Bayer Leading Terms and Conditions for Software and Related Services
v. 2.0

1 General

1.1 These Bayer Leading Terms and Conditions for software and Related Services ("LTC") are incorporated by reference into an agreement relating to the provision of Software or any Related Service between Customer and Supplier. Customer agrees to conclude a contract based on a combination of Supplier's Standard and these LTC, provided that the LTC take precedence over Supplier's Standard.

1.2 In the event of contradictions between the provisions of the LTC, the PO (and other referenced or attached documents therein) as well as the Supplier's Standard, the following order of priority applies:

(a) These LTC;

(b) the PO and any other documents referred or attached to therein (except for the General Purchase Terms and Conditions of Bayer and its Affiliates, which shall not apply at all);

(c) the Supplier's Standard.

1.3 The LTC even take precedence, if the provisions of Suppliers' Standard stipulate that no terms and conditions of Customer apply.

1.4 Provisions in Supplier's Standard deviating from the LTC to Customer's disadvantage do not apply, even if Customer does not separately object to their application in individual cases. Even if Supplier refers to a letter that contains or refers to Supplier's Standard or a third party's terms and conditions, this does not constitute an agreement to the validity of those terms and conditions to the extent that the provisions deviate to Customer's disadvantage from the LTC.

1.5 The precedence of the LTC shall not apply if (i) the Supplier's Standard contains more favorable provisions for Customer, or (ii) the LTC do not contain provisions with respect to a matter covered by the Supplier's Standard.

2 Definitions

2.1 **"Affiliate(s)"** 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.

2.2 "**Agreement**" all contractual provisions between Supplier and Customer relating to the provision of a specific Software and a Related Service, including these LTC, Supplier's Standard and, as the case may be, any Purchase Orders.

2.3 "**AI Act**" means Regulation (EU) 2024/1689 of the European Union.

2.4 "**AI System**" means a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

2.5 "**Customer**" means, as the case may be, Bayer AG or any of its Affiliates, individually or together.

2.6 "**Customer Data**" means any and all materials, data (including Personal Data), either originally uploaded by Customer/Defined Users or processed by computing operations of Supplier's Software, other working results derived when using the Software and Related Services and information made available to Supplier by Customer or by Defined Users. Customer Data also includes input (Customer queries) and output (response to the input) of an AI System.

2.7 "**Confidential Information**" has the meaning as defined in Supplier's Standard.

2.8 **"Defined Users"** means the staff, agents, subcontractors, advisors, customers and suppliers of Customer and Customer's Affiliates that have been authorized by Customer to use the Software and Related Services for the business purposes of Customer or Customer's Affiliates according to the terms of the LTC and Supplier's Standard.

2.9 **"Grant"** means the scope of license and use rights granted by Supplier.

2.10 "**LTC**" mean these Bayer Leading Terms and Conditions for software and Related Services.

2.11 "**Purchase Order**" or "**PO**" means the document defining the scope, term and prices of the Software and any Related Services to be provided by Supplier.

2.12 "**Personal Data**" means any information relating to an identified or identifiable natural person.

2.13 "**Related Services**" means any service (e.g., provision of implementation-, customization-, configuration-, maintenance-, hotline support-, specific software development- or training-services) provided together with the Software for the Customer or Customer Affiliate.

2.14 "**Software**"**,** means any on-premise or off-premise ("**Cloud Services**") provision of a computer program, including any related documentation, as described as the subject matter in the underlying Purchase Order and/or Supplier's Standard.

2.15 "**Supplier**" means the company that will provide the Software and Related Services.

2.16 "**Supplier's Standard**" shall mean Supplier's standard agreement or terms and conditions for the Software and Related Services.

2.17 "**Usage Data**" means all system generated data such as log-in data, counting of load-ups or use of the Software, created through the use of the Software by Customer. Usage Data does not include any Customer Data.

2.18 "**Work Result**" means any deliverable resulting from a Related Service performed for Customer or Customer Affiliate, e.g. from any customization, configuration, implementation or any other specific software development services.

3 License Grant

3.1 Customer is authorized to use and to make available the Software and Related Services to Defined Users without geographical restrictions, unless stipulated otherwise in the Agreement and subject to all applicable laws on export and import.

3.2 Unless the Software is provided by Supplier as a Cloud Service, Customer may – limited to the business purposes of Customer and Customer's Affiliates – allow third parties to use and operate the Software and any related Work Results, both in dedicated data centers or in shared operating environments owned by third parties (e.g. as Infrastructure as a Service or Platform as a Service).

3.3 With regard to Work Results and with regard to new versions, updates or upgrades forming part of maintenance services as part of the Software, Sections 3.1 and 3.2 apply mutatis mutandis.

4 Acceptance test

4.1 Work Results – if owed by Supplier under the Agreement – shall be subject to an acceptance test.

4.2 Unless otherwise agreed in the Purchase Order, Customer will perform such acceptance test within 4 weeks after delivery of the Work Result and receipt of the information in text form from Supplier that the Work Result is ready for acceptance. Such an acceptance test shall be subject to the acceptance criteria agreed on in the Purchase Order, if any, or any generally applicable quality criteria.

4.3 If the acceptance test fails, Supplier shall rectify any defects within a reasonable period determined by Customer before Customer repeats the acceptance test. In the event the acceptance test fails again and Supplier is not able to rectify defects within the period determined by Customer, Customer is entitled to, by declaration to Supplier, either (i) abate the remuneration accordingly or (ii) rescind the Agreement in part or, (iii) in case the defect is not trivial, in full, it being understood that Customer is entitled to a reimbursement of any fees paid in advance.

5 Suspension of Software and Related Services

To the extent that Supplier is entitled to suspend Customer's use of the Software and Related Services under the Agreement, Supplier will (i) provide contemporaneous notice (within one business day) of such suspension to the extent that prior information is not prohibited by law, by any competent supervisory authority or by courts, (ii) limit the suspension to the necessary amount of time and (ii) make commercially reasonable efforts to resolve, with Customer, the reason for the suspension.

6 Software that qualifies as or incorporates an AI System

6.1 Supplier shall promptly disclose in writing to Customer any Software and/or Related Service that qualifies as or incorporates an AI System. Furthermore, Supplier shall not utilize any Software and/or Related Services that uses an AI System without obtaining prior written consent (email to suffice) from Customer.

6.2 Supplier confirms that any AI System that is part of the Software conforms with the applicable law, in particular and to the extent applicable to the requirements of the AI Act.

6.3 Supplier must not use any Customer Data to further train the AI System.

6.4 At first request of Customer, Supplier must assist and make available to Customer all information necessary to demonstrate compliance with the AI Act (including in respect of record-keeping and logging requirements).

7 Rights on Data

7.1 Customer shall retain all rights, including any intellectual property right, on Customer Data. Any disclosure of Customer Data is prohibited without Customer's prior written consent. The restrictions do not apply if Supplier has a legal obligation to disclose respective Customer Data to authorities. Supplier is obligated to inform Customer about such disclosure without undue delay.

7.2 At any time, Customer is entitled to retrieve Customer Data back in an industry standard format and demand the deletion of Customer Data or portions of it. As far as technically possible and economically feasible, Customer shall be provided with an industry standard interface through which Customer may extract Customer Data independently at any given time. Any Customer Data extraction executed by Customer itself is free of charge.

7.3 Supplier may only use Customer Data to the extent necessary for the provision of the Software and Related Services. Supplier must cease such use of Customer Data after termination or expiration of the Agreement.

7.4 Supplier's right to use Usage Data is restricted to Usage Data in anonymized or aggregated format that does not contain any Personal Data or Confidential Information and that is used for the purpose of the provision and improvement of Supplier's Software only.

7.5 Thirty (30) calendar days upon termination or expiration of the Purchase Order and Customer's subsequent confirmation that the Customer Data has been received and can be construed (deletion approval, email being sufficient), Supplier shall carry out the permanent and irrevocable deletion of any Customer 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, Supplier shall have no right to retain Customer Data after termination or expiration of the Purchase Order.

7.6 Upon termination or expiration of a Purchase Order or the Agreement, Customer may request additional exit assistance services from Supplier. The scope and remuneration of such services are subject to good faith negotiations between the Parties, unless such services are already covered by the Agreement.

8 Liability

8.1 The aggregate liability of a Party to the other Party for all claims and damages related to the Agreement, whether based on an action in contract, equity, negligence, tort or other theory, does not exceed an amount equal to one hundred (100) percent of the charges paid and payable by Customer (including Affiliates) under the Agreement during the twelve (12) months immediately preceding the date of the initial written notice of the applicable breach or other event, act or omission on which such liability is based.

8.2 The limitations and exclusion of liability set forth in this Section 8 do not apply to damages caused by willful misconduct or gross negligence.

8.3 Supplier shall indemnify Customer from all claims brought by third parties arising out of any infringement of intellectual property rights, data protection rights or equivalent rights resulting from the use of the Software or Related Services by Customer, provided however that such use is conform with the terms of Supplier's Standard.

9 Representations and Warranties

9.1 Supplier represents and warrants that it owns or has obtained all necessary licenses, permissions, and rights to grant Customer the requisite rights to use and benefit from the Software or Related Services.

9.2 Supplier represents and warrants that each Software, Related Service or Work Result will at the time of transfer (and in case of Cloud Services throughout the subscription period) materially conform to the specifications set forth in the applicable documentation and in the applicable Purchase Order.

9.3 Unless longer in Supplier's Standard, the warranty period is six (6) months starting at the date of installation and/or productive usage of the Software, respectively declaration of acceptance by Customer with regard to Work Results. With regard to Cloud Services, the warranty period extends to the entire subscription period.

9.4 During the warranty period and/or the duration of a maintenance contract, Supplier is obliged to provide security-relevant updates for the Software. In the event of publicly known security vulnerabilities that pose a significant security risk, Supplier shall

provide updates without undue delay. For any other publicly known security vulnerabilities, Supplier shall provide un update within a reasonable period.

10 Subcontractors

In case Supplier subcontracts any of Supplier's obligations under the Agreement, in whole or in part, Supplier shall inform Customer thereof sufficiently in advance. In case Customer, in its sole discretion, has reasonable grounds to object to a sub-contractor and Supplier is either not able or willing to replace such subcontractor, Customer is entitled to terminate the Agreement free of charge and to receive a reimbursement of any charges paid in advance.

11 Confidentiality, Usage of Logo

11.1 Any provision regarding the protection of Confidential Information in Suppliers Standard shall apply mutually.

11.2 Supplier is not allowed to use any Customer or Customer Affiliate's logo, name, brand names or corporate identity for any purposes, especially marketing purposes, without prior written consent from Customer.

12 Tax

All agreed consideration is exclusive of European or other similar Value Added Taxes (VAT, IVA), Goods and Services Taxes (GST, ITBMS, ITBIS), Sales and Services Taxes (SST), and General Sales Taxes (IGV, ISV) (collectively, "Indirect Taxes"). If any Indirect Taxes are applicable, such Indirect Taxes shall be invoiced additionally according to the applicable tax law. Such Indirect Taxes shall be paid to Supplier only, if Supplier is obliged to transfer such Indirect Taxes to the respective tax authorities and after receipt of a corresponding invoice. Supplier shall issue correct invoices in accordance with the applicable tax law.

13 Export Control

13.1 Both Parties shall comply with all applicable laws on export and import including international sanctions, unless it is impermissible to do so under applicable antiboycott laws.

13.2 In case that Supplier considers it necessary to contact competent authorities making reference to Customer, Supplier shall liaise with Customer prior to approaching the relevant authority.

14 Assignment and Divestment

14.1 In the event that Customer sells or transfers to any third party all or substantially all of (i) its business, (ii) a given business unit or (iii) a given site or legal entity, or merges or otherwise consolidates itself or any of its Affiliates with another entity ("**Divested Entity**"), Customer shall be entitled to, at Customer's sole discretion, choose between or combine the following rights:

14.1.1 Customer is entitled to allow the Divested Entity to use the Software, any Related Services, and any related Work Results under the following conditions ("**Transitional Services**"):

- The use of the Software by the Divested Entity is limited to its internal business purposes and to a transition period of up to 12 months from the date of divestiture ("**Transition Period**").
- If the remaining subscription period is shorter than 12 months, Customer may extend the term of the Agreement limited to the portion of the Software and corresponding fees that the Divested Entity needs to use, to ensure that the Divested Entity can use the Software for a total of up to 12 months. Such extension shall be subject to the same conditions and prices as outlined in the Agreement.
- In case Supplier incurs any additional costs in connection with the provision of the Transitional Services, Supplier is entitled to demand from Customer a reasonable reimbursement subject to Supplier, prior to the beginning of the Transition Period, informing Customer of any expected additional costs, the exact amount and the reasons for the additional costs and Customer issuing a corresponding Purchase Order.
- The Agreement shall remain solely between Customer and Supplier and Customer shall remain liable to Supplier for the actions and obligations of the Divested Entity during the Transition Period.
- Upon the expiration of the Transition Period, the Divested Entity must stop using the Software and Customer shall have the right to partially terminate the Agreement in respect of the proportionate share attributable to the Divested Entity and the fees payable by Customer shall be reduced by the proportionate share attributable to the Divested Entity.

14.1.2 Customer is entitled to, without Supplier's consent but with reasonable notice, fully or partially assign the Agreement to the Divested Entity under the following conditions:

- In case of a partial assignment, Customer retains a portion of the Software and the Divested Entity receives the other portion of the Software for the remaining term of the Agreement as initially agreed between Customer and Supplier.
- Upon the completion of the partial assignment, the fees payable by Customer shall be reduced by the proportionate share that is attributable to the Divested Entity and the Divested Entity shall pay the fees attributable to the portion of the Software assigned to it.
- In case Supplier incurs any additional costs in connection with the (partial) assignment, Supplier is entitled to demand from Customer a reasonable reimbursement subject to Supplier, prior to the completion of the (partial) assignment, informing Customer of any expected additional costs, the exact amount and the reasons for the additional costs and Customer issuing a corresponding Purchase Order.

14.2 The above rights to Transitional Services and the right to (partially) assign the Agreement are subject to the following additional conditions:

- The Divested Entity must not be a direct competitor of Supplier;
- The Divested Entity must not be subject to any applicable export control laws, sanctions or other comparable laws and regulations that would prohibit Supplier to provide the Software to the Divested Entity.

15 Sustainability

15.1 Supplier is obligated to organize its business with Customer in compliance with Customer's human rights-related and environment-related expectations as well as other sustainability topics as outlined in Customer's Supplier Code of Conduct ("**Bayer SCoC**"), Version dated December 31, 2022, which can be accessed through https://www.bayer.com/en/procurement/supplier-code-of-conduct. Customer reserves the right to amend this Sustainability Clause as well as the Bayer SCoC, if Customer's human rights-related and environment-related expectations change and will inform Supplier thereof as soon as reasonably possible. Supplier shall acknowledge continued compliance to such amended SCoC or clause, as the case may be.

15.2 Supplier will address the substantive provisions of the Bayer SCoC to its suppliers and ensures that the substantive provisions of the Bayer SCoC are adhered to by itself and its suppliers, including access to Customer's complaint portal specified in the Bayer SCoC.

Customer reserves the right to evaluate, control or audit (onsite or remote audit, online or paper questionnaire, recognized certification systems or audit-systems, etc.) to ensure and verify compliance with the aforementioned. An evaluation, control or audit can be executed directly by Customer or by a qualified third party.

15.3 Supplier shall, without undue delay, (i) report to Customer in text form any identified risks for and violations of the principles outlined in Bayer SCoC and (ii) take appropriate remedial actions to prevent, end, or minimize the violation. Customer reserves the right to (i) apply a concept for ending or minimizing a violation and (ii) ask for Supplier's cooperation in this respect. If Supplier fails to comply with the requirements of the Bayer SCoC, and after a grace period of three months has lapsed without the violations having been eliminated, Customer reserves the right to either (i) suspend the agreement until such violations have been remedied, or (ii) give extraordinary notice of termination after the aligned timeline for execution has lapsed unfruitful and at Customer's exclusive discretion.

15.4 Supplier acknowledges and supports Customer's Supplier Inclusion & Diversity efforts, its commitment to the participation of diverse businesses and the prohibition of discriminatory treatment in the supply chain as outlined in Bayer SCoC.

16 Miscellaneous

16.1 Any changes or supplements to these LTC require text form. The same applies to the agreement on any waiver of this text form requirement.

16.2 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 LTC shall not be affected.

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