Software License Agreement for Academic/Nonprofit Use

Definitions

"**think-cell Software**" refers to think-cell Software GmbH, Chausseestr. 8/E, 10115 Berlin, Germany, a private limited liability company incorporated under the laws of the Federal Republic of Germany. think-cell Software GmbH is the developer, licensor, and distributor of this software product.

"**think-cell Operations**" refers to think-cell Operations GmbH, Chausseestr. 8/E, 10115 Berlin, Germany, a private limited liability company incorporated under the laws of the Federal Republic of Germany.
think-cell Operations GmbH is responsible for the fulfilment in accordance with this Software License Agreement, in particular as the compiler of the installation packages, the deliverer of this software product and the recipient of credit card payments.

"**Software**" refers to this software product developed, licensed, and distributed under this Software License Agreement for Academic/Nonprofit Use by think-cell Software GmbH and compiled into an installation package and delivered by think-cell Operations GmbH via its customer portal. This software product allows its users to create and alter visual presentations in Microsoft PowerPoint. It includes: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, 5) license use documents and/or keys, and 6) documentation.

"**SLA**" refers to this Software License Agreement for Academic/Nonprofit Use and the terms and conditions set forth by this Software License Agreement for Academic/Nonprofit Use.

"**YOU**" refers to the individual who registers with think-cell Software GmbH for academic/nonprofit use of this software product or, if this software product is being licensed on behalf of an entity by an individual authorized to register with think-cell Software GmbH KG for the academic/nonprofit use of this software product on behalf of such entity, then "YOU" refers to such entity, and, for the purposes of Section 6 (Use and Protection of Personal Data) only, also to the acting individual.

"**Personal Data**" refers to personal data in the meaning of Art. 4 no. 1 of the General Data Protection Regulation, i.e., any information relating to an identified or identifiable natural person.

1 Subject

(1) This SLA constitutes a software leasing agreement according to Sections 598 subsequent of the German Civil Code which is hereby concluded between YOU and think-cell Software according to the terms and conditions of this SLA.

(2) This SLA furthermore constitutes a software delivery, a virus inspection and prevention and a fulfilment agreement which is hereby concluded between YOU and think-cell Operations according to the terms and conditions of this SLA.

(3) The Software is leased and licensed to YOU by think-cell Software under this SLA and <u>not</u> sold to YOU.

(4) The Software is protected by applicable national and international copyright laws and treaty provisions.

(5) This SLA and the use of the Software under this SLA is only offered by think-cell Software to a limited class of academic and nonprofit organizations, which are defined in the sole and exclusive discretion of think-cell Software as degree-granting accredited colleges and universities together with their affiliated graduate schools and affiliated non-commercial research institutions, operating under one administrative/admissions department, or other legal entities recognized as nonprofit organizations in the countries where they operate. By conclusion of this SLA YOU hereby warrant to think-cell Software that YOU fulfill the above-stated criteria. think-cell Software reserves the right to change the above-stated criteria with effect to the termination of this SLA and to decide on a case-by-case basis whether or not YOU qualify for licensing under this SLA.

2 Right and License to Use

(1) Under this SLA the Software shall only be used for an educational or non-commercial purpose. If YOU desire to license the Software for a commercial purpose or other purpose not permitted under the scope of this SLA, YOU must enter into a separate software license agreement with think-cell Software and pay all applicable license fees before engaging in such use.

(2) During the term of this SLA, pursuant to Section 3 (Term and Termination), below, think-cell Software hereby grants YOU a worldwide, non-exclusive, non-transferable, time-limited and terminable right and license to use the Software free of charge on the limited basis set forth in this SLA. All other right, title and interest in and to the Software and any enhancements or updates remain with think-cell Software and/or think-cell Operations.

(3) The right and license to use the Software is subject to the provision of a license key ("**Key**") which is issued by think-cell Software and delivered to YOU at the beginning of YOUR license period and expires automatically on the end of YOUR license period.

(4) The Software and the Key are delivered to YOU electronically by download and/or other electronic means of delivery provided by think-cell Operations. think-cell Software shall only be responsible to hand over the Software and/or Key to think-cell Operations and instruct think-cell Operations to deliver the Software and/or the Key to YOU in accordance to the terms and conditions of this SLA. For the purpose of the delivery the Software and/or Key are handled by think-cell Operations.

(5) Under this SLA, YOU may use the Software up to the level of use specified in this SLA, and make and install copies, including a backup copy, to support such use. The terms of this SLA apply to each copy made. YOU will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Software.

(6) Under this SLA, YOU are entitled to grant any of YOUR employees, academic staff and students the right and license to use the Software. Any such grant of right and license to use the Software is restricted to the use of the Software for YOUR academic/nonprofit purposes according to YOUR instructions.

(7) YOU may not 1) use, copy, modify, or distribute the Software except as provided in this SLA; 2) reverse assemble, reverse compile, or otherwise translate the Software except if and as specifically permitted by this SLA or by mandatory statutory law without the possibility of contractual waiver; 3) sell, sublicense, rent, or lease the Software; or 4) provide graphics services for a fee using the Software. If the applicable laws under YOUR jurisdiction allow YOU to modify the Software, e.g., in case of a defect that is not eliminated by think-cell Software within reasonable time or to establish compatibility with other software, YOU are not allowed to delegate the modification to a contractor that is or might become a potential competitor of think-cell Software and/or think-cell Operations.

(8) YOU must ensure that anyone who uses the Software (accessed either locally or remotely) does so only for YOUR authorized use and fully complies with the terms and conditions of this SLA. YOU must protect YOUR Key against unauthorized use by third parties. In case a third party, including YOUR employees, academic staff or students, infringes the terms and conditions of this SLA and/or the intellectual property rights of think-cell Software and/or think-cell Operations, YOU must inform think-cell Software without undue delay after finding out about the infringement. Furthermore, YOU must closely co-operate with think-cell Software and/or think-cell Operations to stop the infringement. The same applies if YOU receive a request from an unauthorized third party to allow and grant access and use of the Software - in particular from individuals or organizations formerly related to YOU.

(9) The right and license to use the Software will expire at the termination of this SLA, pursuant to Section 3 (Term and Termination), below.

3 Term and Termination

(1) The term of this SLA starts with the issuing and delivery of the Key to YOU.

(2) The term of this SLA ends on the expiration date of the Key issued and delivered to YOU.

(3) During the term of this SLA the parties are entitled to terminate this SLA only for a good cause. In particular, think-cell Software is entitled to terminate this SLA, without prejudice to any other rights or remedies, at any time without prior written notice to YOU in the event that YOU engage in, or participate with any third party in, the unauthorized manufacture, duplication, distribution or use of the Software or otherwise infringe any other intellectual property right of think-cell Software and/or think-cell Operations.

(4) At the end of the term or upon termination of this SLA, YOU must destroy all copies of the Software licensed under this SLA and all Keys provided to YOU.

(5) YOU shall not be entitled to derive any rights and claims against think-cell Software by the continued use of the Software after the end of the term or upon termination of this SLA. In particular, the continued use of the Software by YOU after the end of the term or upon termination of this SLA without the explicit consent of think-cell Software cannot be interpreted as an implicit approval of think-cell Software to the continued use and/or an extension of this SLA.

4 Installation, Support and Updates

(1) The Software is installed by YOU at YOUR own risk.

(2) During the term of this SLA, pursuant to Section 3 (Term and Termination), above, think-cell Software hereby grants YOU the right to receive free written technical support regarding the Software. The provision of the free written technical support is subject to capacity. Support requests can be mailed to think-cell Software by postal mail, facsimile, or electronic mail. Support is only available for the latest version of the Software.

(3) During the term of this SLA, pursuant to Section 3 (Term and Termination), above, think-cell Software hereby grants YOU the right to receive free new versions of the Software ("**Update**"). Updates are delivered to YOU electronically by think-cell Operations via download and/or other electronic delivery means. YOU agree that the Software automatically downloads and installs available Updates of the Software. YOU may opt out of this

process. In the event that YOU do not install the latest Updates of the Software, the merchantability, operation and the fitness of the Software and YOUR technical possibility to use the Software for the contractually provided purpose might be affected.

(4) YOU agree that the Software automatically sends error reports to think-cell Software and/or think-cell Operations to support the improvement of the Software.

5 Virus Inspection and Prevention Agreement with think-cell Operations

(1) think-cell Software shall <u>not</u> be responsible under this SLA that the Software and Updates are free of viruses, worms, trojans, malicious code and/or other malware ("**Viruses**").

(2) think-cell Operations shall be responsible under this SLA that the Software and all Updates are delivered to YOU free of Viruses. For this purpose, YOU hereby explicitly assign and instruct think-cell Operations to inspect the Software and all Updates leased and licensed to YOU under this SLA before delivery to ensure that the Software and all Updates are free of Viruses. think-cell Operations will confirm to YOU that the Software and all Updates are free of Viruses by electronically signing the Software and all Updates with its code signing certificate.

(3) The services of think-cell Operations according to this Section 5 (2) are provided to YOU free of charge.

6 Use and Protection of Personal Data

<u>Please note:</u> **YOU hereby declare YOUR consent to the storage, processing and transfer of YOUR Personal Data by think-cell Software in accordance with the following data protection and usage provisions. YOU may withdraw YOUR consent at any time, but such withdrawal will not affect the lawfulness of previous data processing.**

(1) think-cell Software is entitled to collect, store, and use and process YOUR Personal Data exclusively for the conclusion and execution of this SLA.

(2) YOUR Personal Data will only be collected from and provided by YOU if not otherwise permissible according to the General Data Protection Regulation and/or the German Federal Data Protection Act.

(3) think-cell Software is entitled to publish YOUR name and logo in the public list of references of think-cell Software which may be provided to third parties. YOUR name and logo will be removed from this list after the end of the term or upon termination of this SLA.

(4) think-cell Software will observe all mandatory statutory provisions of the General Data Protection Regulation, the German Federal Data Protection Act, the German Telemedia Act and all other applicable statutory laws regarding the collection, storage, usage and processing of YOUR Personal Data. More information on how YOUR Personal Data is processed and protected by think-cell Software can be found in the privacy policy published at: https://www.think-cell.com/privacy ("**Privacy Policy**").

(5) think-cell Software is entitled to transfer and share YOUR Personal Data with think-cell Operations if and insofar as the transfer and sharing of YOUR Personal Data is necessary for the conclusion and execution of this SLA. think-cell Software guarantees that think-cell Operations will strictly adhere to this Section 6.

(6) If YOU provide Personal Data (e. g. names, email addresses, phone numbers) relating to other natural persons, YOU are responsible to provide them with access to the Privacy Policy on behalf of think-cell Software and to procure their prior consent with the storage, processing and transfer of their Personal Data by think-cell Software and/or think-cell Operations in accordance with this Section 6. YOU will hold harmless think-cell Software and think-cell Operations from any claims based on a lack of such consent or the required information.

7 Acknowledgement and Publicity

(1) Any publication or presentation to which the use of the Software under this SLA materially contributed shall either describe the contribution made by the Software or note that the work was (partly) supported by a grant from think-cell Software.

(2) In case that YOU operate a web-site for YOUR institution or entity YOU shall maintain a link from a prominent part of YOUR web-site to think-cell Software's web-site, referring to the Software itself as an offer to YOUR employees, academic staff and students and to think-cell Software as a sponsor of YOUR academic/nonprofit work.

8 Warranty and Liability

(1) The Software is provided "as is" and "as available". think-cell Software provides YOU with <u>no</u> contractual warranties or conditions either expressed or implied, including but not limited to, the implied warranties or conditions of merchantability, fitness for a particular purpose, and non-infringement, regarding the Software or support. YOU assume responsibility for the selection of the Software to achieve intended results and for the

installation, use and results obtained from the Software. Further, there is no contractual warranty of title, enjoyment, lack of infringement or that the operation of the Software will be uninterrupted or error-free.

(2) YOUR statutory warranty rights under this SLA are subject to the following restrictions:

a. think-cell Software's liability regardless of negligence or fault with regard to initial defects of the Software is hereby excluded.

b. In the event of a defect of the Software, YOU are only entitled to claim supplementary performance and delivery of the Software free of defects, pursuant to Section 4 (Installation, Support and Updates), above.

c. In case that the supplementary performance and delivery of the Software finally fails within reasonable time or if the supplementary performance and delivery of the Software is not reasonable at all, YOU shall be entitled to withdraw from this SLA by giving written notice to think-cell Software. YOU shall not be entitled to claim for damages against think-cell Software due to YOUR withdrawal from this SLA.

(3) think-cell Software's liability under this SLA is furthermore subject to the following restrictions:

a. think-cell Software shall not be liable for any damages caused by defects of the Software except for damages caused by defects of the Software which are fraudulently concealed from YOU in the meaning of Section 600 of the German Civil Code.

b. With regard to all other damages the liability of think-cell Software shall be restricted as follows:

i. think-cell Software is liable without any restriction 1) in case of willful misconduct or gross negligence, 2) in case of bodily injury and/or injury of health, and 3) according to the applicable provisions of the German Product Liability Act.

ii. In case of a slightly negligent violation of a main contractual duty of this SLA, which has to be fulfilled in order to enable the execution of this SLA in an orderly manner and on whose fulfillment YOU could usually rely and whose violation would endanger the achievement of the purpose of this SLA, YOUR claims against think-cell Software under this SLA are limited to direct losses which are foreseeable and typical for this type of software license agreement. The liability of think-cell Software for loss of, or damage to, data is limited to the refund of the typical effort for data recovery in case of regular and suitable security backups by YOU.

iii. think-cell Software shall not be liable for any other slightly negligent violation of any contractual and/or statutory duty. Under no circumstances think-cell Software shall be liable for any loss of use, interruption of business, or any direct, indirect, special, incidental, and/or consequential damages of any kind, including loss of, or damage to, data, lost profits, business, revenue, goodwill, or anticipated savings, even if informed of their possibility. YOU assume the entire risk as to the quality and performance of the Software. As some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, the above limitation or exclusion may not apply to YOU in full, but shall be interpreted to apply to the maximum extent permissible under applicable law.

iv. think-cell Software is not liable for damages of any kind which are caused by unauthorized use of the Software and/or use of software that is not authorized by think-cell Software. Software is authorized by think-cell Software, if and only if it is electronically signed by think-cell Software's or think-cell Operations' code signing certificate.

(4) The liability restrictions provided in this Section 8 are applicable to the employees, e.g., directors, software developers, sales and support staff, technicians, subcontractors and suppliers of think-cell Software.

(5) The liability restrictions provided in this Section 8 are also applicable to think-cell Operations.

9 Entire Agreement and Modifications

(1) This SLA constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings, and agreements between the parties.

(2) This SLA may not be modified or amended unilaterally by YOU, including by custom, usage of trade, or course of dealing, except by an instrument in writing signed by duly authorized representatives of both parties.

(3) think-cell Software reserves the right to unilaterally change or modify any of the terms and conditions of this SLA. think-cell Software shall give written notice to YOU of any such changes. In the event of a change, YOU shall have the right to terminate this SLA for a good cause by written notice within four (4) weeks after having received the written notification from think-cell Software. By continuing to use the Software following think-cell Software's notice of change, YOU accept the changes of this SLA which were unilaterally provided by think-cell Software and agree to be bound by such changes.

10 Governing Law and Attorneys' Fees

(1) The validity and interpretation of this SLA and the rights and obligations of the parties hereunder shall be

exclusively governed by the law of the Federal Republic of Germany. The parties hereby waive the application of the rules on the conflict of laws and the United Nations Convention on the Sale of Goods (CISG).

(2) All disputes arising out of this SLA and/or in connection with this SLA shall be subject to the exclusive jurisdiction of the local court of Berlin-Charlottenburg.

(3) In any action or suit to enforce any right or remedy under this SLA or to interpret any provision of this SLA, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees.

11 Severability and Survival

(1) In the event that any provision is found invalid or unenforceable pursuant to judicial decree or decision, that provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this SLA shall remain valid and enforceable according to its terms. The same applies for gaps or loop-holes in this SLA.

(2) The provisions of Sections 1, 2 (7-9) and 8 through 11 shall survive the expiration or termination of this SLA. The mandatory statutory provisions applicable between the parties remain unaffected.

By the following signature YOU agree to the above-mentioned provisions.

_____   _____
Date of execution   Your signature, position and seal