



# MagicTrap Software End User License Agreement

This End User License Agreement ("Agreement") governs the terms of use for the MagicTrap software license for the use of the "MagicScout service packages" (hereinafter referred to as "Software"), which you can purchase via our Bayer [AgroCloud Webshop](#). By clicking on the confirmation fields at the end of the order process, you confirm that you have read and agree to the terms of this Agreement. You also confirm that you are concluding this Agreement as an Entrepreneur as defined in the General Terms and Conditions of the Bayer AgroCloud Webshop), e.g. in connection with your business activities as a farmer. If you do not agree to the provisions of this Agreement, no agreement will be concluded for the use of the Software. Therefore, if you do not accept all the terms of this Agreement, please cancel the order process.

## I. General

This Agreement constitutes a legally binding agreement between yourself ("Licensee") and Bayer CropScience Schweiz AG, Peter Merian-Str. 84, 4052 Basel, Switzerland ("BAYER"). This Agreement applies in addition to the General Terms and Conditions of the Bayer AgroCloud Webshop. In order to use the Software in accordance with the terms of this Agreement, the Licensee must have downloaded the free "MagicScout" application (hereinafter referred to as the "App") and purchased the corresponding hardware ("MagicTrap"), (which can be purchased separately via the Bayer [AgroCloud Webshop](#). Without the MagicTrap and the App, the Software will not function as intended. In other words, without the hardware and the App, the acquisition of a right to use the Software is useless and worthless. The App as such can also be used without the hardware and Software; however, the functionalities available in the App are limited (weed and disease detection). Images from the MagicTrap and corresponding related analyses can only be made available by using both the App and the Software in combination with the MagicTrap. With regard to the App, [the Terms of Use of the App apply](#).

## II. Subject matter of the Agreement

This Agreement applies to the Software described above, including all subsequent updates, upgrades and associated documentation.

BAYER provides the Licensee with the Software for a limited period of use in accordance with the provisions of this Agreement.

The Licensee receives the user documentation (operating instructions) as an electronic version online (available [here](#)). BAYER is not obliged to provide a printed version of the user documentation (operating instructions).

## III. Duration of the Agreement

This Agreement has a term of 12 months from the date of the online conclusion of this Agreement.

This Agreement shall be automatically extended by a further 12 months in each case, provided that it is not terminated by either party in writing or in text form (in particular: email) with a notice period of 14 days to the end of the current contractual period. When exercising the right to terminate, Licensee should give notice using the Stripe portal, which is integrated in the Bayer Agrocloud Webshop; a



corresponding simple form for termination by the Licensee is offered there. If the termination via the Stripe portal does not work, the Licensee can also give notice by email to [support.agrocloud@bayer.com](mailto:support.agrocloud@bayer.com).

If the Agreement is terminated, the Licensee's right to use the Software shall expire.

The right to terminate the Agreement without notice for good cause remains unaffected.

#### IV. License

The conclusion of this Agreement is only possible within the frame of the order process as provided in the General Terms and Conditions of the Bayer AgroCloud Webshop; the email address provided during the order process must be the same as the one used for logging into the App and also for logging into the Stripe Portal. The Licensee is obliged to download the App before concluding this Agreement; otherwise, the activation of the Software for use by the Licensee will not work. After the conclusion of this Agreement, the Licensee shall obtain access to the Software by having the Software activated for use in the Licensee's App by BAYER or a third party commissioned by BAYER.

BAYER is responsible for creating and maintaining the technical requirements to be able to use the Software.

The Licensee has no right to access the source code of the Software.

By concluding this Agreement for the use of the Software, BAYER grants the Licensee the non-exclusive, time-limited right to use the Software under the specified terms of this Agreement without the right to sublicense.

The Licensee is not entitled to sell, rent or lend the Software. It is intended exclusively for use by the Licensee.

Any other use is excluded.

Any breach of this Agreement by the Licensee shall automatically result in the expiry of the right of use.

#### V. Changes and updates

BAYER is authorized, but not obliged, to provide updates to the Software at its own discretion.

BAYER is not obliged to provide updates of the Software to Licensees who have not downloaded the App, are using an outdated version of the App, have deleted the App or are in arrears with the payment of their license fee.

#### VI. User account requirements

A single license for the Software is linked to a user account, i.e. a specified email address. The Licensee must therefore provide such an email address. This must be the same email address that the Licensee also uses to log into the App and to log into the Stripe Portal. The Licensee is solely responsible for creating and complying with this requirement. The use of the Software only works via such a user account. There is no linking of an individual license to a specific user device (smartphone).

If more than one user account is set up or maintained, at least a corresponding number of individual licenses for the Software is required.

The Licensee may change a registered user account but must ensure that a user account is registered at all times during the term of this Agreement in order to be able to use the Software. The Licensee is



responsible for this. The Licensee is therefore obliged to notify such a change immediately by email to: [support.agrocloud@bayer.com](mailto:support.agrocloud@bayer.com) so that such a change can be carried out.

The Licensee may purchase additional licenses for the Software at any time during the term of this Agreement via the Bayer AgroCloud Webshop.

The Licensee can only use his license package via his respective specified user account, even if the Licensee acquires license packages other than a single license (irrespective of the scope of the respective license package selected by the Licensee).

## VII. Copyright

The Software provided by BAYER and all associated documentation are protected by copyright. All rights to the Software and other documents provided in the context of the initiation and execution of the Agreement shall be the exclusive property of BAYER in the relationship between the contracting parties.

The Software is licensed and not sold.

## VIII. Restrictions

The Licensee is entitled to use the Software under a specific and deposited user account, as described above, from the time of corresponding activation.

The Licensee is not authorized to modify, decompile, disassemble (or attempt to determine the source code of the Software), decrypt, extract or otherwise change the Software in any way. The Software or parts thereof, including the associated documentation, may not be used as the basis for derivative works.

The Software may not be passed on to third parties unless BAYER expressly agrees to this in writing.

BAYER may withdraw the license to use the Software for good cause. Good cause shall be deemed to exist in particular if the Licensee is in default of payment of a substantial part of the remuneration or does not comply with this Agreement and does not immediately cease the violation of this Agreement even after written warning by BAYER. If the rights of use are withdrawn, the Licensee shall lose access to the Software and the associated functionalities.

The operating instructions and the documents enclosed with the Software, whether in electronic or written form, may only be copied for the internal purposes of the Licensee. The production of further copies is prohibited.

## IX. Obligations of the Licensee

The Licensee shall take reasonable precautions to ensure that the Software works properly (in particular by using a functioning smartphone). He shall check the Software for its usability for the purpose intended by him before using it operationally.

The Licensee shall take appropriate measures to protect the Software and its associated user account from unauthorized access by third parties.

## X. Remuneration, terms of payment and offsetting; changes of the Agreement

BAYER shall provide the Software to the Licensee against payment of initial or renewal license fees and all other fees as specified in the order process in the Bayer AgroCloud Webshop.



Upon the extension of this Agreement in accordance with § 3, the payment method stored in the Licensee's user account will be used to settle the license fees incurred for the extension period. If such a payment method is not stored in the user account or has been deleted, the Licensee will be in default of payment. BAYER is then entitled to revoke the usage rights to the Software with immediate effect (see § 8). By paying the outstanding amount, the Licensee can then request reactivation of the Software from BAYER.

Until the complete payment of the license fees and other claims arising from this contractual relationship with BAYER, the Licensee is not entitled to the granting or extension of a usage right to the Software from BAYER.

BAYER reserves the right to adjust the license fees during the term of this Agreement, especially at the beginning of a renewal period. BAYER will inform the Licensee in writing or in text form with reasonable notice about any such adjustments. In this case, the Licensee has a special termination right with a notice period of 14 days if they do not agree to the adjustment of the license fees. If the Licensee does not exercise their special termination right, it will be considered as their agreement to the adjustment of the license fees.

BAYER additionally reserves the right to modify Agreement in whole or in part. Except in respect of the assignment of this Agreement to one of BAYER's affiliates in accordance with Section 16, any changes to this Agreement will be effective after we have posted them on our website at [Agrocloud legal page](#) and you have clicked "Accept" before continuing to use the Software. If you do not agree to the revised Agreement, you must stop using the Software.

## XI. Warranty

BAYER warrants, for a period of 12 months from the activation of the Software, that the Software, in terms of its functionality, substantially complies with the program description in the accompanying documentation available [here](#), provided that the Software is used as intended. Representations in test programs, software, and project descriptions, unless expressly designated as such, do not constitute quality guarantees.

If the Licensee is provided with the Software for free for a limited period, BAYER does not provide any warranty for it.

The Licensee is aware of the Software and its performance. The Software has been developed with the application of scientific diligence and recognized engineering practices, particularly adhering to accepted programming standards.

For questions regarding the use of the Software, BAYER or third parties commissioned by BAYER will provide assistance. This support is accessible [here](#).

BAYER does not guarantee that the use of the Software does not infringe on the rights of third parties or cause harm to third parties. This does not apply in cases where BAYER is aware of conflicting rights or damages to third parties, either known due to gross negligence or intentionally concealed by BAYER. At the commencement of the Agreement, BAYER is not aware of any such rights or damages to third parties.

BAYER emphasizes that it is not possible to provide the Software in a way that is entirely free of errors for all users and under all conditions of use. BAYER ensures that the Software is usable for its intended purpose and in accordance with the documentation issued by BAYER at the time of providing it to the Licensee, containing the promised features. Minor deviations from the agreed-upon functions do not constitute grounds for warranty claims.



BAYER does not warrant that the Software meets the specific requirements of the Licensee or user or that the functions contained therein will operate continuously and error-free in a combination selected by the Licensee. The Licensee bears sole responsibility for the selection, installation, and use of the Software, as well as for the intended results thereof.

BAYER is liable for the proper provision of the Software through activation and documentation for download.

BAYER does not warrant that the Software will collaborate with other software existing or installed at the Licensee's or user's premises.

## XII. Liability

Unless legally mandated otherwise, BAYER is not liable for any consequential damages of any kind that do not arise directly from the Software itself, nor for lost profits or other financial losses resulting from the use or inability to use the Software or related thereto. This limitation of liability applies even if remedial measures fail to achieve their essential purpose.

BAYER is only liable for damages caused by grossly negligent or intentional behavior, or due to culpable violation of essential obligations under this Agreement by BAYER.

To the extent that liability is not excluded, the Licensee is entitled to claims for defects only if reported defects are reproducible or otherwise demonstrable by the Licensee.

BAYER is not liable for damages arising from errors, defects, or improper installation, or for damages of any kind resulting from the Licensee's failure to install updates.

The liability for damages resulting from the violation of life, body, or health, and under the Product Liability Act, remains unaffected by the above limitations and exclusions of liability.

## XIII. Data protection

The Licensee's personal data within the Software will be processed on the terms indicated in the Data Privacy Statement in the App.

The provisions of the Privacy Policy of the Bayer Agrocloud Webshop available at [Agrocloud legal page](#), apply to the processing of the Licensee's personal data for the purpose of concluding and performing this Agreement.

## XIV. Confidentiality

Both parties may be granted access to confidential information about the other party to fulfill their contractual obligations. Confidential information does not include information that:



- A. is publicly known at the time of Agreement formation or becomes public knowledge after Agreement formation and this is not due to an unlawful act or omission on the part of the receiving party.
- B. was already in the lawful possession of the other party before disclosure.
- C. was lawfully communicated to the receiving party by a third party without restrictions on disclosure.
- D. was independently developed by the receiving party, and this independent development can be documented in writing; or
- E. must be disclosed by law, pursuant to an order of a competent court, or a regulatory or administrative authority.

The parties treat each other's confidential information confidentially and do not disclose the confidential information to any third party except based on legal requirements. They also do not use the confidential information for purposes other than the execution of this Agreement. The parties ensure, through appropriate measures, that the confidential information accessible to them is not disclosed or disseminated by their employees or representatives in violation of the terms of this Agreement.

The parties are not responsible for loss, destruction, alteration, or disclosure of confidential information caused by third parties.

## XV. Place of jurisdiction and applicable law

The provision on place of jurisdiction and applicable law as provided in the General Terms and Conditions of the Bayer AgroCloud Webshop shall apply to this Agreement and all conduct, controversies and causes of action arising out of or in connection with this Agreement. Agreement

## XVI. Miscellaneous

A waiver of a right under this Agreement is only effective in written form and applies only to the party to which the waiver was given and only for the circumstances underlying this waiver. Unless expressly agreed otherwise, the rights arising from this Agreement are cumulative and do not exclude statutory rights.

Neither BAYER nor the Licensee may assign or otherwise transfer this Agreement and the resulting rights and obligations to third parties, or intend to do so under this Agreement, without obtaining the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding contrary provisions, both parties have the right to assign this Agreement, upon written notice to the other party, to one of their affiliated companies or to a company resulting from a merger, acquisition, restructuring, or other business reorganization of the respective party. Furthermore, BAYER may subcontract its obligations under this Agreement to a third party, provided that BAYER remains responsible for the performance of the services under this Agreement. Assignments, subcontracting, or other transfers in violation of this provision are void.

This Agreement does not create or establish a simple partnership between the parties, nor does it authorize one party to act as an agent for the other. Furthermore, the parties are not authorized to act on behalf of or in the name of the other party or to otherwise obligate the other party (including making



representations or warranties, assuming obligations or liabilities, and exercising other rights or powers).

BAYER is not liable to the Licensee under this Agreement if it is prevented from fulfilling its contractual obligations or fulfills them with delay, or if it is impeded in the conduct of business due to actions, events, omissions, or accidents beyond the reasonable control of BAYER. This includes, but is not limited to, strikes, lockouts, or other labor disputes (whether involving the workforce of BAYER or third parties), failure of public utilities or transportation or telecommunication networks, natural disasters, war, riots, civil commotions, willful damage, fire, flood, or storm, or comparable events. BAYER informs the Licensee about such events and their expected duration.

## XVII. Severability Clause

If individual provisions of this Agreement are or become invalid, the validity of the Agreement as a whole shall not be affected thereby. Instead of the ineffective provision, a substitute provision shall come into force that achieves the intended purpose as closely as possible. This also applies in the case of a loophole in the Agreement.