applicable version of such standard data protection clauses. Agreeing to other safeguards is at **Client's** sole discretion.

* * * * *