CASE M.8084 – BAYER/MONSANTO

Modification of commitments
Date: 11.4.2018

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COMMISSION DECISION

of 11.4.2018

amending commitments in Case M.8084 – Bayer/Monsanto

(Case M.8084 – Bayer/Monsanto)

(Text with EEA relevance)

(Only the English text is authentic)
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(Only the English text is authentic)

Having regard to the Treaty on the Functioning of the European Union,
Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,
Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹,
Having regard to Commission Decision of 21 March 2018 declaring a concentration to be compatible with the internal market and the functioning of the EEA Agreement²,

Whereas:

1. FACTS AND PROCEDURE

(1) By decision of 21.3.2018 (the "Decision") adopted in application of Article 8(2) of Council Regulation (EEC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings³ (the "Merger Regulation"), the Commission declared the operation by which Bayer Aktiengesellschaft ("Bayer", Germany) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of Monsanto Company ("Monsanto", United States) (hereinafter, the "Concentration") compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by the notifying party annexed to the Decision (the "Commitments").

(2) Under clauses 2 to 11 of the Commitments, Bayer committed to divest a package of assets and businesses (the "Divestment Business") to BASF SE ("BASF", Germany). The Divestment Business, described in the Commitments and the Schedule to the Commitments, comprises:

(a) Bayer’s global broad acre crop seeds and traits business, with certain limited carve-outs, namely: hybrid rice in Asia; hybrid cotton, juncea (mustard), and millet in India; and cotton in South Africa; as well as R&D programmes directed to sugarcane in Brazil, and sugarbeet in Europe;

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.
² C(2018)1709 final, Case No M.8084 – Bayer/Monsanto.
(b) Bayer’s global glufosinate ammonium business;
(c) the assets comprising Bayer’s agricultural and non-agricultural glyphosate products in the EEA;
(d) the assets comprising Monsanto’s NemaStrike nematicides business (the "NemaStrike Assets");
(e) Bayer’s line of research for the development of herbicides based on the [NSH line of research 1] chemistry;
(f) Bayer’s line of research for the development of non-selective herbicides based on the [NSH line of research 2] chemistry;
(g) Bayer’s line of research for the development of non-selective herbicides based on the [NSH line of research 3] chemistry; and
(h) A licence to Bayer Digital Farming’s global portfolio, including pipeline projects which qualify as alpha projects or are more advanced (the "Digital Agriculture Licence").

Bayer proposes, in its reasoned request of 4.4.2018, as modified on 6.4.2018, to amend the Commitments relating to: (i) the NemaStrike Assets and (ii) the Digital Agriculture Licence, pursuant to clause 94 of the Commitments and paragraph 23 of the Schedule to the Commitments.

The modified commitments reflecting these changes were submitted by Bayer on 6.4.2018 (the "Modified Commitments").

In its report of 9.4.2018, the Monitoring Trustee gave a positive opinion on Bayer’s revised reasoned request for the amendment of the Commitments. As further described below, the Monitoring Trustee considers that the amendment of the Commitments regarding the NemaStrike Assets and the Digital Agriculture Licence is at least as effective as the original Commitments in solving the competition concerns identified by the Commission in the Decision.

2. ASSESSMENT

2.1. Proposed modification of the commitment regarding the NemaStrike Assets

2.1.1. Existing Commitment

The Commitments provide that Bayer would divest to BASF the NemaStrike Assets described in paragraphs 17 to 22 of the Schedule to the Commitments.

2.1.2. Modified Commitment

Bayer requests the Commission to change the divestment of the NemaStrike Assets to the global divestment of Bayer’s Poncho, VOTiVO, Poncho/VOTiVO, VOTiVO/RedigoM, VOTiVO 2.0, Poncho/VOTiVO 2.0, COPeO, and ILeVO seed treatment businesses and pipeline product [pipeline seed treatment] (the "Seed Treatment Assets") to BASF. The Seed Treatment Assets include, but are not limited to, intellectual property rights, all data and know-how, all product registrations and pending regulatory submissions, sales and marketing assets, and contracts specific to the Seed Treatment Assets. Bayer also commits to supply BASF these products at

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4 See paragraphs 17 to 26 of the Schedule to the Modified Commitments submitted by Bayer on 6.4.2018 and attached hereto as Annex.
variable cost for a limited period of time (until BASF can establish an alternative source of production).

2.1.3. Assessment

(8) Pursuant to paragraph 23 of the Schedule to the Commitments, "[t]he Commission may further, in response to a reasoned request from Bayer showing good cause, waive, modify or substitute one or more of the undertakings part of the NemaStrike Assets, provided that any alternative commitment is at least as effective as the above commitment in remedying the Commission’s concerns in the relevant areas. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Bayer. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with".

(9) In its report of 9.4.2018, the Monitoring Trustee gave a positive opinion on Bayer's reasoned request for the amendment of the Commitments in relation to the NemaStrike Assets. The Monitoring Trustee considers that the Modified Commitments would resolve the Commission's concerns by removing the horizontal overlap caused by the Concentration. Further, the Seed Treatment Assets contain a number of high-value products that are already generating turnover.

(10) The Commission considers that the Seed Treatment Assets are at least as effective as the NemaStrike Assets in removing the competition concerns identified by the Commission in the Decision. This is because the Seed Treatment Assets, like the NemaStrike Assets, have the effect of entirely removing the horizontal overlap in relation to nematicidal seed treatment for which the Commission has identified competition concerns in the Decision.

(11) In addition, the Seed Treatment Assets are a profitable and attractive business. In 2017, Bayer generated sales of approximately EUR [...] from the seed treatments that are in the scope of the Seed Treatment Assets and an integrated gross margin of more than EUR [...]. By comparison, the NemaStrike Assets have not yet generated any sales since they relate to a pipeline product.

(12) BASF has not expressed any objections or concerns regarding the proposed modification of the Commitments in relation to the NemaStrike Assets.

(13) Based on the above, the Commission considers that the Modified Commitments, substituting the NemaStrike Assets with the Seed Treatment Assets, are at least as effective as the Commitments in remedying the Commission’s concerns in the relevant area.

2.2. Proposed modification of the Digital Agriculture Commitment

2.2.1. Existing Commitment

(14) The Commitments provide that Bayer would grant BASF a binding, perpetual, irrevocable, and sole licence for the use on a worldwide basis of the code, data and algorithms for the entirety of Bayer Digital Farming’s global portfolio and pipeline projects which qualify as alpha projects or are more advanced. The Digital Agriculture Licence is described in paragraphs 43 to 60 of the Schedule to the Commitments.
2.2.2. Modified Commitment

(15) Bayer requests the Commission to replace the Digital Agriculture Licence with a divestment to BASF of Bayer’s digital agriculture business worldwide (the "Digital Agriculture Assets"). Bayer would receive a non-exclusive, royalty-free, perpetual licence back regarding certain Digital Agriculture Assets on a "white label" basis for use outside of North America (the "Licence-Back").

2.2.3. Assessment

(16) Pursuant to clause 94 of the Commitments, "[t]he Commission may further, in response to a reasoned request from Bayer showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Bayer. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with".

(17) In its report of 9.4.2018, the Monitoring Trustee gave a positive opinion on Bayer’s reasoned request for the amendment of the Digital Agriculture Commitments. The Monitoring Trustee considers that the Modified Commitments are an expansion of the original ones and are at least as effective in solving the overlaps in digital agriculture.

(18) The Commission considers that the divestiture of the Digital Agriculture Assets is at least as effective as the Digital Agriculture Licence in removing the competition concerns identified by the Commission in its Decision. Both commitments fulfil the same purpose, that is enabling a competitor to replicate the competitive constraint lost because of the Transaction in the field of digital agriculture, and in particular with regard to [pipeline product]. The main modification of the Commitments in digital agriculture concerns its structure. The Digital Agriculture Licence would be replaced by a divestiture of the Digital Agriculture Assets to BASF. Therefore, while serving the same purpose, the Modified Commitments in digital agriculture would adopt a fully structural form.

(19) The assets comprised in the Digital Agriculture Assets are essentially the same as those included in the Digital Agriculture Licence of the current Commitments. In addition to those assets, through the requested divestiture, BASF would obtain (i) all shares in Bayer Digital Farming GmbH; (ii) all Bayer’s employees (except six employees that would be retained by Bayer); (iii) pipelines projects which did not qualify as alpha projects on the Effective Date; (iv) all dedicated customer contracts pertaining to Bayer’s digital agriculture business that Bayer is able to transfer; and (v) all Bayer’s existing brands associated with its digital agriculture business.

(20) In addition, the Licence-Back of certain Digital Agriculture Assets for use outside of North America together with the retention by Bayer of six employees would prevent consumer harm since these measure would ensure the continuance of services by Bayer to farmers and other consumers in the EEA, in particular, with regard to [pipeline product]. Moreover, the selection of the six employees that will be retained by Bayer would be subject to the Commission’s approval following consultation with the Monitoring Trustee.

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5 See clauses 1 and 10 of the Modified Commitments and paragraphs 51 to 61 of the Schedule to the Modified Commitments submitted by Bayer on 6.4.2018 and attached hereto as Annex.
Therefore, the Commission considers that the divestiture of the Digital Agriculture Assets addresses, at least as effectively as the Digital Agriculture Licence, the concerns raised by the Commission in its Decision in relation to digitally-enabled prescriptions of fungicides for broad acre crops in the EEA. The Digital Agriculture Licence provided BASF with sufficient assets to replicate the competitive position held by Bayer in the relevant market in the EEA. The divestiture of Bayer’s Digital Agriculture Business would provide BASF with additional assets that are likely to further reinforce BASF’s competitive position in the EEA, while preventing consumer harm in the EEA through the Licence-Back.

With regard to the condition provided for in clause 94 of the Commitments that a modification of the Commitments is only possible in exceptional circumstances, the Commission considers that this requirement is met. The modification of the Commitments was prompted by the fact that, after the Decision, in order to obtain a clearance by the United States Department of Justice ("US DoJ"), Bayer is required to divest its Digital Agriculture Assets to BASF. The lack of alignment between the remedies proposed by Bayer and accepted by the Commission and the remedies offered to the US DoJ in respect of the same assets would likely create legal uncertainty for the Parties and impede the effective and prompt implementation of those remedies.

BASF has not expressed any objections or concerns regarding the proposed modification of the Commitments in relation to the Digital Agriculture Licence.

Based on the above, the Commission considers that the Modified Commitments, substituting the Digital Agriculture Licence by the divestiture of the Digital Agriculture Assets to BASF, are at least as effective as the Commitments in remedying the Commission’s concerns in the relevant area.

3. **CONCLUSION**

It follows from the above that Bayer has shown good cause for the requested amendments, and that the Modified Commitments are appropriate. Therefore, the Commission has decided, in accordance with clause 94 of the Commitments and paragraph 23 of the Schedule to the Commitments, to accept the Modified Commitments,
HAS ADOPTED THIS DECISION:

Article 1
The Modified Commitments replace the Commitments with effect from the date of the adoption of this decision.

Article 2
This Decision is addressed to:
Bayer Aktiengesellschaft
Kaiser-Wilhelm-Allee
51368 Leverkusen
Germany
Done at Brussels, 11.4.2018

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission
Annex

6 April 2018

CASE COMP/M.8084 – BAYER / MONSANTO

REVISED COMMITMENTS TO THE EUROPEAN COMMISSION

(A) Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the “Merger Regulation”), Bayer Aktiengesellschaft, a stock corporation incorporated under the laws of the Federal Republic of Germany, with its registered office at Kaiser-Wilhelm-Allee 1, 51373 Leverkusen, Germany, and registered with the local court (Amtsgericht) Cologne under Handelsregister number 48248 (“Bayer”) hereby enters into the following Commitments (the “Commitments”) vis-à-vis the European Commission (the “Commission”) with a view to rendering Bayer’s acquisition of sole control of Monsanto Company, a corporation incorporated under the laws of the State of Delaware, United States of America, with its registered office at 800 North Lindbergh Boulevard, St Louis, Missouri, 63167, United States of America, and registered with the Secretary of State of the State of Delaware under File Number 3174788 (“Monsanto”) (the “Concentration”) compatible with the internal market and the functioning of the EEA Agreement.

(B) This text shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “Decision”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “Remedies Notice”).

Section A Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “Consolidated Jurisdictional Notice”).
**Alpha Projects**: Bayer digital agriculture projects in the first development phase where a pipeline project ceases to be a mere concept and where something tangible is developed and recorded (for example, research or technical know-how, data gathering, initial coding sequences, and so on).

**Assets**: the assets that contribute to the current operation or that are necessary to ensure the viability and competitiveness of the Divestment Businesses, as indicated in Section B and Section C, and described in more detail in the Schedule.

**Bar / Pat Patents**: patents related to bar / pat genes co-developed and co-owned by Bayer and Biogen Idec MA Inc..

**BASF**: BASF SE, a stock corporation incorporated under the laws of the Federal Republic of Germany, with its registered office at Carl-Bosch-Strasse 38, Ludwigshafen am Rhein, 67056, and registered with the local court (Amtsgericht) Ludwigshafen am Rhein under Handelsregister (commercial register) number HRB 6000.

**BASF Closing**: the transfer to BASF of all legal entities, assets, and employees and the entering into licensing and other agreements that are part of the BASF Divestment Package.

**BASF Closing Period**: the period of three months from the approval of BASF as the purchaser of the BASF Divestment Package and the terms of sale by the Commission.

**BASF Divestment Package**: the businesses, assets, licences, and employees described in Section B below, and in the Schedule, which Bayer commits to divest and/or licence to BASF.

**BVS**: Bayer Vegetable Seeds.

**Commitments Date**: the date of execution of these Commitments.

**Confidential Information**: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest**: any conflict of interest that impairs the Trustee’s or the Independent Adviser’s objectivity and independence in discharging its duties under the Commitments.

**Digital Agriculture Assets**: Bayer’s entire digital agriculture business worldwide, including all employees (with the exception of six employees to be retained by Bayer), all tangible and intangible assets, all intellectual property rights, brands, source code, data and algorithms, and supporting materials for the entirety of Bayer Digital Farming’s global product portfolio, and all employees, literature, documentation, milestone reports, algorithms, data, architecture and source code pertaining to Bayer’s digital agriculture research and development pipeline at all stages of development, as identified in Annex RC.2 which Bayer commits to transfer to BASF.
**Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Bayer, and who has/have received from Bayer the exclusive Trustee Mandate to sell the Divestment Businesses to one or more Purchasers at no minimum price.

**Divestment Businesses:** the BASF Divestment Package and the Vegetable Seeds Divestment Business.

**Effective Date:** the date of adoption of the Decision.

**First Divestiture Period:** the period of [...] from the Effective Date.

**Hold Separate Managers:** the persons appointed by Bayer for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

**IA Mandate:** the mandate of the Independent Adviser to provide independent advice and assistance to the Commission in connection with its assessment of: i) the adequacy of the Commitments to restore effective competition in the EEA following the completion of the Concentration; ii) the suitability of BASF as the purchaser of the BASF Divestment Package; and iii) the suitability of any Proposed Purchasers as Purchasers of the Vegetable Seeds Divestment Business.

**Independent Adviser:** one or more natural or legal person(s) approved by the Commission and appointed by Bayer to carry out the IA Mandate.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedule, including the Hold Separate Managers.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Bayer, and who has/have the duty to monitor Bayer’s compliance with the conditions and obligations attached to the Decision.

**NSH:** non-selective herbicides.

**[NSH line of research 1] Data Transfer and Licence:** the package of intellectual property rights relating to [NSH line of research 1] class herbicide chemistry type [mode of action] described in the Schedule to which Bayer commits to give BASF exclusive rights.

**[NSH line of research 2] Data Transfer and Licence:** the package of intellectual property rights relating to [NSH line of research 2] class herbicide chemistry type [mode of action] described in the Schedule to which Bayer commits to give BASF exclusive rights.

**[NSH line of research 3] Data Transfer and Licence:** the package of intellectual property rights relating to [NSH line of research 3] class herbicide chemistry type [mode of action] described in the Schedule to which Bayer commits to give BASF exclusive rights.
OSR: oilseed rape / canola.

**Parties:** Bayer and Monsanto.

**Personnel:** all staff currently employed in the Divestment Businesses, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

**Proposed Purchasers:** entities proposed by Bayer or the Divestment Trustee to the Commission as Proposed Purchasers, prior to their approval by the Commission.

**Purchaser Criteria:** the criteria laid down in Paragraphs 26 and 27 of these Commitments that Purchasers of the Divestment Businesses must fulfil in order to be approved by the Commission.

**Purchasers:** the entities approved by the Commission as acquirers of the Divestment Businesses in accordance with the criteria set out in Section E.

**Samples:** samples of up to 100 milligrams of chemical structures where such samples are still available to Bayer and have not degraded in storage. Bayer will not resynthesize samples of chemical structures if it no longer has sufficient volumes, or quality, of the relevant samples.

**Schedule:** the schedule to these Commitments describing in more detail the Divestment Businesses.

**Seed Treatment Assets:** the data, know-how, employees, intellectual property, registrations, sales and marketing assets, and contracts comprising Bayer’s VOTiVO (*Bacillus firmus*), VOTIVO FS240 (*Bacillus firmus*), PONCHO/VOTiVO (clothianidin/*Bacillus firmus*), Deter (clothianidin), PONCHO 600 FS (clothianidin), PONCHO 600 FS (clothianidin), PONCHO PLUS (clothianidin/imidaclclopid), PONCHO Super (clothianidin/thiodicarb), PONCHO VOTiVO 1250 (clothianidin/*Bacillus firmus*), TWO.O (*Bacillus thurigiensis*), PONCHO VOTiVO 2.0 (clothianidin/*Bacillus firmus*/TWO.O (= *Bacillus thurigiensis*)), PONCHO 1250 VOTiVO 2.0, (clothianidin/*Bacillus firmus*/TWO.O (= *Bacillus thurigiensis*)) 1LeVO (Fluopyram FS 600), COPeO (Fluopyram FS 600) seed treatment businesses, and Bayer’s pipeline nematode control products VOTiVO/Redigo M (*Bacillus firmus*/ prothioconazole/metalaxyl) and [pipeline seed treatment] (“*[pipeline seed treatment]*”).

**Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

**Trustee Divestiture Period:** the period of […] from the end of the First Divestiture Period.

**Vegetable Seeds Closing:** the transfer to the Purchaser of all legal entities, assets, and employees comprising the Vegetable Seeds Divestment Business.
**Vegetable Seeds Closing Period**: the period of three months from the approval of the Purchaser of the Vegetable Seeds Divestment Business and the terms of sale by the Commission.

**Vegetable Seeds Divestment Business**: Bayer’s global vegetable seeds business, described in Section C below, and in the Schedule, which Bayer commits to divest.

**Section B  The Commitment to Divest the BASF Divestment Package**

2. In order to maintain effective competition, Bayer commits to divest to BASF the BASF Divestment Package.

3. The Concentration shall not be implemented before the Commission has approved BASF as the purchaser of the BASF Divestment Package, and the terms of sale in accordance with Paragraph 28 below.

4. Bayer shall be deemed to have complied with this commitment if the BASF Closing takes place within the BASF Closing Period.

5. In order to maintain the structural effect of the Commitments, Bayer shall, for a period of 10 years after the BASF Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the BASF Divestment Package, unless, following the submission of a reasoned request from Bayer showing good cause and accompanied by a report from the Monitoring Trustee (as provided in Paragraph 94 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over all, or parts of, the BASF Divestment Package is no longer necessary to render the Concentration compatible with the internal market.

I.  **Structure and definition of the BASF Divestment Package**

6. The BASF Divestment Package comprises:

   (a) Bayer’s global broad acre crop seeds and traits business, with certain limited carve-outs, namely: hybrid rice in Asia; hybrid cotton, juncea (mustard), and millet in India; and cotton in South Africa;\(^1\) as well as R&D programmes directed to sugarcane in Brazil, and sugarbeet in Europe\(^2\) (the “**Broad Acre Divestment Businesses**”);

   (b) Bayer’s global glufosinate ammonium business (the “**GA Divestment Business**”);

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\(^1\) Bayer’s cotton seeds and traits business in South Africa is being divested to a local purchaser pursuant to conditions imposed by the South African Competition Commission.

\(^2\) This relates to a cooperation with KWS where the relevant germplasm is owned exclusively by KWS.
(c) the assets comprising Bayer’s non-agricultural glyphosate business, and its Zarpa-brand family of agricultural glyphosate products. These products comprise all agricultural and non-agricultural glyphosate products sold by Bayer in the EEA (in the EEA, Zarpa is sold only in Spain and Portugal, all Zarpa pipeline projects are mixtures of [active ingredient] and glyphosate) (the “Glyphosate Assets”);

(d) the Seed Treatment Assets;

(e) the [NSH line of research 1] Data Transfer and Licence;

(f) the [NSH line of research 2] Data Transfer and Licence;

(g) the [NSH line of research 3] Data Transfer and Licence; and

(h) the Digital Agriculture Assets.

7. The Glyphosate Assets and the Seed Treatment Assets are identifiable groups of assets, but are not standalone businesses within Bayer. The Parties submit that there is no viable way to create standalone businesses out of these asset packages. They can most effectively be separated from the existing businesses as a series of assets (trademarks, patents, product registrations, and other intellectual property) and sold to BASF, which has the required management, personnel, and facilities to operate them.

8. Bayer also commits to provide training and information required by BASF, delivered by appropriate specialists, to prepare BASF’s sales and marketing teams to begin selling the products included in the Glyphosate Assets and the Seed Treatment Assets. Such training will be available for up to 12 months following the BASF Closing. Bayer will provide this support at variable cost, as calculated using Bayer’s standard accounting practices, excluding overheads.

9. The [NSH line of research 1] Data Transfer and Licence, the [NSH line of research 2] Data Transfer and Licence, and the [NSH line of research 3] Data Transfer and Licence comprise intellectual property, data, Samples, Key Personnel and licences only (as set out in the Schedule).

10. The Digital Agriculture Assets comprise Bayer’s entire digital agriculture business worldwide, including all employees (with the exception of six employees to be retained by Bayer), all tangible and intangible assets, all intellectual property rights, brands, source code, data and algorithms, and supporting materials for the entirety of Bayer Digital Farming’s global product portfolio, and all employees, literature, documentation, milestone reports, algorithms, data, architecture and source code pertaining to Bayer’s digital agriculture research and development pipeline at all stages of development.
The legal and functional structure of the remainder of the BASF Divestment Package (the Broad Acre Divestment Business and the GA Divestment Business), as operated to date, is described in the Schedule. The remainder of the BASF Divestment Package includes all assets and staff that contribute to the current operation of the Broad Acre Divestment Business, and the GA Divestment Business, or are necessary to ensure the viability and competitiveness of all elements of the BASF Divestment Package, taking into consideration BASF’s existing infrastructure and capabilities. In particular, and as specified in more detail in the Schedule, the BASF Divestment Package includes (in relation to broad acre crop seeds and traits, and glufosinate ammonium), but is not limited to:

(a) all tangible and intangible assets (including intellectual property rights);
(b) all transferrable licences, permits and authorisations issued by any governmental organisation for the benefit of the elements of the BASF Divestment Package. Bayer will assist BASF with acquiring any non-transferrable licences within a defined period of time, also by providing any required data packages;
(c) all contracts, leases, commitments and customer orders of the elements of the BASF Divestment Package;
(d) all customer, credit and other records of the elements of the BASF Divestment Package; and
(e) the Personnel.

Section C The Commitment to Divest the Vegetable Seeds Divestment Business

I. Commitment to divest

12. In order to maintain effective competition, Bayer commits to divest, or procure the divestiture of, the Vegetable Seeds Divestment Business by the end of the First Divestiture Period as a going concern. The Vegetable Seeds Divestment Business will be sold as a single business and will not be divided.

13. Bayer commits to sell the Vegetable Seeds Divestment Business to one or more Purchasers (but only as a single business) and on terms of sale approved by the Commission in accordance with the procedure described in Paragraph 27 of these Commitments. To carry out the divestiture, Bayer commits to find one or more Purchasers and to enter into final binding sale and purchase agreements for the sale of the Vegetable Seeds Divestment Business within the First Divestiture Period. If Bayer has not entered into such agreements at the end of the First Divestiture Period, Bayer shall grant the Divestiture Trustee an exclusive mandate to sell the Vegetable
Seeds Divestment Business in accordance with the procedure described in Paragraph 60 in the Trustee Divestiture Period.

14. Bayer shall be deemed to have complied with this commitment if:

(a) by the end of the Trustee Divestiture Period, Bayer or the Divestiture Trustee has entered into one or more final binding sale and purchase agreements for the Vegetable Seeds Divestment Business and the Commission approves the potential Purchaser(s) and the terms of sale as being consistent with the Commitments in accordance with the procedure described in Paragraph 28; and

(b) the Vegetable Seeds Closing takes place within the Vegetable Seeds Closing Period.

15. In order to maintain the structural effect of the Commitments, Bayer shall, for a period of 10 years after the Vegetable Seeds Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Vegetable Seeds Divestment Business, unless, following the submission of a reasoned request from Bayer showing good cause and accompanied by a report from the Monitoring Trustee (as provided in Paragraph 94 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over all, or parts of, the Vegetable Seeds Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

II. Structure and definition of the Vegetable Seeds Divestment Business

16. The Vegetable Seeds Divestment Business consists of Bayer’s global vegetable seeds business, without carve-outs.

17. The legal and functional structure of the Vegetable Seeds Divestment Business as operated to date is described in the Schedule. The Vegetable Seeds Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation of the Vegetable Seeds Divestment Business or are necessary to ensure the viability and competitiveness of this business. The Vegetable Seeds Divestment Business includes, but is not limited to:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all transferrable licences, permits and authorisations issued by any governmental organisation for the benefit of the Vegetable Seeds Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Vegetable Seeds Divestment Business;
(d) all customer, credit and other records of the Vegetable Seeds Divestment Business; and

(e) the Personnel.

Section D  Related Commitments

I.  Preservation of viability, marketability and competitiveness

18. From the Commitments Date until the BASF Closing and the Vegetable Seeds Closing (as applicable), Bayer shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular, Bayer undertakes:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans; and

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses, and not to solicit or move any Personnel to Bayer’s remaining businesses. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Businesses, Bayer shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Bayer must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

II.  Hold-separate obligations

19. Bayer commits, from the Effective Date until the BASF Closing and the Vegetable Seeds Closing (as applicable), to keep or to procure the keeping of the Divestment Businesses separate from the businesses it is retaining and to ensure that, unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by Bayer have no involvement in the Divestment Businesses; and (ii) the Key Personnel and Personnel of the Divestment Businesses have no
involvement in any business retained by Bayer and do not report to any individual outside the Divestment Businesses.

20. Until the BASF Closing and the Vegetable Seeds Closing (as applicable), Bayer shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as a distinct and saleable entity separate from the businesses which Bayer is retaining. Immediately after the adoption of the Decision, Bayer shall appoint Hold Separate Managers. The Hold Separate Managers, who shall be part of the Key Personnel, shall manage the Divestment Businesses independently and in the best interest of the businesses with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by Bayer. The Hold Separate Managers shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Managers shall be subject to the procedure laid down in Paragraph 18(c) of these Commitments. The Commission may, after having heard Bayer, require Bayer to replace the Hold Separate Managers.

III. **Ring-fencing**

21. Bayer shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by Bayer before the Effective Date will be eliminated and not be used by Bayer. This includes measures vis-à-vis Bayer’s appointees on the supervisory board and/or board of directors of the Divestment Businesses. In particular, the participation of the Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. Bayer may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or the disclosure of which to Bayer is required by law.

IV. **Non-solicitation clause**

22. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of two years after the BASF Closing and the Vegetable Seeds Closing (as applicable).

V. **Due diligence**

23. In order to enable potential Purchasers of the Vegetable Seeds Divestment Business to carry out a reasonable due diligence of the Vegetable Seeds Divestment Business, Bayer shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
(a) provide to potential Purchasers sufficient information as regards the Vegetable Seeds Divestment Business; and

(b) provide to potential Purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

VI. Reporting

24. Bayer shall submit written reports in English on potential Purchasers of the Vegetable Seeds Divestment Business and developments in the negotiations with such potential Purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission’s request). Bayer shall submit a list of all potential Purchasers having expressed interest in acquiring the Vegetable Seeds Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential Purchasers within five days of their receipt.

25. Bayer shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential Purchasers.

Section E The Purchasers

26. In order to be approved by the Commission as the Purchaser of the BASF Divestment Package, BASF must fulfil the following criteria:

(a) BASF shall be independent of and unconnected to Bayer and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(b) BASF shall have the financial resources, proven expertise and incentive to maintain and develop the BASF Divestment Package as a viable and active competitive force in competition with the Parties and other competitors; and

(c) the acquisition of the BASF Divestment Package by BASF must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, BASF must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the BASF Divestment Package.

(d) BASF must have all required assets and employees to support the BASF Divestment Package, particularly (but not exclusively) those elements which are not being sold as standalone businesses.
27. In order to be approved by the Commission as the Purchaser of the Vegetable Seeds Divestment Business, the Purchaser must fulfil the following criteria:

(a) the Purchaser shall be independent of and unconnected to Bayer and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(b) the Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Vegetable Seeds Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(c) the acquisition of the Vegetable Seeds Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Vegetable Seeds Divestment Business; and

(d) the Purchaser shall be a new entrant, i.e., does not already control (directly or indirectly) any vegetable seeds business.

28. The final binding sale and purchase agreements (as well as ancillary agreements) relating to the divestment of the Divestment Businesses shall be conditional on the Commission’s approval. When Bayer has reached an agreement with each Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee and/or the Independent Adviser. Bayer must be able to demonstrate to the Commission that each Purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being transferred and/or licensed, in a manner consistent with the Commission’s Decision and the Commitments. For the approval, the Commission shall verify that each Purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold and/or licensed in a manner consistent with the Commitments, including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the Proposed Purchasers.
Section F  Independent Adviser

I. Independent Adviser

29. In view of Bayer’s desire for the Commission’s assessment of the potential Purchaser(s) to be as advanced as possible at the time of the Effective Date, Bayer commits to appoint an Independent Adviser.

30. The Independent Adviser shall:

(a) at the time of appointment, be independent of Bayer, Monsanto, and their respective Affiliated Undertakings;

(b) possess the necessary qualifications and resources to carry out the IA Mandate, for example, have sufficient relevant experience as an investment banker or consultant or auditor, and experience monitoring global divestiture commitments; and

(c) neither have nor become exposed to a Conflict of Interest.

31. The Independent Adviser shall be remunerated by Bayer in a way that does not impede the independent and effective fulfilment of the IA Mandate.

Proposal by Bayer

32. No later than one working day after the Commitments Date, Bayer shall submit the name or names of one or more natural or legal persons whom Bayer proposes to appoint as the Independent Adviser to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Independent Adviser fulfil the requirements set out in Paragraph 30 and shall include:

(a) the full terms of the IA Mandate, which shall include all provisions necessary to enable the Independent Adviser to fulfil its duties under the IA Mandate;

(b) the outline of a work plan which describes how the Independent Adviser intends to carry out its assigned tasks;

(c) an indication whether the Independent Adviser would be willing, and able, to also act as the Monitoring Trustee and/or Divestment Trustee.

Approval or rejection by the Commission

33. The Commission shall have the discretion to approve or reject any of the persons proposed by Bayer as the Independent Adviser and to approve the IA Mandate subject to any modifications it deems necessary for the Independent Adviser to fulfil its obligations. If only one name is approved, Bayer shall appoint or cause to be
appointed the person or persons concerned as Independent Adviser, in accordance with the IA Mandate approved by the Commission. If more than one name is approved, Bayer shall be free to choose the Independent Adviser to be appointed from among the names approved. The Independent Adviser shall be appointed within three working days of the Commission’s approval, in accordance with the IA Mandate approved by the Commission.

Independent Adviser nominated by the Commission

34. If all proposed Independent Advisers are rejected by the Commission, the Commission shall nominate an Independent Adviser, whom Bayer shall appoint, or cause to be appointed, in accordance with a mandate approved by the Commission.

II. Functions of the Independent Adviser

35. The Independent Adviser’s primary function is to provide independent advice and assistance to the Commission in connection with its assessment of:

(a) the adequacy of the Commitments to restore effective competition in the EEA following the completion of the Concentration; and

(b) the suitability of any Proposed Purchasers as Purchasers of the Divestment Businesses.

36. The Commission may, on its own initiative or at the request of the Independent Adviser or Bayer, give any orders or instructions to the Independent Adviser.

Duties and obligations of the Independent Adviser

37. The Independent Adviser shall:

(a) within two working days of its appointment, provide the Commission a detailed work plan describing how it intends to carry out its duties (the “Work-Plan”);

(b) provide such assistance in connection with the tasks described in Paragraphs 35-36 as the Commission may from time to time request;

(c) provide to the Commission within 15 days after the end of every month, sending Bayer a non-confidential copy at the same time, a written report that shall cover the tasks described in Paragraphs 35-36;

(d) provide to the Commission, prior to the Effective Date and on a date to be agreed with the Commission in the Work-Plan, a written report whose specific content shall be agreed with the Commission;
promptly report in writing to the Commission, sending Bayer a non-confidential copy at the same time, if it concludes on reasonable grounds that Bayer is failing to comply with these Commitments; and

promptly report in writing to the Commission, sending Bayer a non-confidential copy at the same time, if it concludes on reasonable grounds that Monsanto or any potential Purchaser is not providing the Independent Adviser with full cooperation or is otherwise hindering the Independent Adviser in the fulfilment of its assigned tasks.

38. If the Independent Adviser, Monitoring Trustee, and/or Divestiture Trustee are not the same legal or natural persons, the Independent Adviser, Monitoring Trustee, and/or Divestiture Trustee shall cooperate closely with each other.

39. Bayer commits to include the Independent Adviser among its proposed candidates for Monitoring Trustee and/or Divestment Trustee pursuant to Paragraph 53. This is without prejudice to the Commission’s ability to determine the Independent Adviser’s suitability to act as the Monitoring Trustee and/or the Divestment Trustee. Bayer hereby confirms that if the Commission approves the Independent Adviser to become the Monitoring Trustee and/or Divestment Trustee, Bayer shall appoint the Independent Adviser as such.

Duties and obligations of the Parties

40. Bayer shall provide and shall cause its advisers to provide, and Monsanto provide and cause its advisers to provide, the Independent Adviser with all such co-operation, assistance and information as the Independent Adviser may reasonably require to perform its tasks described in Paragraphs 35-36. The Independent Adviser shall have full and complete access to any of Bayer’s, Monsanto’s, and the Divestment Business’ books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments, and Bayer, Monsanto, and the Divestment Businesses shall provide the Independent Adviser upon request with copies of any document. Bayer, Monsanto, and the Divestment Businesses shall make available to the Independent Adviser one or more offices on their premises and shall be available for meetings in order to provide the Independent Adviser with all information necessary for the performance of its tasks.

41. Bayer shall provide and shall cause its advisers to provide the Independent Adviser, on request, with the information submitted to Proposed Purchasers, in particular give the Independent Adviser access to the data room documentation and all other information granted to Proposed Purchasers in the due diligence procedure. Bayer shall inform the Independent Adviser on Proposed Purchasers, and submit lists of Proposed Purchasers at each stage of the selection process, including the offers made by Proposed Purchasers at those stages.
42. Bayer shall indemnify the Independent Adviser and its employees and agents (each an “Indemnified Party”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Bayer for, any liabilities arising out of the performance of the Independent Adviser’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Independent Adviser, its employees, agents or advisers.

43. At the expense of Bayer, the Independent Adviser may appoint advisers (in particular for corporate finance or legal advice), subject to Bayer’s approval (this approval not to be unreasonably withheld or delayed) if the Independent Adviser considers the appointment of such advisers necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Independent Adviser are reasonable. Should Bayer refuse to approve the advisers proposed by the Independent Adviser, the Commission may approve the appointment of such advisers instead, after having heard Bayer. Only the Independent Adviser shall be entitled to issue instructions to the advisers. Paragraph 42 of these Commitments shall apply mutatis mutandis.

44. Bayer agrees that the Commission may share Confidential Information proprietary to Bayer with the Independent Adviser. The Independent Adviser shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.

45. Bayer agrees that the contact details of the Independent Adviser are published on the website of the Commission’s Directorate-General for Competition and they shall inform interested third parties, in particular, any Proposed Purchasers, of the identity and the tasks of the Independent Adviser.

Replacement, discharge and reappointment of the Independent Adviser

46. If the Independent Adviser ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Independent Adviser to a Conflict of Interest:

(a) the Commission may, after hearing the Independent Adviser and Bayer, require Bayer to replace the Independent Adviser; or

(b) Bayer may, with the prior approval of the Commission, replace the Independent Adviser.

47. If the Independent Adviser is removed according to Paragraph 46 of these Commitments, the Independent Adviser may be required to continue in its function until a new Independent Adviser is in place to whom the Independent Adviser has effected a full handover of all relevant information. The new Independent Adviser
shall be appointed in accordance with the procedure referred to in Paragraphs 32-34 of these Commitments.

48. Unless removed according to Paragraph 46 of these Commitments, the Independent Adviser shall cease to act as Independent Adviser only after the Commission has discharged it from its duties after the IA Mandate has been completed, or the Trustee has been appointed.

Section G Trustee

I. Appointment procedure

49. Bayer shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Bayer commits not to close the Concentration before the appointment of a Monitoring Trustee.

50. If Bayer has not entered into a binding sale and purchase agreement regarding the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected one or more Purchasers proposed by Bayer at that time or thereafter, Bayer shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

51. The Trustee shall:

(a) at the time of appointment, be independent of Bayer, Monsanto, and their respective Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor, and experience monitoring global divestiture commitments; and

(c) neither have nor become exposed to a Conflict of Interest.

52. The Trustee shall be remunerated by Bayer in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Bayer

53. No later than two weeks after the Effective Date, Bayer shall submit the name or names of one or more natural or legal persons whom Bayer proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Bayer shall submit a list of one or more persons whom Bayer proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient
information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in Paragraph 51 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

54. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Bayer shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Bayer shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission’s approval, in accordance with the mandate approved by the Commission.

New proposal by Bayer

55. If all the proposed Trustees are rejected, Bayer shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with Paragraphs 49 and 54 of these Commitments.

Trustee nominated by the Commission

56. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Bayer shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

57. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Bayer, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
Duties and obligations of the Monitoring Trustee

58. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) oversee, in close co-operation with the Hold Separate Managers, the ongoing management of the Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness, and monitor compliance by Bayer with the conditions and obligations attached to the Decision. To that end, the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by the Parties, in accordance with Paragraphs 18 and 19 of these Commitments;

(ii) supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with Paragraph 20 of these Commitments;

(iii) with respect to Confidential Information:

- determine all necessary measures to ensure that Bayer does not after the Effective Date obtain any Confidential Information relating to the Divestment Businesses;

- in particular strive for the severing of the Divestment Businesses’ participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses;

- make sure that any Confidential Information relating to the Divestment Businesses obtained by Bayer before the Effective Date is eliminated and will not be used by Bayer;

- decide whether such information may be disclosed to or kept by Bayer as the disclosure is reasonably necessary to allow Bayer to carry out the divestiture or as the disclosure is required by law; and

(iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and Bayer or Affiliated Undertakings;
(c) propose to Bayer such measures as the Monitoring Trustee considers necessary to ensure Bayer’s compliance with the conditions and obligations attached to the Decision, in particular, the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

(d) review and assess potential Purchasers, as well as the progress of the divestiture process, and verify that, dependent on the stage of the divestiture process:

(i) potential Purchasers receive sufficient and correct information relating to the Divestment Businesses and the Personnel in particular, by reviewing, if available, the data room documentation, the information memorandum and the due diligence process; and

(ii) potential Purchasers are granted reasonable access to the Personnel;

(e) act as a contact point for any requests by third parties, in particular, potential Purchasers, in relation to the Commitments;

(f) provide to the Commission, sending Bayer a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Businesses, as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process, as well as potential Purchasers;

(g) promptly report in writing to the Commission, sending Bayer a non-confidential copy at the same time, if it concludes on reasonable grounds that Bayer is failing to comply with these Commitments;

(h) within one week after receipt of the documented proposal referred to in Paragraph 27 of these Commitments, submit to the Commission, sending Bayer a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of any potential Purchasers and the viability of the Divestment Businesses after the Sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the potential Purchasers; and
(i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

59. If the Monitoring and Divestiture Trustees are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other’s tasks.

Duties and obligations of the Divestiture Trustee

60. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to any number of Purchasers, provided that the Commission has approved both the Purchasers and the final binding sale and purchase agreement(s) (and ancillary agreements) as in line with the Commission’s Decision and the Commitments in accordance with Paragraphs 26 and 27 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Bayer, subject to Bayer’s unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

61. In the Trustee Divestiture Period (or otherwise at the Commission’s request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Bayer.

III. Duties and obligations of the Parties

62. Bayer shall provide and shall cause its advisers to provide, and Monsanto shall provide and cause its advisers to provide, the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Bayer’s or the Divestment Businesses’ books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Bayer and the Divestment Businesses shall provide the Trustee, upon request, with copies of any document. Bayer and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

63. Bayer shall provide and shall cause its advisers to provide, and Monsanto shall provide and cause its advisers to provide, the Monitoring Trustee with all managerial
and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. Bayer shall provide and shall cause its advisers to provide the Monitoring Trustee, on request, with the information submitted to potential Purchasers, and, in particular, give the Monitoring Trustee access to the data room documentation and all other information granted to potential Purchasers in the due diligence procedure. Bayer shall inform the Monitoring Trustee of possible Purchasers, submit lists of potential Purchasers at each stage of the selection process, including the offers made by potential Purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

64. Bayer shall grant or procure its Affiliated Undertakings to grant, and Monsanto shall grant or procure its Affiliated Undertakings to grant, comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the BASF Closing and the Vegetable Seeds Closing (as applicable) and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the BASF Closing and the Vegetable Seeds Closing (as applicable), including the appointment of advisers to assist with the sale process. Upon request of the Divestiture Trustee, Bayer shall cause the documents required for effecting the sale and the BASF Closing and the Vegetable Seeds Closing (as applicable) to be duly executed.

65. Bayer shall indemnify the Trustee and its employees and agents (each an “Indemnified Party”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Bayer for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisers.

66. At the expense of Bayer, the Trustee may appoint advisers (in particular for corporate finance or legal advice), subject to Bayer’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisers necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Bayer refuse to approve the advisers proposed by the Trustee, the Commission may approve the appointment of such advisers instead, after having heard Bayer. Only the Trustee shall be entitled to issue instructions to the advisers. Paragraph 65 of these Commitments shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisers who served Bayer during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
67. Bayer agrees that the Commission may share Confidential Information proprietary to Bayer with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

68. Bayer agrees that the contact details of the Monitoring Trustee are published on the website of the Commission’s Directorate-General for Competition and they shall inform interested third parties, in particular, any potential Purchasers, of the identity and the tasks of the Monitoring Trustee.

69. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

70. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

   (a) the Commission may, after hearing the Trustee and Bayer, require Bayer to replace the Trustee; or

   (b) Bayer may, with the prior approval of the Commission, replace the Trustee.

71. If the Trustee is removed according to Paragraph 70 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in Paragraphs 49-56 of these Commitments.

72. Unless removed according to Paragraph 70 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section H Fast Track Dispute Resolution Procedure

73. In the event that any of the Purchasers claims that Bayer is failing to comply with its obligations arising from these Commitments, that Purchaser may invoke the dispute settlement procedure described in this Section.

74. The Purchaser shall notify Bayer and the Monitoring Trustee of its request in writing and specify the reasons why it believes that Bayer is failing to comply with the Commitments. Bayer shall use its best efforts to resolve all differences of opinion and to settle all disputes of which it has been notified through co-operation and
consultation within a reasonable period of time, not to exceed fifteen working days after receipt of the request.

75. The Monitoring Trustee shall present its own proposal for resolving the dispute within eight working days, specifying in writing the action, if any, to be taken by Bayer to ensure compliance with the Commitments vis-à-vis the Purchaser, and be prepared, if requested, to facilitate the settlement of the dispute.

76. Should Bayer and the Purchaser fail to resolve their differences of opinion through cooperation and consultation, the Purchaser may initiate the arbitration process described below. The arbitration process shall be used only to resolve disputes regarding compliance with the Commitments.

77. To initiate the arbitration process, the Purchaser shall give written notice to Bayer nominating an arbitrator and stating the specific nature of the claim, the factual basis of its position and the relief requested. Bayer shall appoint another arbitrator within 14 calendar days after receipt of the written notice. The arbitrators so appointed shall appoint a third arbitrator to be president of the arbitral tribunal within seven calendar days after both arbitrators have been nominated. Should Bayer fail to nominate an arbitrator, or if the two arbitrators fail to agree on the president, the default appointment(s) shall be made by the International Chamber of Commerce (“ICC”). The three-person arbitral tribunal shall herein be referred to as the “Arbitral Tribunal.”

78. The dispute shall be finally resolved by arbitration under the ICC Rules of Arbitration, with such modifications or adaptations as foreseen herein (the “Rules”). The arbitration shall be conducted in Frankfurt, in the German language.

79. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as appropriate in the circumstances.

80. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the arbitration. Terms of reference shall be drawn up and signed by the parties to the arbitration and the Arbitral Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.

81. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from Bayer and/or its Affiliated Undertakings or the Purchaser, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the parties to the arbitration agree.
The arbitrators shall agree in writing to keep any confidential information and business secrets disclosed to them in confidence. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Monitoring Trustee and outside counsel and experts of the opposing party.

The burden of proof in any dispute governed under the Rules shall be as follows:
(a) the Purchaser must produce evidence of a prima facie case;
(b) if the Purchaser does so, the Arbitral Tribunal must find in favour of the Purchaser unless Bayer can produce evidence to the contrary.

The Commission shall be allowed and enabled to participate in all stages of the procedure by:
(a) receiving all written submissions (including documents and reports, etc.) made by the parties to the arbitration;
(b) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the arbitration (including terms of reference and procedural time-table);
(c) filing any Commission amicus curiae briefs; and
(d) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

The Arbitral Tribunal shall forward, or shall order the parties to the arbitration to forward, the documents mentioned to the Commission without delay.

In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal shall inform the Commission, and may seek the Commission’s interpretation of the Commitments before finding in favour of any party to the arbitration and shall be bound by the Commission’s interpretation.

The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. The Commitments shall be construed in accordance with the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.

Upon request of the Purchaser, the Arbitral Tribunal may make a preliminary ruling on the dispute. The preliminary ruling shall be rendered within one month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.
The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by Bayer to comply with the Commitments vis-à-vis the Purchaser (e.g., modify a supply contract pricing formula). The final award shall be final and binding on the parties to the arbitration and shall resolve the dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.

The final award shall, as a rule, be rendered within three months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitments if asked by the Arbitral Tribunal.

The parties to the arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award.

Nothing in the above-described arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the Treaty on the Functioning of the European Union.

Section I  The Review Clause

The Commission may extend the time periods foreseen in the Commitments in response to a request from Bayer or, in appropriate cases, on its own initiative. Where Bayer requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Bayer. Only in exceptional circumstances shall Bayer be entitled to an extension within the last month of any period.

The Commission may further, in response to a reasoned request from Bayer showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Bayer. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section J  Entry Into Force
To the extent these Revised Commitments modify the commitments entered into by Bayer and Monsanto on 16 February 2018, such revisions shall take effect on the date of the approval by the Commission of Bayer’s reasoned request dated 5 April 2018.
I. The BASF Divestment Package

1. The BASF Divestment Package comprises:

   (a) Bayer’s global broad acre crop seeds and traits business, with certain limited carve-outs, namely: hybrid rice in Asia; hybrid cotton, juncea (mustard), and millet in India; and cotton in South Africa; as well as R&D programmes directed to sugarcane in Brazil, and sugarbeet in Europe (the “Broad Acre Divestment Businesses”);

   (b) Bayer’s global glufosinate ammonium business (the “GA Divestment Business”);

   (c) the assets comprising Bayer’s non-agricultural glyphosate business, and its Zarpa-brand family of agricultural glyphosate products. These products comprise all agricultural and non-agricultural glyphosate products sold by Bayer in the EEA (in the EEA, Zarpa is sold only in Spain and Portugal, all Zarpa pipeline projects are mixtures of [active ingredient] and glyphosate) (the “Glyphosate Assets”);

   (d) the data, know-how, employees, intellectual property, registrations, sales and marketing assets, and contracts comprising Bayer’s VOTiVO (Bacillus firmus), VOTiVO FS240 (Bacillus firmus), PONCHO/VOTiVO (clothianidin/Bacillus firmus), Deter (clothianidin), PONCHO 600 FS (clothianidin), PONCHO 600 FS (clothianidin), PONCHO PLUS (clothianidin/imidacloprid), PONCHO Super (clothianidin/thiodicarb), PONCHO VOTiVO 1250 (clothianidin/Bacillus firmus), TWO.O (Bacillus thurigiensis), PONCHO VOTiVO 2.0 (clothianidin/Bacillus firmus/TWO.O (= Bacillus thurigiensis)), PONCHO 1250 VOTiVO 2.0, (clothianidin/Bacillus firmus/TWO.O (= Bacillus thurigiensis)), ILeVO (Fluopyram FS 600), COPeO (Fluopyram FS 600) seed treatment businesses, and Bayer’s pipeline nematode control products VOTiVO/Redigo M (Bacillus firmus/ prothioconazole/metalaxyl) and [pipeline seed treatment] (“pipeline seed treatment”) (together, the “Seed Treatment Assets”);

   (e) the [NSH line of research 1] Data Transfer and Licence;

   (f) the [NSH line of research 2] Data Transfer and Licence;

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3 Bayer’s cotton seeds and traits business in South Africa is being divested to a local purchaser pursuant to conditions imposed by the South African Competition Commission.

4 This relates to a cooperation with KWS where the relevant germplasm is owned exclusively by KWS.
(g) the [NSH line of research 3] Data Transfer and Licence; and

(h) the Digital Agriculture Assets.

_The Broad Acre Divestment Business_

2. Bayer commits to divesting its entire global broad acre crop seeds and traits business, with only limited carve-outs, namely: hybrid rice in Asia; hybrid cotton, juncea (mustard), and millet in India; cotton in South Africa; as well as R&D programmes directed to sugarcane in Brazil, and sugarbeet in Europe (the “Broad Acre Commitments”).

3. The Broad Acre Divestment Businesses include, but are not limited to:

(a) Bayer’s global LibertyLink (glufosinate ammonium tolerance) traits business except in rice;

(b) Bayer’s trait research activities (including both GM and non-GM traits) in cotton, corn, OSR, soybean, its global R&D activities directed to wheat, and its canola-quality juncea research programme worldwide; its GM trait research facilities in Morrisville, North Carolina, USA, its US headquarters and all greenhouse facilities in Research Triangle Park in Raleigh, North Carolina USA, and its trait research facility in Ghent, Belgium;

(c) Bayer’s global cotton seeds and traits business in all countries except:

(i) India (where Bayer has a standalone cotton breeding programme); and

(ii) South Africa (where Bayer’s cotton seeds and traits business is being divested to a local purchaser pursuant to conditions imposed by the South African Competition Commission);

(d) Bayer’s global OSR seed and traits business worldwide;

(e) Bayer’s global soybean seeds and traits business; and

(f) Bayer’s global corn traits business.

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5 Bayer’s cotton seeds and traits business in South Africa is being divested to a local purchaser pursuant to conditions imposed by the South African Competition Commission.

6 This relates to a cooperation with KWS where the relevant germplasm is owned exclusively by KWS.

7 Transgenic events for rice are not transferring – BASF requested the exclusion of rice as BASF had established that there is no commercial viability for LibertyLink rice.
4. For each of the Broad Acre Divestment Businesses, Bayer will transfer to BASF, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all transferrable licences (i.e., licences that are legally capable of being transferred to a new owner), permits, and authorisations issued by any governmental organisation for the benefit of the elements of the Broad Acre Divestment Businesses;

(c) Bayer will assist BASF with acquiring any non-transferrable licences within 12 months of the BASF Closing (subject to complications outside the control of Bayer) and until such time provide BASF with the ability to benefit from the licence to independently operate the Broad Acre Divestment Business. Bayer will agree a detailed schedule of timing with the Independent Adviser and/or Monitoring Trustee for assisting BASF with securing non-transferrable licences;

(d) all contracts, leases, commitments and customer orders of the elements of the Broad Acre Divestment Businesses;

(e) all customer, credit and other records of the elements of the Broad Acre Divestment Businesses;

(f) Bayer will arrange for transitional IT systems to be provided by a third-party service provider; and

(g) as a general principle, all of the Personnel currently working on the Broad Acre Divestment Businesses will be transferred to BASF (subject to agreement with the German employee representatives).

5. The Broad Acre Divestment Business will not require any long-term supply agreements between Bayer and BASF. Any required transitional service and supply agreements, reverse transitional service agreements, lease-back agreements, or licensing agreements are provided in Section III below.

6. The preliminary list of Key Personnel to be transferred, subject to complying with all applicable employment laws, for the Broad Acre Divestment Business is set out in the following table:

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Role</th>
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<tbody>
<tr>
<td>[…]</td>
<td>Head of Transition Team &amp; Head of Seeds</td>
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<tr>
<td>[…]</td>
<td>Head of R&amp;D</td>
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<tr>
<td>[…]</td>
<td>Head of Stewardship</td>
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<tr>
<td>Key Personnel</td>
<td>Role</td>
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</tr>
<tr>
<td>[...]</td>
<td>Vice President and global counsel for corn and soybean</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Soybean</td>
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<tr>
<td>[...]</td>
<td>Head of Cotton</td>
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<tr>
<td>[...]</td>
<td>Head of Oilseeds</td>
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<td>[...]</td>
<td>Head of Finance</td>
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<td>[...]</td>
<td>Head of HR</td>
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<td>[...]</td>
<td>Head of Communications</td>
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<td>[...]</td>
<td>Head of S&amp;T Marketing</td>
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<td>[...]</td>
<td>Head of Product Supply</td>
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<tr>
<td>[...]</td>
<td>Head of Wheat</td>
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<tr>
<td>[...]</td>
<td>Seeds UK</td>
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<tr>
<td>[...]</td>
<td>Weed Control</td>
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<tr>
<td>[...]</td>
<td>Trait Validation</td>
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<tr>
<td>[...]</td>
<td>Trait Discovery</td>
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<tr>
<td>[...]</td>
<td>Canola Wheat Seeds US</td>
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<td>[...]</td>
<td>Pest Control</td>
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<tr>
<td>[...]</td>
<td>Regional B&amp;TD, EMEA &amp; Breeding Ops</td>
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<td>[...]</td>
<td>Soybean Breeding Management</td>
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<td>[...]</td>
<td>Trait Discovery</td>
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<td>[...]</td>
<td>Cotton Breeding</td>
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<tr>
<td>[...]</td>
<td>Molecular Breeding &amp; Trait Development</td>
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<td>[...]</td>
<td>Wheat Breeding N Dakota</td>
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<td>[...]</td>
<td>Crop Analytics</td>
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<tr>
<td>[...]</td>
<td>Seeds Supply Latam</td>
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<tr>
<td>[...]</td>
<td>Seeds Breeding &amp; Trait Development</td>
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<tr>
<td>[...]</td>
<td>Disease Control &amp; Quality Traits</td>
</tr>
<tr>
<td>[...]</td>
<td>NA B&amp;TD Operations</td>
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<tr>
<td>[...]</td>
<td>Global B&amp;TD Technology Platform</td>
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<tr>
<td>[...]</td>
<td>Trait Development Cotton Corn &amp; Soybean</td>
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<tr>
<td>[...]</td>
<td>Omics Discovery Platform</td>
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<tr>
<td>[...]</td>
<td>Seeds DACH</td>
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<tr>
<td>[...]</td>
<td>Seeds NBS</td>
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</tbody>
</table>
7. The GA Divestment Business comprises Bayer’s entire global glufosinate ammonium business, without carve-outs. The GA Divestment Business includes, but is not limited to:

(a) Bayer’s entire glufosinate ammonium-based herbicide product portfolio, as well as all current glufosinate ammonium-related development products, comprising more than [...] patent families related to specific glufosinate ammonium formulations, mixtures and methods, and all data and support necessary for registrations and all relevant local registrations;

(b) four of Bayer’s state-of-the-art facilities in Germany (Frankfurt and Knapsack) and the United States (Mobile and Muskegon), which account for the production of all of Bayer’s glufosinate ammonium worldwide;

(c) formulation and packaging capabilities as part of the Muskegon facilities mentioned above and the Regina site, and (for as long as requested by BASF) provided by Bayer through its global formulation and filling network by way of arm’s-length tolling agreements;

(d) all of Bayer’s dedicated intellectual property. Shared intellectual property will be allocated to the main user (Bayer or the Divestment Businesses) with licences, or covenants not to assert, put in place to ensure access by the other party;

(e) all of Bayer’s dedicated supplier contracts. Shared contracts will be split if feasible. Otherwise, Bayer will use its best efforts to assist BASF with the creation of new contracts to be in place immediately post-closing;
(f) all of Bayer’s dedicated customer contracts. With respect to shared contracts, Bayer will use its best efforts to assist BASF with the creation of new contracts to be in place immediately post-closing;

(g) all transferrable licences (i.e., licences that are legally capable of being transferred to a new owner), permits, and authorisations issued by any governmental organisation for the benefit of the elements of the GA Divestment Businesses;

(h) Bayer will use its best efforts to assist BASF with acquiring any non-transferrable licences within 36 months of the BASF Closing (subject to complications outside the control of Bayer) and until such time provide BASF with the ability to benefit from the licence to independently operate the GA Divestment Business. Bayer will agree a detailed schedule of timing with the Independent Adviser and/or Monitoring Trustee for assisting BASF with securing non-transferrable licences. If the non-transferrable licences are not acquired within this period, appropriate measures will be agreed with the Monitoring Trustee;

(i) Bayer will arrange for transitional IT systems to be provided by a third-party service provider; and

(j) as a general principle, all of the Personnel currently working on the GA Divestment Business will be transferred to BASF (subject to agreement with the German employee representatives).

8. The GA Divestment Business will require a supply agreement for indaziflam for as long as this active ingredient is patent protected and cannot be sourced from anyone other than Bayer. The initial term of this agreement is [5-10 supply years], and shall automatically renew for a [1-3 year] renewal term, unless BASF terminates at least […] prior to the end of the initial term. Bayer will supply BASF with the active ingredient at variable cost, in priority over other purchasers, and in the quantities demanded by BASF until the earlier of the expiry of this agreement or until there are at least three generic suppliers of indaziflam able to supply BASF whose source of indaziflam is not Bayer. Any required transitional service and supply agreements, reverse transitional service agreements, lease-back agreements, or licensing agreements are provided in Section III below.

9. Transitional supplies or services will be provided by Bayer at variable cost for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. Any subsequent
supplies or services will be based on commercial terms agreed between Bayer and BASF.

10. The Key Personnel to be transferred, subject to complying with all applicable employment laws, for the GA Divestment Business are set out in the following table:

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Head of Transition Team &amp; Head of Seeds</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Development &amp; Regulatory</td>
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<tr>
<td>[...]</td>
<td>Head of Marketing &amp; Business Development</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Sales &amp; Distribution</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Finance &amp; Controlling</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Product Supply</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Frankfurt Site</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Knapsack Site</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Muskegon Site</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Regina Site</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Marketing Crop Manager Arable</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Agronomic Development</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Formulation Technology</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Human Safety</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Regulatory Affairs</td>
</tr>
</tbody>
</table>

The Glyphosate Assets

11. The objective of the commitments relating to the Glyphosate Assets is to remove any overlap between Bayer and Monsanto in the sale of glyphosate-based products in the EEA (agricultural and non-agricultural).

12. The Glyphosate Assets comprises Bayer’s non-agricultural glyphosate-based products in the EEA, and the Zarpa-brand family of agricultural glyphosate products in the EEA (in the EEA, Zarpa is sold in only Spain and Portugal, all Zarpa pipeline projects are mixtures of [active ingredient] and glyphosate). Because glyphosate-based herbicides are such a small business for Bayer, Bayer proposes to structure the divestment as an asset sale including, but not limited to:

(a) Bayer’s non-agricultural glyphosate-based herbicide product portfolio, comprising all trademarks, formulations, mixtures and methods, all data and

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8 There are no assets or employees to be transferred in Germany as there are only application services there which services are retained.
support necessary for registrations, and all relevant local registrations. This includes a further six registered brand names; ⁹

(b) Bayer’s Zarpa-brand family of agricultural glyphosate products, including all trademarks, formulations, mixtures and methods, all data and support necessary for registrations, and all relevant local registrations (in the EEA, Zarpa is sold only in Spain and Portugal, all Zarpa pipeline projects are mixtures of [active ingredient] and glyphosate);

c) all pipeline projects and the associated IP relating to Bayer’s non-agricultural glyphosate-based products in the EEA, ¹⁰ and, for Spain and Portugal, to the Zarpa-brand family of agricultural glyphosate products in the EEA (in the EEA, Zarpa is sold only in Spain and Portugal, all Zarpa pipeline projects are mixtures of [active ingredient] and glyphosate);

d) all dedicated supplier contracts. Shared contracts will be split if feasible. Otherwise, Bayer will use its best efforts to assist BASF with the creation of new contracts to be in place immediately post-closing;

(e) all dedicated customer contracts. Shared contracts will be split if feasible. Otherwise, Bayer will use its best efforts to assist BASF with the creation of new contracts to be in place immediately post-closing;

(f) all dedicated distribution agreements. Shared contracts will be split if feasible. Otherwise, Bayer will use its best efforts to assist BASF with the creation of new contracts to be in place immediately post-closing; and

(g) all the Personnel of the Glyphosate Assets, subject to the work council process in France (for French employees only).

13. Bayer and BASF have not yet begun negotiating the approach to transitional services but Bayer commits to act as a supplier of glyphosate AI and the required mixture partners, and a toll formulator (mixing and packaging formulated products), or as a supplier of formulated products (i.e., finished products) on a transitional basis to BASF. Transitional supplies or services will be provided by Bayer at variable cost for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. Any subsequent

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⁹ The trademarks Mustang, Arent, Tersol Trio, Destrol, and Suztol will transfer, but are not currently in use or are being phased out by Bayer.

¹⁰ There are no assets or employees to be transferred in Germany as there are only application services there which services are retained.
supplies or services will be based on commercial terms agreed between Bayer and BASF.

14. The Glyphosate Assets will not require any long-term supply agreements between Bayer and BASF beyond those mentioned in Paragraph 13. Monsanto currently supplies Bayer with the glyphosate AI used in Bayer’s glyphosate products. BASF could obtain glyphosate from other sources, but Bayer commits to supply BASF with glyphosate AI on fair, reasonable, and non-discriminatory terms. Bayer and BASF have not yet begun to negotiate transitional or longer-term supply agreements, but a list of contemplated agreements are provided in Section III below. Bayer commits to enter into any such transitional agreements deemed necessary by the Independent Adviser or Monitoring Trustee.

15. Bayer will retain all physical assets relating to its glyphosate business, its agricultural and non-agricultural glyphosate-products outside of the EEA, its glyphosate application services worldwide, its entire glyphosate-free business:

(a) all real estate related to the Glyphosate Assets, including, but not limited to, Bayer’s Monheim field formulation laboratory, Monheim field testing biology laboratory, Monheim greenhouses, and all of the sales and marketing offices used in the Glyphosate Assets;

(b) all application services;\(^{11}\)

(c) all research and development projects and the associated IP which concern glyphosate-free solutions. Bayer’s existing glyphosate AI and product portfolio have been commercialised for some time. Consequently, it is no longer an R&D-intensive business. Bayer’s non-agricultural glyphosate R&D activities and intellectual property are now focused on glyphosate-free products;

(d) industrial sales of active ingredients including glyphosate (i.e., re-sale of bulk glyphosate obtained from any source); and

(e) sales of any glyphosate-free products (i.e., products not containing glyphosate).

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\(^{11}\) There is no overlap between the Parties in this area as Monsanto has no application services.
16. The Key Personnel to be transferred, subject to complying with all applicable employment laws, for the Glyphosate Assets are set out in the following table:

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Benelux, Key Account Manager Environmental Science</td>
</tr>
<tr>
<td>[...]</td>
<td>Nordics, Business Manager</td>
</tr>
<tr>
<td>[...]</td>
<td>France</td>
</tr>
<tr>
<td>[...]</td>
<td>UK &amp; Ireland, T&amp;O/TVM/Forest Portfolio Manager</td>
</tr>
<tr>
<td>[...]</td>
<td>Iberia, Business Manager Environmental Science Iberia</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Development &amp; Regulatory (formerly Head of Global Regulatory Affairs in Environmental Science)</td>
</tr>
</tbody>
</table>

The Seed Treatment Assets

17. The objective of the commitments relating to the Seed Treatment Assets is to enable BASF to replicate the competitive position held by Bayer absent the Concentration.

18. The Seed Treatment Assets include, but are not limited to:

(a) the intellectual property rights used in the Poncho (clothianidin), VOTiVO \((\text{Bacillus firmus} \text{ I-1582})\), Poncho/VOTiVO (clothianidin/\text{Bacillus firmus} \text{ I-1582}), and Poncho/VOTiVO 2.0 (clothianidin/\text{Bacillus firmus} \text{ I-1582/TWO.0} (= \text{Bacillus thuringiensis})) seed treatment businesses. Bayer will receive an exclusive licence back for all non-seed treatment uses of clothianidin. In addition, Bayer will receive a non-exclusive licence back for the use of clothianidin as an active ingredient in Bayer’s currently commercialised Prosper Evergol product and in its currently commercialised seed treatment mixture products for potatoes, sugarbeet, cereals, and vegetables that Bayer will retain post-Concentration;

(b) the intellectual property rights used in the ILeVO (Fluopyram FS 600) and COPeO (Fluopyram FS 600) seed treatment businesses with the exception of patents related to fluopyram. For patents related to fluopyram, Bayer will assign to BASF all patents exclusively related to the use of fluopyram as a seed treatment. All other patents related to fluopyram will be retained by Bayer for use in non-seed treatment applications only, and Bayer will provide BASF with an exclusive, royalty-free licence to all such retained patents for seed treatment uses;
(c) all intellectual property rights to be used in Bayer’s pipeline nematode control products [pipeline seed treatment] and VOTiVO/Redigo M mixtures; all data and know-how gathered by Bayer up to the Effective Date from field trials conducted on these products; insofar as available, all internal and external studies on these products (such as toxicology, residues or efficacy studies); information on the structure of these products; insofar as available, pending product registrations; and, if available, Samples of the relevant molecules;

(d) all know-how specific to the Seed Treatment Assets and the application thereof;

(e) all product registrations and pending regulatory submissions related to the Seed Treatment Assets;

(f) all current commercial formulations of the Seed Treatment Assets and those in development;

(g) all data from field trials of the Seed Treatment Assets, including ongoing trials and studies;

(h) all sales and marketing assets, including, inter alia, customer lists, distribution plans, all market research conducted to date regarding the Seed Treatment Assets;

(i) all Bayer’s contracts for the sale of the Seed Treatment Assets would transfer to BASF. With respect to shared contracts, Bayer will use its best efforts to assist BASF with the creation of new contracts to be in place immediately post-closing; and

(j) Bayer will assign to BASF all rights used in the Seed Treatment Assets under:

(i) Bayer’s co-exclusive licence to Syngenta’s patent covering use of clothianidin on genetically modified crops;

(ii) Bayer’s agreement with Elemental Enzymes for TWO.0;

(iii) Bayer’s agreements with Sumitomo (Valent) related to clothianidin; and

(iv) Bayer’s exclusive licence to the Nihon Nohyaku patent for use of fluopyram as a nematicide.

Assignment of these rights, to the extent they depend on counterparty consent, would occur as expeditiously as possible, but in no event later than 12 months after closing of the Concentration. Bayer represents BASF does not require
these consents while BASF is receiving product manufactured by Bayer pursuant to an interim supply agreement (as described in paragraph (9)), and that these are the only material third-party agreements implicated by the global divestiture of the Seed Treatment Assets to BASF.

19. **Annex RC.1** provides the global sales, broken down by country, of the Seed Treatment Assets.

20. The Seed Treatment Assets would not include any current or future non-seed treatment uses of fluopyram. The current excluded uses are (i) foliar fungicides (the relevant current brands are Ascra Xpro, Luna Sensation, Luna Experience, Luna Tranquility, Luna Privilege, Propulse), (ii) soil-applied nematicides (the relevant current brands are Velum Prime, Velum Total, Velum One, Velum, Velum GR, Verango Verango Prime, and (iii) non-agricultural applications in Bayer’s Environmental Science business (the relevant current brands are Indemnify, Exteris Stress guard, Broadform).

21. Bayer commits to produce the Seed Treatment Assets for BASF at variable cost and in sufficient volumes pursuant to one or more tolling agreements. These tolling agreements will have an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for further periods of [1-3 years], on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee, until BASF is able to establish an alternative source of production and formulation and obtain all necessary regulatory approvals and registrations.

22. Bayer will assist BASF in transferring or applying for, as the case may be, any product registrations required to complete the transfer of the Seed Treatment Assets. Bayer will provide BASF with copies of all available data and information required to obtain such product registrations.

23. Bayer will use its best efforts to maintain all active registrations for the active ingredient fluopyram globally for up to ten years from the Effective Date. Bayer will transfer to BASF all product registration data for the formulations ILeVO and COPeO. In the event that a relevant authority requests BASF to provide data on the active ingredient fluopyram for a registration of ILeVO, COPeO or any future formulation of a fluopyram seed treatment product, Bayer will send to that authority a letter of access, authorising the authority to access Bayer’s data on the active ingredient fluopyram. If BASF decides to apply for a product registration in a jurisdiction where Bayer does not have an active registration for the active ingredient fluopyram, Bayer will, if BASF is required by the relevant authority, submit existing data pertaining to the active ingredient fluopyram to the relevant authority in order to enable BASF to obtain the required registration. At BASF’s option, for the period of ten years after the Effective Date, Bayer will use reasonable best efforts to enable BASF to join future task forces in relation to the active ingredient fluopyram, which
Bayer decides to form, provided that, in all cases, BASF agrees to abide by the relevant terms and conditions of the applicable task force agreement and the standards that are applied by Bayer (as the case may be) in the ordinary course and pay its pro rata share of costs.

24. Bayer commits to take all reasonable steps to defend any patents which are licensed to BASF as part of the Seed Treatment Assets.

25. Finally, subject to local labour laws, Bayer commits to transfer to BASF the Key Employees of the Seed Treatment Assets as identified in the following table:

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Bayer Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Platform/Segment Head</td>
</tr>
<tr>
<td>[...]</td>
<td>Key Account Manager</td>
</tr>
<tr>
<td>[...]</td>
<td>Regulatory Affairs Management</td>
</tr>
<tr>
<td>[...]</td>
<td>Sr. Brand/Product Manager</td>
</tr>
<tr>
<td>[...]</td>
<td>Industrial SeedGrowth Manager</td>
</tr>
<tr>
<td>[...]</td>
<td>Industrial SeedGrowth Coordinator</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Key Account Managers</td>
</tr>
<tr>
<td>[...]</td>
<td>Key Account Manager</td>
</tr>
<tr>
<td>[...]</td>
<td>Agronomic Development Exp</td>
</tr>
<tr>
<td>[...]</td>
<td>Safety &amp; Assessment</td>
</tr>
<tr>
<td>[...]</td>
<td>Country / Region Regulatory Specialist</td>
</tr>
<tr>
<td>[...]</td>
<td>Sales Representative</td>
</tr>
</tbody>
</table>

26. Bayer will also provide to BASF, after BASF’s consultation with the Key Personnel identified in the table above, the option to offer employment to up to two full time employees in total working on the [pipeline seed treatment] line of research to ensure a smooth transition (if required by BASF), subject to the Commission’s approval following consultation with the Monitoring Trustee. These additional employees, once identified by BASF and approved by the Commission, are Key Personnel for the purposes of these Commitments. Bayer will provide to BASF a list of all employees working on these lines of research, subject to complying with all applicable employment laws. Any transfer of such Key Personnel to BASF is also subject to all applicable employment laws.
With regard to IP that is used both by the Seed Treatment Assets and the businesses to be retained by Bayer:

(a) where such IP currently is exclusive to the Seed Treatment Assets, it will be transferred, or (if a transfer is not possible) exclusively licensed, to BASF; and

(b) where such IP currently is used by other parts of the Bayer business, it will be allocated to the primary user (the Seed Treatment Assets to be transferred to BASF or Bayer) with licences, or covenants not to assert put in place to ensure access by the other party.

Transitional services will be provided by Bayer at variable cost for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. Any subsequent supplies or services will be based on commercial terms agreed between Bayer and BASF.

The Commission may further, in response to a reasoned request from Bayer showing good cause, waive, modify or substitute one or more of the undertakings part of the Seed Treatment Assets, provided that any alternative commitment is at least as effective as the above commitment in remedying the Commission’s concerns in the relevant areas. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to Bayer. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

[NSH line of research 1] Data Transfer and Licence

The objective of the [NSH line of research 1] Data Transfer and Licence is to come as close as possible to a divestment of Bayer’s [NSH line of research 1] class herbicide chemistry (“[NSH line of research 1] Chemistries”) line of research for non-selective uses without disrupting Bayer’s ability to research, develop, and market [mode of action] for selective uses or [...].

By way of the [NSH line of research 1] Data Transfer and Licence Bayer commits to:

(a) transfer to BASF all data and know-how gathered by Bayer up to the Effective Date from field trials conducted on [NSH line of research 1] Chemistries as relating to all non-selective uses as well as information on the structure, and Samples, of the relevant molecules;
(b) Grant to BASF a perpetual, exclusive, worldwide licence\(^{12}\) of all Bayer IP rights and know-how relating to Bayer’s [NSH line of research 1] Chemistries existing at the Effective Date for all non-commercial and commercial applications in the field of non-selective uses, including:

(i) for the control of unwanted vegetation for example in permanent crops and plantation crops (such as trees, nuts and vines), on roadsides, squares, industrial sites, airports or railway tracks; or

(ii) for the burn-down application, for example in farm crops; and

(iii) for the application on herbicide tolerant field crops (HT crops) in which the tolerance is conferred by man-made mutation or transgenic modification.

32. For the avoidance of doubt, the [NSH line of research 1] Data Transfer and Licence does not include any data or intellectual property regarding Bayer’s selective [mode of action] for selective uses or [...] in each case independent of their development status (early research, development, marketed, etc.).

33. Explicitly excluded from this licence is any selective use in any plant which is tolerant by nature.

34. The [NSH line of research 1] Data Transfer and Licence will require an exclusive licence or licences for the relevant data and know-how. There are no other transitional or long-term agreements required between Bayer and BASF.

35. The Key Personnel to be transferred, subject to complying with all applicable employment laws, for the [NSH line of research 1] Data Transfer and Licence are set out in the following table:

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Laboratory Leader, Discovery Chemist</td>
</tr>
<tr>
<td>[...]</td>
<td>Laboratory Leader, Discovery Chemist</td>
</tr>
</tbody>
</table>

36. Bayer will also provide to BASF, after BASF’s consultation with the Key Personnel identified in the paragraph above, the option to offer employment to up to three full time employees in total working across any of the three lines of research ([NSH line of research 2] Chemistries, [NSH line of research 3] Chemistries and [NSH line of research 1] Chemistries) to ensure a smooth transition (if required by BASF), subject to the Commission’s approval following consultation with the Monitoring Trustee.

\(^{12}\) For the avoidance of doubt, by granting BASF an exclusive licence to the non-selective uses, Bayer will no longer have the right to use the IP rights and know-how covered by the [NSH line of research 1] Data Transfer and Licence for these non-selective uses while BASF will not have the rights to use the IP rights and know-how covered by the [NSH line of research 1] Data Transfer and Licence for selective uses.
These additional employees, once identified by BASF and approved by the Commission, are Key Personnel for the purposes of these Commitments. Bayer will provide to BASF a list of all employees working on these lines of research, subject to complying with all applicable employment laws. Any transfer of such Key Personnel to BASF is also subject to all applicable employment laws.

[NSH line of research 2] Data Transfer and Licence

37. The objective of the [NSH line of research 2] Data Transfer and Licence is to come as close as possible to a divestment of Bayer’s [NSH line of research 2] class herbicide chemistry type [mode of action] (“[NSH line of research 2] Chemistries”) line of research for non-selective uses without disrupting Bayer’s ability to research, develop, and market [NSH line of research 2] Chemistries for selective uses.

38. By way of the [NSH line of research 2] Data Transfer and Licence, Bayer commits to:

(a) transfer to BASF all data and know-how gathered by Bayer up to the Effective Date from in vitro assays […] and all field trials conducted on [NSH line of research 2] Chemistries as relating to all non-selective uses as well as information on the structure, and Samples, of the relevant molecules;

(b) grant to BASF a perpetual, exclusive, worldwide licence13 of all Bayer IP rights and know-how relating to Bayer’s [NSH line of research 2] Chemistries existing at the Effective Date for all non-commercial and commercial applications in the field of non-selective uses, including:

(i) for the control of unwanted vegetation for example in permanent crops and plantation crops (such as trees, nuts and vines), on roadsides, squares, industrial sites, airports or railway tracks, or

(ii) for the burn-down application, for example in farm crops, and

(iii) for the application on herbicide tolerant field crops (HT crops) in which the tolerance is conferred by man-made mutation or transgenic modification.

39. Explicitly excluded from this licence is any selective use in any plant which is tolerant by nature.

13 For the avoidance of doubt, by granting BASF an exclusive licence to the non-selective uses, Bayer will no longer have the right to use the IP rights and know-how covered by the [NSH line of research 2] Data Transfer and Licence for these non-selective uses while BASF will not have the rights to use the IP rights and know-how covered by the [NSH line of research 2] Data Transfer and Licence for selective uses.
40. The [NSH line of research 2] Data Transfer and Licence will require an exclusive licence or licences for the relevant data and know-how. There are no other transitional or long-term agreements required between Bayer and BASF.

41. The Key Personnel to be transferred, subject to complying with all applicable employment laws, for the [NSH line of research 2] Data Transfer and Licence are set out in the following table:

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Laboratory Leader, Discovery Chemist</td>
</tr>
</tbody>
</table>

42. Bayer will also provide to BASF, after BASF’s consultation with the Key Personnel identified in the paragraph above, the option to offer employment to up to three full time employees in total working across any of the three lines of research ([NSH line of research 2] Chemistries, [NSH line of research 3] Chemistries and [NSH line of research 1] Chemistries) to ensure a smooth transition (if required by BASF), subject to the Commission’s approval following consultation with the Monitoring Trustee. These additional employees, once identified by BASF and approved by the Commission, are Key Personnel for the purposes of these Commitments. Bayer will provide to BASF a list of all employees working on these lines of research, subject to complying with all applicable employment laws. Any transfer of such Key Personnel to BASF is also subject to all applicable employment laws.

*[NSH line of research 3] Data Transfer and Licence*

43. The objective of the [NSH line of research 3] Data Transfer and Licence is to come as close as possible to a divestment of Bayer’s [NSH line of research 3] class herbicide chemistry type [mode of action] (“[NSH line of research 3] Chemistries”) line of research for non-selective uses without disrupting Bayer’s ability to research, develop, and market [NSH line of research 3] Chemistries for selective uses.

44. By way of the [NSH line of research 3] Data Transfer and Licence Bayer commits to:

(a) transfer to BASF all data and know-how gathered by Bayer up to the Effective Date from all field trials conducted on [NSH line of research 3] Chemistries as relating to all non-selective uses as well as information on the structure, and Samples, of the relevant molecules;

(b) grant to BASF a perpetual, exclusive, worldwide licence\(^{14}\) of all Bayer IP rights and know-how relating to Bayer’s [NSH line of research 3] Chemistries

\(^{14}\) For the avoidance of doubt, by granting BASF an exclusive licence to the non-selective uses, Bayer will no longer have the right to use the IP rights and know-how covered by the [NSH line of research 3] Data Transfer and Licence for these non-selective uses while BASF will not have the rights to use the IP rights and know-how covered by the [NSH line of research 3] Data Transfer and Licence for selective uses.
existing at the Effective Date for all non-commercial and commercial applications in the field of non-selective uses, including:  

(i) for the control of unwanted vegetation for example in permanent crops and plantation crops (such as trees, nuts and vines), on roadsides, squares, industrial sites, airports or railway tracks; or

(ii) for the burn-down application, for example in farm crops; and

(iii) for the application on herbicide tolerant field crops (HT crops) in which the tolerance is conferred by man-made mutation or transgenic modification.

45. Explicitly excluded from this licence is any selective use in any plant which is tolerant by nature.

46. The [NSH line of research 3] Data Transfer and Licence will require an exclusive licence or licences for the relevant data and know-how. There are no other transitional or long-term agreements required between Bayer and BASF.

47. The Key Personnel to be transferred, subject to complying with all applicable employment laws, for the [NSH line of research 3] Data Transfer and Licence are set out in the following table:

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Laboratory Leader, Discovery Chemist</td>
</tr>
<tr>
<td>[...]</td>
<td>Laboratory Leader, Discovery Chemist</td>
</tr>
</tbody>
</table>

48. Bayer will also provide to BASF, after BASF’s consultation with the Key Personnel identified in the paragraph above, the option to offer employment to up to three full time employees in total working across any of the three lines of research ([NSH line of research 2] Chemistries, [NSH line of research 3] Chemistries and [NSH line of research 1] Chemistries) to ensure a smooth transition (if required by BASF), subject to the Commission’s approval following consultation with the Monitoring Trustee. These additional employees, once identified by BASF and approved by the Commission, are Key Personnel for the purposes of these Commitments. Bayer will provide to BASF a list of all employees working on these lines of research, subject to complying with all applicable employment laws. Any transfer of such Key Personnel to BASF is also subject to all applicable employment laws.

15 Bayer has three patent applications for [NSH line of research 3] Chemistries which have not yet been published.
The Digital Agriculture Assets

a. Transfer to BASF

49. The objective of the Digital Agriculture Assets divestment is to enable BASF to replicate the competitive position held by Bayer absent the Concentration.

50. The Digital Agriculture Assets comprise:

(a) Bayer’s entire digital agriculture business worldwide, including all employees (with the exception of six employees to be retained by Bayer), all tangible and intangible assets, all intellectual property rights, brands, source code, data and algorithms, and supporting materials for the entirety of Bayer Digital Farming’s global product portfolio, including those listed in Annex RC.2 to the Commitments;

(b) all shares in Bayer Digital Farming GmbH;

(c) all literature, documentation, milestone reports, algorithms, data, architecture and source code pertaining to Bayer’s digital agriculture research and development pipeline projects at all stages of development;

(d) all dedicated customer contracts, and all third-party agreements pertaining to Bayer’s digital agriculture business that Bayer is able to transfer to BASF. If Bayer is not able to transfer or assign any material agreement it will use its best efforts to assist BASF with the creation of new contracts to be in place immediately post-closing;

(e) all master datasets relevant for each product for which Bayer has the legal right to transfer to BASF, as at the Effective Date; and

(f) all other datasets used by the products included within the Digital Agriculture Assets (including details of where the datasets can be obtained).

51. The Digital Agriculture Assets will be transferred to BASF in their entirety. Bayer will receive a licence back to use certain of the Digital Agriculture Assets outside North America as specified in Section b below.

52. The selection of the six employees to be retained by Bayer will be subject to the Commission’s approval following consultation with the Monitoring Trustee, and all applicable employment laws.

53. The Digital Agriculture Assets will be available in the current condition of each product as at the Effective Date. The Digital Agriculture Assets will put BASF in the exact same position as Bayer technologically at the time of transfer.
54. BASF will likely require support from third-party suppliers in four key areas:
   (a) data services (including satellite data, weather data, and maps);
   (b) cloud data storage/processing providers;
   (c) software licences and IT service providers; and
   (d) business service providers.

55. Given BASF’s existing digital agriculture capability, Bayer expects that it is likely to have relationships with providers of each of these services. Each of these four data sources or data handling contracts are open to any party. BASF will be able to contract with these providers easily, and in some cases will have options for procuring the relevant services from other providers if it desires. Bayer will provide support to BASF to allow BASF to fully understand these data and service providers, to provide contacts of potential suppliers, to help with technical implementation if necessary, and to use its best efforts to assist BASF with securing contracts or identifying alternative suppliers, or, insofar as this is not possible, Bayer shall cooperate with BASF in any reasonable arrangement designed to provide for BASF the benefits of the contracts Bayer has, subject to compliance with applicable laws and the terms of the relevant contracts.

56. There are five parties that provide Bayer with more tailored inputs for its digital agriculture platforms. Bayer sees no reason why these companies would not also be willing to contract with BASF, but given that their offerings are less generic, Bayer has identified them specifically. Bayer has also identified potential alternative suppliers whose products are at least as advanced as those used by Bayer (including a supplier already owned by BASF, and a supplier with whom BASF has an existing long-term partnership). These suppliers are described in the table below.

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Product/Service</th>
<th>Alternative Suppliers</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Pest &amp; disease risks</td>
<td>ISIP (leading pest &amp; disease modelling company in close collaboration with federal states in Germany)</td>
</tr>
<tr>
<td>[...]</td>
<td>Satellite data</td>
<td>ESA (actively approaching market with value added satellite imagery including atmospheric correction), Airbus Industries, DigitalGlobe, many others.</td>
</tr>
<tr>
<td>[...]</td>
<td>Weed camera</td>
<td>John Deere has, by dimensions, the largest pool of agricultural telematics data (myJohnDeere.com) and has acquired Blue River Technology. BASF has an existing long term partnership with John Deere, see, for example, Agritechnica Gold Medals.</td>
</tr>
</tbody>
</table>
b. Licence-Back to Bayer

The following products included in the Digital Agriculture Assets, including all pipeline products which qualify as Alpha Projects or are more advanced on the Effective Date, will be licensed to Bayer by BASF on a non-exclusive, royalty-free, perpetual, “white label” basis for use outside of North America:

(a) Alertas: an analytics tool for the evolution of certain fungal diseases and pests in agricultural crops on regional basis for Brazil;

(b) Climate.center: an online database which stores and manages weather data from different sources in a standardised, user-friendly format;

(c) Expert.com web application: This application provides risk-based recommendations for use of crop protection products on cereals, potato, and oilseed rape;

(d) FTpro: a solution for the management of industry development pilot protocols based on information from external partners including: (i) the capability to collect field level data for the pilots and associate it with protocol job steps; and (ii) the capability to monitor the progress of all protocols down to the individual job step;

(e) Weedscount mobile application: This application identifies weeds through a photograph taken by the user;

(f) xarvio FieldManager web application: This application automatically identifies pest and disease risks for a particular field, based on field-specific information, and identifies which crop protection product should be used by the grower and on which days. The application calculates zone specific dosing recommendations for application of some fungicides on cereals;

(g) xarvio FieldManager mobile application: This application provides mobile access to a subset of the functionality described above for the Xarvio FieldManager web application; and

(h) xarvio Scouting mobile application: This application identifies weeds, diseases, pests, type of leaf damages, and the nutrient status of wheat and oilseed rape through a photograph taken by the user.
58. Bayer will not acquire any right to use the xarvio, Field Manager or Weed scout brands, or any other brand or product name currently associated with Bayer’s product portfolio or pipeline. BASF will acquire all of the existing Bayer brands and Bayer will develop new brands based on the licensed technology.

59. BASF will not be required to licence improvements to the Digital Agriculture Assets to Bayer.

Additional Assets and Personnel

60. If there is any asset or personnel which is not covered by this Schedule but which are both used (exclusively or not) in a part of BASF Divestment Package and are necessary for the continued viability and competitiveness of part of the BASF Divestment Package, that asset, personnel, or an adequate substitute will be offered to BASF.

II. The Vegetable Seeds Divestment Business

61. The Vegetable Seeds Divestment Business comprises Bayer’s entire global vegetable seeds business without carve-outs, including, but not limited to:

(a) all legal entities held by BVS;

(b) for shared legal entities through which BVS operates, Bayer will either establish a new legal entity and transfer the relevant employees and assets, or transfer the relevant employees and assets to an entity specified by the Purchaser;

(c) all sites and locations (either owned or leased) held by BVS;

(d) sites and locations shared with other parts of Bayer where BVS is the main user;

(e) for shared sites where BVS is not the main user, Bayer will work with the Purchaser to ensure continuity of existing facilities post-closing until the Purchaser can make its own arrangements;

(f) all fixed assets, intangible assets, and goodwill held by BVS;

(g) all employees and all platform employees working on BVS projects will be transferred to the Purchaser;

(h) all BVS products across different life cycles;

(i) Nunhems and HILD brands, including all sub-brands and registered trademarks;
(j) all agreements dedicated to BVS. Shared contracts will be split if feasible. Otherwise, Bayer will use its best efforts to assist the Purchaser with the creation of new contracts to be in place immediately post-closing;

(k) BVS expertise and know-how;

(l) all IP held by BVS legal entities (e.g. germplasm, markers, cell biology information, traits, patent rights, trademarks, licencing agreements, plant variety protection rights, know-how), and all IP currently held by Bayer legal entities other than BVS which are necessary for the operation of the Vegetable Seeds Divestment Business. In the event of any such IP being shared with or required by Bayer for any other purposes, Bayer commits, where feasible, to either licence the IP to the Purchaser by non-exclusive licence, or by a complete transfer subject to a licence back from the Purchaser to Bayer, in both cases provided that the field of use available to Bayer will exclude the field of vegetable seeds;

(m) Bayer’s position in an existing joint venture in China;

(n) customer lists and customer records; and

(o) all Key Personnel listed in the table below.

62. Bayer has not yet determined what transitional service agreements will be required to support the Vegetable Seeds Divestment Business. Bayer commits to enter into any transitional agreements deemed necessary by the Independent Adviser or Monitoring Trustee. In any event, Bayer commits to provide the Purchaser of the Vegetable Seeds Divestment Business, at its option, with IT support services and any other services necessary to ensure a smooth transition of the Vegetable Seeds Divestment Business to the Purchaser.

63. The Key Personnel to be transferred, subject to complying with all applicable employment laws, for the Vegetable Seeds Divestment Business are set out in the following table:

<table>
<thead>
<tr>
<th>Key Personnel</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>[...]</td>
<td>Head of Vegetable Seeds</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Finance</td>
</tr>
<tr>
<td>[...]</td>
<td>Managing Director R&amp;D</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of Sales</td>
</tr>
<tr>
<td>[...]</td>
<td>Managing Director Marketing &amp; Sales</td>
</tr>
<tr>
<td>[...]</td>
<td>Managing Director Operations</td>
</tr>
<tr>
<td>[...]</td>
<td>Strategy</td>
</tr>
<tr>
<td>Key Personnel</td>
<td>Role</td>
</tr>
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<td>--------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>[...]</td>
<td>Head of LP&amp;C Vegetable Seeds</td>
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<tr>
<td>[...]</td>
<td>Global Head Crop Development</td>
</tr>
<tr>
<td>[...]</td>
<td>Global Head of Research</td>
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<tr>
<td>[...]</td>
<td>Global Head R&amp;D Services</td>
</tr>
<tr>
<td>[...]</td>
<td>Global R&amp;D TL TOX</td>
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<tr>
<td>[...]</td>
<td>Global R&amp;D TL PPX</td>
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<tr>
<td>[...]</td>
<td>Global R&amp;D TL MEM/WMW</td>
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<tr>
<td>[...]</td>
<td>Global R&amp;D CAC/ONX/LEL</td>
</tr>
<tr>
<td>[...]</td>
<td>Global R&amp;D LTL/CUX/SPS</td>
</tr>
<tr>
<td>[...]</td>
<td>Project Manager</td>
</tr>
<tr>
<td>[...]</td>
<td>Breeder APAC Tropical</td>
</tr>
<tr>
<td>[...]</td>
<td>Breeder EMEA I</td>
</tr>
<tr>
<td>[...]</td>
<td>Breeder EMEA II</td>
</tr>
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<td>[...]</td>
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*Additional Assets and Personnel*

64. If there is any asset or personnel which is not covered by this Schedule but which are both used (exclusively or not) in a part of Vegetable Seeds Divestment Business and are necessary for the continued viability and competitiveness of part of the Vegetable Seeds Divestment Business, that asset, personnel, or an adequate substitute will be offered to Proposed Purchasers.
III. Transitional Service Agreements, Reverse Transitional Service Agreements, Lease-back Agreements, and Licensing Agreements Potentially Required to Support the Commitments

A. Broad Acre Divestment Business

65. Bayer and BASF have already agreed the agreements required to support the Broad Acre Divestment Business, and any reverse transitional service agreements or lease-back agreements. Transitional supplies or services will be provided by Bayer at variable cost for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. Any subsequent supplies or services will be based on commercial terms agreed between Bayer and BASF.

66. The following contracts between Bayer and BASF will, or could, last for 12 months or longer, and have been created to ensure business continuity:

(a) a trademark transitional services agreement ([1-3 year] duration);

(b) a software transitional licence agreement ([1-3 year] duration);

(c) a trade secret agreement (long-term);

(d) a supply agreement for Prosper Evergol seed treatment (to BASF from Bayer) used on InVigor OSR seed (renewable);

(e) a seed treatment supply agreement for divested cotton and soy varieties (renewable);

(f) a stewardship agreement ([3-7 year] duration);

(g) a Pat/Bar patent licence agreement (long-term);

(h) CNA Agreement (long-term);

(i) a cotton variety licence for South Africa (long-term);

(j) a germplasm agreement for India (long-term);

(k) an Isoxaflutole supply agreement for the United States, Mexico (HPPD tolerant cotton and soy) and Brazil for a term of [3-7 years] after the first supply of the product. This agreement will automatically renew for [1-3 years] unless either BASF or Bayer terminates this agreement [<12 months] prior to the end of the initial term or, as applicable, of a renewal term. Bayer will supply BASF with the active ingredient at variable cost, in priority over
other purchasers, and in the quantities demanded by BASF for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew these terms of supply for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. This agreement includes access for BASF to Bayer’s registration data in order to make required regulatory filings. Bayer will globally maintain all product registrations for Isoxaflutole. Isoxaflutole does not have patent protection, and to Bayer’s best knowledge a few other manufacturers could supply BASF. This agreement will be put in place in order to allow BASF immediate access to Isoxaflutole from Bayer so that BASF will be able to create formulations of Isoxaflutole on HPPD tolerant cotton and soybean.

B. GA Divestment Business

67. Bayer and BASF have already agreed the agreements required to support the GA Divestment Business, and any reverse transitional service agreements or lease-back agreements. Transitional supplies or services will be provided by Bayer at variable cost for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. Any subsequent supplies or services will be based on commercial terms agreed between Bayer and BASF.

68. The following contracts between Bayer and BASF will, or could, last for 12 months or longer, and have been created to ensure business continuity:

(a) a transition services agreement, with various transition services included. The following services have the potential to last 12 months or longer:

i) Production services. These include knowledge transfer, training, advice and assistance by Bayer experts regarding Process Hazard Analysis. There is also engineering support on plant and design know-how by Bayer experts with respect to capacity expansion projects in Muskegon, Frankfurt, Mobile and Knapsack.

ii) Regulatory services. These include global regulatory services, including an attempt to transfer management of on-going regulatory studies conducted by external service providers to BASF, a transfer of know-how in a training session, information and guidance to BASF regarding addressing new data requirements or questions by regulatory authorities.

16 The relevant trademarks for the Balance GT system (GM traits and herbicide) are licensed exclusively to BASF under a separate agreement.
They also include local regulatory services, which will allow for the inclusion of complaints received in Bayer’s complaint handling system.

iii) **Product development services.** These include global product development services, which will include a know-how transfer, a finalisation of on-going development studies at Bayer’s sites. There will also be primary territories product development services, which will transfer management of on-going development studies which are conducted by external service providers to BASF; if not possible the studies will be continued by Bayer until finalisation.

(b) an Infraserv GmbH ("Infraserv") assignment and assumption agreement for Knapsack. This agreement will position BASF as a customer of Infraserv entirely independently from Bayer. The terms of the agreements are not assessable, as they relate to services performed by Infraserv for the transfer of service agreements, or, as applicable, the split or transfer with modification of service agreements.

(c) an Infraserv assignment and assumption agreement for Frankfurt. This agreement will position BASF as a customer of Infraserv entirely independently from Bayer with respect to the main services performed by Infraserv. The terms of the agreements are not assessable, as they relate to services performed by Infraserv for the transfer of service agreements, or, as applicable, the split or transfer with modification of service agreements.

(d) an Infraserv assignment and assumption agreement for Frankfurt. This agreement will position BASF as a customer of Infraserv entirely independently from Bayer with respect to the other services performed by Infraserv. The terms of the agreements are not assessable, as they relate to services performed by Infraserv for the transfer of service agreements, or, as applicable, the split or transfer with modification of service agreements.

(e) an Infraserv assignment and assumption agreement for Frankfurt. This agreement will position BASF as a customer of Infraserv entirely independently from Bayer with respect to logistics services performed by Infraserv’s logistics affiliate at the Frankfurt site. The terms of the agreements are not assessable, as they relate to services performed by Infraserv for the transfer of service agreements, or, as applicable, the split or transfer with modification of service agreements.

(f) a German real property transfer agreement. This agreement will govern the transfer of leasehold rights to BASF from Bayer in the Frankfurt and Knapsack sites. This will position BASF as a customer of Infraserv entirely independently from Bayer.
(g) a German lease transfer agreement in Knapsack. This agreement will transfer and split the lease agreements with Infraserve Knapsack. This will position BASF as a customer of Infraserv entirely independently from Bayer.

(h) a German lease transfer agreement in Frankfurt. This agreement will transfer and split the lease agreements with Infraserve Frankfurt. This will position BASF as a customer of Infraserv entirely independently from Bayer.

(i) a cooperation agreement in Knapsack. This agreement will be a necessity to ensure the cooperation of BASF and Bayer while they are both present at the Knapsack site. This agreement will be in place until 2037, with no option to renew. There is the option of early termination.

(j) a supply agreement for energy and media in Knapsack. The agreement will be in place until 2022, with an option to extend for another [1-3 years]. The necessity of the supply results from a need to supply chilled water and brine to the glufosinate ammonium production plant.

(k) a supply agreement for raw materials in Knapsack. This agreement will ensure that Bayer will supply HCI to BASF. The proximity allows Bayer to supply to BASF without transportation of truck or railcar. HCI is a commonly used raw material in the industry and BASF can terminate this agreement if it wishes to change its supplier. This supply agreement will be in place until the end of the [1st-3rd year] after Closing. There is the option to renew each [1-3 years], unless the agreement is terminated with [1-3 years'] notice.

(l) a service agreement for takeover of waste gas in Knapsack, with an initial term of [5-10 years]. This agreement will give BASF time to implement their own waste gas treatment facility, as Bayer will retain its waste gas treatment facility. This agreement has an indefinite term with a termination right after the first [5-10 years], and a [1-3 years] notice period.

(m) a lease agreement for Knapsack, for an initial term of [5-10 years]. It will address the one transferred glufosinate ammonium production line surrounded by facilities that Bayer will be retaining. The building cannot be separated from the leasehold agreement with Bayer, therefore the building will be leased by BASF and all of the production lines and the equipment will be owned by BASF. There is a maximum of four [5-10 year] periods of renewal if requested by BASF [1-3 years] before expiry.

(n) a safekeeping agreement for Knapsack. This agreement will be put in place to ensure that BASF has short term business continuation. The glufosinate ammonium business uses <10% of the warehouses, with the remaining >90% used by the retained Bayer business. This agreement is for the term of
[1-3 years] after closing, and allows BASF sufficient time to secure new warehousing facilities. There is no option to renew.

(o) a safekeeping and management agreement for spare parts. This agreement will allow Bayer to store spare parts for an interim period in a warehousing space that will transfer to BASF while Bayer looks for a new facility. This agreement is for [1-3 years] after closing, with no option to renew. This agreement offers a solution to the divestment practicalities.

(p) a service agreement for takeover of condensate. This agreement will be put in place because Bayer has a condensate agreement with the site owner Infraserve. Due to the structure of the piping, the condensate disposal agreement cannot be split. This was identified as the most efficient solution, as otherwise BASF will have to make a significant investment to set up their own connection to Infraserve’s pipelines.

(q) an Indaziflam supply agreement. This agreement will be put in place to enable BASF to develop mixtures of glufosinate ammonium and Indaziflam to enhance the value of the glufosinate ammonium business in a post-patent scenario. A certain dependency of BASF on Bayer cannot be avoided due to the fact that Indaziflam has patent protection until February 2024. The initial term of this agreement is [5-10 supply years], and shall automatically renew for a [1-3 year] renewal term, unless BASF terminates at least [<12 months] prior to the end of the initial term. There is an option for BASF and Bayer to discuss whether they want to extend this further than the renewal term, but in any event the agreement will expire on December 31, 2027. Bayer will supply BASF with the active ingredient at variable cost, in priority over other purchasers, and in the quantities demanded by BASF until the earlier of the expiry of this agreement or until there are at least three generic suppliers of indaziflam able to supply BASF.

(r) an Indaziflam regulatory services agreement. This agreement will be put in place to ensure that Bayer will provide BASF access to Indaziflam registrations and will support BASF in order for BASF to register all the Indaziflam mixtures. Bayer will globally maintain all global product registrations for indaziflam. This dependency is typical for every arrangement between two manufacturers where one develops mixtures with an active ingredient from a different manufacturer. This agreement will continue for the term of the master supply agreement. If/when the master supply agreement is terminated or is not renewed, this agreement will terminate as well.

(s) a formulated products tolling agreement, for a maximum period of [3-7 years]. In most cases product registrations are based on specific
production/formulation sites and the related product specifications. Therefore in order to ensure business continuity Bayer will formulate the finished products at the registered sites until BASF has registered its own formulation site. BASF will be offered the formulation at variable cost, and so will ensure that BASF will be in the same position Bayer is currently in. This agreement gives BASF flexibility to build up its formulation capacities. There are three additional renewal terms of [1-3 years] available.

(t) a reverse formulated product tolling agreement for Regina. In most cases product registrations are based on specific production/formulation sites and the related product specifications. Therefore in order to ensure business continuity BASF will formulate the finished product (this is 30 products for up to seven countries) at the registered site, until Bayer has registered its own formulation site and product registrations. This agreement will ensure that Bayer will be offered the formulation at variable cost. The initial term expires [1-3 years]. There are three additional renewal terms of [1-3 years]. In this agreement BASF is the service provider, so there is no risk of BASF becoming dependent on Bayer.

(u) a form of a supply, formulation and distribution agreement. This agreement will ensure that Bayer will distribute end-use formulated products in the distribution territory (the smaller glufosinate countries, i.e., the total distribution territory amounts to less than 15% of the entire GA Divestment Business) until BASF or an appointed agent (in countries where BASF is not represented with an own organisation) will take over the business directly. This will allow BASF to concentrate on the immediate transfer of business after Closing (as defined in the agreement described in Paragraph (u)) on the top glufosinate ammonium countries. This agreement has an initial term of [3-7 years], but BASF has a termination right with [<12 months]’ notice period at any time.

(v) a term sheet for formulated product distribution agreement for Mexico which will follow the agreement described in Paragraph (u) as a basis for this agreement. This term sheet outlines the terms and conditions for an agreement regarding the exclusive distribution of glufosinate ammonium for agricultural uses in Mexico. This will be for a term of [3-7 years], with BASF able to terminate the agreement with a [<12 months]’ notice period. This agreement will have unlimited number of renewal periods of [1-3 years], unless either Bayer or BASF terminates the agreement by giving [<12 months]’ notice.

(w) an active ingredient production agreement for the manufacturing facility in Frankfurt. As a result of the change in ownership, BASF will be unable to export or sell any of the active ingredient or formulations in Special
Registration Countries (Brazil, Canada, Korea, Taiwan, and certain Distribution Territories) until the change in ownership of the AI production sites from Bayer to BASF is registered, which will take several months. Therefore this agreement will allow Bayer to legitimately claim to be the manufacturer in this interim period in order to ensure regulatory compliance and business continuity. This agreement will terminate at the earlier point in time of either: (i) [1-3 years] (with option for BASF to extend for another [1-3 years] for every Special Registration Country where the change of manufacturer in the registration has not yet been completed); or (ii) completion of change of manufacturer to BASF in all Special Registration Countries.

(x) a binding term sheet of formulated product supply agreements for Special Registration Countries (Brazil, Canada, Korea, and Taiwan).

(y) a patent, software and trade secrets agreement. This is an addendum to the agreement described in Paragraph 68, and regulates the transfer of IP and the grant/grant back of licences. The IP rights licensed under this agreement have a broader scope than the GA Divestment Business. As a result, Bayer will retain ownership and give BASF the right to use them as required. The dependency between BASF and Bayer therefore is that of a transferor/transferee, and licensor/licensee. The agreement expires when the last patent/licence/trade secret has expired or become public knowledge.

(z) an addendum to the agreement described in Paragraph 68 regulating all of the transfer of Trademarks and grants of transitional trademark licences for the GA Divestment Business. The term of the transitional trademark licence is [1-3 years], or the last to expire of the non-transferrable trademarks. The dependency between BASF and Bayer therefore is that of a transferor/transferee, and licensor/licensee.

(aa) a registration data licence agreement. This agreement is a necessity for BASF, as it grants BASF access to Bayer registration data for multiple active ingredients, or active ingredients belonging to a task force. The agreement is in place until 2027, or longer if a study still has data protection in a country.

(bb) a form of cooperation agreement in Frankfurt. This agreement will be put in place to ensure cooperation between BASF and Bayer’s operations at the Frankfurt site. This agreement will be in place until 2037, with early termination possible.

(cc) a term sheet for a formulated product supply agreement for Korea. It sets forth the material terms of an agreement for which Bayer’s subsidiary in the Republic of Korea will exclusively manufacture the glufosinate ammonium
products when BASF supplies the glufosinate ammonium. The term sheet sets out that the initial term would be for a period of [1-3 years], unless earlier terminated upon the transfer of the applicable registrations. There will be three renewal periods of [1-3 years] if the registrations have not been transferred.

(dd) a term sheet for a formulated product supply agreement in Taiwan. It sets forth the material terms of an agreement for which Bayer’s subsidiary in Australia will exclusively manufacture the Transferred Manufactured Products to BASF in Taiwan. The term sheet sets out that the initial term would be for a period of [1-3 years], unless the registrations have been transferred to BASF and they elect to terminate the agreement on [<12 months]’ written notice prior to the end of the [1st-3rd year]. There will be two renewal periods of [1-3 years], subject to BASF’s right to terminate upon the transfer of the registrations.

(ee) a Butyl mixture supply agreement, for a period of [3-7 years] after closing, with the option to renew. BASF will be provided with an incineration outlet for Butyl mixture in Muskegon. This agreement is mutually beneficial, as BASF will avoid the cost of disposal of the by-product by transferring it to Bayer, which Bayer will use in its manufacturing in Bayer’s Kansas City site. The material is provided for free, and so will relieve BASF of the disposal cost of the by-product, while additionally Bayer will save costs as Bayer will not have to purchase the by-product from a different supplier.

(ff) a glufosinate ammonium supply agreement. This agreement will be put in place to ensure BASF will be able to secure the income from glufosinate ammonium sales to Bayer, should Bayer want to re-enter the market. This is for a period of [3-7 years], with the agreement beginning [1-3 years] after closing.

(gg) a glufosinate ammonium agreement for regulatory services, provided in support of the agreement described in Paragraph (ff) above. This agreement will be put in place because it is necessary for BASF to provide access to glufosinate ammonium registrations and support Bayer in order for Bayer to register all solo products and mixtures relating to glufosinate ammonium. This dependency is typical for every arrangement between two manufacturers where one develops mixtures with an active ingredient from a different manufacturer. This agreement is for a period of [3-7 years], with the agreement beginning [1-3 years] after closing.

C. Glyphosate Assets

69. Bayer and BASF are still negotiating the agreements required to support the Glyphosate Assets. Transitional supplies or services will be provided by Bayer at
variable cost for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. Any subsequent supplies or services will be based on commercial terms agreed between Bayer and BASF. At present, it is contemplated that the agreements set out below will, or may, be required. Bayer commits to enter into any such transitional agreements deemed necessary by the Independent Adviser or Monitoring Trustee.

(a) Transition Services Agreement;
(b) Active Ingredient Supply Agreements for glyphosate and the respective mixing partners;
(c) Formulated Product Tolling Agreement or Supply Agreement (depending on the agreed transitional structure);
(d) Trademark and Trade Secret Agreement;
(e) Registration Data Licence Agreement; and
(f) An [active ingredient] supply agreement to enable BASF to sell mixtures of glyphosate and [active ingredient] for use as agricultural herbicides in Portugal and Spain.

70. There are currently no details available on the substance of these agreements.

D. Vegetable Seeds Divestment Business

71. Bayer commits to provide the Purchaser of the Vegetable Seeds Divestment Business, at its option, with IT support services and any other services necessary to ensure a smooth transition of the Vegetable Seeds Divestment Business to the Purchaser.

E. Seed Treatment Assets

72. Bayer and BASF are negotiating the agreements required to support the Seed Treatment Assets. Transitional supplies or services will be provided by Bayer at variable cost for an initial period of [1-3 years] after the BASF Closing. BASF will have the option to renew the term for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee. Any subsequent supplies or services will be based on commercial terms agreed between Bayer and BASF. At present, it is contemplated that the agreements set out below will, or may, be required. Bayer commits to enter into any such transitional agreements deemed necessary by the Independent Adviser or Monitoring Trustee.
Transitional services

73. The Parties currently contemplate the following post-sale transitional services with the ultimate purchaser, though this is subject to further negotiation:

Regulatory Registrations

74. Bayer will assist BASF in applying for BASF’s product registrations to the extent necessary.

Product Testing/Ongoing Regulatory Studies

75. In addition to transferring data and records to BASF, Bayer will support BASF with a combination of completing advanced ongoing studies, completing trials planned for the current growing season, and/or transferring the lab analysis portion of recently initiated studies to BASF for both product testing purposes and regulatory purposes. The extent of support will depend on the level of progress in the respective studies and BASF’s capabilities. Bayer will also assist BASF in applying for Experimental Use Permits (EUPs) in required jurisdictions. Bayer will provide support in transferring its Material Transfer Agreements (MTAs) with third-parties and accompanying research data. Finally, in completing applicable ongoing studies, Bayer will also provide consulting support to BASF to supplement its understanding of the formulations of products produced through the use of the Seed Treatment Assets in development for row crops, fruit, and vegetables, as well as its understanding of formulation compatibility, application, dust-off, stability, plantability, and seed safety. This support is expected to continue for up to [1-3 years].

Production/Application/Supply Chain Processes

76. Bayer will provide consulting support to BASF in developing BASF’s plans to upgrade its seed processing facilities for upstream seed treatment application (should BASF opt to become an upstream player) and will also provide advice on manufacturing site readiness, maintenance of quality controls, and development of treatment application protocols. Bayer will also support BASF in developing its understanding of the application methodology and chemistry of the products produced through the use of the Seed Treatment Assets and will provide technical and troubleshooting support while BASF is selling to downstream customers and retailers. In addition, Bayer will, at the request of BASF, for [1-3 years], supply toll application services of the products produced through the use of the Seed Treatment Assets to BASF at variable cost. The aforementioned support is expected to continue for [1-3 years]. In addition, Bayer will assist BASF in replicating tolling, distribution, procurement, purchasing, transportation, warehousing, and invoicing processes. It will also assist BASF in forecasting raw materials requirements for production of the products produced through the use of the Seed Treatment Assets and understanding technical reports, production data, and related production processes for the products produced through the use of the Seed Treatment Assets. This support is expected to
continue for [1-3 years]. BASF will have the option to renew these terms of supply for a further period of [1-3 years], for a total of up to [3-9 additional years] after the BASF Closing, on each occasion subject to the Commission’s approval following consultation with the Monitoring Trustee.

Marketing

77. Bayer will provide all transfer approvals and complete any online procedures set forth by the registrar of domain name registrations. It is anticipated that such support will continue for up to [<12 months].

Intellectual Property

78. Bayer will provide documents necessary to assign patents/patent applications and trademarks/trademark applications to BASF and will support BASF in responding to inquiries/prosecution of patents and trademarks related to the products produced through the use of the Seed Treatment Assets. It will also support the transition of any pending invention disclosures. It is anticipated that such support will continue for earlier of [<12 months] or until assignments are complete.

* * *

Annex RC.1 […]
Annex RC.2 […]

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