

## **Nematool App End User License Agreement**

This Nematool App End User License Agreement constitutes a legally binding agreement ("Agreement") between you and Bayer Cropscience SLU, avenida Baix Llobregat 3-5, Sant Joan Despi-08970 (Barcelona), Spain ("we", "us" or "BAYER"). Your use of the Nematool App is subject to the general terms and conditions set forth in this Agreement. Additional terms may apply as described in Sections 2.1, 2.2, and 5.9 below, which are incorporated by reference ("Additional Terms").

In addition, you are only entitled to use the Nematool app and the BAYER software (section 2) if you have entered into the Nematool data access agreement with Bayer CropScience Schweiz AG, Peter Merian-Str. 84, 4052 Basel, Switzerland, by clicking "OK". Nematool's Data Access Agreement can be found here:

<https://www.nematool.com/legal/EN/Nematool-DataAccessAgreement.pdf>

If you do not agree to the Nematool Data Access Agreement referred to above, you must stop using the Nematool App and BAYER software and they will terminate this Agreement for breach (see Section 4.3 below).

The Nematool app is for commercial use only. By clicking "Accept" when setting up your Nematool Account pursuant to Section 1.3 below, you represent and warrant that you are at least 18 years of age, that you are acting for a business purpose, and that you agree to be bound by this Agreement. If you are accepting this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind the entity, in which case "you" and "your" shall refer to you and such entity. **If you are not 18 years of age or older, or do not agree to this Agreement, you may not use the Nematool app.** You are solely responsible for complying with all requirements for access to or use of the Nematool App through your mobile device and other computing devices, internet or telecommunications provider (including, but not limited to, terms relating to the use of any additional required software).

## 1. Nematool App

1.1 Scope of application: The Nematool app provides you with agronomic recommendations in order to protect your crops against nematodes or alerts you to the potential risks of nematodes to your crops. The Nematool app may not be available in all languages. We do not guarantee any results, and neither the Nematool app nor works generated by BAYER (as defined in Section 3.2 below) should be used as a substitute for sound agricultural practices, including regular and diligent monitoring of the field, or as the sole means of making agricultural, risk management or financial decisions. We recommend that you consult your agronomist, commodities broker, and other service professionals before making financial, risk management, and agricultural decisions.

1.2 Personal Data: Providing the Nematool App requires us to collect, share and use some personal data within the meaning of Article 4 (1) of the GDPR about you ("Personal Data"). The way we handle your personal data and other information relevant to data privacy can be found in our Privacy Statement, which is available on <https://nematool.com/Nematool-DataPrivacyStatement.pdf>.

1.3 Nematool Account: You must create a Nematool account to access the Nematool App ("Nematool Account"). When you create a Nematool account, you will be asked to provide certain information about yourself, such as your email address and password ("Account Information"). 1.4 Login Information: You agree to keep your Nematool Account username and password confidential ("Login Information") and prevent unauthorized users from using your Login Information to access the Nematool App. You are solely responsible for the activities of anyone who accesses the Nematool App using your login information and for ensuring that all users of your Nematool account comply with this Agreement. You must notify us immediately of any unauthorized use of your Nematool Account and immediately change your login password if you believe that your Nematool Account is no longer secure.

1.5 License: The Nematool application is licensed to you. Subject to the terms of this Agreement, BAYER grants a limited, revocable, personal, non-exclusive, non-transferable right for you and persons authorized by you to access and use the Nematool application and the Works generated by BAYER solely for your commercial

use in Spain. We do not grant you any rights or licenses under any of our technology or intellectual property rights, except as expressly granted in this Agreement.

1.6 Restrictions: You agree NOT:

(a) use the Nematool App outside of the United States;

(b) use the Nematool App on land that you do not own or have the right to use;

(c) sell, lease, loan, license, export, re-export, otherwise transfer, distribute, redistribute, copy, publicly perform or display, transmit or publish the Nematool application or the BAYER Generated Works or assign, transfer or sublicense this Agreement or the rights granted by us in this Agreement without our prior written consent;

(g) remove or modify any trademarks or proprietary rights notices of ours or those of our licensors, or violate or circumvent, or attempt to circumvent, any security features of the Nematool App.

1.7 **No charge:** The use of the Nematool app is free of charge.

## 2. SOFTWARE

**2.1 BAYER Software:** The Nematool application uses and includes certain software and/or firmware ("**BAYER Software**"). Some BAYER programs reside on the Nematool soil sensors sold to you. Your use of the BAYER Software is subject to the End User License Agreement that accompanies the BAYER Software, the terms of which are Additional Terms. With respect to any BAYER Software (including, but not limited to, the use of websites) that is not accompanied by an End User License Agreement, BAYER, or its applicable third-party licensors, grants you a personal, non-transferable, non-exclusive right and license to use the object code of the BAYER Software in accordance with this Agreement, provided that you do not copy, modify, create a derivative work of, reverse engineer, reverse assemble or attempt to discover any source code or sequence of structure and organization, sell, assign, sublicense, distribute, rent, lease, grant a security interest or otherwise transfer any rights in the BAYER Software. You acknowledge that this license is not a sale of intellectual property and that BAYER or its licensors, suppliers, or third-party vendors remain the owners of all right, title, and interest in and to the BAYER Software and related documentation. BAYER's software is protected by copyright laws.

**2.2 Additional Requirements for Apple App:** Software applications available through the Apple App Store are subject to your prior acceptance of the Apple Inc. ("Apple") Licensed App End User License Agreement (see <https://www.apple.com/legal/internet-services/itunes/dev/stdeula> ("**EULA** ")of

Apple"))), which are considered Additional Terms. In the event of any inconsistency between the terms of this Agreement and the terms of Apple's EULA, Apple's EULA terms will control. If you are using the Nematool App through the Mobile App software on an Apple device, including iPhone, iPod touch, or iPad devices ("**Apple App**"), you further acknowledge and agree that you may use the Apple App on any Apple device that you own or control and as permitted by the usage rules set forth in the Apple App Store Terms of Service. This Agreement is only between you and BAYER, not with Apple, and Apple is not responsible for the Apple App or the Nematool App. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple App. In the event that the Apple App fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the Apple App to you in accordance with Apple's terms and conditions; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Apple App. BAYER (and not Apple) is responsible for addressing any claims by you or a third party relating to the Apple App or your possession and/or use of the Apple App, including: (1) product liability claims; (2) any claim that the Apple App fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation. In the event that a third party claims that the Apple App and/or your possession and use of the Apple App infringes that third party's intellectual property rights, BAYER (and not Apple) is responsible for the investigation, defense, settlement and discharge of such claim to the extent such

obligation exists. Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary of this Agreement solely with respect to this paragraph. You represent and warrant that (1) you are not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. government as a "terrorist supporting" country; and (2) is not listed on any U.S. government list of prohibited or restricted parties.

**2.3 Software Updates:** BAYER and its third-party licensors have the unlimited right, but not the obligation, to provide updates, updates or supplements to BAYER and third-party software (such as, but not limited to, adding or removing features or updating security components) at any time. We will use reasonable efforts to notify you of any changes we make to the BAYER software, even if this is not always possible. You must install or use the most recent version of the BAYER software and meet any additional requirements. An upgrade, upgrade or add-on may result in a change or discontinuation of the functions of the BAYER software. Although unlikely, software updates, updates, or supplements could reset your soil sensors and clear saved preferences or stored content.

### **3. DATA**

**3.1 Farm Data and Feedback:** The Nematool App may require you or your Authorised Users to upload, enter, transmit, store or otherwise make available to BAYER information about your farming operation, such as soil temperature (via

sensors), geolocation and crops planted ("**Farm Data**"). You may not be able to use certain features of the Nematool App if you do not provide this information, because the operation of the Nematool App depends on this information. Between you and BAYER, you own all farm data. To the extent permitted by applicable law, you grant us a non-exclusive license to access, use, reproduce, display, modify, and prepare derivative works based on your Farm Data in order to provide you with the Nematool application and related support, for our internal operations and research and development purposes, and in order to implement this Agreement. If you submit comments or suggestions about the Nematool app, we may use your comments or suggestions without obligation to you. To the extent that farm data contains personal data about you, we will handle it as described in our **Privacy Statement** in... and Section 4.2.

**3.2 BAYER Generated Works:** We own all works that we generate ("**BAYER Generated Works**"), including data (also aggregated data), tools, analyses, results, estimates, prescriptions, recommendations, and other information generated, published, displayed, transmitted, or made available to you on or by the Nematool App, except for your Personal Data or other Farm Data, whether or not the Works generated by BAYER are related to Personal Data or other Farm Data.

## **4. TERM AND TERMINATION**

**4.1 Term of Agreement:** This Agreement comes into force after you have clicked "Accept" when setting up your Nematool Account in accordance with

Section 1.3 above and expires if at least one soil sensor is active and connected with the Nematool App; furthermore, this Agreement may be terminated by you or by BAYER in accordance with the Sections below.

4.2 Account Deletion Requests: You may request that we permanently delete your Nematool account by sending an email to: [nematool.support.esp@bayer.com](mailto:nematool.support.esp@bayer.com) or by sending us written notice as set out in Section 5.6 below. Deletion of your Nematool Account terminates this Agreement with immediate effect, subject to the survival provisions of this Agreement.

**4.3 Termination for Breach:** Either you or BAYER may terminate this Agreement with immediate effect if the other party materially breaches this Agreement. For example, we may terminate this Agreement hereunder if your continued use of the Nematool App violates the terms of this Agreement or any applicable law or regulation despite a respective warning from us.

**4.4 Additional Termination Rights:** We may terminate this Agreement at any time with a notice period of 30 days, for example, if we no longer offer such a Nematool application.

**4.5 Survival.** The rights granted to BAYER pursuant to Section 3 and any other rights or obligations of the parties under this Agreement which, by their nature, would continue beyond the termination, cancellation, suspension or expiration of this Agreement shall survive the termination, cancellation, suspension or expiration of this Agreement.

## 5. MISCELLANEOUS

5.1 Compliance with Law and Export Controls: You agree to use the entire Nematool App strictly in accordance with all applicable laws. You may not use or export or re-export the Nematool application, including but not limited to the BAYER software and works generated by BAYER, except as authorized by EU law and the laws of Spain.

5.2 **Force Majeure:** Neither you nor BAYER will be in breach of this Agreement or be liable for any damages caused by delay or failure to perform any of your obligations under this Agreement due to circumstances beyond the control of the complaining party.

5.3 Governing Law: This Agreement and all conduct, disputes, and causes of action arising out of or related to this Agreement shall be governed by and construed in accordance with the laws of Spain (without regard to rules relating to conflicts of laws, which shall not be taken into account in their entirety) and you submit to the exclusive jurisdiction of the courts located in Barcelona. on Contracts for the International Sale of Goods.

However, BAYER may bring claims before other courts of competent jurisdiction, including, but not limited to, the country in which it has its registered office or the registered residence of natural persons. The United Nations Convention on Contracts for the International Sale of Goods is explicitly waived.

#### **5.4 Limited Warranties and Disclaimers:**

a) **Content:** We do not guarantee any results, and neither the Nematool app nor the works generated by BAYER should be used as a substitute for good agricultural practices. The Nematool application provides support for decision-making based on statistical probabilities and other models, as well as third-party sources, but does not carry out any conclusive evaluation. Making this assessment remains your own responsibility. The Nematool app is based on algorithms. However, it is obviously not possible for an algorithm to model each feature of an individual event. We assume no responsibility, either explicit or implied, for the information and decision support contained in the Nematool app and the works generated by BAYER that are correct, complete and up-to-date. Therefore, we recommend that you verify all the information you receive before using it in any form.

b) **BAYER Software:** Warranties and liability with respect to BAYER Software that was accompanied by an End User License Agreement pursuant to Section

2.1 above are governed by that End User License Agreement and Section 2.4 above.

With respect to any BAYER Software that is not accompanied by an End User License Agreement (including, but not limited to, the use of websites), the following applies:

- (1) Descriptions will not be deemed guaranteed unless separately agreed in writing.
- (2) Rights in the event of defects are excluded in the event of slight deterioration of use and other defects that are not material defects (as defined in point 3 below).
- (3) In the event and to the extent that the BAYER Software has a defect, which continues for more than 24 hours and causes a substantial impairment to your business ("Material Defect"), we have the right to choose between repairing, replacing, delivering or replacing the BAYER Software, including but not limited to delivering or installing a new version of the program or an alternative solution.
- (4) Your rights in the event of defects will expire after 12 months and the term will start on the date of use of the respective BAYER software or, in case of delivery, on the date of such delivery. With respect to upgrades, upgrades or supplements, the period shall commence in each case on the date of use of the respective item or, in the case of delivery, on the date of such delivery.

- (5) In the event of delivery of the BAYER software, you must inspect the delivered items without delay for transport damage and other apparent defects, preserve appropriate evidence and assign any claims of recourse to us upon delivery of the documents.
- (6) Any claim for damages is subject to the limitations set forth in Section 5.4.
- (7) Modifications or additions to the BAYER software made by you or through third parties will result in your rights being terminated in the event of defects. We are also not responsible for defects caused by improper use or improper operation or by the use of improper means of operation by you.

#### **5.5 Limitation of Liability and Indemnification:**

(1) We shall be liable under the terms of this Agreement only in accordance with the provisions set out in (a) to (d):

(a) We will be liable for losses (including loss of data) arising from Material Defects (as defined in Section 5.4 b) (3) above) that do not exceed the amount you actually paid for Nematool Floor Sensors during the 12 months prior to the date on which the relevant claim arises.

(b) We will be liable in accordance with applicable mandatory laws in the event of product liability.

(c) We will be liable for (i) losses intentionally caused by us, our legal representatives and our vicarious agents and for (ii) death, personal injury or

damage to health caused by the intent or negligence of us, our legal representatives and our vicarious agents.

(d) Any broader liability on our part is excluded as to the substance, unless such liability is mandatory in accordance with applicable laws.

**(2) You agree to indemnify, defend and hold harmless BAYER and its Affiliates, and each of their respective employees, officers, directors, shareholders, agents, successors, licensors and subcontractors, from and against any claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees, arising out of or related to: i) your unlawful use of the Nematool App, the BAYER software or works generated by BAYER; (ii) your violation of any part of this Agreement; and (iii) any dispute or problem between you and any third party relating to (i) and (ii) above.**

5.6 Notices: Notices from either party in relation to the Nematool App may be provided by email or physical. The receiving party shall be deemed to have received such notice at the time of delivery or transmission or, in the case of mail, 48 hours after mailing. By installing, downloading, activating, or using a Nematool License, you expressly consent and agree that all notices, including, but not limited to, all commercial communications from either party in connection with the Nematool application, the BAYER software, works generated by BAYER, and this Agreement, may be provided electronically to your primary email address provided in your Nematool account. It is your responsibility to keep your account information up to date so that we can communicate with you

electronically. Any legal notice to be given to BAYER must be sent to: Bayer Cropscience SLU, avenida Baix Llobregat 3-5, Sant Joan Despi-08970 (Barcelona), Spain or by email to: [nematool.support.esp@bayer.com](mailto:nematool.support.esp@bayer.com). If we send a notice to your primary email address on file and your primary email address on file is incorrect, outdated, blocked by your licensor, or unable to receive electronic communications, we will be deemed to have provided you with the notice. If the electronic notices we send you are returned due to an invalid email address, we may deactivate your account, in which case you will not be able to use your account until you update your account information and provide you with a valid and functional email address. You may change your primary email address at any time in your account settings or by sending an email message to ..., and in the body of such request, please indicate your old email address and your new email address.

5.7 Modifications: BAYER may modify this Agreement at any time. Except with respect to the assignment of this Agreement to one of BAYER's Affiliates pursuant to Section 5.8, any changes to this Agreement will be effective after we have posted them on our website in [www.nematool.com](http://www.nematool.com). and you have clicked "OK" before continuing to use the Nematool app. If you do not agree with the revised Agreement, you must stop using the Nematool app.

5.8 **Assignment:** You may not assign or transfer this Agreement or any rights or obligations under this Agreement (by assignment, operation of law or otherwise) without the prior written approval of BAYER. Any attempted assignment or

transfer of this Agreement to any person shall be deemed null and void *ab initio* and without force or effect. Any breach of this provision shall constitute a material breach of this Agreement. BAYER, however, may assign this Agreement at any time to one of its Affiliates without your acceptance. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

**5.9 Entire Agreement:** This Agreement, including the applicable Privacy Statement and Additional Terms, constitutes the entire agreement between the parties. The headings are for convenience only. In the event of any inconsistency between the terms of this Agreement and the terms of the Additional Terms, the Additional Terms shall control. This Agreement does not create a partnership, partnership, joint venture, trust, agency, or other relationship between the parties. This Agreement is non-exclusive. No waiver by either party of any breach by the other party of any of the terms of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or a different provision of this Agreement. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be enforced to the maximum extent permissible, and the remainder of this Agreement shall remain in full force and effect.