



## 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/SaaS and related services 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"** shall mean with respect to a Party, any person, corporation, firm, joint venture or other entity which, directly or indirectly, through one or more intermediates, controls, is controlled by or is under common control with such Party. As used in this definition, "control" means possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of the outstanding voting securities or by contract or otherwise.
- 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 scope of license and use rights granted by Contractor.
- 1.9 **"LTCs"** mean these Bayer Leading Terms and Conditions ("LTCs") for software and related services.
- 1.10 **"Personal Data"** means any information relating to an identified or identifiable natural person.
- 1.11 **"Solution/Product"**, as described as the subject matter in the underlying purchase order and/or Contractor's Standard.

## 2 Subject Matter of the Agreement

- 2.1 Client shall be authorized to use and to make available the Solution/Product to Defined Users without geographical restrictions. Client may – limited to the business purposes of Client and Client's 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 Client's Affiliates Companies.
- 2.2 In the event maintenance services or other software related projects/services, such as, for example, customization, configuration, implementation, specific software development or training services, form part of the ordered Solution/Product, the parties agree that all of such services may also be received on behalf of Client by the third parties as described in Section 2.1.
- 2.3 Any customization, configuration, implementation or specific software development shall be subject to an acceptance test. Contractor will inform Client in writing if the respective work is ready for acceptance. Unless otherwise agreed in the purchase order, Client will perform an acceptance test within 4 weeks after having been informed in writing that the work is ready for acceptance. Such acceptance test shall be subject to the acceptance criteria agreed on in the purchase order, if any, or any generally applicable quality criteria. If the acceptance test fails Contractor will rectify the respective findings within a reasonable period before the acceptance test will be repeated. In the event the acceptance test fails again, Client is entitled to terminate this Agreement in full or in part, it being understood that any unused fees paid in advance by Client shall be reimbursed.
- 2.4 With regard to work results and deliverables resulting from the projects/services as described in Section 2.2 and in particular with regard to new versions, updates or upgrades forming part of maintenance service as part of the Solution/Product, Section 2.1 applies mutatis mutandis.
- 2.5 Unless otherwise defined herein, the Grant of Contractor's Standard applies.

## 3 Data Privacy

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

## 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**

Unless otherwise stated in the purchase order, 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:
- (a) Data processing agreement, if any, as concluded pursuant to Section 3 above;
  - (b) These LTCs;
  - (c) Contractor's Standard;
  - (d) 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. Assessment of data privacy relevance**

- 1.1 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, 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.
- 1.2 Client and Contractor shall not start processing Personal Data prior to fulfilling the requirements as determined in the following clauses.

### **2. Commissioned processing**

- 2.1 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**").
- 2.2 Where such processing on behalf of Client is subject to the Regulation (EU) 2016/679 (General Data Protection Regulation, "**GDPR**"), the DPA must follow the mandatory requirements of Art. 28 GDPR.
- 2.3 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.

### **3. Transfers of Personal Data from EEA to Third Countries**

- 3.1 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 4.
- 3.2 Any transfer of or giving access to Personal Data originating from the EEA to any other country than those mentioned in clause 4.1 ("**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).

3.3 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.

#### **4. Changes to data processing**

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.

\* \* \* \* \*