

# End User Subscription Agreement - EUSA

This End User Subscription Agreement for ChemAxon SaaS ("**EUSA**") is by and between ChemAxon Kft., located in Záhony utca 7., Budapest, Hungary, H-1031 ("**ChemAxon**") and its Affiliates and the individual or legal entity who is using the applicable services made available by ChemAxon ("**Subscriber**") – altogether "**Parties**" – and governs all use of said services referenced in the order placed by Subscriber. Subscriber can order said services by sending to ChemAxon either an email message (sales [at] chemaxon [dot] com) or an ordering or purchasing document ("**Order Form**") properly filled out.

BY USING CHEMAXON SAAS AND/OR SUBSCRIPTION SERVICES, SUBSCRIBER EXPRESSLY ACCEPTS AND AGREES TO THE TERMS OF THIS EUSA. IF YOU ARE AN INDIVIDUAL AGREEING TO THE TERMS OF THIS EUSA ON BEHALF OF AN ENTITY, SUCH AS YOUR EMPLOYER, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ENTITY AND "SUBSCRIBER" SHALL REFER HEREIN TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS OF THIS EUSA, YOU MUST NOT EXECUTE THE ORDER FORM AND MAY NOT USE CHEMAXON SAAS AND/OR SUBSCRIPTION SERVICES (EACH AS DEFINED BELOW).

## 1. Definitions

The following capitalized terms shall have the meanings set forth below:

1.1. "**Account**" gives the End User personalized access to settings and ChemAxon SaaS by signing up and providing ChemAxon with some personal information (typically your name, email address and a password). Such Account information will be used to authenticate the End User when accessing the ChemAxon SaaS and Subscription Services and protect the Account from unauthorized access by others. Account settings can be edited or terminated at any time via the identity provider.

1.2. "**Affiliate**" shall mean (i) any corporation or business entity of which fifty percent (50%) or more of the securities or other ownership interests representing the equity, the voting stock or general partnership interest are owned, controlled or held, directly or indirectly; or (ii) any corporation or business entity which, directly or indirectly, owns, controls or holds fifty percent (50%) (or the maximum ownership interest permitted by law) or more of the securities or other ownership interests representing the equity, the voting stock or, if applicable, the general partnership interest.

1.3. "**ChemAxon SaaS**" means ChemAxon's proprietary software as a service ("**SaaS**") solution identified at the order by Subscriber and made available by ChemAxon to Subscriber on the e-business Hosting Environment for which ChemAxon agrees to provide Subscription Services to Subscriber pursuant to the terms of this EUSA, e.g., the "ChemAxon Synergy". For avoidance of doubt, no license file shall be provided to Subscribers.

1.4. "**Subscriber Data**" means any data and/or information that Subscriber provides including, without limitation, any kind of chemical and biological data or any html files, text, recordings, graphics, images, applets or servlets that Subscriber create, upload/download or transfer in/out or through the e-business Hosting Environment.

1.5. **"e-business Hosting Environment"** means the hardware and software that Hosting Party makes available for ChemAxon to provide Subscription Services to Subscriber and the Hosting Party provided Internet access bandwidth, collectively as detailed in Annex 2.

1.6. **"Effective Date"** means the commencement of the Subscription Term and of this EUSA as defined in Section 7.1.

1.7. **"End User"** shall mean an individual user who eventually uses ChemAxon SaaS including the Subscriber's officers, directors, employees if said Subscriber is a legal entity.

1.8. **"Feedback"** means any comments or other feedback Subscriber may provide to ChemAxon concerning the functionality and performance of ChemAxon SaaS, including identification of potential errors and improvements.

1.9. **"Hosting Party"** shall mean a third party that provides the e-business Hosting Environment for ChemAxon SaaS. Such third party is listed in Annex 2.

1.10. **"Internet"** means the public worldwide network of TCP/IP-based networks.

1.11. **"Order Form"** means an ordering document, which is either an appropriate email message or a form manifested in a web page or a part thereof or a standalone document accepted by ChemAxon for subscribing to ChemAxon SaaS and Subscription Services and referencing this EUSA.

1.12. **"Representatives"** means directors, officers, employees, agents, contractors, consultants, advisors and representatives of a party or a third party.

1.13. **"Subscription Expiration Date"** means the last day of Subscriber's Subscription Term when all Subscription Services granted under this EUSA have expired in accordance with any further conditions agreed on the Order Form.

1.14. **"Subscription Fee"** means the fee for Subscription Services purchased by the Subscriber.

1.15. **"Subscription Services"** means the hosting services of ChemAxon SaaS as well as maintenance and support services including software upgrades and patches and bug fixes provided by ChemAxon as set forth in Annex 1 of this EUSA.

1.16. **"Subscription Term"** means the applicable initial and/or renewal term of the Subscription Services as defined in Section 7 and considered as the time between the Effective Date and the Subscription Expiration Date.

1.17. **"TCP/IP"** means Transmission Control Protocol/Internet Protocol.

## 2. ChemAxon Responsibilities

2.1. **ChemAxon SaaS.** Subject to Subscriber's timely payment of the Subscription Fee, compliance with the terms and conditions of this EUSA and parameters declared on the Order Form, ChemAxon shall provide to Subscriber ChemAxon SaaS, running in the e-business Hosting Environment made available by the Hosting Party and the Subscription Services during the applicable Subscription Term to use the same for internal or commercial purposes, in connection with the deployment of no more than the number of Accounts as are set forth in the Order Form. Unless renewed, this EUSA will expire on the Subscription Expiration Date. This means that ChemAxon will cease providing access to ChemAxon SaaS after the end of the applicable Subscription Term. Team Admin is Subscriber's personnel who shall be a direct contact to ChemAxon regarding ChemAxon SaaS and Subscription Services. Team Admin invite and manage End Users.

2.2. **Accounts.** ChemAxon shall create a proper work space of ChemAxon SaaS defined on Subscriber's Order Form and invite a Team Admin who shall be responsible for all other set up, pursuant to Section 3.1, necessary for the End Users to access ChemAxon SaaS. Each End User shall generate an Accounts and proper credentials, which provides access to ChemAxon SaaS.

2.3. **Set-up.** On or before the Effective Date, ChemAxon shall complete all tasks required to, and shall make the Subscription Services and ChemAxon SaaS accessible to Subscriber in the e-business Hosting Environment.

2.4. **Subscription Services.** Subject to Subscriber's timely payment of the Subscription Fee and compliance with the terms and conditions of this EUSA, ChemAxon shall provide and perform to Subscriber the Subscription Services operate in the e-business Hosting Environment during the Subscription Term so as to meet or exceed the required levels of quality, speed, availability, capacity, reliability or other characteristics detailed in Annex 1. Subscriber shall purchase Subscription Services corresponding to the details of the subscription as specified in the Order Form. Unless renewed, the Subscription Services will expire on the Subscription Expiration Date. This means that ChemAxon will not provide the Subscription Services after the end of the applicable Subscription Term.

### **3. Subscriber's Responsibilities**

3.1. **Accounts.** The Subscriber is responsible to have its End Users set up their Accounts. The Subscriber is also responsible to control and maintain the access rights for ChemAxon SaaS based on the number and identity of its End Users pursuant to this EUSA and the Order Form. Account and the Account information is personal, non-transferable and each End User shall keep any related information confidential. Multiple and/or parallel use of an access credential to an Account at the same time is strictly prohibited.

3.2. Subscriber and End Users shall not destroy, disable or circumvent, or attempt to destroy, disable or circumvent in any way the Account and/or the use and time limitations set by the Account or ChemAxon SaaS. Subscriber acknowledges and agrees that any attempt to exceed the use of ChemAxon SaaS beyond the limits configured to the Account will automatically and immediately terminate the licenses granted under this EUSA.

**3.3. Subscription Services.** Subscriber will comply with its responsibilities to support the Subscription Services as specified in this Section 3 and in Annex 1. Such obligations are to be performed at no charge to ChemAxon. ChemAxon's obligations are contingent on Subscriber meeting such support obligations.

**3.4. Capacity Planning.** Subscriber acknowledges it is its responsibility to determine whether ChemAxon SaaS, the Subscription Services, e-business Hosting Environment, Subscriber Data and their combination will meet Subscriber's capacity, performance, or scalability needs. Subscriber is responsible for planning and for requesting changes to the e-business Hosting Environment, including any additional capacity required supporting anticipated peaks in demand that may significantly increase web site hits, transaction volumes, or otherwise increase system resource utilization. In such cases, further charges may apply.

**3.5. Content and Digital Certificates.** Subscriber is responsible for Subscriber Data, including selection, creation, design, usage, licensing, maintenance, testing, and support. Subscriber is also responsible for any individual's personal information or any information Subscriber considers confidential that is included in the Subscriber Data. The Subscription Services or ChemAxon SaaS may allow Subscriber to include within the Subscriber Data personal information about others. The laws of some jurisdictions may require the consent of individuals prior to including their personal information in the Subscriber Data or require compliance with laws, rules, and regulations (such as personal health information). Subscriber agrees to comply with all applicable laws, to obtain all necessary consents, and make all necessary disclosures before including personal information in the Subscriber Data and using in connection with ChemAxon SaaS and the Subscription Services. The Subscriber acknowledges and agrees that Subscriber is solely responsible for any personal information that may be contained in the Subscriber Data, including any information which Subscriber shares with third parties, and that Subscriber is and remains in compliance with applicable data privacy and protection laws.

**3.6. Security considerations.** Subscriber acknowledges that Subscriber has reviewed the security features e-business Hosting Environment and responsibilities of the Host Party and has determined that they meet Subscriber's security needs. Subscriber is solely responsible for determining the appropriate procedures and controls regarding security of Subscriber Data and for the implementation of any such procedures and controls.

## **4. Subscription Fee and Payment**

**4.1. Subscription Fee.** In consideration of the provision of the Subscription Services and ChemAxon SaaS hereunder and subject to ChemAxon's compliance with its obligations, Subscriber agrees to pay ChemAxon the Subscription Fee, which is due on the Effective Date in case of the Initial Subscription Term pursuant to Section 7.1 or on the Subscription Expiration Date of the then-current Renewal Subscription Term in case of renewal pursuant to Section 7.2.

**4.2. Payment.** Payment of the Subscription Fee made by Subscriber as set forth in the applicable Order Form shall arrive to ChemAxon's designated bank account prior to or on its due date pursuant to Section 4.1 .

**4.3. Taxes.** All payments by Subscriber to ChemAxon hereunder shall be made free and clear of and without reduction for all applicable sales or use, goods and services, value added, consumption or other similar fees or taxes imposed by any government (other than taxes on the net income of ChemAxon), which shall be paid by Subscriber. Accordingly, if Subscriber is required to withhold any taxes on the amounts payable to ChemAxon hereunder, Subscriber shall pay ChemAxon such additional amounts as are necessary to ensure receipt by ChemAxon of the full amount which ChemAxon would have received but for the deduction on account of such withholding. The amounts of any taxes required to be paid by ChemAxon will be added to ChemAxon's invoice, and Subscriber shall promptly remit such amounts to ChemAxon, as the collection agent, upon invoice.

## **5. Restricted Activities**

Subscriber shall not, and shall not encourage any third party to: (a) use ChemAxon SaaS for the purpose or in manner except as permitted or described in this EUSA, in the Order Form or in the documentation provided therewith; (b) modify, adapt, alter, translate, or create derivative works of ChemAxon SaaS; (c) reverse-engineer, decompile, disassemble, or attempt to derive the code for ChemAxon SaaS, in whole or in part, except to the extent that such activities are permitted under applicable law; (d) distribute, license, sublicense, lease, rent, loan, or otherwise transfer ChemAxon SaaS to any third party; (e) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of ChemAxon or its suppliers contained on or within any copies of ChemAxon SaaS; (f) use ChemAxon SaaS for the purpose of creating a product or service competitive with ChemAxon SaaS; (g) use ChemAxon SaaS with any unsupported software or hardware (as described in the applicable documentation provided by ChemAxon); (h) use ChemAxon SaaS for any time-sharing, outsourcing, service bureau, hosting, application service provider or like purposes; (i) disclose the results of any benchmark tests on ChemAxon SaaS without ChemAxon's prior written consent; (j) use ChemAxon SaaS for any unlawful purpose; or (k) separate use of individual components integrated into ChemAxon SaaS by Subscriber for any purposes; if this is the intention, Subscriber needs to contact ChemAxon at sales [at] chemaxon [dot] com and purchase appropriate license(s) for such individual components.

## **6. Ownership of ChemAxon SaaS**

ChemAxon and its licensors own and retain all right, title, and interest, including all intellectual property rights, in and to ChemAxon SaaS, including any improvements, modifications, and enhancements to it. Except for the rights expressly granted in this EUSA, Subscriber shall acquire no other rights, express or implied, in or to ChemAxon SaaS, and all rights not expressly provided to Subscriber hereunder are reserved by ChemAxon and its licensors. ChemAxon SaaS provided hereunder are made available to Subscriber as a service, not sold. For avoidance of doubt, no license file shall be provided to fulfill ChemAxon responsibilities pursuant to this EUSA.

## 7. Term and Termination

7.1. **Commencement.** This EUSA and Subscription Services will be effective commencing at 12:01 a.m., CET (GMT+1), on the fifth (5<sup>th</sup>) business day after the date of arrival of payment of the Subscription Fee pursuant to Section 4 to ChemAxon's designated bank account ("**Effective Date**"). Unless otherwise terminated in accordance with this section, this EUSA will remain in effect until the Subscription Expiration Date and for so long as Subscriber is in compliance with the terms and conditions of this EUSA ("**Initial Subscription Term**").

7.2. **Renewal.** Subject to payment of the Subscription Fee by Subscriber pursuant to Section 4 and Subscriber's in compliance with the terms and conditions of this EUSA, this EUSA and the Subscription Term will renew for an additional Subscription Term (the "**Renewal Subscription Term**"). The Initial Subscription Term and Renewal Subscription Term altogether, where applicable, shall be the term of the Subscription Services ("**Subscription Term**").

7.3. **Expiry.** If a payment of the Subscription Fee does not arrive to ChemAxon's designated bank account prior to or on its due date pursuant to Section 4, this EUSA, ChemAxon SaaS and Subscription Services shall expire on the Subscription Expiration Date. ChemAxon shall shut down ChemAxon SaaS and Subscription Services pursuant to Section 7.8.

7.4. **Change in Subscription Services.** Subscriber may terminate or extend to use certain and available portion of or tools in ChemAxon SaaS at its sole discretion at the expiry of the Subscription Term and/or add new ones at any time in the Subscription Term with giving written notification to ChemAxon. Such notification must be in writing at least thirty (30) days prior to the end of the Subscription Term for this EUSA. The termination of selected portion of or tools in ChemAxon SaaS will not affect Subscriber's obligation to pay charges for other ChemAxon SaaS or the Subscription Services. In case of the above change, no refund of the Subscription Fee shall be made by ChemAxon to Subscriber. Subject to a ninety (90) day prior notice to Subscriber, ChemAxon shall have the right to change any portion of or tools in ChemAxon SaaS or the Subscription Services at its sole discretion at any time in the Subscription Term if such change is in line with the Subscription Service purposes or is a substitution of service, which serves better performance for Subscriber or termination of a product line or a component thereof.

7.5. **Termination without cause by Subscriber.** Subscriber may terminate this EUSA, any Order Form incorporating the terms of this EUSA and the use of ChemAxon SaaS and Subscription Services without cause at any time by simply stopping to use and make payment for ChemAxon SaaS and Subscription Services. The date of termination pursuant to this Section 7.5 shall be the end of use of ChemAxon SaaS by Subscriber if ChemAxon has been notified or the Subscription Expiration Date if ChemAxon has not been notified.

7.6. **Termination without cause by ChemAxon.** ChemAxon may terminate this EUSA, any Order Form incorporating the terms of this EUSA and the provision of ChemAxon SaaS and Subscription Services without cause at any time with giving written notification to Subscriber. Such notification must be in writing at least one quarter of the then-current Subscription Term prior to the Subscription Expiration Date. The date of termination pursuant to this Section 7.6 shall be the end of the notice period.

**7.7. Termination for Cause.** Either party may terminate this EUSA and any Order Form incorporating the terms of this EUSA on an immediate effect if the other party materially breaches this EUSA and fails to cure such breach within three (3) working days of receiving written notice thereof. The date of termination pursuant to this Section 7.7 shall be the end of the cure period. ChemAxon has the right to suspend access right of any End User or eventually terminate this EUSA and any Order Form incorporating the terms of this EUSA on an immediate effect if such End User will not use ChemAxon SaaS with full compliance of the provisions of this EUSA. Subscriber acknowledges and agrees that any attempt to exceed the use of ChemAxon SaaS beyond the limits configured to the Account shall be considered as material breach of this EUSA.

**7.8. Effect of Termination.** Unless otherwise agreed by the Parties, upon the expiration or termination of this EUSA or any Order Form, all ChemAxon SaaS and Subscription Services granted herein or therein will terminate and Subscriber will discontinue all use or provision of the applicable ChemAxon SaaS and Subscription Services, respectively. Subscriber shall return to ChemAxon any materials (e.g. backups) provided by ChemAxon to Subscriber, if any. Upon the date of termination, all undisputed Subscription Fee accrued hereunder through the date of termination will become due and payable. No refund of the Subscription Fee shall be made by ChemAxon to Subscriber if this EUSA (i) expires pursuant to Section 7.3 or is terminated by (ii) Subscriber without cause pursuant to Sections 7.5 or (iii) ChemAxon with cause pursuant to Section 7.7. Proportional refund of the Subscription Fee shall be made by ChemAxon to Subscriber if this EUSA is terminated by (a) ChemAxon without cause pursuant to Section 7.6 or (b) Subscriber with cause pursuant to Section 7.7 provided only that the amount of the proportional refund exceeds 10% of the Subscription Fee. Subscriber Data stored on the e-business Hosting Environment, if any, shall be available for thirty (30) days after the Subscription Expiration Date or the date of termination. During such period, Subscriber may securely save its data to its own environment. Upon Subscriber's request and subject to additional fee payable by Subscriber to ChemAxon based on agreement between Subscriber and ChemAxon, ChemAxon may provide the service to save and deliver such Subscriber Data to Subscriber. After such period, ChemAxon shall assume no liability whatsoever for losses of any information or data whatsoever including Subscriber Data, which may occur due to any expiry or termination of this EUSA, ChemAxon SaaS and Subscription Services.

**7.9. Reinstatement.** In case of expiry or termination of ChemAxon SaaS and/or Subscription Services by Subscriber pursuant to Sections 7.3, 7.5 and 7.6, a reinstatement fee shall be paid by Subscriber to ChemAxon upon Subscriber's requests to resume its subscription of ChemAxon SaaS and Subscription Services after said expiry, termination or discontinuation thereof.

**7.10. Survival.** Sections 1, 5, 6, and 7 through 13 shall survive any termination or expiration of this EUSA or any Order Form. Upon termination, ChemAxon may also enforce any rights provided by law.

## **8. Feedback.**

Subscriber may submit to ChemAxon bug reports, comments, feedback or ideas (collectively “**Feedback**”) about ChemAxon SaaS, including without limitation about how to improve ChemAxon SaaS. By submitting any Feedback, Subscriber hereby assigns to ChemAxon all right, title, and interest in and to the Feedback, if any.

## 9. Confidentiality

9.1. **Definition.** "Confidential Information" means any information disclosed by one party ("Discloser") to the other ("Recipient"), directly or indirectly, in writing, orally or by inspection of tangible objects, which is designated as "Confidential," "Proprietary" or some similar designation, or learned by Recipient under circumstances in which such information would reasonably be understood to be confidential. Confidential Information may include information disclosed in confidence to Discloser by third parties. For the purposes of this EUSA, ChemAxon SaaS, and the results of any performance, functional or other evaluation of ChemAxon SaaS, shall be deemed as Confidential Information of ChemAxon, while Subscriber Data shall be deemed as Confidential Information of Subscriber.

9.2. **Exceptions.** The confidentiality obligations in this Section 9 shall not apply with respect to any of the Discloser's Confidential information which Recipient can demonstrate: (a) was in the public domain at the time it was disclosed to Recipient or has become in the public domain through no act or omission of Recipient; (b) was known to Recipient, without restriction, at the time of disclosure as shown by the files of Recipient in existence at the time of disclosure; (c) was disclosed by Recipient with the prior written approval of Discloser; (d) was independently developed by Recipient without any use of Discloser's Confidential Information by Representatives of (or contractors hired by) Recipient who had no access to or did not rely on Discloser's Confidential Information; (e) became known to Recipient, without restriction, from a source other than Discloser without breach of this EUSA by Recipient and otherwise not in violation of Discloser's rights; or (f) is released from the term of this EUSA by mutual agreement of the Parties in writing.

9.3. **Restrictions on Use and Disclosure.** Recipient agrees not to use Discloser's Confidential Information or disclose, distribute or disseminate Discloser's Confidential Information except in furtherance of the performance of its obligations or enforcement of its rights hereunder or as otherwise expressly agreed by Discloser in writing. Recipient agrees to restrict access to such Confidential Information to its Representatives who need to know such Confidential Information for performing as contemplated hereunder and have agreed in writing to be bound by a confidentiality obligation no less protective than that contained in this EUSA. Recipient shall exercise the same degree of care to prevent unauthorized use or disclosure of Discloser's Confidential Information to others as it takes to preserve and safeguard its own information of like importance, but in no event less than reasonable care.

9.4. **Compelled Disclosure.** If Recipient is compelled by a court or other competent authority or applicable law to disclose Confidential Information of Discloser, it shall give Discloser prompt written notice and shall provide Discloser with reasonable cooperation at Discloser's expense so that Discloser may take steps to oppose such disclosure or obtain a restraining order. Recipient shall not be in breach of its obligations in this Section 9 if it makes any legally compelled disclosure provided that Recipient meets the foregoing notice and cooperation requirements.



**9.5. Injunctive Relief.** Recipient acknowledges that breach of the confidentiality obligations would cause irreparable harm to Discloser, the extent of which may be difficult to ascertain. Accordingly, Recipient agrees that Discloser is entitled to immediate injunctive relief in the event of breach of an obligation of confidentiality by Recipient, and that Discloser shall not be required to post a bond or show irreparable harm in order to obtain such injunctive relief.

**9.6. Return of Confidential Information.** As between the Parties, Confidential Information shall remain the property of the Discloser. At any time, upon Discloser's reasonable request, Recipient shall promptly (and in any event within 60 days) return to Discloser or destroy, at the election of the Discloser, any Confidential Information of the Discloser. In addition, within 30 days after termination of this EUSA, Recipient shall (i) promptly return all tangible materials containing such Confidential Information to Discloser, (ii) remove all Confidential Information (and any copies thereof) from any computer systems of the Recipient, its contractors and its distributors, and confirm in writing that all materials containing Confidential Information have been destroyed or returned to Discloser, as applicable, by Recipient. Recipient shall cause its Affiliates, and Representatives to strictly comply with the foregoing. In case of ChemAxon, as Recipient, shall be requested by Subscriber to save and deliver Subscriber's data to Subscriber pursuant to Section 7.8, additional fee payable by Subscriber to ChemAxon may apply. Notwithstanding the foregoing, (x) the Recipient may retain one copy of the Discloser's Confidential Information for archival purposes and as reasonably necessary to demonstrate compliance with the terms and conditions of this EUSA, including in connection with legal proceedings and (y) neither the Recipient nor any of its Representatives shall be required to delete or destroy any electronic back-up media or other electronic back-up files that have been created solely by the automatic or routine archiving and back-up procedures of the Recipient or its Representatives, to the extent created and retained in a manner consistent with its or their standard archiving and back-up procedures.

## **10. Warranties and Disclaimers**

**10.1. ChemAxon Warranties.** ChemAxon warrants that:

10.1.1. it has the requisite corporate power and authority to execute, deliver and perform its obligations under this EUSA;

10.1.2. it will make available ChemAxon SaaS and perform the Subscription Services to the best of its abilities using all reasonable care and skill in accordance with generally recognized commercial practices and standards and in accordance with Annex 1 and documentation;

10.1.3. it shall make available ChemAxon SaaS and perform the Subscription Services in accordance with all applicable laws and regulations and expected industry standards including but not limited to those relating to data protection;

10.1.4. ChemAxon SaaS shall be in compliance with the specification and in accordance with the functional characteristics described in the user guide.

10.1.5. if required, it has obtained, and at all times will maintain, all necessary licenses and consents from third parties to perform its obligations under this EUSA;

10.1.6. to the best of its knowledge, ChemAxon SaaS made available to Subscriber, pursuant to this EUSA, shall be free from computer viruses. Subscriber is advised that it should carry out its own virus checks and satisfy itself that any files downloaded from the e-business Hosting Environment are free from computer viruses. Under no circumstances shall ChemAxon be liable whatsoever for any loss (consequential or otherwise, including but not limited to loss of data or loss of profits) resulting from or connected with the accidental introduction of a computer virus into Subscriber's environment (other than in breach of the warranty in this Section 10.1);

10.1.7. it shall notify Subscriber immediately of any breach by the Host Party of its agreement with ChemAxon or any material issue arising from the e-business Hosting Environment which may interfere with the Subscriber's enjoyment of the Subscription Services or risk damage, loss, corruption or modification to any data, programs, materials or information used by the Subscriber;

10.2. **Warranty disclaimer.** SUBSCRIBER EXPRESSLY UNDERSTAND AND AGREE THAT ALL USE OF CHEMAXON SAAS IS AT SUBSCRIBER'S SOLE RISK AND THAT CHEMAXON SAAS AND MAINTENANCE AND SUPPORT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." CHEMAXON, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES REGARDING CHEMAXON SAAS OR MAINTENANCE AND SUPPORT SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, TOGETHER WITH ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM CHEMAXON OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS EUSA. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CHEMAXON, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO SUBSCRIBER THAT: (A) SUBSCRIBER'S USE OF CHEMAXON SAAS OR MAINTENANCE AND SUPPORT SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS, OR (B) SUBSCRIBER'S USE OF CHEMAXON SAAS OR MAINTENANCE AND SUPPORT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL EXCLUDE OR LIMIT CHEMAXON'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SUBSCRIBER UNDERSTANDS AND ACKNOWLEDGES THAT CHEMAXON SAAS IS NOT DESIGNED, INTENDED OR WARRANTED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS.

10.3. **Exclusivity of Warranties.** The warranties in Section 10.1 are the exclusive warranties from ChemAxon. They replace all other warranties, including, without limitation, the implied warranties of merchantability, and fitness for a particular purpose.

10.4. **Security.** Security-related services by the Host Party including process security management, physical security, and network security are specified in documents made available by the Host Party. Subscriber acknowledges that ChemAxon does not control and the transfer of data over telecommunication facilities, including the Internet. ChemAxon does not warrant that it will be able to prevent third party disruptions of the e-business Hosting Environment or in connection with Subscriber Data, provided that it has taken all reasonable commercial and technical measures to avoid this eventuality. Subscriber agrees and acknowledges that ChemAxon shall assume no liability whatsoever for the security-related services by the Host Party and/or telecommunication facilities described in this Section 10.4.

10.5. **Other Disclaimers.** Save as set out in the Service Levels pursuant to Annex 1, ChemAxon does not warrant uninterrupted or error-free operation of any Subscription Service or that ChemAxon will correct all defects. ChemAxon does not make any representation or warranty with respect to Subscriber's responsibilities set forth in Section 3.6. ChemAxon provides non-ChemAxon products, and non-Subscription Services, if any, without warranties of any kind. However, non-ChemAxon manufacturers, suppliers, or publishers may provide their own warranties to Subscriber.

10.6. **Subscriber's Warranties.** Subscriber warrants that (a) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this EUSA; (b) Subscriber has no contractual or other obligation that restricts or prohibits Subscriber's execution or performance of this EUSA; (c) Subscriber's use of ChemAxon SaaS and/or Subscription Services and Subscriber Data will comply with unlawful use of the Internet service as follows: Subscriber warrants and undertakes that neither Subscriber nor any person authorized by Subscriber will knowingly publish or transmit over the Internet any material that is obscene, threatening, defamatory or likely to cause offence or which in any way infringes the intellectual property rights of another party. Subscriber hereby agree to indemnify and hold ChemAxon harmless from any and all demands losses claims proceedings damages costs and expenses including legal fees arising out of any claim against us in relation to such materials. Subscriber shall accept responsibilities for all items published or transmitted from Subscriber's site. The Hosting Party will only act as a distributor of Subscriber's traffic and will not examine it in any way except for the purpose of routing it over the Internet. ChemAxon reserves the right to investigate potential violations of the above warranties in this Section 10.6. If ChemAxon reasonably determines that a material breach of any such warranty has occurred during the term of this EUSA, ChemAxon reserves the right without notice to Subscriber to reject remove or – using reasonable efforts to promptly notify Subscriber by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail - require Subscriber to remove any material or Subscriber Data, which in our reasonable opinion contravenes the above provisions of this Section 10.6.

## 11. Indemnification

**11.1. By ChemAxon.** ChemAxon shall defend at its own expense any legal action brought against Subscriber to the extent that it is based on a claim or allegation that ChemAxon SaaS infringes a patent or copyright of a third party, and ChemAxon will pay any costs and damages awarded against Subscriber in any such action, or agreed to under a settlement signed by ChemAxon, that are attributable to any such claim but shall not be responsible for any compromise made or expense incurred without ChemAxon's consent. Such defense and payments are subject to the conditions that (a) Subscriber gives ChemAxon prompt written notice of such claim, (b) tenders to ChemAxon sole control of the defense and settlement of the claim, and (c) reasonably cooperates with ChemAxon when requested in connection with the defense and settlement of the claim. ChemAxon will have no liability to so defend and pay for any infringement claim to the extent it (i) is based on modification of ChemAxon SaaS other than by ChemAxon, with or without authorization; (ii) results from failure of Subscriber to use an updated version of ChemAxon SaaS; or (iii) is based on the combination or use of ChemAxon SaaS with any product, data, software (including, without limitation, an open source software), program or apparatus, device not provided by ChemAxon in the e-business Hosting Environment if such infringement would not have arisen but for such use or combination; or (iv) results from use of ChemAxon SaaS by Subscriber after its subscription and/or this EUSA was terminated; or (v) is based on Subscriber Data or generally Subscriber's failure to comply with its obligations under this EUSA.

**11.2. Limitation of IP Damages.** Should any ChemAxon SaaS, or the operation thereof, become or in ChemAxon's opinion be likely to become, the subject of such claim described in Section 11.1, ChemAxon may, at ChemAxon's option and expense, procure for Subscriber the right to continue using ChemAxon SaaS, replace or modify ChemAxon SaaS so that it becomes non-infringing, or terminate its subscription granted hereunder for such ChemAxon SaaS. THIS SECTION 11.2 LIABILITY, AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**11.3. By Subscriber.** Subscriber agrees to hold harmless and indemnify ChemAxon and its subsidiaries, Affiliates, Representatives, officers, agents, employees, advertisers, licensors, suppliers or partners from and against any third party claim arising from or in any way related to Subscriber's breach of this EUSA, use of ChemAxon SaaS and/or the Subscription Services, or violation of applicable laws, rules or regulations in connection with ChemAxon SaaS and/or the Subscription Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, ChemAxon will provide Subscriber with written notice of such claim, suit or action.

## **12. Limitation of Liability.**

**12.1. Exclusion of Damages.** SUBSCRIBER EXPRESSLY UNDERSTANDS AND AGREES THAT CHEMAXON, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO SUBSCRIBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES INCURRED BY SUBSCRIBER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED EXCEPT AS PROVIDED HEREIN, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS. THE FOREGOING LIMITATIONS ON CHEMAXON'S LIABILITY SHALL APPLY WHETHER OR NOT CHEMAXON HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL EXCLUDE OR LIMIT CHEMAXON'S LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW.

**12.2. Liability Cap.** EXCEPT WITH RESPECT TO EITHER PARTY'S OBLIGATIONS OF INDEMNIFICATION, THE TOTAL LIABILITY OF CHEMAXON ARISING OUT OF OR RELATED TO THIS EUSA WILL NOT EXCEED THE GREATER OF USD \$100 OR THE TOTAL AMOUNTS PAID BY SUBSCRIBER FOR THE RELEVANT CHEMAXON SAAS UNDER THE APPLICABLE ORDER FORM, IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

### **13. Miscellaneous**

**13.1. No Sale or Lease of Goods and/or Real Property.** As between Subscriber and ChemAxon, ChemAxon retains all right, title and interest in ChemAxon SaaS. This EUSA is a subscription agreement. No any goods and/or real property are sold or leased by ChemAxon under this EUSA.

**13.2. Headings.** The headings of the various sections of this EUSA have been inserted for convenience only and shall not affect the interpretation of this EUSA.

**13.3. Conflict.** If a term or condition in an Attachment conflicts with a term or condition in this EUSA, the provisions of the Attachment shall prevail unless specifically stated to the contrary.

**13.4. Survival.** Any of these terms and conditions which by their nature extend beyond the EUSA termination or expiration remain in effect until fulfilled.

**13.5. Governing Law.** This EUSA will be governed by the laws of Hungary without reference to conflict of law principles. Each party agrees to submit to the exclusive jurisdiction of the courts located within the county of Budapest, Hungary to resolve any legal matter arising from this EUSA.

**13.6. Waiver of Jury Trial.** The Parties waive any right to a jury trial in any proceeding arising out of or related to this EUSA.

13.7. **Severability.** If any provision of this EUSA shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this EUSA shall in no way be affected or impaired thereby, so long as the remaining provisions of this EUSA still express the original intent of the Parties. If the original intent of the Parties cannot be preserved, this EUSA shall either be renegotiated or terminated.

13.8. **Publicity and Trademarks.** Neither Party grants the other the right to use its or any of its affiliates' trademarks, trade names, or other designations in any promotion, publication, or web site without prior written consent. Parties agree that they may, after their prior written approval, issue a jointly agreed joint press release relating to this EUSA. Except as may be required by law or as may be required by ChemAxon to make ChemAxon SaaS available to Subscriber or perform the Subscription Services, neither Party may disclose to any third party the terms and conditions of this EUSA, without prior written consent.

13.9. **No Third-Party Beneficiaries.** Except as expressly provided in Section 11, this EUSA does not create any intended third party beneficiary rights.

13.10. **Personnel.** Each Party is responsible for the supervision, direction, and control of its respective personnel and Representatives. ChemAxon reserves the right to determine or change at any time the assignment of its personnel and Representatives. ChemAxon may subcontract portions of the Subscription Services to suitably qualified, professional subcontractors and their Affiliates selected by ChemAxon.

13.11. **No Agency.** This EUSA does not create an agency, joint venture, or partnership between the Parties.

13.12. **Assignment.** Except as provided herein, neither Party may assign any of its rights or obligations under this EUSA, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, ChemAxon may assign the entirety of its rights and obligations under this EUSA, without consent of the Subscriber, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

13.13. **Disclaimer.** The application of the UN Convention of International Sale of Goods to this EUSA is disclaimed in its entirety.

13.14. **No Resale.** Subscriber shall not resell ChemAxon SaaS and/or Subscription Services in whole or in part. This does not prevent Subscriber from making their Subscriber Data and/or ChemAxon SaaS and/or Subscription Services available to Subscriber's End Users.

13.15. **Risk of Loss.** Risk of loss for all ChemAxon SaaS shall at all times remain with ChemAxon. Risk of loss for Subscriber Data shall at all times remain with Subscriber.

13.16. **Force Majeure.** Except for payment obligations hereunder, neither Party is responsible to fulfill its obligations to the extent due to causes beyond its control.

13.17. **Entire Agreement.** Together with any Order Forms, this is the entire agreement between the Parties relating to the subject matter hereof. This EUSA (including applicable Order Forms) shall control over any additional or different terms of any correspondence, order, confirmation, invoice or similar document, even if accepted in writing by both Parties, and waivers and amendments of any provision of this EUSA shall be effective only if made by non-preprinted agreements indicating specifically what sections of this EUSA are affected, signed by both Parties and clearly understood by both Parties to be an amendment or waiver.

13.18. **Waiver.** The failure of either Party to enforce its rights under this EUSA at any time for any period shall not be construed as a waiver of such rights. If any provision of this EUSA is held invalid or unenforceable, the remainder of this EUSA will continue in full force and effect and the invalid or unenforceable provision shall be reformed to the extent necessary to make it valid and enforceable.

13.19. **Freedom of Action.** Each Party is free to enter into similar agreements with others.

13.20. **Limitation of Rights.** Each of the Parties grants only the rights expressly specified herein. No other rights (including rights under patents) are granted, either directly, by implication, estoppel, or otherwise.

13.21. **Data Protection.** Subject to and where permitted by its data protection obligations, Subscriber agrees to allow ChemAxon to store and use Subscriber's contact information, including names, phone numbers, and e-mail addresses, anywhere they do business solely to the extent necessary for it to perform its obligations under this EUSA. Such information will be processed and used in accordance with all data protection laws and Subscriber's instructions.

13.22. **Notices.** Any notices required or permitted hereunder will be effective upon receipt and will be personally delivered; mailed via the postal service; sent by reliable overnight courier; or transmitted by confirmed facsimile. Except where otherwise specified, all notices will be in writing and addressed to the applicable Party's designated Representative at the address specified in this EUSA. Except as to notices permitted or required under Sections 7 (Term and Termination) or 11 (Indemnification), the Parties agree that electronic mail messages sent between them using security procedures sufficient to reasonably authenticate them will be deemed writings.

13.23. **New Agreement versions.** When a new Subscription Term begins, the most current version of this EUSA made available by ChemAxon shall be applicable to Subscriber's use of ChemAxon SaaS.

## **Annex 1. Hosting, Support and Maintenance Services for ChemAxon SaaS**

### **Service Descriptions**

The following Subscription Services shall be provided for ChemAxon SaaS:

**1. Hosting Services.** ChemAxon provides hosting services to its Subscribers in accordance with this EUSA which enables access to ChemAxon SaaS with commercially reasonable levels of security.

**2. Maintenance and Support Services.** ChemAxon provides maintenance and support services for ChemAxon SaaS to its Subscribers including: (i) technical and operational assistance to Subscriber’s designated personnel via communication channel(s) as defined hereinafter; and (ii) application of upgrades, patches, error corrections and bug fixes during normal scheduled maintenance periods; (iii) updates to the application documentation.

**3. Services Exclusions.** The following services are not included in Subscription or Support Services yet may be obtained from ChemAxon on an additional fee basis and subject to Subscriber’s execution of an Order Form and ChemAxon’s acceptance and confirmation for the same: (i) professional services and content development, including new and/or missing functionality, customized features, strategy and design services, systems architecture, configuration and integration; (ii) training on ChemAxon SaaS or its separate modules; (iii) out-of-hours support: support provided by ChemAxon to Subscriber at times excluding ChemAxon Support Hours pursuant to Section 8 of this Annex 1; (iv) support provided by ChemAxon at Subscriber’s premises or any other premises requiring travel and living expenses; (v) any professional services required by Subscriber in connection with implementation of any upgrade to ChemAxon SaaS; and (vi) any professional services in respect of incorrect use of the current release or operator error. Arrangement for the above services may be initiated by Subscriber using an Order Form to be sent to sales [at] chemaxon [dot] com.

**4. Data Management.** ChemAxon shall manage all software and algorithms in accordance with ChemAxon global, standard information security policies and applicable standard operating procedures (“SOPs”) for the following:

- Security (physical, network and application)
- Privacy Policy

**Service Levels**

As part of the hosting ChemAxon SaaS, ChemAxon shall meet or exceed the following Service Levels:

	<b>Standard Hosting</b>
Availability (percent)	<b>&gt; 95%</b>

1. **Availability.** Availability is calculated as actual uptime in days when ChemAxon SaaS are available, divided by scheduled uptime in days and expressed as a percentage. Scheduled uptime is calculated as calendar days excluding days dedicated for scheduled maintenance and support.
2. **Scheduled Maintenance.** Regularly scheduled maintenance including upgrades, updates, patches, enhancements and new releases of ChemAxon SaaS will be excluded when calculating Availability and will be conducted from 8:00 am-10:00 am Central European Time (CET = GMT+1) Wednesdays, except as otherwise notified by ChemAxon.



3. **Support Services.** ChemAxon will respond to defects, errors, deficiency or outages (“**Problem**”) in accordance with the levels of severity, each as reasonably determined by ChemAxon, and Support Package agreed between Subscriber and ChemAxon as described hereinafter.
4. **Subscriber Responsibilities.** Subscriber is advised to utilize its own permanent help desk for the purpose of acting as sole liaison between Subscriber and ChemAxon. Subscriber shall report any Problem and provide ChemAxon with the necessary data required to reproduce such Problem, or to discover the cause or a cure for the reported Problem.
5. **Additional information.** If the description of the Problem is insufficient, ChemAxon may need to gather more information from Subscriber to conduct additional testing. In these cases, ChemAxon may ask Subscriber to (i) list the exact steps that cause the Problem, (ii) collect and send additional information, such as log files or message headers. Subscriber may also route the Problem to individual specialists for further investigation. Resolution times vary, depending on the complexity of the Problem and the availability of information described above. ChemAxon shall provide its Support Services as described herein provided that Subscriber ensures full cooperation with ChemAxon on both technical and personnel level and shares all information that ChemAxon deems necessary to resolve the Problem.
6. **Exclusions.** In no event will ChemAxon be responsible for Problems occurred for any of the following reasons: (i) Subscriber’s breach of this EUSA, (ii) causes resulting from, if applicable, Subscriber’s, Hosting Party’s or any third party’s acts, errors or omissions or any systems, hardware or software not provided by, or identified by ChemAxon or ChemAxon’s service provider as being compatible with ChemAxon SaaS (including Subscriber telecommunications carrier or internet service provider). In addition, the Service Level commitments and response times are not applicable to Subscriber’s use of ChemAxon SaaS in a non-production or test (demo / trial / evaluation) environment, or beta or pilot use of the same by early adopters.
7. **Communication channels.** Subscriber shall report issues throughout dedicated support channels, currently via email ([synergy-support \[at\] chemaxon \[dot\] com](mailto:synergy-support@chemaxon.com)) and direct chat options.
8. **ChemAxon Support Hours.** As ChemAxon is a Hungarian corporation, it shall provide its Support Services within working hours in Hungary between 9 a.m. and 5 p.m. Monday to Friday, Central European Time excluding the national, bank and bridge holidays related to Hungary as listed at <http://www.officeholidays.com/> (“**ChemAxon Support Hours**”).
9. **Acknowledgement of Support Request.** Upon receipt of a support request by Subscribers to any of the above channels ChemAxon will prioritize such request according to the Severity Levels identified below and ChemAxon employ commercially reasonable efforts wherever possible to issue acknowledgement for the 90% of the queries within ChemAxon Support Hours by the end of the next business day after ticket is logged.
10. **Determining Severity Levels.** After acknowledgement is issued, ChemAxon will prioritize such request according to the Severity Levels identified in the table below and defines support case priorities:

<u>Severity Levels</u>	<b>Description and impact of the Problem</b>
------------------------	--

Critical Impact (Severity 1)	A Problem that causes ChemAxon SaaS to crash or critical functions thereof be unavailable for use and which has no acceptable work-around available that is easy to implement (< 4 hours). Subscriber's business is at risk (significant FTE cost, potential data integrity issue, etc.).
High Impact (Severity 2)	A Problem that affects multiple users of ChemAxon SaaS and prevents effective use of a feature or features of ChemAxon SaaS, but which does not cause ChemAxon SaaS to be unavailable for use in whole. Important functions of ChemAxon SaaS are unavailable, impaired or degraded. Subscriber's business is significantly impacted (danger of significant FTE cost, productivity decrease, etc.). A work-around to mitigate critical business impact is available and easy to implement.
Low Impact (Severity 3)	All other Problems that (i) affects productivity or the use and leads erroneous behaviour of ChemAxon SaaS and (ii) does not materially affect Subscriber's ability to use ChemAxon SaaS (e.g. user inconveniences). Non-critical functions of ChemAxon SaaS are behaving abnormally, or Subscriber has a time-sensitive development question (this may be included in Additional support services).

- 11. Possible solutions.** Subject to Severity Levels, CHEMAXON will use best endeavors to offer Subscriber a solution. Depending on the Problem, the following solutions are possible without limitation:
- a. CHEMAXON answers Subscriber's question.
  - b. CHEMAXON fixes the Problem or provides a work-around, which may be a tentative, short-term and/or temporary solution for the Problem.
  - c. CHEMAXON resolves the Problem, which considered as a longer-term or the permanent resolution for the Problem.
  - d. CHEMAXON confirms the Problem reported as a missing feature. Subscriber may submit it as a customized feature pursuant to Section 7 of this Annex 1.
  - e. CHEMAXON determines that the Problem reported is not supported.
  - f. CHEMAXON may not reproduce the Problem, but provide recommendations for further investigation.
  - g. CHEMAXON asks a third-party product team to help, and put Subscriber in contact with them for further assistance.
  - h. CHEMAXON may not Resolve the Problem reported.
- 12. Resolution.** Given the nature of enterprise software solutions, it is not possible to guarantee that Problems can be resolved within a given timescale. In some cases, it can take time to examine all possible causes of the issue and identify possible resolution paths. ChemAxon shall work closely with Subscriber to get the Problem fixed as quickly as technically possible – this might involve a short-term work-around whilst ChemAxon works on troubleshooting, analysis and a longer-term resolution. In the case of complex bug fixes, ChemAxon and Subscriber will agree a reasonable timescale for correction of the Problem.
- 13. Support Case Handling.** All cases are tracked in a centralized system.

## Annex 2. The Hosting Party for ChemAxon SaaS and Subscription Services

## Hosting Party

The following third party / parties provide(s) the e-business Hosting Environment for ChemAxon SaaS:

- Amazon
- <https://aws.amazon.com/legal/>

## Documents of the Hosting Party

- <https://aws.amazon.com/legal/>

## Annex 3. Special conditions for ChemAxon SaaS Demo

The special terms in this Annex 3 are complementary to other sections of this EUSA. It covers and governs terms and conditions that differ or alter from or amend the same set forth in this EUSA. The provisions of this Annex 3 should be interpreted together with other sections of this EUSA to understand complete terms and conditions regarding providing CHEMAXON SaaS for your special purposes that is your demo of CHEMAXON SaaS. Consequently, provisions of other sections of this EUSA also apply. Therefore, it is strongly recommended to check and read all sections. If there is any inconsistency or conflict between the provisions of this Annex 3 and other sections of this EUSA, terms and conditions of this Annex 3 shall govern and control regarding your demo of CHEMAXON SaaS.

## What is ChemAxon SaaS Demo?

Welcome to the ChemAxon SaaS Demo (“**CSD**”) that is provided by [ChemAxon](#) located at Záhony utca 7., Budapest, Hungary, H-1031 (“**ChemAxon**”). CSD is a publicly available web resource developed and made available by ChemAxon with the purpose of facilitating a nice and simple environment to evaluate and try out ChemAxon's proprietary software product, Synergy (the “**Purpose**”). Synergy is a commercially available, web-based software to access, display, search and analyze scientific data. Number of ChemAxon and vendor tools are reachable throughout the software and more will come, combining our strong chemistry knowledge with all the technical benefits of a browser-based environment. Currently, Synergy encompasses various tools that of use can be demonstrated here.

## ChemAxon SaaS Demo Terms of Use

BY USING CSD, YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS OF USE (THE “**TERMS OF USE**”) AND ALL APPLICABLE LAWS AND REGULATIONS. IF YOU DO NOT AGREE TO THESE TERMS OF USE, DO NOT APPLY FOR USING CSD.

### Preamble

CHEMAXON is the owner of rights, copyrights, title and interest (“**RIGHTS**”) in Synergy, CSD and the content of CSD and related documentation, if any.

You desire to evaluate Synergy for the purpose of determining whether to enter into a long term license agreement for Synergy; and

CSD runs on a hosted environment as known as cloud that a hosting party makes available for ChemAxon ("**Host Party**") to provide services set forth in this document ("**e-business Hosting Environment**").

## **Registration**

In order to use CSD, you will be required to complete a registration and will have a user account with ChemAxon.

**One account per user.** One CSD user can have only one ChemAxon Account. Consequences of doing otherwise may include provision of a notice, restriction of accessing ChemAxon products and services, or may eventually lead to close all accounts in question.

## **Availability**

ChemAxon SaaS Demo provides two ways of testing:

- **Evaluation:** Subject to fees and charges, ChemAxon will set up your own test environment in which your activities and data, such as input molecules and search queries, are handled as private information. They are not accessible to any third parties in any way.
- **Trial:** You can use ChemAxon's common trial environment. You may upload content there that are - if ChemAxon specifically states it otherwise - accessible to all other visitors and testers. ChemAxon does not guarantee any confidentiality. You shall be solely responsible for your own uploads and the consequences resulted in. ChemAxon may not charge you for this service.

## **Content / Data Generated**

The technology used at CSD are based on functionality developed by ChemAxon. Wherever possible, performance will use the latest release version of the ChemAxon functionality. ChemAxon reserves the rights at its sole discretion to add or remove features and functionalities to or from CSD, respectively. ChemAxon assumes no liability, obligation or undertaking whatsoever with regard to or arising from such updates. Any use of data generated on CSD, including chemical structures, information related thereof and results of structure based predictions should be cited to ChemAxon, date of data generation and a link to ChemAxon.

**ChemAxon's rights.** Everything that you read or see on CSD is copyrighted or otherwise protected and owned by ChemAxon or a third party who licensed or granted to ChemAxon the right to use such material. Unless otherwise expressly noted, nothing that you read or see on CSD may be copied or used except as provided in these Terms of Use or with the prior written approval of ChemAxon.

**Restricted use.** ChemAxon does not grant you permission to print individual pages from CSD except provided herein. No other permission is granted to you to print, copy, reproduce, distribute, license, transfer, sale, transmit, upload, download, store, display in public, alter, modify or create derivative works of these materials. This grant of permission is not a transfer of title, and under this permission you may not:

- use the materials for any commercial purpose, or for any public display (commercial or non-commercial); if this is your intention you need to contact ChemAxon at [sales \[at\] chemaxon \[dot\] com](mailto:sales@chemaxon.com) and purchase Synergy license(s);
- remove any copyright, trademark or other proprietary notations from the materials; or
- transfer the materials to another person or third parties or "mirror" the materials on any other server.

ChemAxon makes no warranties or representations, other than specified herein, to you that your use of any materials displayed on CSD will not infringe the rights of third parties. ChemAxon is not in a position to assess the validity of any proprietary rights or has no right to transfer the same to you or a third party. Therefore, ChemAxon cannot provide comment or permission (except as provided herein) concerning any input you make to CSD and the use, copying, or distribution of any information and data generated on CSD.

### **Your Responsibilities - General**

**Credentials.** You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer. You accept responsibility for all activities that occur under your account or password and such use shall be deemed to be use by you. You will ensure that all use of your account fully complies with these Terms of Use. Transfer of the account by you to any other person or entity is prohibited.

**Capacity planning.** You acknowledge that it is your responsibility to determine whether CSD, the e-business Hosting Environment and their combination will meet your capacity, performance, or scalability needs. You are responsible for planning and for requesting changes to the e-business Hosting Environment, including any additional capacity required supporting anticipated peaks in demand that may significantly increase web site hits, transaction volumes, or otherwise increase system resource utilization.

**Your content and Digital Certificates.** You are responsible for all your materials uploaded and /or downloaded or actions made to, in or from the e-business Hosting Environment, including information, data, files, selection, creation, design, usage, licensing, maintenance, testing, and support ("**Your Components**"). You are also responsible for any individual's personal information or any information you consider as confidential. CSD may allow you to include within the Your Components personal information about others. You acknowledge and agree that you are solely responsible for any personal information that may be contained in Your Components, including any information which you share with third parties, and that you are and remain in compliance with applicable data privacy and protection laws.

You agree not to submit or transmit to CSD any written material that is unlawful, threatening, libelous, defamatory, obscene, pornographic, profane, or might in any other way violate any law, regulation, or rule. You are solely responsible for any material you submit to CSD. You further agree not to upload, email, post or transmit to, or distribute or otherwise publish through CSD any written material which disrupts the normal operation of CSD, including posting or otherwise transmitting material that is not related to the subject at issue or otherwise restricts or inhibits any other user from using CSD. Through your usage of CSD, you may submit and/or ChemAxon may gather certain limited information about you and your website usage. We are free to use such information for any purpose we deem appropriate, including marketing purposes. For more information, please check our [Privacy Policy for CSD](#).

**Security.** Security-related services by the Host Party including process security management, physical security, and network security are specified in documents made available by the Host Party. When using CSD, information will be transmitted over a medium that is beyond the control and jurisdiction of ChemAxon and its suppliers. Accordingly, ChemAxon assumes no liability for or relating to the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of CSD. Therefore, you acknowledge that ChemAxon does not control and the transfer of data over telecommunication facilities, including the Internet. ChemAxon does not warrant that it will be able to prevent third party disruptions of the e-business Hosting Environment or in connection with Your Components, provided that it has taken all reasonable commercial and technical measures to avoid this eventuality. You agree and acknowledge that ChemAxon shall assume no liability whatsoever for the security-related services by the Host Party and/or telecommunication facilities described in this Section "Security".

**Locations.** ChemAxon's headquarters is located in Budapest, in Hungary. ChemAxon makes no representation that the materials on CSD are appropriate or available for use in other locations. Access to the content may not be legal by certain persons or in certain countries outside of Hungary. If you access CSD from outside Hungary, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction.

**Performance Report.** Within thirty (30) days after the expiration of your test session, You may present CHEMAXON with a written report or summary evaluating the Software and providing suggestions, criticisms and comments about performance of CSD ("**Performance Report**"). You agree to answer all reasonable questions of CHEMAXON relating to the operation and performance of CSD. CHEMAXON may use such Performance Report and information for research purposes, improvements and enhancements to the Synergy without any rights accruing to you.

### **Your Responsibilities for Evaluations**

**Security considerations.** You acknowledge that you have reviewed the security features of the e-business Hosting Environment and responsibilities of the Host Party and have determined that they meet your security needs. You are solely responsible for determining the appropriate procedures and controls regarding security of Your Components and for the implementation of any such procedures and controls.

**No Refund.** ChemAxon generally refuses to refund credits applied to use in CSD. However, your written claims may be evaluated otherwise at ChemAxon's sole discretion.

### **ChemAxon's Responsibilities for Evaluations - Confidentiality**

**Definition. "Confidential Information"** means any information disclosed by one party ("**Discloser**") to the other ("**Recipient**"), directly or indirectly, in writing, orally or by inspection of tangible objects, which is designated as "Confidential," "Proprietary" or some similar designation, or learned by Recipient under circumstances in which such information would reasonably be understood to be confidential. Confidential Information may include information disclosed in confidence to Discloser by third parties. For the purposes of this document, (a) CSD and content of CSD, (b) the access rights to CSD, (c) any information, documentation, benchmark results and /or proprietary materials relating to CSD, RIGHTS, or this document, (d) the results of any performance, functional or other evaluation of CSD i.e. the contents of the Performance Report and (e) Your Components shall be deemed as Confidential Information.

**Exceptions.** The confidentiality obligations herein shall not apply with respect to any of the Discloser's Confidential information which Recipient can demonstrate: (a) was in the public domain at the time it was disclosed to Recipient or has become in the public domain through no act or omission of Recipient; (b) was known to Recipient, without restriction, at the time of disclosure as shown by the files of Recipient in existence at the time of disclosure; (c) was disclosed by Recipient with the prior written approval of Discloser; (d) was independently developed by Recipient without any use of Discloser's Confidential Information by employees or other agents of (or contractors hired by) Recipient who had no access to or did not rely on Discloser's Confidential Information; (e) became known to Recipient, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and otherwise not in violation of Discloser's rights; or (f) is released from the term of this document by mutual agreement of the parties in writing.

**Restrictions on Use and Disclosure.** Recipient agrees not to use Discloser's Confidential Information or disclose, distribute or disseminate Discloser's Confidential Information except in furtherance of the performance of its obligations or enforcement of its rights hereunder or as otherwise expressly agreed by Discloser in writing. Recipient agrees to restrict access to such Confidential Information to those employees or consultants of Recipient who need to know such Confidential Information for performing as contemplated hereunder and have agreed in writing to be bound by a confidentiality obligation no less protective than that contained in this Agreement. Recipient shall exercise the same degree of care to prevent unauthorized use or disclosure of Discloser's Confidential Information to others as it takes to preserve and safeguard its own information of like importance, but in no event less than reasonable care.

**Compelled Disclosure.** If Recipient is compelled by a court or other competent authority or applicable law to disclose Confidential Information of Discloser, it shall give Discloser prompt written notice and shall provide Discloser with reasonable cooperation at Discloser's expense so that Discloser may take steps to oppose such disclosure or obtain a restraining order. Recipient shall not be in breach of its obligations herein if it makes any legally compelled disclosure provided that Recipient meets the foregoing notice and cooperation requirements.

**Information Security.** During your testing CSD, ChemAxon will access to e-business Hosting Environment, data storage, servers and other aspects of information technology environment making available to you (“**Your Evaluation Environment**”), and ChemAxon agrees that any such access shall be subject to the following requirements: (i) ChemAxon shall only access Your Evaluation Environment as directed by you for purposes of assisting your evaluation project; (ii) you are solely responsible for determining what in Your Evaluation Environment shall be accessible to ChemAxon and ChemAxon shall not attempt to access any other portion of Your Evaluation Environment; and (iii) you shall be solely responsible for protecting all login credentials in your possession that allow access to Your Evaluation Environment and shall ensure that such credentials are not shared nor distributed to others. Further, ChemAxon shall not copy, record (by writing, electronically, or by any other means), transfer, remove from Your Evaluation Environment, or otherwise use any information residing in Your Evaluation Environment for any purpose other than to conduct your evaluation project. For purposes hereof, all information in Your Evaluation Environment accessed or made available to ChemAxon shall be deemed your Confidential Information.

**Injunctive Relief.** Recipient acknowledges that breach of the confidentiality obligations would cause irreparable harm to Discloser, the extent of which may be difficult to ascertain. Accordingly, Recipient agrees that Discloser is entitled to immediate injunctive relief in the event of breach of an obligation of confidentiality by Recipient, and that Discloser shall not be required to post a bond or show irreparable harm in order to obtain such injunctive relief.

**Return of Confidential Information.** As between the parties, Confidential Information shall remain the property of the Discloser. At any time, upon Discloser’s reasonable request, Recipient shall promptly (and in any event within 30 days) return to Discloser or destroy, at the election of the Discloser, any Confidential Information of the Discloser. In addition, within 30 days after termination of this Agreement, Recipient shall (i) promptly return all tangible materials containing such Confidential Information to Discloser, (ii) remove all Confidential Information (and any copies thereof) from any computer systems of the Recipient, its contractors and its distributors, and confirm in writing that all materials containing Confidential Information have been destroyed or returned to Discloser, as applicable, by Recipient. Recipient shall cause its affiliates, agents, contractors, and employees to strictly comply with the foregoing. In case of ChemAxon, as Recipient, shall be requested by you to save and deliver your data or Your Components to you, additional fee payable by you to ChemAxon may apply.

### **Your Responsibilities for Trials**

Trials on CSD are public services and do not support private data. The structures provided by users on CSD are publicly accessible. For avoidance of doubt, ChemAxon is not the owner of such structures.



More generally, before you submit any information to CSD, including any comments, remarks, suggestions, ideas, notes, drawings, graphics, concepts, or other information or paste any web content, URL, type any chemical name or other text including any chemical name, drawing or uploading any chemical structure or data or uploading documents of any kind containing any chemical structure, please consider that CSD are open to the public. You take full responsibility for any information you provide to these web sites. Except as expressly set forth on CSD otherwise, if you submit any information to CSD, you are giving that information, and all your rights in it, to ChemAxon free of charge and such information shall be deemed to be non-confidential and ChemAxon shall have no obligation of any kind with respect to such information and shall be free to store, reproduce, use, disclose and distribute the information to others without limitation, without your consent or any compensation to you or anyone else. ChemAxon shall be free to use any know-how or techniques contained in such information for any purpose whatsoever including but not limited to developing, manufacturing and marketing products incorporating such information. This is true whether you submit such information to us by e-mail, through a form on CSD, on a bulletin board, or in any other manner. ChemAxon may from time to time monitor, review and, in its sole discretion, modify or delete any postings you make on CSD however, ChemAxon is not obligated to do so.

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**Liability Cap.** EXCEPT WITH RESPECT TO EITHER PARTY'S OBLIGATIONS OF INDEMNIFICATION, THE TOTAL LIABILITY OF CHEMAXON ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE GREATER OF USD \$100 OR THE TOTAL AMOUNTS PAID BY YOU FOR CSD, IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

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**By You.** You hereby agree to indemnify and hold harmless ChemAxon, its affiliates, officers, directors, employees, agents, shareholders, suppliers and any third party providers from and against any and all damages, losses, costs and expenses or liability arising out of or in connection with the performance of CSD or use, copying, or distribution of any information or data generated on CSD, whether alone or in combination with any product or service or resulting from any violation of this notice.

### **Your use CSD**

Furthermore, YOU, on top of the above clauses,

- understand and declare that your use of ChemAxon proprietary software, CSD is voluntary. You agree to immediately raise any concerns you might have. ChemAxon will use its best efforts to handle and response such concerns, but will assume no liability, obligation, or undertaking whatsoever with regard to such concerns.
- understand and consent to that all your activities made in CSD, including input data and mouse movements may be recorded, analyzed, and used internally by ChemAxon in order to (i) understand user's behavior better and (ii) further improve the usability and functionality of its software products. For avoidance of doubt, your name and personal data will not be used for any other purpose.
- agree that you are responsible for any information transferred to and from CSD and saving and storing your input and output data and information used and generated during your sessions in CSD. ChemAxon takes no liability for any information regarding the sessions including history, calculations, structure list, any results generated during the sessions, which may be lost. ChemAxon will do its best efforts to avoid such losses.

We continuously work on improving CSD. We, therefore, request your opinion by email. You can also directly approach us with your questions, comments, and requests.

### **Governing Law**

These Terms of Use are governed by the internal substantive laws of Hungary, without resort to its conflict of laws principles. You expressly agree that exclusive jurisdiction for any dispute with ChemAxon, or in any way relating to your use of CSD, resides in the courts of Hungary. However, if your institution is a state university in the USA and the constitution or laws of your institution's state expressly require that the laws of your state apply to contracts to which the institution enters, then the jurisdictional and substantive laws of your state shall govern these Terms of Use without regard to conflicts of law provisions. If any provision of these Terms of Use is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use.

## **Termination**

You may terminate the agreement incorporated in these Terms of Use at any time by destroying all materials received from CSD, ceasing to use CSD.

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The date of the latest version of this document appears on the first line of this page.

## **Contact details**

For legal issues, ChemAxon may be contacted at [compliance \[at\] chemaxon \[dot\] com](mailto:compliance@chemaxon.com).

For technical related inquiries, ChemAxon may be contacted at [synergy-support \[at\] chemaxon \[dot\] com](mailto:synergy-support@chemaxon.com).