

Terms & Conditions

This SERVICES AGREEMENT (this “*Agreement*”) is entered into as of the date this Agreement is executed by the last of the parties to sign (the “*Effective Date*”), by and between ChemQuest Digital Services, LLC, an Ohio company having an address of One Waterstone Place, 9435 Waterstone Boulevard, Suite 270, Cincinnati, OH 45249 (“*Vendor*”) and (“*Client*”). Vendor and Client may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

1. **Definitions.** As used in this Agreement, the following terms shall have the meaning described herein, and shall include the plural as well as the singular.

(a) “**Agreement**” shall mean these terms and conditions and any written amendments signed by Vendor and Client.

(b) “**Authorized Users**” shall mean Client’s employees or agents that are specifically authorized by Client to access and use the System.

(c) “**Confidential Information**” shall have the meaning set forth in Section 8(a).

(d) “**Client Data**” shall mean the data obtained by Vendor through Client’s and the Authorized User’s use of the System.

(e) “**Documentation**” shall mean Vendor’s standard manual and/or training materials related to the System, which may be provided to Client from time to time.

(f) “**Discloser**” shall have the meaning set forth in Section 8(a).

(g) “**Effective Date**” shall mean the date the Client clicks the “I Accept” button.

(h) “**Feedback**” shall mean any suggestion or idea for improving or otherwise modifying the System, Documentation, or Services.

(i) “**Fees**” shall have the meaning set forth in Section 4(a).

(j) “**Intellectual Property**” shall mean any and all patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, know-how, trade secrets, and proprietary information.

(k) “**Recipient**” shall have the meaning set forth in Section 8(a).

(l) “**Services**” shall mean providing Client and Authorized Users with the ability to access and use the System and any related professional services including training and support.

(m) “**Software**” shall mean any software Client and/or its Authorized Users are able to access through their use of the System, including without limitation, any computer programs, object code, source code, graphics, and user interfaces related to the foregoing.

(n) “**System**” shall mean Vendor’s proprietary system, including without limitation the Software, that allows Client to obtain proprietary data, commodities pricing, macroeconomic indicators and trends, and market condition information related to the chemical market, as well as the data itself.

(o) “**Term**” shall mean collectively the Initial Term and any Renewal Term.

2. Services and Licenses

(a) **System.** Subject to the terms and provisions of this Agreement, Vendor hereby grants to Client and its Authorized Users a limited, non-exclusive, non-transferable, non-sublicensable license during the Term to access and use the System to for its internal business purposes. Client and its Authorized Users shall only have the right to use the System in a manner consistent set forth in this Agreement.

(b) **Documentation License.** Vendor hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license to duplicate and internally display and distribute the Documentation to the extent reasonably necessary for Client to perform the activities set forth in Section 2(a),

(c) **Authorized Users.** Client acknowledges and agrees that it will be liable for any action or omission by an Authorized User that would, if it were an action or omission of the Client, have been a breach of this Agreement.

(d) **Restrictions on Use.** Client and its Authorized Users will not, and will not permit any third-party to: (i) interfere with the System, other Vendor customers' access to the System, or with the security of the System, (ii) lease, distribute, or resell the System; (iii) use the System as a basis for developing a competitive system or software (or contract with a third party to do so); (iv) remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or propriety legends or other notices or markings that may appear on or in the System; (v) make the System available to third parties as managed or network provisioned services; (vi) attack or disrupt the System, including without limitation through any denial of service (DoS) attacks, unauthorized access, monitoring or crawling, or distribution of malware (including but not limited to virus, Trojan horses, worms, time bombs, spyware, adware, or cancelbots); (vii) modify, translate, or create derivative works based on the System or Documentation; or (viii) use the System or Documentation other than in accordance with this Agreement and other than in compliance with all applicable laws and regulations. If Vendor suspects that Client and/or its Authorized Users have violated the requirements of this Section 2(d), Vendor may suspend that Client and/or its Authorized Users access to the System without advanced notice, in addition to other remedies Vendor may have. Vendor is not obligated to take any action against that Client and/or its Authorized Users or any other System user or other third party for violating this Agreement, but Vendor is free to take any such action it sees fit.

(e) **Unauthorized Access.** Client agrees to take reasonable steps to prevent unauthorized access to the System, including by protecting Client's and/or its Authorized Users' passwords and other log-in information associated with Client's and/or its Authorized Users' account. Client shall notify Vendor immediately if Client knows of or suspects unauthorized use of the System or breach of its security. Client agrees that it shall be liable for actions taken under or through the use of any Client and/or its Authorized User account, whether or not such use was authorized.

3. Vendor Intellectual Property

(a) **Vendor Intellectual Property.** As between the Parties, Vendor retains all right, title, and interest in and to the any and all Intellectual Property associated with the System, Services, and Documentation, including without limitation the Software, and any and all graphics, user interfaces, logos, and trademarks used in or reproduced through the System. This Agreement does not grant Client any intellectual property license or rights in or to the System, Services, and Documentation or any component or aspect thereof, except to the limited extent that this Agreement specifically sets forth. Client recognizes that the System, Services, and Documentation or any component or aspect thereof are protected by copyright and other laws. Client shall provide Vendor with a non-exclusive and non-transferable license to use the trademarks, trade names, service marks, service names, logos, and similar proprietary rights owned by Client on Vendor's website subject to prior written approval by Client.

(b) **Feedback.** Vendor has not agreed to and does not agree to treat as confidential any Feedback that Client or any Authorized Users provide to Vendor, and nothing in this Agreement or in the Parties' dealings arising out of or related to this Agreement will restrict Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Client or the Authorized Users in question. Client hereby grants to Vendor a perpetual, irrevocable right and license to exploit Feedback in any and every way.

4. Fees and Payment

(a) **Fees.** Unless otherwise agreed to by the Parties, Client will pay Vendor the annual subscription fees (“Fees”) described in Exhibit A attached hereto. If Client’s use of the System or Services exceeds the limits set forth in Exhibit A or otherwise requires the payment of additional fees (per the terms of the Agreement), Client will be billed for such usage based on Vendor’s standard rates and Client agrees to pay the additional fees in the manner provided in herein.

(b) **Payment.** Client must pay the Fees using valid a credit or debit card or by automated clearing house (ACH) (“*Payment Method*”). By using a Payment Method, Client is hereby representing and warranting Client’s full right and authority to pay the Fees in the manner elected without violating any applicable law, rule, or regulation. Client remains responsible for any uncollected amounts. If any Fee is not successfully settled, due to expiration, insufficient funds, or otherwise, Vendor may suspend Client’s access to the Service until Vendor has successfully charged a valid Payment Method.

(c) **Invoicing.** Vendor shall provide invoices to Client within five (5) business days of the date of the invoice. All invoices are due within thirty (30) days of receipt. Client shall provide Vendor with complete and accurate billing contact information including a valid email address.

(d) **Taxes.** Amounts due under this Agreement are payable to Vendor without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld at the source. If applicable law requires withholding or deduction of such taxes or duties, Client shall separately pay Vendor the withheld or deducted amount. However, the preceding two sentences do not apply to taxes based on Vendor’s net income.

(e) **Audit.** Vendor may, at its own expense, audit Client’s performance under this Agreement. Vendor shall conduct audits during regular business hours at Client’s place or places of business and shall not unreasonably interfere with the other Client’s business activities. Vendor shall conduct an audit only once annually. If as a result of any audit, Vendor identifies any violation of the terms of this Agreement by Client, then Client shall pay the expenses associated with the audit.

5. Representations and Warranties and Limitation of Liability

(a) **Client Warranties.** Client represents and warrants to Vendor that: (i) Client has the requisite power and authority to enter into this Agreement and perform its obligations hereunder; (ii) Client has the full right and authority to provide Vendor with the Client Data, and Client’s provision of the Client Data and Vendor’s use thereof as authorized herein, shall not violate applicable law or the rights of any third party, including without limitation the Intellectual Property rights or privacy rights of any third party; and (iii) Client shall comply with all applicable laws, rules and regulations while accessing or using the Services or any output thereof, including without limitation any applicable antitrust or import/export laws, rules or regulations.

(b) **Vendor Warranties.** Vendor represents and warrants to Client the Services will be performed by qualified personnel in a professional, workmanlike manner consistent with this Agreement and the prevailing standards of the industry for similar services.

(c) **DISCLAIMER.** THE SYSTEM, DOCUMENTATION AND/OR SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, VENDOR MAKES NO OTHER WARRANTIES WITH RESPECT TO THE SYSTEM, DOCUMENTATION, AND/OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, OR TITLE/NON-INFRINGEMENT AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VENDOR MAKES NO WARRANTIES THAT ANY OUTPUT OR RESULT GENERATED FROM THE USE OF THE SYSTEM OR SERVICES WILL MEET CLIENT’S REQUIREMENTS.

CLIENT ACKNOWLEDGES THAT CLIENT'S USE OF THE SERVICE, INCLUDING CLIENT'S USE OF ANY ASSOCIATED CONTENT OR DATA, AND ANY OUTPUT OR RESULTS GENERATED THROUGH CLIENT'S USE OF THE SERVICE, IS SOLELY AT CLIENT'S OWN RISK. VENDOR DOES NOT WARRANT OR GUARANTEE THAT THE SERVICE WILL PROVIDE ANY DESIRED RESULT AND THAT THE OUTPUT OR RESULTS GENERATED THROUGH CLIENT'S USE OF THE SERVICE WILL BE ACCURATE, ERROR FREE, OR SUITABLE FOR ANY PURPOSE. FURTHER, VENDOR DOES NOT GUARANTEE THE CONTINUOUS, UNINTERRUPTED AND ERROR-FREE OPERATION OF ITS SERVICE.

(d) **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROVIDED HEREIN, VENDOR SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA, BUSINESS OR PROFITS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BASED ON BREACH OF WARRANTY, CONTRACT, OR NEGLIGENCE IN CONNECTION WITH THIS AGREEMENT OR THE SYSTEM, DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLIENT CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWELVE (12) MONTHS FROM THE EVENT GIVING RISE TO THE CLAIM OR SUCH CLAIM WILL BE FOREVER BARRED. VENDOR'S LIABILITY FOR ACTUAL DAMAGES ARISING FROM ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT IN ANY EVENT EXCEED ALL FEES DUE AND PAYABLE TO VENDOR HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE ACCRUAL OF THE UNDERLYING CLAIM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY TO MEET ITS ESSENTIAL PURPOSE.

6. Indemnity.

(a) Client shall indemnify, defend and hold harmless Vendor, its affiliates, officers, directors, employees, agents and customers from and against any and all loss, liability, cost, judgment, damages and expense, including attorneys' fees, which may be incurred by Vendor in connection with any claims, actions, or demands by a third party ("Claim") arising out of or related to (i) the gross negligence or willful misconduct of Client's and/or its employees or agents; (ii) any violation of applicable law by Client and/or any Authorized User; (iii) any violation of the terms of this Agreement by Client and/or any Authorized Users; (iv) Client's and/or any Authorized User's use of the Services or System; and (v) any claim or allegation that Client's provision of the Client Data, and Vendor's use thereof as authorized herein, violates the rights of any third party, including without limitation the privacy rights or rights stemming from registered United States patents or copyrights of any third party. The amount recoverable for any violation of rights stemming from registered United States patents or copyrights of any third party shall be limited to the actual damages awarded by a court of law.

(b) Vendor shall indemnify, defend and hold harmless Client, its affiliates, officers, directors, employees, agents and customers from and against any and all loss, liability, cost, judgment, damages and expense, including attorneys' fees, which may be incurred by Client in connection with any Claim arising out of or related to any claim or allegation that Vendor's provision of the Services, and Client's use thereof as authorized herein, violates any registered United States patents or copyright that is owned by a third party. The amount recoverable for any violation of rights stemming from registered the United States patents or copyrights of any third party shall be limited to the actual damages awarded by a court of law.

(c) The obligations of the party providing indemnification ("Indemnitor") are expressly conditioned on the following: (a) the party receiving indemnification ("Indemnitee") promptly giving written notice of the Claim to the Indemnitor (provided that Indemnitor shall only be relieved of its obligations to the extent prejudiced by the delay); (b) Indemnitee giving sole control of the defense and settlement of the Claim to Indemnitor (provided that Indemnitee may participate in the defense and employ counsel at its expense and Indemnitor will obtain the prior approval of Indemnitee before entering into any settlement of such Claim or ceasing to defend against such Claim, if such settlement or ceasing to defend the Claim adversely affects Indemnitee); and (c) Indemnitee providing to Indemnitor, at Indemnitor's cost and expense, all reasonable assistance.

7. Data

(a) **Use of Client Data.** Vendor shall use, store, disclose, and otherwise process the Client Data: (i) for the purpose of performing its obligations under this Agreement; (ii) pursuant to documented instructions from Client, (iii) in accordance with its privacy policy, which is available at <https://chemquest.com/privacy-policy/> (“**Privacy Policy**”) and which is hereby incorporated by reference, or (iv) when required to do so by applicable law, and Vendor informs Client of that legal requirement before processing and minimizes any disclosures to the maximum extent permitted by law.

(b) **Aggregate & Anonymized Data.** Notwithstanding anything to the contrary herein, Vendor may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. (“**Aggregate Data**” refers to Client Data with the following removed: personally identifiable information and the names and addresses of Authorized Users).

8. Confidentiality

(a) **Confidential Information Defined.** “**Confidential Information**” means any and all information disclosed by one party to this Agreement (“**Discloser**”) to the other (“**Recipient**”) during the Term, including without limitation, any source code, prices, trade secrets, databases, designs and techniques, models, displays and manuals, information concerning research activities and plans, customers, personnel, marketing or sales plans, sales forecasts, pricing or pricing strategies, costs, operational techniques, strategic plans, business information, whether or not such information is disclosed by Discloser orally or in writing, and whether or not such information is marked as “confidential” or “proprietary” at the time of disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient’s possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser. Recipient is on notice that the Confidential Information may include Discloser’s valuable trade secrets.

(b) **Nondisclosure.** Recipient shall not use Confidential Information for any purpose other than to perform its obligations under this Agreement (the “**Purpose**”). Recipient: (a) will not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Article 8; and (b) will not disclose Confidential Information to any other third party without Discloser’s prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense.

(c) **Injunction.** Recipient agrees that breach of this Article 8 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

(d) **Termination & Return.** With respect to each item of Confidential Information, the obligations of Article 8 will terminate three (3) years after the termination or expiration of this Agreement; provided that such obligations related to Confidential Information constituting Discloser’s trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination or expiration of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.

(e) **Retention of Rights.** This Agreement does not transfer ownership of Confidential Information. Discloser will retain all right, title, and interest in and to all Confidential Information.

9. **Term and Termination.**

(a) **Term.** The term of this Agreement shall begin on the Effective Date and shall continue for a period of one (1) year (“**Initial Term**”). At the expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year term periods (each such period being a “**Renewal Term**”) unless either party provides written notice of non-renewal at least sixty (60) calendar days prior to the end of the current term.

(b) **Termination.** In addition to any other express termination right set forth in this Agreement:

(i) Either Party may terminate this Agreement for cause upon thirty (30) days’ written notice of a material breach to the other Party, provided such breach remains uncured at the expiration of such notice period; and

(ii) Either Party may immediately terminate this Agreement upon the occurrence of any of the following events: (a) the other Party becomes insolvent, or is adjudicated bankrupt or voluntarily seeks protection under any bankruptcy or insolvency law; or (b) the other Party makes an assignment of its assets for the benefit of creditors or any arrangement with its creditors.

(iii) Vendor may terminate this Agreement for convenience by providing the Client with 90 days’ written notice. In the event Vendor terminates the Agreement this Section 9(b)(iii), Vendor will provide Client with a pro-rated refund of any Fees it has prepaid to Vendor for Services that it will no longer have the right to use.

(c) **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, any right or license granted to Client therein shall immediately cease; and any Fees due to Vendor under the Agreement shall become immediately payable.

(d) **Equitable Relief.** The Parties acknowledge and agree that there may be no adequate remedy at law for the failure of the other Party to comply with any of the material terms and conditions of this Agreement upon termination of this Agreement, or upon a breach of the confidentiality terms herein, and the Parties agree that, in the event of any such failure, the non-breaching Party shall be entitled to equitable relief by way of temporary restraining order, temporary injunction, and permanent injunction and such other and further relief as any court of competent jurisdiction may deem proper.

10. **Miscellaneous**

(a) **Notice.** Notices are deemed delivered on the next business day after sending by email (unless the sender has been notified of a delivery failure) and three business days after sending by mail. Any notice to be given under this Agreement must be given in writing and sent to the following address(es), or to a different email or mailing address which a Party may give written notice of pursuant to this Section from time to time:

(i) To Client: to the mailing address or email address Client provides to Vendor.

(ii) To Vendor: by mail

(b) **Amendment.** This Agreement may not be amended except in a writing executed by authorized representatives of Client and Vendor.

(c) **Assignment.** This Agreement may not be assigned by Client without the written consent of Vendor. Any attempt to assign this Agreement in violation of the foregoing will be null and void. This Agreement binds the Parties, their respective affiliates, successors and permitted assigns.

(d) **Survival.** The terms of this Agreement that by their sense and context should survive any termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including without limitation various provisions Articles 3, 5, 6, 7, 8, and 10, and any payment obligations that accrue prior to such termination or expiration.

(e) **Independent Contractor.** The Parties are independent contractors and as such, at no time shall either Party be considered an employee or employer of the other. Without limitation on the generality of the foregoing, neither Party may bind the other Party to any agreement, obligation, or covenant of any kind, expressed or implied, without the bound Party's prior written consent in each instance.

(f) **Binding Effect and Third-Party Beneficiary.** Except as specifically stated in this Agreement, neither Party, nor any of their respective employees or agents, will have the power or authority to bind or obligate the other Party. No third party is a beneficiary of this Agreement.

(g) **Waiver of Rights.** Except where specifically stated to the contrary, all remedies available to either party for breach of this Agreement under this Agreement, at law, or in equity, are cumulative and nonexclusive. A waiver or failure of either Party at any time to require performance by the other Party of any provision hereof will not affect the full right to require such performance at any time thereafter.

(h) **Severability.** If any provision or portion thereof of this Agreement or its application in a particular circumstance is held to be invalid or unenforceable to any extent in any jurisdiction, such provision or portion thereof will, as to such jurisdiction only, be ineffective to the extent of such unenforceability, all other provisions and portions thereof of this Agreement will not be affected thereby and will be valid and enforced to the fullest extent permitted by law.

(i) **Choice of Law and Venue.** This Agreement, as well as any and all tort claims arising from this Agreement or arising from any of the proposals, negotiations, communications or understandings regarding this Agreement, will be governed by and construed in accordance with the laws of the State of Ohio, United States of America, (“Ohio”), accept to the extent preempted by federal law. Venue for any litigation arising out of this Agreement shall be in any competent court of jurisdiction in Hamilton County, Ohio.

(j) **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control (each, a “Force Majeure Event”), including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) governmental health restrictions or advisories; (h) disease, epidemics or pandemics; (i) national or regional emergency; and (j) any other similar events or circumstances. The party suffering a Force Majeure Event shall give notice within 14 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

(k) **Entire Agreement.** This Agreement governs Client’s use of the Services, and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between Client and Vendor with respect to the Services. Notwithstanding the foregoing, Client may also be subject to additional terms and conditions, posted policies (including but not limited to the Privacy Policy), guidelines, or rules that may apply when Client purchases certain elements of the Services, affiliate or advertiser services, third-party content or third-party software.