GEXCON TERMS AND CONDITIONS: LICENCE, SUPPORT, MAINTENANCE AND OTHER SERVICES

These Terms and Conditions apply between (a) the Gexcon Entity; and (b) the customer entity, each as stated in the applicable Order Form (being "Gexcon" and the "Customer" respectively), and govern the provision and receipt of the relevant Products and Services set out in such Order Form.

By signing an Order Form, Gexcon and the Customer enter into a legal commitment and agree to be bound by the terms set out in this Agreement. Any purchase order issued by the Customer shall not constitute an amendment or modification to this Agreement. Gexcon reserves the right not to enter into an Order Form.

1 Interpretation

1.1   In this Agreement the following expressions have the following meanings unless inconsistent with the context:

"Affiliate" means in respect of a party, any other person or entity that directly or indirectly controls, is controlled by, or is under common control with such party (in accordance with Section 1124 of the Corporation Tax Act 2010).

"Agreement" means these Terms and Conditions, the relevant Order Form and any schedule or annexure to these Terms and Conditions or the relevant Order Form.

"Commencement Date" means the date on which the Order Form is signed, or, in the case of a lease renewal, the date of the subsequent contract.

"Confidential Information" means all information which is disclosed by one party to the other whether before or after the Commencement Date, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a party's business including its products (including the source code and object code of the Products), operations, processes, plans or intentions, developments, trade secrets, know how, market opportunities, marketing, personnel, suppliers and customers, together with the existence and terms of this Agreement.

"Consultancy Services" means any consultancy services incidental to the Products, as set out in the Order Form.

"Customer Systems" means the hardware, software, and systems (including networks, servers or cloud hosting environments) operated by or on behalf of the Customer (excluding the Products).

"Documentation" means the user reference guides usually supplied by Gexcon, including without limitation the relevant documentation provided on the Gexcon website (www.gexcon.com), as updated from time to time.

"Fees" means the fees for the relevant Products and Services set out in the Order Form, plus all additional Taxes.

"Gexcon Entity" means Gexcon AS, Gexcon UK Ltd, Gexcon Netherlands BV or any of their Affiliates.

"Hosted Services" means the provision of and access to the Products via any such website or other hosted environment or online access (including any hosted environment managed or provided by a third party), as may be specified and made available by Gexcon from time to time.

"Intellectual Property" means any and all copyright, patents, trade marks, design rights, database rights, rights in software, utility models, topography rights, any applications and registrations associated with such rights and all other intellectual property rights exercisable in any part of the world (whether registered or not) together with all goodwill and know how.

"Licence" means the licence(s) or subscription(s) purchased by the Customer as set out in the Order Form, which entitle the Customer to access and use the Products and the Documentation in accordance with the applicable terms as set out in Schedule 1.

"Order Form" means the order form or quotation document signed by Gexcon and the Customer for the licence and supply of the Products and Services stated therein.

"Products" means the software product(s) as set out in the Order Form (including where made available as Hosted Services), and as further described on www.gexcon.com, and including any Updates.

"Services" means such Hosted Services, Support Services, Training Services or Consultancy Services (if any) to be provided by Gexcon, as set out in the Order Form.

"Specification" means the functions and facilities of the Products as described in the Documentation.

"**Support Fee**" means the annual fee for Support Services set out in Order Form.

"Support Services" means the support and maintenance of the Products by Gexcon pursuant to Schedule 4.

"Taxes" has the meaning given to it in clause 10.4.

"Training Services" means Gexcon's end user training.

"Updates" means any fixes, modifications, customisations or updates to the Products made available by Gexcon to the Customer, (excluding any new software identified as such by Gexcon, which would require a new Licence).

1.2   In the event of a conflict between the parts of this Agreement, then, except to the extent expressly stated otherwise, the following order of precedence shall apply: Order Form, schedule or annexure to Order Form, Schedule 1, Schedule 2, these Terms and Conditions, and any other schedule or annexure to these Terms and Conditions.

1.3   A reference to a statute or statutory provision includes any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; any repealed statute or statutory provision which it re-enacts (with or without modification); and any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it.

1.4   A reference to any party includes its successors in title and permitted assigns; and a reference to a person includes any individual, firm, body corporate, association, partnership, government or state.

1.5   The words "includes" or "including" shall be construed as illustrative only and shall not limit the generality of the preceding words, and the headings are inserted for convenience only and shall not affect interpretation.

1.6   Where a term of this Agreement requires the parties to agree something, they shall each seek to reach such agreement acting reasonably and in good faith.

1.7   Time is not of the essence in relation to this Agreement, although the parties will use their reasonable endeavours to adhere to any agreed timetables.

1.8   The terms of this Agreement apply to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom or practice or course of dealing, including where the Customer asserts that the Products and Services are to be provided on any standard purchase terms and Gexcon supplies the Products and Services following the parties executing any such standard purchase terms.

2   Term

2.1   Subject to earlier termination pursuant to clause 12:

(a)   this Agreement shall commence on the Commencement Date and shall (subject to earlier termination pursuant to clause 12) continue in the case of the Services until the Services have been completed, and in the case of the Products until all the relevant Licences terminate or expire;

(b)   the initial term of each Licence to the Products is set out in the Order Form and by reference to the licence model set out in Schedule 1, being the period of time that the Customer is permitted to access and use the Products in accordance with this Agreement; and

(c)   unless otherwise stated in the Order Form, each Licence shall automatically expire in accordance with Schedule 1.

2.2   If the Customer has committed to a minimum Licence term in the Order Form, the Fees have been calculated based on this commitment and the Licence cannot be terminated earlier by the Customer, other than in accordance with clause 12.

3   Licence

3.1   Subject to the payment of the Fees, Gexcon hereby grants to the Customer a limited, non-transferable, non-assignable, non-exclusive licence to access and use the Products and the Documentation in accordance with the Licence terms selected in the relevant Order Form and described at Schedule 1.

3.2   The Customer may elect to upgrade its Licence (for payment of additional Fees) to a more permissive Licence type or to increase the number of authorised users, either for the remainder of the then committed Licence term or for a certain period of time, provided that Customer notifies Gexcon in advance and the parties enter into a new Order Form. Gexcon reserves the right to charge the Customer for any unauthorised use outside of the Customer's Licence. Unless otherwise agreed, the price will be according to the then current price list.

3.3   Where, as indicated in the Order Form, Gexcon provides Hosted Services, the terms set out in Schedule 3 shall also apply.

4   Restrictions

4.1   Save to the minimum extent as permitted by mandatory applicable law, the Customer shall have no right to, and shall not and shall not instruct or permit any third party (including any user) to:

(a)   make copies of the Products or Documentation, except as necessary for Customer's legitimate back-up or archival purposes;

(b)   translate, reverse engineer, decompile, decipher, copy, make derivative works of, adapt or modify the Products or the Documentation;

(c)   rent, lease, distribute, display, frame, link, compile or otherwise commercially exploit the Products or Documentation outside the scope of the Customer's Licence;

(d)   use any other technology or process, including artificial intelligence programmes, to use, download or scrape data from the Products or Documentation or otherwise breach the restrictions in this Agreement;

(e)   use the Products or Documentation or their results to verify other products or to directly or indirectly create or develop other products or services similar to the Products; or

(f)   disclose to any third party the results of the Products for performance benchmarks or any specific detailed comparisons between the Products and any third-party products or services,

and to the extent that local law expressly grants the Customer the right to decompile the Products to obtain the information necessary to achieve interoperability with other programs, the Customer must first ask Gexcon (notifying it of the objectives and interoperability sought) to provide such necessary information on reasonable terms.

4.2   Except as explicitly stated in Schedule 1, the Customer shall not permit any third party to use the Products, nor use the Products on behalf of or for the benefit of any third party in any way whatsoever (including, without limitation, using the Product for the purpose of operating a managed service).

4.3   The Customer acknowledges that a license key may be required to access and use the Products, and such license key may contain certain restrictions with regards to the operation of the Products in line with the Customer's Licence (e.g. the number of simulations the Customer can perform).

4.4   Where access to a Product is enabled via a security device which will permit use of the Products on only one computer at a time, any such security device is and shall remain the property of Gexcon, but the Customer shall be responsible for protecting each security device from loss or damage. Upon the request of Gexcon due to the release of an Update and necessary replacement (either with another security device or a license key) or due to the termination or expiry of a Licence, the Customer shall return the security device to Gexcon. If the Customer fails to return a security device upon a request by Gexcon in accordance with this Clause 4.4, the Customer shall pay the then-current fee for a Licence for the Products unless otherwise agreed by Gexcon. Subject to availability, Gexcon shall replace any security device returned defective or damaged at no charge. If the Customer claims to have lost a security device, Gexcon

may provide a replacement (at the Customer's cost), provided that a director of the Customer signs an undertaking that the original security device has been lost and that it will not, if found, be used again in the future.

5   Training Services

5.1   Where Training Services have been purchased by the Customer in the Order Form, Gexcon shall provide the Customer with its training for the relevant Products.

5.2   Where training is to be provided on site at the Customer's premises, the Customer shall provide facilities and equipment as notified to the Customer in advance.

5.3   If the Customer wishes to cancel and re-arrange any Training Services, Gexcon shall be entitled to charge the Customer for any wasted costs and expenses (such as pre-incurred travel and accommodation costs), provided Gexcon uses its reasonable endeavours to mitigate such costs and expenses.

6   Consultancy Services

6.1   Where Consultancy Services have been purchased by the Customer in the Order Form, Gexcon shall provide the relevant Consultancy Services set out in the Order Form. Where the Order Form specifies that alternative terms and conditions apply (such as Gexcon's standard consulting agreement), such terms shall apply instead of these Terms and Conditions.

7   Support Services

7.1   Where Support Services have been purchased by the Customer in the Order Form, Gexcon shall provide the Support Services on the terms set out in Schedule 4.

7.2   The Customer shall pay the relevant Support Fees for the relevant term set out in the Order Form. Where indicated in the Order Form, Support Services are mandatory for certain Products, and must be purchased conterminous with the Licence.

8   Customer Obligations

8.1   The Customer shall at all times be responsible for:

(a)   performing any specific obligations set out in the Order Form;

(b)   ensuring that the Customer Systems meet the minimum requirements set out in the Documentation;

(c)   its data, including its quality and completeness, and the taking of regular back-up copies for security and recovery purposes (and Gexcon shall not be responsible for any loss of data or to re-constitute it);

(d)   ensuring its compliance with applicable laws; and

(e)   its users' compliance with this Agreement, and for their acts and omissions.

8.2   The Customer undertakes to comply with all applicable export control laws and sanctions laws including but not limited to the U.S. Export Administration Regulations, the U.S. Office of Foreign Asset Control regulations and orders, the UK Export Control Order 2008/3231 (as amended), the EU Dual-Use Regulation 428/2009 (as amended) and other applicable laws prohibiting dealings with certain individuals and entities (collectively, "**Trade Controls**"), in relation to its use of the Products, Documentation and Services, and will not export, re-export, transfer or use the Products or their output in breach of any Trade Controls. Any breach by the Customer of this clause 8.2 shall entitle Gexcon to suspend the Licence and any access to the Products and to terminate this Agreement for material breach. Gexcon may suspend provision of any Product or Services if required by Trade Controls.

8.3   Unless Gexcon is providing Hosted Services, the Products will be made available to the Customer to download via a URL, and the Customer is responsible for installing the Products in accordance with the Documentation.

9   Warranty

9.1   Gexcon warrants that:

(a)   the Services will be performed with reasonable care and skill; and

(b)   at the Licence start date and for ninety (90) days thereafter, the Products will perform in all material respects in accordance with the Specification (with any ongoing support and maintenance for the Products provided as part of any Support Services taken by the Customer).

9.2   Gexcon cannot warrant or represent, and the Customer acknowledges that Gexcon does not warrant or represent, that the Products and Services are suitable for the Customer's needs, or that their operation will be uninterrupted or error free. The Customer is responsible for selecting the appropriate Products and Services to achieve its intended results and for the results obtained.

9.3   The warranties set out in clause 9.1 shall not apply to defects or failures which arise in whole or in part from a failure of the Customer to meet its obligations under this Agreement, from any failure to purchase Support Services or to install Updates, or from any accident, neglect or misuse of the Products by the Customer, or any failure of the Customer Systems or any third party power or connectivity.

9.4   Except as expressly set out in this Agreement and to the fullest extent permitted by law, the Products, Documentation and Services are provided "as is" and all warranties, conditions and other terms whether express or implied by statute or common law, or by custom, practice or a course of dealings (including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement) are excluded from this Agreement.

9.5   The Customer will give written notice to Gexcon as soon as practicable upon becoming aware of a breach of any warranty, and Gexcon's sole liability and obligation in relation to a breach of the warranty under clause 9.1 shall be to remedy, repair or replace the Products or to re-perform the Services, or at Gexcon's discretion to terminate this Agreement in respect of the Products or Services and issue a refund or pro-rata refund as applicable.

10   Price and Payment

10.1   Gexcon shall invoice, and the Customer shall pay to Gexcon, the Fees set out in the Order Form.

10.2   Except as otherwise set out in the Order Form, Gexcon shall invoice the Customer for the Fees in advance and the Customer shall pay each invoice within 30 days after the date of such invoice.

10.3   Where payment of the Fees or any part thereof is not made on a due date, without prejudice to its other rights or remedies, Gexcon shall be entitled at its sole discretion to:

(a)   suspend the Licence to the Products and suspend the provisions of the Services (and may take such technical steps (such as disabling passwords, accounts, and licence keys) to prevent the Customer's access to and use of the Products and Services), until such time as the outstanding payment is made; and

(b)   charge interest on the outstanding amount at the greater of (i) the amount permitted by applicable law; and (ii) the rate of six (6) per cent. per annum above the Barclays Bank base rate (as the same may vary from time to time), from the due date until the Fees or outstanding part thereof is paid (whether before or after judgement).

10.4   All sums stated as payable to Gexcon under this Agreement:

(a)   are exclusive of value added tax and all similar taxes or import charges ("**Taxes**") which shall (where applicable) be paid by the Customer at the rate in force at the due time for payment; and

(b)   shall be paid free and clear of all deductions or withholdings whatsoever, save to the extent any such deductions or withholdings are required by law.

10.5   If the Customer is required by law to make any deduction or withholding in respect of tax from any amounts payable to Gexcon it shall:

(a)   pay Gexcon an additional amount as will, after the deduction or withholding has been made, leave Gexcon with the same amount as it would otherwise have been entitled to receive; and

(b) promptly pay to the relevant taxation authority such withholding or deduction and provide Gexcon with written evidence that it has made such payment.

11 Intellectual Property Rights

11.1 Gexcon is the owner or licensee of the Product and the Documentation. The Customer acknowledges that any Intellectual Property rights used or embodied in or in connection with the Products and the Documentation (including all derivatives and modifications thereto) shall remain the exclusive property of Gexcon or its licensors.

11.2 The Customer shall not to remove from the Products or Documentation any notices of Gexcon's or its licensor's proprietary rights. If the Customer, acting as a consultant, makes the results from any Products available to a third party, including incorporating such results into its own documents or presentations, the Customer must include an attribution indicating that the results came from the Products.

11.3 Any and all Intellectual Property rights created by Gexcon as a result of the performance of the Services, shall be owned by Gexcon. To the extent required for the receipt and use of the Services, Gexcon grants to the Customer a limited, internal, non-transferable, non-assignable, non-exclusive licence to access and use the output from such Services, solely for its internal business purposes and during the term of the relevant Licences to which the Services relate.

11.4 Any and all Intellectual Property rights owned by the Customer independent of this Agreement shall be owned by the Customer or its licensors. To the extent required for the provision of the Services, the Customer hereby grants to Gexcon a limited, internal, non-transferable, non-assignable, non-exclusive licence to access and use such Intellectual Property rights, solely for the provision of the Services and during the term of the relevant Licences to which the Services relate.

12 Termination

12.1 This Agreement may be terminated by notice in writing with immediate effect:

(a) by Gexcon if the Customer fails to pay any sum due under this Agreement within twenty one (21) days of any due date;

(b) by the non-defaulting party if the other commits a material breach of this Agreement which (if remediable) has not been remedied within twenty one (21) days of a written request to remedy; or

(c) by either party in the event of any steps being taken in respect of the other party for: the passing of a resolution for its winding-up or dissolution; the making of an administration order or the appointment of an administrator or receiver; the taking of possession or sale by an encumbrancer of the other party's assets; or any analogous events in any other jurisdiction; or if the other party ceases to do business.

12.2 Upon expiry or termination of this Agreement for any reason, and (in respect of a Product) on the expiry or termination of the provision of a specific Product:

(a) any terms of this Agreement stated to, or which by implication should, continue shall remain in effect, including clauses 4, 10, 11, 12.2, 13 to 15, 21, 23 and 25;

(b) except in respect of any element of the Products that Gexcon expressly permits continued limited use (which Gexcon reserves the right to curtail on notice), any Licence shall terminate without notice and the Customer shall immediately cease use of the Products and any Documentation and permanently delete all copies of the Products and Documentation and any licence key, passwords or access credentials;

(c) the Customer shall permanently delete any of Gexcon's Confidential Information (or return it at Gexcon's request);

(d) the Customer may continue to use any outputs from the Products obtained prior to expiry or termination, but accepts that they may become out of date and inaccurate; and

(e)   Gexcon shall be permitted to disable access to the Products and where applicable delete any of Customer's Confidential Information,

and on request a director of the Customer shall certify to Gexcon that it has complied with its obligations under this clause 12.2.

13   Indemnity

13.1   The Customer shall defend, indemnify, and hold Gexcon harmless against all third-party actions, claims and proceedings ("**Claims**") and any damages, costs, and expenses (including reasonable legal fees) arising therefrom, each to the extent arising from the Customer's use of the Products or Services in breach of this Agreement.

13.2   Gexcon shall defend and indemnify the Customer against all successful third-party Claims and any damages, costs, and expenses (including reasonable legal fees) awarded against the Customer by a court of competent jurisdiction or agreed in a settlement approved by Gexcon, each to the extent arising from any claim that the Customer's use of the Products or receipt of the Services in accordance with this Agreement infringed that third party's Intellectual Property rights.

13.3   The indemnity in clause 13.2 is conditional upon the Customer (i) promptly (and within 30 days) notifying Gexcon in writing of any such of actual or threatened Claim received by the Customer; (ii) giving Gexcon sole control of the defence and settlement of the Claim; (iii) reasonably cooperating with Gexcon, at Gexcon's expense, in the defence and settlement of the Claim and providing Gexcon with all relevant information for Gexcon to defend the Claim; and (iv) not making any admissions unless Gexcon gives prior written consent.

13.4   If Gexcon becomes aware or believes that the Products and/or Services may infringe any third-party Intellectual Property rights, then Gexcon may at its sole option decide to either:

(a)   obtain the right for the Customer to continue using the Products and/or Services, or modify or replace them so they become non-infringing (provided they provide the same type of functionality); or

(b)   terminate the Licence or part thereof and refund the Customer the portion of the Fees paid for the terminated part of Products and/or Services (including any unused, prepaid Fees).

13.5   The indemnity in clause 13.2 shall not apply to the extent the Claim arises from the Customer's breach of this Agreement, any modifications made by the Customer, a combination or use of the Products and/or Services with products and/or services not provided/supplied by Gexcon, or if the Customer uses an earlier version of Products or fails to implement Updates (including where Customer elects not to continue with Support Services) and the Claim could have been avoided if the Customer had switched to an updated version or installed Updates made available by Gexcon.

13.6   This clause 13 contains the Customer's exclusive remedy for any Intellectual Property right infringements.

14   Liability

14.1   Nothing in this Agreement shall limit or exclude Gexcon's liability for death or personal injury caused by negligence, for any fraud or fraudulent misrepresentation, or for any other liability that cannot be excluded or limited by applicable law.

14.2   Subject to clause 14.1, Gexcon's total aggregate liability under or in connection with this Agreement (whether in contract, tort (including negligence) or for breach of statutory duty) shall be limited to an amount equal to the Fees paid by the Customer in the previous twelve (12) months for the relevant Product or Service.

14.3   Subject to clause 14.1, Gexcon will not be liable for the following loss or damage however caused (whether in contract, tort (including negligence) or for breach of statutory duty) and even if foreseeable:

(a)   economic loss including administrative and overhead costs; loss of profits, business, contracts, revenues, goodwill, or data; wasted expenditure; loss production or anticipated savings; or

(b)   any indirect, incidental, special, or consequential loss or damage.

15 Confidentiality and Data Protection

15.1 Except with the prior written consent of the disclosing party or as required by law, a court order or by any relevant regulatory or government authority or to the extent that information has come into the public domain through no fault of the receiving party, each party shall:

(a) treat as strictly confidential all Confidential Information of the other party received or obtained as a result of entering into or performing this Agreement, and only use it for the purposes of this Agreement;

(b) not share it with any third party, other than its Affiliates and professional advisors, and only then on a need-to-know basis and strictly subject to confidentiality obligations no less onerous than this clause 15; and

(c) maintain the security of such Confidential Information by implementing appropriate technical and organisational measure to prevent disclosure.

15.2 The parties understand that the Products and Services do not require Gexcon to process any personal data on behalf of the Customer, and the Customer should not use the Products to store or process any personal data. To the extent that Gexcon collects and processes any personal data (such as for account administration and support queries), Gexcon is the controller over such data, and Gexcon shall collect and process it in accordance with its privacy policy available on www.gexcon.com. The Customer shall ensure that all users of the Products and Services are made aware of Gexcon's privacy policy.

16 Litigation and support

16.1 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 privileged or 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). If 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.

17 Audit

17.1 During the term of this Agreement and for 12 months thereafter, Gexcon may audit the Customer's use of the Products in order to investigate compliance with this Agreement, upon at least 14 days' prior written notice. Unless Gexcon has reasonable evidence to suggest the Customer is in breach of this Agreement, such an audit shall only be conducted once per calendar year and shall not unreasonably interrupt the Customer's business.

17.2 The Customer agrees to provide reasonable assistance (including reasonable access to Customer Systems) and information which is relevant for the audit. Gexcon shall not be responsible for any costs incurred by the Customer in relation to the audit.

17.3 Audits may also be conducted by electronic means and Gexcon may include license compliance technology in the Products that monitors, verifies and reports to Gexcon on the Customer's use of the Products to verify compliance with this Agreement.

17.4 Without prejudice to Gexcon's other rights and remedies, if Gexcon becomes aware that the Customer has used the Products outside the scope of the License granted, the Customer shall within 30 days of invoice, pay Gexcon for the excessive use at Gexcon's then applicable standard price list.

18   Force Majeure

18.1   Neither party shall be deemed to be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any circumstances beyond that party's reasonable control.

19   Entire Agreement

19.1   This Agreement sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement.

19.2   Each party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties, promises and terms contained in this Agreement and, save as expressly set out in this Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

20   Assignment and subcontracting

20.1   Subject to clause 20.2, neither party may assign, transfer, charge or otherwise dispose of or encumber this Agreement, or any of its rights or obligations under it, without the prior consent of the other party (not to be unreasonably withheld or delayed).

20.2   Gexcon may, without the consent of the Customer:

(a)   assign, novate or transfer this Agreement to an Affiliate or any purchaser of the Gexcon business; and

(b)   subcontract the performance of its obligations under this Agreement to a third party (including where Gexcon acts as a reseller of any software, products, or services), provided that Gexcon remains responsible to the Customer for such performance in accordance with the terms of this Agreement.

21   Notices

Any notice to a party under this Agreement shall be in writing, signed by or on behalf of the party giving it and shall be delivered personally, by pre-paid first class post, or by prepaid recorded delivery (or international equivalent) to the address of the party set out in the Order Form, or as otherwise notified in writing from time to time or sent by email to the email address specified in the relevant Order Form. A notice shall be deemed to have been served at the time of delivery, if delivered personally or, 48 hours after posting to an address in the United Kingdom, and 5 calendar days after posting to any other address. A notice sent electronically in accordance with this Clause 21 shall be deemed to have been received at the time of transmission, or, if this time falls outside of normal working hours, when normal working hours resume.

22   No knowledge of use

22.1   The parties acknowledge and agree that:

(a)   Gexcon has no direct control over the use and manner of application of the Products by the Customer, nor any knowledge of the data input when running the Products;

(b)   Gexcon has no knowledge of the particular situations for which the Customer may wish to use the Products, nor of the level of training and experience of the user;

(c)   the Customer is solely responsible for the interpretation any results from the Products, and any recommendations or action based on such interpretation; and

(d)   the Customer shall ensure that the personnel using the Products shall have a sufficient level of skill and experience in the field in which the output from the Products is to be applied and as required to evaluate such output.

23 General

23.1 To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement, nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

23.2 Subject to clause 24, variation of this Agreement shall not be valid unless it is in writing and signed by or on behalf of each of the parties by its respective authorised representatives.

23.3 Gexcon shall not be liable for any liability, loss or damage unless the Customer has issued a claim against Gexcon within two (2) years after the date the circumstances giving rise to the claim occurred.

23.4 No single or partial exercise of, or failure or delay in exercising, any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise. The doctrine of affirmation of a contract by election is specifically excluded.

23.5 Except for where a term provides a specific right or benefit to one of Gexcon's licensors (which shall be enforceable by such licensor), no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it. No third party consent is required to amend this Agreement.

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

24 Amendments

24.1 Gexcon reserves the right to amend these Terms and Conditions at any time by notifying the Customer in writing (such as where an amendment is required due to a change in law). The Customer may, acting reasonably, where the change has a material adverse effect on the Customer, reject such amendments and terminate this Agreement without penalty by giving written notice to Gexcon within 30 days 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 and Conditions as amended.

25 Governing law and jurisdiction

25.1 This Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter, or formation shall be governed by English law.

25.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Agreement, its subject matter, or formation.

Schedule 1   Licence Models

The Order Form sets out the relevant licence or subscription model applicable to the Customer's use of the Products, which shall be subject to the following applicable terms as appropriate.

1   Licence Type

1.1   Standalone Licence: This licence allows the Customer to operate the Products on a single (1) computer at any given time.

1.2   Network Licence: This licence permits the Customer to utilise the Products over a network, accommodating a specified number of users simultaneously.

1.3   Usage Rights: The Customer is authorised to engage in the number of concurrent tasks or active processes of the Products as specified in the Order Form.

Note: The licence may be implemented through various technical methods, including but not limited to the use of a physical dongle, a local software licence, or via a cloud-based server managed by Gexcon.

2   Licence Term

2.1   Unless otherwise specified in the Order Form, the licence term will be for a particular short-term period (e.g. between 1 to 12 months), or for a multi-year committed period (e.g. 2 to 5 years). There are no renewal commitments and for potential renewals after expiration, a new License must be purchased.

Please note that Gexcon may refer to a "lease" in the Order Form or Documentation, but this is used as a shorthand description, and the intended legal meaning is a time limited licence to use the Products.

3   Licence Categories

3.1   Commercial Licence: A commercial licence allows the Customer to use the Products for consulting to third parties.

3.2   Academic Licence: An academic licence (e.g. delivered as a "university edition") only allows the Customer, such as universities or other educational establishments, to use the Products solely for teaching, learning and non-profit research on the following basis and the following conditions apply:

(a)   Academic Licenses are only available to recognised academic institutions at the discretion of Gexcon and use is limited to employees of such institutions and their registered students;

(b)   the work and analysis using the Products and their output must not be for commercial purposes (including consulting), benchmarking, or any internal business purposes of the Customer;

(c)   any publications or presentations using data generated by a Product must cite the Product name and its version number; and

(d)   Support Services for the users will be provided at Gexcon's sole discretion.

4   Evaluation licence

4.1   Where Gexcon makes any Products and Documentation available for internal evaluation purposes ("**Evaluation Software**"), the terms in this section 4 shall apply and in the event of any conflict shall override the other terms in this Agreement. The primary purpose of the licence is for the Customer to evaluate the use of the Evaluation Software internally in test scenarios to determine whether to purchase a Licence, and not to use it for "live" scenarios.

4.2   Unless otherwise set out in the Order Form, the term of the Licence shall be for a limited period of 1 month.

4.3 Any Evaluation Software is released free of charge for evaluation only, and to the maximum extent permitted by law is on an "as is" and "as available" basis without any warranty or performance commitment (and clause 9.1 of this Agreement shall not apply), and Customer accepts that:

(a) Gexcon may provide Support Services in its sole discretion;

(b) it assumes all responsibility for its use of the Evaluation Software and any results obtained from it;

(c) it is not permitted to share the Evaluation Software with any third party; and

(d) subject to clauses 14.1 and 14.3 of this Agreement, Gexcon's total aggregate liability arising out of or in connection with its use of the Evaluation Software is capped at £1,000.

5 Beta licences

5.1 Where Gexcon makes any Products and Documentation available as "beta" software for testing purposes ("**Beta Software**"), the terms in this section 5 shall apply and in the event of any conflict shall override the other terms in this Agreement.

5.2 The primary purpose of the licence is for the Customer to test the Beta Software and to obtain feedback. The Customer should ensure that it safeguards all data used with Beta Software and retains any required back-up of its data, and that it does not rely in any way on the correct functioning or output or performance of the Beta Software.

5.3 Unless otherwise set out in the Order Form, the term of the Licence shall terminate upon the earlier of (i) 1 month from the date Customer receives the Beta Software, and (ii) the initial commercial release of a generally available version of the Beta Software.

5.4 Any Beta Software is released free of charge for testing only, and to the maximum extent permitted by law is on an "as is" and "as available" basis without any warranty or performance commitment (and clause 9.1 of this Agreement shall not apply), and the Customer accepts that:

(a) beta versions may contain defects and Gexcon is under no obligation, to provide technical support or to correct such defects, or to continue to develop, productise, support, repair, offer for sale or in any other way continue to provide or develop the Beta Software;

(b) it assumes all responsibility for its use of the Beta Software and any results obtained from it;

(c) it is not permitted to share the Beta Software with any third party;

(d) Gexcon may provide Support Services in its sole discretion; and

(e) subject to clauses 14.1 and 14.3 of this Agreement, Gexcon's total aggregate liability arising out of or in connection with its use of the Beta Software is capped at £1,000.

5.5 The Customer shall promptly provide to Gexcon (via such reporting mechanism notified) reasonable suggestions, comments and feedback regarding the Beta Software, including but not limited to usability, bug reports and test results and any other specific feedback requirements detailed in the Order Form ("**Feedback**"). The Customer agrees that Gexcon may use, disclose, reproduce, license, distribute and otherwise commercialise such Feedback and hereby grants Gexcon all required licences to allow Gexcon to exercise these rights. The Customer obtains no rights in any products or services in which the Feedback is used or implemented.

Schedule 2   Additional Product Terms

DIPPR Database

1   The specific terms in this section of Schedule 2 shall apply to the Products which incorporate the "DIPPR Database" provided by The American Institute of Chemical Engineers ("**AIChE**").   Without limiting the foregoing as at April 2022 such Products include: EFFECTS, RISKCURVES, and FLACS.

The Customer acknowledges and agrees that other Products made available pursuant to this Agreement may incorporate the DIPPR Database from time to time, in which case the terms in this Schedule 2 shall also apply to those Products.

2   Use of the DIPPR Database by the Customer as part of the Products is subject to the following additional terms, which shall, in the event of any conflict, override the other terms in this Agreement:

2.1   distribution of the Product via hard copy, CD-ROM, or electronically in any format or by any other means is prohibited;

2.2   access to the Product from outside the Customer's organisation in any manner is prohibited;

2.3   the Customer shall indemnify and hold AIChE harmless from any claim, damages, suit or proceedings arising from dissatisfaction of the contents of the DIPPR Database, including AIChE's liability for reasonable attorney's fees and expenses in defending such claim;

2.4   WHILST AICHE USES REASONABLE EFFORTS DESIGNED TO VERIFY THAT THE DATA CONTAINED IN THE DIPPR DATABASE HAS BEEN SELECTED ON THE BASIS OF SOUND JUDGEMENT, THE DIPPR DATABASE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. AICHE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AICHE SHALL NOT BE LIABLE FOR ANY DAMAGES, LOSS OF PROPERTY OR PROFITS, OR CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES THAT MAY RESULT FROM ERRORS OR OMISSIONS IN THE DIPPR DATABASE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND

2.5   AICHE DOES NOT WARRANT THAT THE DIPPR DATABASE WILL SATISFY THE CUSTOMER'S REQUIREMENTS OR THAT THE DIPPR DATABASE IS WITHOUT DEFECT OR ERROR OR THAT THE OPERATION OF THE DIPPR DATABASE WILL BE UNINTERRUPTED. THE CUSTOMER IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF THE DIPPR DATABASE AND FOR TESTING AND EVALUATING IT BEFORE ANY USE OF OR RELIANCE ON IT. THE CUSTOMER ASSUMES, WITHOUT LIMITATION, ALL RISKS AND LIABILITIES ASSOCIATED WITH THE USE OF THE DATA INCLUDED IN THE DIPPR DATABASE.

Geographic restrictions

3   For certain Products remote access to the Product(s) through the internet, or other network, is only allowed from geographical sites/offices which themselves have active Licences with the same licence level, and any other remote access is prohibited. The Order Form will stipulate if this restriction applies to the specific Product(s) licensed by the Customer, and the relevant restrictions.

Schedule 3   Hosted Service Terms

1   Definitions

1.1   In this Schedule in addition to the definitions set out at Clause 1.1 of this Agreement, the following terms have the following meanings:

"**Acceptable Use Policy**" means any policy or policies applicable to the use of, or access to, a hosted environment that is used to provide the Hosted Services, and includes the AWS Acceptable Use Policy (available at: https://aws.amazon.com/aup/) as may be updated from time to time.

"**CPU-Hour Ceiling**" means any limit on the total number of CPU-hours that the Customer may use the Hosted Services, as specified in any Order Form or as determined in accordance with paragraph 6.1 of this Schedule 3.

"**Customer Data**" means the data inputted by the Customer, its users or Gexcon on the Customer's behalf for the purpose of using the Hosted Services or facilitating the Customer's use of the Hosted Services.

"**Virus**" means any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, data, equipment, hardware or network, or any telecommunications services or similar, including malware, ransomware, worms, trojan horses, viruses and other similar things or devices.

2   Additional Customer Obligations

2.1   In addition to the Customer's obligations under Clause 8 and restrictions at Clause 4 of this Agreement, the Customer shall:

2.1.1   only access and use the Hosted Services through the interface made available by Gexcon, and not integrate that interface with any third party technology without Gexcon's prior written consent;

2.1.2   comply with any Acceptable Use Policy, and allow Gexcon or its third party hosting provider to verify such compliance;

2.1.3   not introduce or permit the introduction of any Virus into the Hosted Services or Gexcon's or any third-party hosting provider's system; and

2.1.4   not use, or facilitate or allow others to use, the Hosted Services (including by accessing, storing, distributing or transmitting any material through its use of the Hosted Services) in any way that:

(a)   is unlawful, fraudulent, harmful, obscene, discriminatory, or infringing; or

(b)   facilitates illegal activity or is otherwise illegal or causes damage or injury to any person or property.

3   Hosted Services Availability

3.1   Gexcon will use commercially reasonable endeavours to ensure that the Hosted Services are Available on a continuing basis, except for any time during which planned maintenance (including planned maintenance carried out by any third-party hosting provider) is scheduled to occur.

3.2   If an individual Hosted Service is not Available (as measured by Gexcon), the Customer shall be entitled to claim a reduction in the Fees for the Hosted Services (calculated on an individual Hosted Service basis) in accordance with the table below. Any claim for a reduction in Fees must be raised by the Customer to Gexcon in writing within 30 days of the end of the month to which the claim relates.

Availability of the specific Hosted Service	Reduction in the Monthly Fee for the impacted Hosted Service
Available for more than 90% (inclusive) of the Service Hours	No reduction

Available for less than 90% but more than 80% (inclusive) of the Service Hours	25% of the Monthly Fees
Available for less than 80% but more than 70% (inclusive) of the Service Hours	50% of the Monthly Fee
Available for less than 70% of the Service Hours	100% reduction in the Monthly Fee

And for the purposes of this paragraph 3 of this Schedule 3:

"**Available**" means that the Hosted Services are generally available for use by any users.

"**month**" means a calendar month.

"**Monthly Fee**" means in respect of Fees payable for the Hosted Services:

(a)   where the Fees are paid or payable by the Customer monthly, such Fees; or

(b)   where the Fees are paid or payable at any other interval, a pro-rated amount of such Fees equal to the equivalent monthly amount.

"**Service Hours**" means the total number of hours (rounded to the nearest whole hour) during any month of the relevant Licence term that the Hosted Services are required to be Available in accordance with paragraph 3.1 of this Schedule 3.

3.3   In calculating any reduction to the Monthly Fees, the Customer acknowledges and agrees that:

3.3.1   the Hosted Services shall be deemed to be Available irrespective of whether the use of the Hosted Services is interrupted or subject to errors or delays under clause 18 of this Agreement, including where resulting from any failure or other issue affecting communications networks and facilities;

3.3.2   where the Customer is entitled to use the Hosted Services pursuant to this Agreement for part of any month during the relevant Licence term, the calculation shall be pro-rated to reflect that period; and

3.3.3   any reduction calculated in accordance with this paragraph 3 shall only apply to the portion of the Fees payable by the Customer for the effected Hosted Service.

3.4   If any unplanned outages or other issues ("**Issue**") that affect Availability occur, the Customer should raise this through the Support Services.

3.5   Notwithstanding anything else in this Agreement, the parties acknowledge and agree that any reduction in the Monthly Fees payable in accordance with this paragraph 3 shall be the Customer's sole and exclusive remedy in the event that Gexcon is unable to comply with its obligations under paragraph 3.1 of this Schedule 3.

4   Networks and Connecting to the Hosted Services

4.1   Gexcon does not warrant that the Customer's use of the Hosted Services will be uninterrupted or error-free and is not responsible for the Customer's use of the Hosted Services or any delay, delivery failures or losses resulting from any failure or other issue affecting communications networks and facilities.

4.2   The Customer is responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems, and for ensuring that the Customer Systems are appropriately configured, to enable it to access and use the Hosted Services.

5   Customer Data

5.1   The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

5.2   Gexcon shall not be responsible for the back-up or storage of any Customer Data, and the Customer herby acknowledges that it is responsible for maintaining its own database and back-up of any Customer Data. Gexcon

strongly recommends that the Customer maintains copies of any Customer Data on its own databases and the Customer agrees that Gexcon is not responsible for any loss or destruction of Customer Data which occurs in the course of the Customer's use of the Hosted Services.

5.3 Following the expiry or earlier termination of the relevant Licence, and subject to Gexcon's obligations under Clause 15 of this Agreement, Gexcon may delete any Customer Data in its possession, custody or control (and is not obliged to retain a copy for the Customer).

6   CPU-hour Ceiling

6.1 Where a CPU-Hour Ceiling has not been specified in the Order Form, or otherwise advised by the Customer to Gexcon in writing, a CPU-Hour Ceiling of 100,000 CPU-hours will apply.

6.2 Gexcon may take any action to prevent the Customer from exceeding the CPU-Hour Ceiling, including by automatically stopping any simulations and preventing the Customer from starting new simulations. Notwithstanding the foregoing, the Customer shall be responsible for any use that exceeds the CPU-Hour Ceiling, and Gexcon shall be entitled to levy additional Fees in respect of any such over-use.

Schedule 4   Support Services

1   Definitions

1.1   In this Schedule in addition to the definitions set out at Clause 1.1 of this Agreement, the following terms have the following meanings:

"**Fault**" means a failure of any Product to provide the functionality set out in the Specification.

"**Working Day**" means Monday to Friday (inclusive), excluding any public holidays in the country from which the Services are provided by Gexcon.

"**Working Hours**" means the hours of 9.00am to 5.00pm on any Working Day.

2   Support Services to be provided by Gexcon

2.1   In consideration of the payment by the Customer of the Support Fee, Gexcon shall make available via email Support Services during Working Hours in accordance with its standard support policy. General support will be provided from Gexcon's support team (primarily in Norway, but also from other locations). Any support outside of Working Hours is at Gexcon's sole discretion.

2.2   The scope of the Support Services shall be limited to such reasonable assistance as Gexcon reasonably determines to be required to support the Customer's effective operation of the Product in accordance with this Agreement. Support Services includes the provision by Gexcon of its standard Updates.

2.3   Gexcon shall have no obligation to provide Support Services other than the most recent version of each Product with all Updates installed.

3   Support notifications

3.1   If the Customer discovers any Fault with the Product then it shall as soon as is reasonably practicable notify Gexcon of the same by email to the support address notified by Gexcon from time to time.

4   Duration

4.1   Subject to payment of the Support Fee, Support Services are provided on and from the Licence commencement date until the end of the Licence term set out in Order Form.