

# GENERAL TERMS FOR LICENSE, MAINTENANCE, SUPPORT AND OTHER SERVICES FOR FLACS ®, FRED ®, SHEPHERD ® AND PIPA ®

(Updated: January 25<sup>th</sup> 2018)

## **Preamble**

These terms and conditions ("Terms") shall apply between Gexcon AS ("Gexcon") and a customer that licenses FLACS, FRED, Shepherd, PIPA and/or purchases related Support and Maintenance and/or other services (such as training) supplied in relation to FLACS, FRED, Shepherd and/or PIPA ("Customer"), and govern the use of FLACS, FRED, Shepherd and PIPA and the provision of the aforementioned services.

The Customer agrees that any person given access to FLACS, FRED, Shepherd and PIPA by the Customer shall be informed of these Terms, and that the Customer shall be liable for any acts or omission by such persons as if such acts or omissions were performed by the Customer itself.

## **1. Definitions**

- a) "Confidential Information" refers to the source and object code of FLACS, FRED, Shepherd and PIPA, the documentation of FLACS, FRED, Shepherd and PIPA, the pricing of FLACS, FRED, Shepherd and PIPA and related services, all other information marked as confidential and information which would, by its nature, be understood by a reasonable person to be the confidential or proprietary business information of the party disclosing such information.
- b) FLACS, FRED, Shepherd and PIPA refer collectively to the FLACS, FRED, Shepherd and PIPA computer programs and media in machine readable form, a protective device/program and accompanying documentation which is/are listed on an Order Form and any software updates the Customer has received through Maintenance and Support services (if applicable);
- c) "License" refers to the license granted to the Customer under these Terms and specified in the Order Form. A definition of each type of license can be found in Annex 1 to these Terms;
- d) "Order Form" refers to the Gexcon Order Form
- e) "Support and Maintenance" or "S&M" refers collectively to the support and maintenance services as further described under Annex 1, which services Gexcon generally makes available to its Customers who have paid the Support and Maintenance fee.
- f) "will", "shall" and "must" are deemed to be equivalent and denote a mandatory obligation or prohibition, as applicable.
- g) "include" and "including" mean "including, without limitation".

## **2. Grant of License**

Subject to the Customer's payment of the applicable fees mentioned in an Order Form and the Customer's undertakings below, Gexcon grants the Customer – when explicitly stated - a limited, non-exclusive, non-transferable License to use FLACS, FRED, Shepherd and PIPA for its internal business operations (unless otherwise specified). FLACS, FRED, Shepherd and PIPA may not be used without payment of the Support and Maintenance fee, if applicable, and any applicable licence fees.

Remote access to FLACS, FRED, Shepherd and PIPA through the internet, or other network, is only allowed from geographical sites/offices which themselves have active FLACS, FRED, Shepherd and PIPA licenses with the same license level. Any other remote access is prohibited.

The Customer may not copy, modify, transfer, sublicense, use or make FLACS, FRED, Shepherd or PIPA available except as expressly provided under these Terms. Any attempt otherwise to copy, modify, transfer, sublicense, use or make FLACS, FRED, Shepherd and/or PIPA available is void, and will automatically terminate this License.

### **3. License Type Change**

Provided that the Customer is otherwise in compliance with these Terms and the terms of the Order Form(s), the Customer may at any time choose to upgrade the license to a higher license category (e.g. from an Academic or Company Internal to a Commercial License) or increase the number of users, either permanently or for a certain time period, under the condition that a) Gexcon is notified in advance and b) a new Order Form is executed between the parties and c) the relevant new pricing is paid by the Customer. Gexcon will invoice the Customer for the price difference between the requested option and the existing license. The price of a temporary upgrade will consist of the price difference between a license at actual license level and the upgrade level for the upgrade period. The price will be according to the then current global FLACS, FRED, Shepherd and PIPA price list valid when entering the future upgraded license period.

### **4. Delivery of the FLACS, FRED, SHEPHERD AND PIPA Computer Programs**

FLACS, FRED, Shepherd and PIPA will be dispatched to the Customer by providing the Customer with an URL which enables the Customer to download FLACS, FRED, Shepherd and PIPA, unless agreed otherwise.

### **5. Training, Maintenance and Support & Other Services**

If requested by the Customer, Gexcon may supply, against additional fees, training or other agreed services and/or new special releases of all or any part of FLACS, FRED, Shepherd or PIPA, which releases are not generally made available under the Gexcon Maintenance and Support services. Maintenance and Support services are detailed in Annex 1 to these Terms. All new releases will be deemed part of FLACS, FRED, Shepherd or PIPA and these Terms will apply.

### **6. Payment and Taxes**

All fees exclude delivery charges, value added tax (if applicable) and any other taxes or import charges at the Customer's destination. Gexcon or an agent, authorized by Gexcon to invoice on its behalf, shall invoice the Customer as set out in Annex 1, and the Customer will pay the license fee, the Service and Maintenance fee and any other fees mentioned on the Order Form(s) together with charges and taxes, and all other relevant invoices, within 30 days of invoice date.

Customer shall pay simple interest of eighteen percent (18 %) per annum on any overdue amounts.

Gexcon may adjust the price every 12 months, with an amount that shall not exceed the increase in the retail price index (the main index) of Statistics Norway, with the reference index value being the index value for the month in which the Agreement was concluded. The price may also be adjusted to the extent that rules or resolutions pertaining to indirect taxes are amended in a way that affects the price.

## **7. Ownership and Restrictions**

Gexcon, and its licensors, retains all ownership and intellectual property rights to FLACS and anything provided to the Customer under these Terms. Shell, and its licensors, retains all ownership and intellectual property rights to FRED, Shepherd and PIPA. The Customer acknowledges that the Customer does not own any copyright, trade mark and any other intellectual property rights related to FLACS, FRED, Shepherd and PIPA. Furthermore, the Customer agrees not to remove any notice of Gexcon's and Shell's proprietary rights. The Customer (or any third party engaged by the Customer) will not decompile or reverse engineer or attempt to decompile or reverse engineer any part of FLACS, FRED, Shepherd or PIPA. Furthermore, the Customer will not attempt to decipher the protective device/program, and the Customer acknowledges that any such attempted act may corrupt or damage FLACS, FRED, Shepherd or PIPA. The Customer acknowledges that a license key may be required to use FLACS, FRED, Shepherd and PIPA. Such a license key may contain certain restrictions with regards to the operation of FLACS, FRED, Shepherd or PIPA, e.g. the number of simulations the Customer can perform may be restricted. The Customer may not create derivative works (including computer programs) based on FLACS, FRED, Shepherd or PIPA.

The Customer may not use the results from FLACS, FRED, Shepherd and PIPA to directly or indirectly create, develop or verify products or software similar to FLACS, FRED, Shepherd, PIPA, or products or software that provide results similar to the results from FLACS, FRED, Shepherd or PIPA.

If the Customer, acting as a consultant, makes the results from FLACS, FRED, Shepherd and PIPA available to anyone else, including incorporating such results into its own documents or presentations, the Customer must include attribution indicating that the results came from FLACS, FRED, Shepherd or PIPA.

Without prior express written permission from Gexcon, the Customer may not disclose to any third party the results of FLACS, FRED, Shepherd and PIPA performance benchmarks or any specific detailed comparisons between FLACS, FRED, Shepherd and PIPA and any licensee or third-party product.

## **8. Warranties & Disclaimers**

Gexcon does not warrant that FLACS, FRED, Shepherd or PIPA will meet the Customer's particular requirements or that FLACS, FRED, Shepherd or PIPA will operate uninterrupted or will be error-free. Gexcon licenses FLACS, FRED, Shepherd and PIPA and provides the services on an as-is basis. Gexcon furthermore disclaims all warranties, whether expressed or implied, oral or written, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, non-infringement, or warranties arising by statute or otherwise in law or from a course of dealing or use of trade. This disclaimer of warranty constitutes an essential and material part of these Terms.

## **9. Limitation of Liability**

To the extent not prohibited by law, Gexcon's maximum liability for any damages arising out of or related to these Terms and/or any Order Form whether in contract or tort or otherwise shall be limited to the license fee and the Maintenance and Support fee paid by the Customer during the last twelve (12) months prior to the harmful event. If a number of events give rise to substantially the same loss, they shall be regarded as giving rise to one claim only.

In no event shall either party be liable for any special, incidental, indirect or consequential damages or any loss of profits (whether based on tort, breach of contract) regardless of

whether such party has been previously advised of the possibility of such damages, claims or demands.

Gexcon shall not be liable for any loss or damage unless the Customer has given written notice to Gexcon within reasonable time and at the latest two (2) years after the date the circumstances giving rise to the claim occurred.

The parties acknowledge and agree that:

- a) Gexcon has no direct control over the use and manner of application of FLACS, FRED, Shepherd and PIPA, nor any knowledge of the data input when running FLACS, FRED, Shepherd and PIPA;
- b) Gexcon has no knowledge of the particular situations for which the Customer may wish to use FLACS, FRED, Shepherd and PIPA, nor of the level of training and experience of those who use FLACS, FRED, Shepherd and PIPA and interpret its results, and make recommendations based on an interpretation of such results; and
- c) The Customer shall ensure that the personnel using FLACS, FRED, Shepherd and PIPA shall have a reasonable level of skill and experience in the field in which the output generated by running FLACS, FRED, Shepherd or PIPA is to be applied and are competent to use FLACS, FRED Shepherd or PIPA and evaluate and apply the output generated therefrom in such field.

#### **10. Indemnification**

Upon demand, the Customer will defend, indemnify and hold Gexcon harmless against damages including without limitation, legal fees, costs and expenses that may be awarded or agreed to be paid to any third party in respect of any claim or action caused by, arising from, relating or referring in any way to the Customer's use of FLACS, FRED, Shepherd or PIPA, other than as otherwise expressly provided in this Agreement.

In case a third party makes any claim against the Customer that FLACS, FRED, Shepherd or PIPA is infringing the third party's intellectual property rights, then Gexcon will indemnify the Customer against the claim if the Customer does the following:

- a) Inform Gexcon within 30 days of receipt of the claim;
- b) Give Gexcon all information required to settle the claim;
- c) Gexcon is given the sole control of the defence and any settlement negotiations.

If Gexcon believes that FLACS, FRED, Shepherd or PIPA infringes any third party intellectual property rights, then Gexcon will at its sole option decide to either a) obtain the right for the Customer to continue using FLACS, FRED, Shepherd and/or PIPA, or b) may terminate the License and refund the Customer the portion of the license fee paid for the part of FLACS, FRED, Shepherd and/or PIPA that gave rise to the third party's claim and any unused, prepaid support fees. Nevertheless, Gexcon will not indemnify the Customer if the Customer a) uses FLACS, FRED, Shepherd or PIPA outside the scope of use, b) alters FLACS, FRED, Shepherd or PIPA, c) the Customer uses an earlier, old version of FLACS, FRED, Shepherd or PIPA and the claim could have been avoided if the Customer had switched to an unaltered current version. Furthermore, indemnification by Gexcon shall not be provided if the claim is based on the combination of FLACS, FRED, Shepherd, PIPA and products and/or services not provided/supplied by Gexcon. This Clause 10 contains the Customer's exclusive remedy for any intellectual property right infringements.

### **11. Confidential Information**

The parties may provide or obtain access to Confidential Information of the other party. The parties agree to keep Confidential Information in confidence as long as it is reasonable to consider that there is a need to keep such information confidential, and as a minimum for three years from the date this Agreement is terminated.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party; d) is disclosed pursuant to law or any governmental or court order, provided that the party requested to do so shall first have given notice to the other party and made a reasonable effort to obtain a protective order therefore.

It is expressly understood and agreed that the obligations of this Clause 11 shall survive the termination or rescission of these Terms or any part hereof.

### **12. Audit**

Gexcon may audit the Customer's use of FLACS, FRED, Shepherd or PIPA in order to investigate compliance with these Terms and any Order Form, upon at least 30 days prior written notice. Such an audit shall only be conducted once per calendar year and shall not unreasonably interrupt the Customer's business. The Customer agrees to provide reasonable assistance and information which is relevant for the audit. Audits may also be conducted by electronic means and Gexcon may include functionality in FLACS, FRED, Shepherd and PIPA that, automatically and without notice, reports the extent of use of FLACS, FRED, Shepherd and PIPA to Gexcon. Gexcon shall not be responsible for any costs incurred by the Customer in relation to the audit. In case an audit reveals that FLACS, FRED, Shepherd or PIPA is used outside the scope of the license granted, the Customer agrees to immediately pay for the excessive use, the higher of, the price difference between actual and agreed use according to the current price list, and 2 times the annual license fee for a main site "commercial lease". Further the Customer agrees to compensate Gexcon for damages incurred, if any.

### **13. a) Termination for Breach**

Gexcon may terminate these Terms and/or the Order Form(s), if the Customer commits a material breach -which includes, failure to pay the license fee, the Support and Maintenance fee or any other sum due hereunder within 21 days of receipt of written notice that the amount is overdue- or if the Customer commits any other material breach of these terms which is either incapable of being remedied or (if remediable) has not been remedied within 21 days of receipt of written notice from Gexcon.

### **13. b) Termination for Convenience**

The Customer may terminate these Terms at any time for any reason by giving written notice at least 2 months prior to the annual Service and Maintenance extension to Gexcon. If the license shall be re-activated at a later stage, the Customer must pay 50 % of the unpaid Service and Maintenance fees for the period FLACS, FRED, Shepherd and/or PIPA has not been used.

Gexcon may terminate these Terms at any time for any reason by giving written notice at least 2 months prior to the annual license extension to the Customer.

If the Customer has a perpetual license for FLACS, the Customer may continue to use FLACS in a manner consistent with these terms after such termination, but the Customer will not receive new version of the software or other Service and Maintenance.

### **13. c) Effects of Termination**

The License will automatically terminate when these Terms terminate. Upon termination and without further notice, the Customer shall: a) cease any further use of FLACS, FRED, Shepherd and/or PIPA and b) at the Customer's expense return FLACS, FRED, Shepherd and/or PIPA and the protective device to Gexcon, and c) the Customer shall demonstrate immediately that it has removed all installations (including backups) of FLACS, FRED, Shepherd and/or PIPA from its systems upon Gexcon's request.

### **14. Assignment**

The Customer shall not lend, give, assign, transfer or sub-license any of its rights or obligations hereunder.

### **15. Reference**

Gexcon may name the Customer as one of its clients and use the Customer's company logo in any promotional material.

### **16. Notices**

Any notice required under these Terms shall be deemed given upon a) mailing by registered or certified mail, return receipt requested, or b) sent by overnight courier, c) sent via facsimile confirmation receipt received. Notices can be sent to the following Gexcon address and fax number (which may be updated by Gexcon, if changed):

Gexcon AS  
Attn: Board of Directors  
P.O. Box 6015  
NO-5892 Bergen  
Norway  
Fax: +47 55 57 43 31

### **17. Entire Agreement**

These Terms and any Order Forms constitute the entire agreement between the Customer and Gexcon with respect to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out in these Terms and any Order Forms are binding on the parties. The Customer acknowledges that it has not relied and shall not rely on any oral representations made by or on behalf of Gexcon.

No addition or modification to these Terms and/or any Order Forms will be binding unless in writing and signed by the Customer's and Gexcon's duly authorized representatives. Any purchase order issued by the Customer shall not constitute an amendment or modification of these Terms and/or any Order Forms.

### **18. Amendments**

Gexcon reserves the right to amend these Terms at any time by notifying the Customer in writing. The Customer may reject such amendments by terminating these Terms by giving written notice to Gexcon within 2 months from the time Gexcon notified the Customer of such amendments. If the Customer does not provide such notice, the Customer agrees to be bound by the Terms as amended.

**19. Severity**

If any of these Terms are held to be invalid or unenforceable by any court or body of competent jurisdiction, the remaining provisions shall remain in full force and effect.

**20. Applicable law and exclusive jurisdiction**

This license shall be governed, construed and enforced in accordance with the laws of Norway and both parties agree to submit to the exclusive jurisdiction of the Norwegian Courts in any dispute arising out of or relating to these Terms and/or any Order Form(s). The parties explicitly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## Annex I

### Distinction Between License Types

#### **a) General (applicable to all types of licenses mentioned in this paragraph)**

Simultaneous Users are users which are logged on to the FLACS, FRED, Shepherd and/or PIPA Computer Programs at the same point in time. The Order Form indicates the maximum number of Simultaneous Users.

Simultaneous simulations in FLACS are simulations run at the same time. Even if a simulation is run on multiple cores, it still counts as a one simulation.

Maximum simultaneous threads per FLACS simulation is the maximum number of parallel threads that can be used for each FLACS simulation when running the parallel version of FLACS.

FLACS, FRED, Shepherd and/or PIPA license(s) may be used in a single named physical location only. The associated machines should not leave a 20 miles radius of the physical site. For using FLACS, FRED, Shepherd and/or PIPA in other locations, additional FLACS, FRED, Shepherd and/or PIPA licenses or "additional physical site" licenses are required for each additional named location.

An external simulation cluster, HPC cluster (High Performance Computing), regardless if owned by the FLACS user or a third party – will qualify as an "additional site".

Licenses may be moved to a new location once a year, only if the new location has the identical pricing structure as set out in the current Gexcon price list.

A USB license dongle is used to control use of the FLACS, FRED, Shepherd and PIPA license. Depending on the license type, it can be either a standalone USB dongle, that can only be used on the machine with the dongle or a network dongle that can be used by any machine in the same network and in the same location. In case of loss, damage or theft of the USB license dongle, the Customer will have to pay for the remaining license period on the license and a nominal fee for a replacement dongle.

#### **b) Stand alone license**

A stand-alone license can only be used on a single machine with network ID (e.g. from an ipconfig output) and with a USB dongle inserted.

FLACS, FRED, Shepherd and/or PIPA can only be run on this machine. Transfer to another machine is possible, but only with Gexcon's permission (e.g. during a machine refresh). The machine should not leave a 20 miles radius of the physical site.

FLACS Stand alone licence allows up to 4 simultaneous simulations and a total of 4 threads for all simulations together (e.g. 4 simulations with 1 thread each, or 2 with 2 threads each or 1 simulations with 4 threads).

#### **c) Network license**

A network license can be used by any machine connected to the same network, and in the same location as the machine with the network dongle. Multiple machines can have FLACS, FRED, Shepherd and/or PIPA installed, but must reach out to the license manager (hub machine) to request check out.



The maximum number of simultaneous FLACS simulations and threads are stated on the order form.

### **Perpetual, Lease and Paid-up license types**

#### **a) Perpetual**

A perpetual FLACS license will grant a permanent license, regulated under the standard FLACS license terms, but with a mandatory yearly Support and Maintenance fee. The license terminates if the Support and Maintenance fee is not paid.

#### **b) Short Term and Annual Lease**

A FLACS, FRED, Shepherd or PIPA lease has a duration between 1 and 12 months. There is no renewal commitment and for potential renewal after expiration, a new license must be purchased. The FLACS, FRED, Shepherd and PIPA leases cost have a mandatory support and maintenance element included.

#### **c) Multi annual Lease**

FLACS, FRED, Shepherd and PIPA multi annual leases will span from a 3 to 5 year contract period. The holder of the lease has committed to the whole lease period, but will be billed on an annual basis. A discount is given compared to annual lease costs. Please note that "lease" is used as a shorthand description, and the intended legal meaning is a time limited licence to use the software.

#### **d) Paid up license**

The paid up license is a special perpetual FLACS license with a specified limited time period for support and maintenance. Unless stated otherwise on the order form, this period will be a 6 months after license start. After this period the user may continue using the license, but will not be entitled to any support or upgrades. The Customer acknowledges that using the FLACS computer program without the most recent updates could potentially mean that the accuracy of the results are not up to the standards in more recent FLACS versions. When providing results to 3rd parties, it is mandatory to clearly indicate the FLACS version used.

### **License categories**

#### **a) Commercial licenses**

A Commercial License allows the Customer to apply FLACS, FRED, Shepherd and/or PIPA for consulting to third parties. For licensees holding a legacy Domestic Licence, please refer to the previous version of this Appendix for the definition.

#### **b) Company Internal FLACS License**

A Company Internal FLACS License may be granted in the sole discretion of Gexcon to internal loss prevention or research departments of amongst others corporations, governmental institutions and insurance companies. This license is not intended to and shall not be utilized for or in connection with any form of external consulting, whether such consulting is paid or unpaid. The Customer shall not disclose information based, either fully or partially, on use of the FLACS Computer Program to any third party. A third party shall be any other recipient outside the Customer's organization or if an individual, not employed on a full-time basis by the Customer. The Customer may deliver results of the FLACS simulations to departments and individual persons internally in the Customer's company, including wholly owned

subsidiaries of the Customer (if any). The subsidiary shall not disclose the FLACS results externally or otherwise, to any third party. Nothing in these Terms will prevent the Customer from making any disclosure of the FLACS results required by law or by any competent authority.

### **c) Academic Licenses**

Customers are defined as Academic if they are universities or other educational establishments, where the intention is to use FLACS, FRED, Shepherd or PIPA solely for teaching, learning and non-profit research.

An Academic Student license is issued to Academic Customers when cooperation is found to be of strategic value by Gexcon. The Customer agrees to send Gexcon a yearly activity report (to [flacs@Gexcon.com](mailto:flacs@Gexcon.com)). The license period may be extended provided Gexcon finds an extension to be of strategic value and the conditions of this non-commercial academic agreement are fulfilled. If the Academic Customer wants to apply FLACS, FRED, Shepherd or PIPA in connection with long-term research projects the Customer receives funding for, then an upgrade license type should be discussed and agreed upon with Gexcon in advance.

The License may then be temporarily upgraded to an Academic R&D License or a Commercial license according to the then current FLACS price list and the procedure described in section 3 of the Terms shall be followed.

The Academic R&D License may be granted in relation to externally funded research projects when the research does not compete with work performed by commercial consultants.

To ensure quality and avoid unfortunate errors, the Academic Customers must, prior to publishing work based on FLACS, FRED, Shepherd or PIPA enable Gexcon to review and check the quality of the work.

### **Support**

A full support contract includes up to 70 hours of phone/e-mail support per agreement year (unused quota is not transferable to subsequent agreement year). For short-term leases of N months and paid-up licenses with N months of support and maintenance, the amount of support will be prorated to the number of months N. For example, the support to be provided for a 3-month lease will be 17.5 hours. Any query is rounded up to the closest whole hour.

During the Public Holidays in Gexcon head quarter in Norway, most of the support staff at Gexcon is in generally out of office, and support services at Gexcon will be maintained at a somewhat lower level than usual. This may possibly lead to a longer time before the customer's case is solved. Public Holidays in Norway include:

- Christmas season; 24th December (Christmas Eve), 25th December (Christmas Day), 26th December (Boxing Day)
- New Year's season; 31st December (New Year's Eve), 1st January (New Year's Day)
- Easter season; Maundy Thursday, Good Friday, Easter Monday
- 1st May (Labour Day)
- Ascension Day (Thursday, 39 days after Easter Sunday)
- 17th May (Norwegian Constitution Day)
- Whit Monday (50 days after Easter Sunday)

### **Litigation and support**

In case of a pending, anticipated or ongoing litigation, in no event shall the Customer, its representatives or agents provide privileged or confidential information to Gexcon through the software support system or otherwise. The Customer bears the sole burden of assuring that no such confidential information is provided. Any request for assistance, engagement or consultation in connection with any pending or anticipated litigation shall be directed to: litigation@Gexcon.com. Gexcon support staff shall not be requested, nor are they required to provide, opinions on modelling strategies related to ongoing or anticipated litigation. In no event shall Gexcon be prohibited from offering any services, including without limitation, litigation support, or software to any other company or individual nor shall any Customer or its agents or attorneys make such application to seek such prohibition. In the event of such application and regardless of the outcome thereof, the Customer shall pay all legal fees, costs and expenses incurred by Gexcon in defending or opposing such application(s). In the event that the Customer is successful in such application, in addition to the foregoing, the Customer shall pay within thirty (30) days of the date of disposition of such application all fees that Gexcon would have earned in connection with the engagement that the Customer opposed.

### **Maintenance**

Full maintenance includes receiving new standard versions, upgrades, bug fixes and features as they are generally made available by Gexcon to its Customers which have paid the applicable Maintenance and Support fee.