

# CEPOS INSILICO GMBH SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (the “SLA”) is entered into as of the Effective Date (as defined on the signature page of this SLA), by and between **CEPOS INSILICO GMBH, WALDSTRASSE 15, 90587 OBERMICHELBAACH, GERMANY** (“Cepos InSilico”) and the **Licensee**. The Parties hereto, intending to be legally bound, agree as follows:

## Section 1—Definitions

The following words, terms and phrases shall, in this SLA and its Exhibits, have the following meanings, which shall apply equally to both the singular and plural forms of the terms defined. As used in this SLA and its Exhibits, the word “including” means “including but not limited to.”

- 1.1 **“Derivative Work”** means a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which such pre-existing works may be recast, transformed or adapted, and that, if prepared without authorization of the owner of the copyright in such pre-existing work, would constitute a copyright infringement unless permitted by applicable law. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a pre-existing work. Permitted Modifications shall not be considered Derivative Works of a Licensed Software.
- 1.2 **“Designated Site”** means the Licensee business structure (such as one or more geographic locations, one or more organization units such as a department or lab, or one or more Licensee projects) specified on a Product Order.
- 1.3 **“Documentation”** means user manuals and other written materials, as they may be amended from time to time whether in electronic, hard copy or other format, relating to a Licensed Product provided to the Licensee.
- 1.4 **“Intellectual Property Rights”** means all vested, contingent and future intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation), copyrights, trademarks, service marks, trade secrets, trade names, patents, moral rights, domain names, design rights, know-how, trade secrets, inventions, formulas, schematics, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world whether now known or in the future created.
- 1.5 **“License Activation Date”** means the date upon which the license(s) for the Licensed Product(s) listed on a Product Order shall commence.
- 1.6 **“Licensed Content”** means a Licensed Product that is an information content product.
- 1.7 **“Licensed Product”** means Cepos InSilico’s proprietary product(s) as described on one or more Product Orders that shall, where applicable, include the Documentation, Licensed Software, Licensed Content, Derivative Work and all New Releases.
- 1.8 **“Licensed Software”** means a Licensed Product that is a software product in object-code form only.
- 1.9 **“Modification Technology”** means either a Licensed Software or technology included with a Licensed Software that when properly licensed from Cepos InSilico may be used to create Permitted Modifications. Modification Technology shall include any Licensed Software application, programming interface (API) and software development kit (SDK) that has been made generally available by Cepos InSilico for customer use. Other Modification Technologies, if any, shall be defined in the Product Orders.
- 1.10 **“New Release”** means a release of a Licensed Product or other Cepos InSilico product that occurs from time to time at Cepos InSilico’s discretion.

- 1.11 **“Obtain”** means to receive either (i) proactively by downloading from Cepos InSilico or an authorized third-party’s website, or (ii) reactively by receiving a physical distribution (such as a CD-ROM) from Cepos InSilico or an authorized Cepos InSilico agent.
- 1.12 **“Party”** means either Cepos InSilico or Licensee and **“Parties”** shall mean both Cepos InSilico and Licensee.
- 1.13 **“Payment Period”** means a specific period of time (e.g., one calendar year) during a Product Order Term (as defined in Section 2.1) for which the Licensee shall make a specific fee payment to Cepos InSilico (in accordance with the terms specified in a Product Order).
- 1.14 **“Permitted Modifications”** means the extension of a Licensed Software’s functionality or content by use of Modification Technology.
- 1.15 **“Product Order”** means a purchase order submitted by Licensee, in substantially the form attached hereto as Exhibit A, for the purpose of ordering one or more licenses to one or more Licensed Product.
- 1.16 **“Release Issue Date”** means the date on which Cepos InSilico publicly makes a New Release of a Licensed Product available for download from its website or through other means.
- 1.17 **“Third-Party Applications”** means software, programs, algorithms and data that are (i) included with, or (ii) not included with but utilised by Licensed Products and are created, developed, and/or owned by a party other than Cepos InSilico.

## Section 2—License Grant, Restrictions On Use, Support and Licensed Content Use

- 2.1 **License Grant.** Subject to the terms and conditions of this SLA, (including but not limited to Licensee’s obligation to pay the fees set forth in Section 5 below), Cepos InSilico hereby grants to Licensee a non-exclusive, non-sublicensable, non-transferable license (or sub-license as the case may be) to (i) install, access, and use the Licensed Product specified on a Product Order accepted by Cepos InSilico hereunder, at the Designated Site, for Licensee’s own internal business or research operations, during the term specified in the Product Order (the **“Product Order Term”**), and in accordance with the Documentation and the quantity, type and other limitations set forth in the Product Order; (ii) use the Documentation solely as necessary to use and support the Licensed Product in accordance with the license granted in Section 2.1(i) above; (iii) to make a reasonable number of copies of the Licensed Product solely for backup, archival, or security purposes, provided that Licensee reproduces all titles, trademarks, copyright, proprietary rights and restricted rights notices in all copies and maintains accurate and up-to-date records of the number and location of all such copies of the Licensed Product; and (iv) if properly licensed from Cepos InSilico, use Modification Technology to make Permitted Modifications to Licensed Software in accordance with the Documentation associated with the Modification Technology.
- 2.2 **General Restrictions.** Cepos InSilico and its licensors reserve all rights in and to the Licensed Products not expressly granted to Licensee in this SLA. Licensee agrees not to (i) modify, adapt, alter, translate, or create Derivative Works from the Licensed Product (Licensee may, however, make Permitted Modifications if Licensee has a valid license for Modification Technology); (ii) sublicense, sell, lease, rent, loan or otherwise transfer the Licensed Product (or any part thereof) to any third party; (iii) use the Licensed Product for any third-party training, commercial time-sharing, or service bureau use; (iv) remove, alter, or obscure any proprietary notices (including copyright notices) of Cepos InSilico or its licensors on the Licensed Product or the Documentation; or (v) otherwise use or copy the Licensed Product except as expressly allowed under Section 2.1. Any attempt to act in violation of this Section 2 shall constitute a breach of this SLA. No rights or licenses shall be implied by estoppel or otherwise, other than the rights and licenses expressly granted to Licensee in this SLA.
- 2.3 **Reverse Engineering.** For Licensed Software, Licensee additionally agrees (i) subject to Section 2.3 (ii) below, not to disassemble, reverse engineer or decompile or otherwise attempt to derive the

source code from any Licensed Software without Cepos InSilico's prior written consent (ii) subject to Section 2.3 (iii) below, in the case of reverse analysis where permitted by applicable law, Licensee may incidentally decompile the Licensed Software only if it is essential to do so in order to achieve interoperability of the Licensed Software with another software program or hardware ("**Permitted Purpose**") and provided the information obtained by the Licensee during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without Cepos InSilico's prior written consent and is not used to create any software substantially similar to the Licensed Software nor used in any manner that would be restricted by copyright or other such proprietary rights (iii) notwithstanding Section 2.3 (ii) above, Licensee undertakes to first consult Cepos InSilico regarding any data Licensee requires in order to achieve interoperability or to deduce underlying ideas and principles so that Cepos InSilico may consider making the same available to Licensee (without the Licensee having to rely on Section 2.3 (ii) above).

- 2.4 No License to Third-Party Applications.** For those Third-Party Applications that are not provided with the Licensed Product, Licensee shall be solely responsible, at its expense, for acquiring all licenses to, and maintenance and support services for, all such Third-Party Applications from such third parties.
- 2.5 Support.** If technical support and maintenance is provided for Licensed Software (as noted on the associated Product Order) and Licensee has fulfilled its obligation to pay the fees set forth in Section 5 below, then Cepos InSilico shall provide technical support and maintenance in respect of such Licensed Software in accordance with this SLA and the specific terms and conditions set out in Exhibit B attached hereto.
- 2.6 Licensed Content Use.** Where the Licensee uses a Licensed Content product, the specific terms and conditions set out in Exhibit C attached hereto shall apply to such use in addition to this SLA.
- 2.7 Terms for License Provision.** Subject to the terms and conditions of this SLA, and where the Licensee has been granted a License to use Cepos InSilico License Product, the Licensee agrees to the terms and conditions set out in Exhibit D. The granting of the Software License, as defined in the Product Order in Exhibit A, is dependent on acceptance of, and compliance with, Exhibit D.

### **Section 3—Ownership**

- 3.1 Licensed Product Intellectual Property Rights.** Cepos InSilico or Cepos InSilico's licensors shall retain all Intellectual Property Rights, title, interest and associated goodwill in and to the Licensed Products and Documentation including all enhancements, updates, improvements and Derivative Works to any of the foregoing (collectively "**Changes**") made by Cepos InSilico.
- 3.2 Permitted Modifications Proprietary Rights.** Unless otherwise agreed to in writing by the Parties, during the term of this SLA, Licensee shall retain all Intellectual Property Rights in and to all Permitted Modifications made exclusively by Licensee using Modification Technology.
- 3.3 Licensed Content Ownership.** The specific provisions relating to the ownership of Licensed Content are set out in Exhibit C.

### **Section 4—Ordering, Delivery, Installation, And Acceptance**

- 4.1 Ordering.** Licensee may submit Product Orders to Cepos InSilico during the term of this SLA. No Product Order will be binding upon Cepos InSilico until accepted by Cepos InSilico in writing. Each Product Order submitted by Licensee and accepted by Cepos InSilico hereunder is incorporated herein by reference and shall be subject to the terms and conditions set forth in this SLA and its Exhibits. In the event that any Product Order is accompanied or substituted by additional conflicting terms, the terms in this SLA and the Exhibits shall always prevail over any such conflicting terms unless otherwise expressly agreed to by the Parties in writing in the Product Order, with specific reference to the section(s) of the SLA to be amended.

- 4.2 Delivery.** Upon Cepos InSilico's acceptance of a Product Order, Licensee may Obtain the Licensed Product specified therein and the Documentation related thereto. Where the Licensee Obtains Licensed Software, it shall consist of the object code of the Licensed Software in machine-readable form only. Risk in any media that contains the Licensed Software shall pass to the Licensee on delivery.
- 4.3 Installation.** Licensee will be responsible for installing the Licensed Product on its computers unless stated differently in a Product Order or otherwise agreed to in writing by the Parties.
- 4.4 Acceptance.** The Licensed Product (including all New Releases) will be deemed accepted when initially Obtained.

## **Section 5—Fees And Payment**

- 5.1 License Fees.** Licensee shall pay Cepos InSilico the license fee(s) set forth in each Product Order accepted by Cepos InSilico hereunder, in accordance with the payment terms specified therein. Unless stated differently in a Product Order, all amounts due to Cepos InSilico shall be paid within thirty (30) days after the first day of each Payment Period.
- 5.2 Taxes and Other Charges.** All fees due hereunder exclude all applicable Value Added, sales, use, and other taxes and all applicable export and import fees, customs duties and similar charges, and Licensee will be responsible for payment of all such taxes (other than taxes based on Cepos InSilico's income), fees, duties, and charges, and any related penalties and interest, arising from the payment of the fees hereunder or the delivery or license of the Licensed Product to Licensee. Licensee will make all payments to Cepos InSilico hereunder free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of the fees to Cepos InSilico will be Licensee's sole responsibility, and Licensee will provide Cepos InSilico with official receipts issued by the appropriate taxing authority, or such other evidence as Cepos InSilico may reasonably request, to establish that such taxes have been paid. Licensee shall indemnify and hold Cepos InSilico harmless from any and all such taxes and any actions brought against Cepos InSilico by any taxing authority with respect to such taxes.
- 5.3 Outstanding Balances.** Outstanding balances shall accrue interest at a rate of two percent (2%) above the base rate of Barclays Bank plc (or such other London Clearing Bank as Cepos InSilico may nominate), from the due date until paid. If Licensee's address on the signature page of this SLA indicates that the Licensee is located in North America, then outstanding balances shall accrue interest at a rate of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. Licensee may not, for any reason, set-off any amounts against any obligation to pay fees to Cepos InSilico pursuant to this SLA.
- 5.4 Currency.** All fees and other amounts payable to Cepos InSilico hereunder are denominated in the currency shown on the Product Order. If no such currency is mentioned, the default currency shall be Great Britain Pounds.

## **Section 6—Term And Termination**

- 6.1 Term.** Unless otherwise terminated pursuant to Sections 6.2, 6.3, 6.4, or 6.5 the term of this SLA will begin on the Effective Date and will continue until the term of every Product Order incorporated into this SLA pursuant to Section 4.1 above has expired.
- 6.2 Termination by Cepos InSilico for Breach by Licensee.** If Licensee breaches a material provision of this SLA and does not cure the breach within thirty (30) days after receiving written notice thereof from Cepos InSilico, Cepos InSilico may, at its option (i) terminate this SLA by giving written notice to Licensee and all of the active Product Orders incorporated herein shall be terminated, or (ii) terminate one or more specific Product Orders if the breach relates to the specific Product Order(s). Upon any termination pursuant to this Section 6.2 (of all Product Orders or one or more Product Orders as applicable), Licensee shall provide immediate payment in full for all unpaid fees for every Payment Period specified on all terminated Product Orders.

- 6.3 Termination by Licensee for Breach by Cepos InSilico.** If Cepos InSilico breaches a material provision of this SLA and does not cure the breach within thirty (30) days after receiving written notice thereof from Licensee, Licensee may, at its option (i) terminate this SLA by giving written notice to Cepos InSilico and all of the active Product Orders incorporated herein shall be terminated, or (ii) terminate one or more specific Product Orders if the breach relates to the specific Product Order(s). Upon any termination pursuant to this Section 6.3 (of all Product Orders or one or more Product Orders as applicable), Cepos InSilico shall refund to Licensee a prorated (on a monthly basis) portion of the current Payment Period fees actually paid to Cepos InSilico on all terminated Product Orders.
- 6.4 Termination by Licensee for Convenience.** Licensee may terminate this SLA (and all active Product Orders therein) or any specific Product Order incorporated into this SLA pursuant to Section 4.1 at any time by: (i) providing written notice to Cepos InSilico, and (ii) providing immediate payment in full for all unpaid fees for every Payment Period specified on all terminated Product Orders (in the case of terminating this SLA) or the specific Product Order (in the case of terminating a specific Product Order). For additional clarity, all unpaid fees for each Payment Period of each terminated Product Order shall become immediately due and payable by the Licensee in full where Licensee elects to terminate prematurely such Product Orders.
- 6.5 Termination for Insolvency.** Either Party may terminate this SLA immediately by notice to the other Party if the other Party ceases to carry on its business or files any petition under the insolvency laws of any nation, jurisdiction, county or place, or suffers a receiver or trustee to be appointed for its business or property, or is adjudicated bankrupt or insolvent.
- 6.6 Effects of Termination.** Upon termination or expiration of this SLA for any reason, (i) either Party shall pay to the other Party within thirty (30) days, without further demand, all fees and other amounts then due under this SLA; (ii) each Party shall immediately return to the other Party all Confidential Information belonging to the other Party; and (iii) all licensed rights granted in this SLA will immediately cease to exist and Licensee must promptly discontinue all use of the Licensed Products, erase all copies of the Licensed Products from Licensee's computers, and return to Cepos InSilico or, at Cepos InSilico's option, destroy all copies of the Licensed Products and Documentation on tangible media in Licensee's possession or control and certify in writing to Cepos InSilico that it has fully complied with these requirements.
- 6.7 Survival.** Any termination of this SLA (or any specific Product Order) howsoever occasioned shall not affect any accrued rights or liabilities of either Party nor shall it effect the coming into force or the continuance in force of any provision hereof that is expressly or by implication intended to come onto or continue in force on or after such termination.

## Section 7—Confidential Information

- 7.1 Obligations.** Each Party acknowledges and agrees that the Licensed Products (including the Documentation, Derivative Work, computer programs, code, algorithms, technology, designs, interfaces, technical drawings and all related Intellectual Property Rights), names and expertise of employees, customer lists, supplier information, information regarding distribution channels, forecasts, strategies, and other technical, business, financial and product development plans that may be provided to either Party hereunder constitute the proprietary confidential information of the disclosing Party ("**Confidential Information**"), and that the other Party's protection thereof is essential to this SLA. During the term of this SLA each Party shall use the other Party's Confidential Information only in accordance with this SLA. Also, during the term of this SLA, and for a period of three (3) years thereafter, each Party shall retain all such Confidential Information in strict confidence and shall not disclose to any third party (except as authorized by this SLA) such Confidential Information or any portion thereof, without the other Party's express written consent. Notwithstanding the foregoing, either Party may disclose information that is required to be disclosed by law, by a valid order of a court or by order or regulation of a governmental agency, or in the course of litigation; provided, however, that prior to any such compelled disclosure, the receiving Party will (i) assert the confidential nature of the Confidential Information against the third party seeking disclosure and (ii) cooperate fully with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or

use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving Party will be entitled to disclose the Confidential Information, but only as and to the extent necessary to legally comply with such compelled disclosure.

**7.2 Exceptions.** The receiving Party shall be relieved of this obligation of confidentiality with respect to any Confidential Information, or portion thereof that:

(i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving Party;

(ii) the receiving Party can prove was known to receiving Party, without restriction or other obligation of confidentiality, at the time of disclosure as shown by the files of the receiving Party in existence at the time of disclosure;

(iii) the receiving Party can prove was independently developed by it without any use of disclosing Party's Confidential Information and by employees or other agents of the receiving Party who have not had access to any of disclosing Party's Confidential Information; or

(iv) becomes known to the receiving Party, without restriction, from a source other than the disclosing Party or a third party who obtained such information directly or indirectly from the disclosing Party, without breach of this SLA by the receiving Party and otherwise not in violation of the disclosing Party's rights.

## **Section 8—Limited Warranty; Disclaimer; Limitation Of Liability**

**8.1 Licensed Software Warranty.** Subject to Sections 8.2 to 8.5 below, for a period of ninety (90) days after Licensee first Obtains a Licensed Software (the "**Software Warranty Period**"), Cepos InSilico warrants that the Licensed Software, when used as permitted under this SLA and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system platform supported by Cepos InSilico), will operate substantially as described in the Documentation. Cepos InSilico will, at its own expense and as its sole obligation (and Licensee's sole and exclusive remedy for any breach of this warranty), use commercially reasonable efforts to correct any reproducible error in the Licensed Software reported to Cepos InSilico by Licensee in writing during the Software Warranty Period. Any such error correction provided to Licensee will not extend the original Software Warranty Period.

**8.2 Misuse of Licensed Software.** The limited warranty set out in Sections 8.1 above shall not cover any defects or errors: (i) caused by or related to misuse, misapplication or any modification of the Licensed Software except for Permitted Modifications; or (ii) use on a computer hardware and operating system platform not supported by Cepos InSilico; or (iii) any use of any release of the Licensed Software that is no longer supported by Cepos InSilico (as defined in Exhibit B).

**8.3 No Warranty for Third-Party Applications or Misuse of Licensed Software.** Cepos InSilico makes no representations or warranties to Licensee with respect to any Third-Party Applications.

**8.4 DISCLAIMER.** EXCEPT FOR THE SOFTWARE WARRANTY IN SECTION 8.2 AND AS PERMITTED BY APPLICABLE LAW, THE LICENSED PRODUCT (INCLUDING THE DOCUMENTATION, LICENSED SOFTWARE, LICENSED CONTENT AND ANY THIRD-PARTY APPLICATIONS) ARE PROVIDED "AS IS," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND CEPOS INSILICO HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATING TO THE LICENSED PRODUCT AND THIRD-PARTY APPLICATIONS, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING. CEPOS INSILICO DOES NOT REPRESENT OR WARRANT THAT THE LICENSED PRODUCT AND THIRD-PARTY APPLICATIONS WILL BE UNINTERRUPTED OR ERROR-FREE OR MAKE ANY OTHER REPRESENTATION OR WARRANTY REGARDING THE USE, OR THE

RESULTS OF THE USE, OF THE LICENSED PRODUCT AND THIRD-PARTY APPLICATIONS IN TERMS OF ACCURACY, CORRECTNESS, RELIABILITY, OR OTHERWISE.

**8.5 LIMITATION OF LIABILITY.** SAVE IN RESPECT OF CLAIMS FOR DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S NEGLIGENCE, OR BREACH OR NON-OBSERVANCE OF THE PROVISIONS SET OUT IN SECTION 7 (CONFIDENTIAL INFORMATION), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATING TO THIS SLA OR THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS OR THIRD-PARTY APPLICATIONS INCLUDING BUT NOT LIMITED TO ANY LOSS OF DATA OR USE, LOST PROFITS, INTERRUPTION OF BUSINESS, LOSS OF ANTICIPATED SAVINGS NOT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE OR ACTUALLY FORESEEN. EXCEPT AS IN THE CASE OF PERSONAL INJURY OR DEATH OR BREACH, OR NON-OBSERVANCE OF THE PROVISIONS SET OUT IN SECTION 7 (CONFIDENTIAL INFORMATION), EITHER PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY UNDER THIS SLA FOR ANY CAUSE WHATSOEVER (WHETHER IN THE FORM OF THE ADDITIONAL COST OF REMEDIAL PRODUCTS OR SERVICES OR OTHERWISE) WILL BE FOR DIRECT COSTS AND DAMAGES ONLY AND WILL BE LIMITED TO THE GREATER OF:

(I) THE SUM FOR WHICH THE DEFAULTING PARTY CARRIES INSURANCE COVER (SUBJECT TO THE DEFAULTING PARTY ACTUALLY RECOVERING SUCH SUM FROM THE INSURER); OR

(II) A SUM EQUIVALENT TO THE TOTAL FEES PAID TO CEPOS INSILICO FOR THE PRODUCTS OR SERVICES SUPPLIED UNDER THIS SLA.

THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS CONTAINED IN THIS SECTION 8 ARE REASONABLE IN LIGHT OF ALL THE CIRCUMSTANCES. ALL LIABILITY THAT IS NOT EXPRESSLY ASSUMED IN THIS SLA IS HEREBY EXCLUDED. THESE LIMITATIONS WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER UNDER STATUTE, IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER FORM OF ACTION. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT LIABILITY FOR FRAUDULENT MISREPRESENTATION.

## **Section 9—Indemnification for Third-party Claims**

**9.1 Indemnification by Cepos InSilico.** Cepos InSilico will defend at its own expense any action against Licensee brought by a third party to the extent that the action is based upon a claim that the Licensed Software infringes upon or misappropriates the third-party's Intellectual Property Rights, and Cepos InSilico will pay those reasonable costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those reasonable costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Licensee notifying Cepos InSilico promptly in writing of such action, Licensee giving Cepos InSilico sole control of the defense thereof and any related settlement negotiations, and Licensee cooperating and, at Cepos InSilico's request and expense, assisting in such defense. If the Licensed Software becomes, or in Cepos InSilico's opinion is likely to become, the subject of an infringement claim, then the Parties specifically agree that Cepos InSilico may at its option and expense, either (i) procure for Licensee the right to continue using the Licensed Software, (ii) replace or modify the Licensed Software so that it becomes non-infringing, or (iii) if (i) and (ii) are not commercially reasonable, immediately recall the Licensed Software that is subject to the infringement and give Licensee a refund of a prorated (on a monthly basis) portion of the current Payment Period fees (as specified in the associated Product Orders) actually paid to Cepos InSilico pursuant to this SLA for the Licensed Software that is subject to the infringement.

**9.2 Exceptions to Indemnification.** Cepos InSilico will have no obligation under this Section 9 or otherwise with respect to any infringement claim based upon (i) any use of any Third-Party Application, (ii) any use of the Licensed Software not in accordance with this SLA, (iii) any use of the Licensed Software in combination with other products, equipment, software, or data not

supplied by Cepos InSilico, (iv) any use of any release of the Licensed Software other than the most current release available, or (v) any modification of the Licensed Software except for Permitted Modifications. THIS SECTION 9 STATES CEPOS INSILICO'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

- 9.3 Indemnification by Licensee.** Licensee agrees to indemnify, defend and hold Cepos InSilico harmless from and against all losses, liabilities, damages, reasonable costs and expenses (including reasonable attorneys' fees) arising from (i) any occurrence of any of the conditions set forth in Section 9.2; and (ii) all violations, breaches, infringements, or other infractions of Licensee's license or other contract(s) with any other third-party with whom Licensee has or should have a license. Cepos InSilico shall notify Licensee promptly in writing of any such action, shall give Licensee sole control of the defense thereof and any related settlement negotiations (except that Licensee shall not enter into any settlement that does not unconditionally release Cepos InSilico, without Cepos InSilico's prior written consent), and shall cooperate and, at Licensee's request and expense, assist in such defense.

## Section 10—Mutual References & Attribution

- 10.1 Attribution.** Should Licensee publish papers regarding its research and such papers utilise results generated in whole or in part using any of the Licensed Products, each such paper shall include appropriate attribution to Cepos InSilico and the Licensed Products in a form similar to: "Results presented in this paper were created using Cepos InSilico GmbH's ParaSurf Product."

## Section 11—General

- 11.1 Compliance with Laws.** Licensee will comply with all applicable export and import control laws and regulations in its use of the Licensed Products and, in particular, Licensee will not export or re-export the Licensed Products without all required government licenses. Licensee will defend, indemnify, and hold harmless Cepos InSilico from and against any violation of such laws or regulations by Licensee or any of its agents, officers, directors, or employees.
- 11.2 Inspections.** Licensee will permit Cepos InSilico or its representatives to review Licensee's relevant records and inspect Licensee's facilities to ensure compliance with this SLA. Cepos InSilico will give Licensee at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Licensee's normal operations. Cepos InSilico shall be permitted to conduct no more than two (2) inspections during any one calendar year.
- 11.3 Assignments.** Unless specifically stated in this SLA or its Exhibits, neither Party may assign or transfer any of its rights or obligations under this SLA without the prior written consent of the other Party, provided, however, that either Party may assign or transfer its rights and obligations under this SLA without such consent to any (a) Affiliate or (b) to any successor by way of merger, acquisition or sale or transfer of all or substantially all of its business or assets to which this SLA relates, in a manner such that the assignee or transferee shall assume and be responsible for the performance and observance of all of such Party's duties and obligations (and shall give all such warranties and indemnities as such party) hereunder. This SLA will be binding upon and inure to the benefit of all permitted successors and assigns of the Parties hereunder. The name of each Party appearing herein will be deemed to include the names of such Party's successors and assigns to the extent necessary to carry out the intent of this SLA. For the purposes of this Section 11.3, an "**Affiliate**" means, in relation to a Party to this SLA, a subsidiary or holding company of that Party, or any subsidiary of that holding company.
- 11.4 Notices.** All notices between the Parties shall be in writing and shall be deemed to have been given if personally delivered, sent by registered post, delivered by an overnight express service, or faxed. Notices that are sent or dispatched per this Section 11.4 shall be deemed received by the addressee (i) in the case of personal delivery, at the time of such delivery, and (ii) in the case of communication by registered post, on the second business day after dispatch in the case of delivery from and to an address in the United Kingdom and five business days after dispatch in any other case, and (iii) in the case of overnight express service, on the date on which the



overnight carrier confirms receipt by addressee, and (iv) in the case of fax transmission, on the first business day after dispatch.

- 11.5 Waiver.** Any waiver or failure to enforce any provision of this SLA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.6 Severability.** If any provision of this SLA is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.
- 11.7 Headings and interpretation.** The Section headings of this SLA are for convenience and reference only and are not to be used in interpreting this SLA. References to numbered sections and Exhibits are references to the relevant section or Exhibit in this SLA. Unless otherwise expressly stated, references to numbered sections contained in any Exhibit relate to the numbered sections of that Exhibit.
- 11.8 Force Majeure.** Neither Party shall be liable for any delays in the performance of any of its obligations hereunder (other than payment obligations) due to causes beyond its reasonable control, including but not limited to, fire, strike, war, riots, acts of any civil or military authority, judicial action, acts of God, or other casualty or natural calamity. In the event of such a force majeure event, the Party suffering the force majeure event shall use reasonable efforts to cure or overcome the same and resume performance of its obligations hereunder.
- 11.9 No Third Party Rights.** The Parties confirm their intention not to confer any rights on third parties by virtue of this SLA.
- 11.10 Modifications to Agreement.** This SLA and any Product Orders accepted hereunder may only amended or modified by mutual written agreement of the Parties.
- 11.11 Partnership or Agency.** This SLA shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this SLA.
- 11.12 Non-solicitation.** Each Party covenants with the other Party that it shall not either during the term of this SLA or within a period of six (6) months thereafter directly or indirectly entice away or endeavor to entice away from the other Party any person who has during the previous twelve (12) months been employed or whose employment has been financed by that Party in connection with this SLA.
- 11.13 Counterparts.** This SLA may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. Each of the Parties hereto may execute and deliver this SLA by signing any such counterpart and delivering same to the other Party by means of facsimile or similar electronic transmission and the communication by such means shall be legal and binding on all Parties hereto.
- 11.14 Entire Agreement.** This SLA, the Exhibits incorporated by reference hereto, and Product Orders incorporated herein and any preceding non-disclosure letter or confidentiality agreement (insofar as it contains no conflict with this SLA) constitute the entire agreement between the Parties regarding the subject hereof and supersede all prior or contemporaneous agreements, understandings, and communications, whether written or oral. In the event that any Product Order or Exhibit hereunder contains terms or conditions in addition to or inconsistent with the terms of this SLA, the terms of this SLA shall prevail.

## **Section 12—Governing Law & Dispute Resolution Procedure**

- 12.1 Governing Law.** This SLA and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with German Law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:

(i) Cepos InSilico shall have the right to sue to recover its fees in any jurisdiction in which the Licensee is operating or has assets, and

(ii) Either Party shall have the right to sue for breach of its Confidential Information (including its Intellectual Property Rights) whether in connection with this SLA or otherwise in any country where it believes that infringement or a breach of this SLA relating to its Confidential Information might be taking place.

For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be Germany.

**12.2 Injunctive Relief.** Each Party recognizes that the other Party's business relies upon the protection of its Confidential Information and that in the event of a breach or threatened breach of its Confidential Information, the other Party will be caused irreparable damage and such other Party may therefore be entitled to seek injunctive or other equitable relief in order to prevent a breach or threatened breach of its Confidential Information.

**12.3 Inter-company Dispute Resolution Procedure.** With respect to all other disputes that are not related to Confidential Information pursuant to Section 12.1 and 12.2 above and its special rules the following procedures shall apply. Where there is a dispute the aggrieved Party shall notify the other Party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other Party. Appropriate, authorized representatives from each of the Parties shall meet in person or communicate by telephone within five (5) business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective Parties. The authorized representatives shall produce a report about the nature of the dispute in detail to their respective executive management and if no agreement is reached on corrective action, then a senior executive of each Party (each with full authority to settle the dispute on behalf of its respective Party) shall meet in person or by telephone, to facilitate an agreement within five (5) business days of a written notice by one to the other. If the dispute cannot be resolved at the senior executive level within a further five (5) business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either Party may seek its legal remedies as provided below in Sections 12.4 and 12.5.

**12.4 Mediation.** If the Parties cannot resolve a dispute in accordance with the procedure in Section 12.3 above, then if both Parties agree in writing, they shall with the assistance of the Centre for Effective Dispute Solution, seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both Parties before pursuing any other remedies available to them.

All negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for either Party's right to seek interlocutory relief pursuant to Section 12.1 above, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until twenty-one (21) days after the Parties have failed to reach a binding settlement by mediation. If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the senior executive of each Party (each with full authority to settle the dispute on behalf of its respective Party), shall remain binding on the Parties.

If either Party fails or refuses to agree to or participate in the ADR procedure or if the dispute or difference is not resolved to the satisfaction of both Parties within sixty (60) days after it has arisen, the matter shall be settled in accordance with the procedure below.

**12.5 Arbitration.** If the Parties cannot resolve the dispute by the procedure set out above, the dispute shall be referred to, and finally be resolved by, arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Section. It is agreed that:

- the tribunal shall consist of one arbitrator; and
- the place of the arbitration shall be Erlangen; and

- the language of the arbitration shall be English.

**12.6 Payments During Dispute.** While the dispute resolution procedure above is in progress and either Party has an obligation to make a payment to the other Party, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under this SLA. Following resolution of the dispute, whether by mediation or arbitration, the sum held in such account shall be payable as determined in accordance with the mediation or arbitration, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.

**12.7 Legal Costs.** The Parties shall bear their own legal costs associated with mediation; however, the non-prevailing Party shall bear both Parties full legal costs and expenses of arbitration. Where there is no clear prevailing Party, the Parties shall bear the legal costs and expenses of arbitration in accordance with the decision of the arbitrator.