

Service Agreement

THIS AGREEMENT ("AGREEMENT") IS BETWEEN THE CUSTOMER WHO ORDERS TestGold SAAS ("CUSTOMER") AND aiChemistry Inc. ("aiChemistry"). Customer's use of and access to TestGold is governed by this Agreement and the terms of Customer's Order. BY USING OR ACCESSING TESTGOLD SAAS, OR BY CHOOSING THE "I ACCEPT" OPTION FOR THESE TERMS, YOU AGREE TO THE TERMS BELOW. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE OR ACCESS TESTGOLD SAAS.:

aiChemistry CUSTOMER TERMS – TestGold Software-as-a-Service

1. **Scope and Parties.** These aiChemistry Customer Terms for Software-as-a-Service (the "Agreement") govern the purchase, access and use of TestGold software-as-a-service from aiChemistry Inc. ("aiChemistry") by the Customer entity identified below ("Customer"). The terms of this Agreement become effective when aiChemistry accepts Customer's order, upon renewal of an order or upon Customer's use of TestGold SaaS (defined below) ("Effective Date"), and will remain in effect unless terminated pursuant to section 19 (Termination).
2. **TestGold Software-as-a-Service.** "TestGold Software-as-a-Service" or "testGold SaaS" or "TestGold" mean the aiChemistry branded online software solutions that aiChemistry makes available for Customer use through a network connection, each as described in the applicable supporting material and other exhibits or attachments that are each made a part of this Agreement (collectively, "Supporting Material"). The terms for use of TestGold is stated in the Supporting Material. Supporting Material may include service descriptions, data sheets, statements of work and their applicable exhibits, addenda, and attachments which may be available to Customer in hard copy or by accessing an aiChemistry website. In the event of a conflict, Supporting Material takes precedence over this Agreement.
3. **Orders.** Customer may place orders for TestGold through our website, customer-specific portal, or by letter, fax, or e-mail (each upon aiChemistry's acceptance, an "Order"). The term of each TestGold subscription is stated in the applicable Order or Supporting Material and begins on the date that TestGold is made available to Customer ("SaaS Order Term").
4. **Access Rights.** During the applicable SaaS Order Term, Customer may access and use TestGold in accordance with the applicable Supporting Material and this Agreement. Customer is responsible for complying with the terms of this Agreement and the Supporting Material. Customer is responsible for any and all use of TestGold through Customer's credentials or any account that Customer may establish. Customer agrees to maintain the confidentiality of Customer's account, credentials, and any passwords necessary to use TestGold. Should Customer believe that there has been unauthorized use of Customer's account, credentials, or passwords, Customer must immediately notify aiChemistry.

5. **Usage Limitations.** TestGold may be used only for Customer's internal business purposes and not for commercialization. Customer will not: (i) exceed any usage limitations identified in the Supporting Material; (ii) except to the extent expressly permitted in Supporting Material, sell, resell, license, sublicense, lease, rent, or distribute TestGold or include aiChemistrySaaS as a service or outsourcing offering, or make any portion of TestGold available for the benefit of any third party; (iii) copy or reproduce any portion, feature, function, or user interface of TestGold; (iv) interfere with or disrupt the integrity or performance of TestGold; (v) use TestGold to submit, send, or store Customer-provided SaaS Data that is obscene, threatening, libelous or otherwise unlawful or tortuous material, violates any third party's privacy rights, or infringes upon or misappropriates intellectual property rights; (vi) use TestGold to disrupt or cause harm to a third party's system or environment; (vii) access TestGold to build a competitive product or service; or (viii) reverse engineer TestGold. Customer is responsible for complying with all terms of use for any software, content, service, or website it loads, creates, or accesses when using TestGold.
6. **Payment terms.**
- a. **Prices and Taxes.** Prices will be as quoted in writing by aiChemistry or, in the absence of a written quote, as set out on our website, customer-specific portal, or aiChemistry published list price at the time an order is submitted to aiChemistry. Prices are exclusive of taxes, duties, and fees unless otherwise quoted. If a withholding tax is required by law, please contact aiChemistry order representative to discuss appropriate procedures.
- b. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of aiChemistry's invoice date. aiChemistry may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
7. **Customer-provided SaaS Data.** Customer is solely responsible for the data, text, audio, video, images, software, and other content input into an aiChemistry system or environment during Customer's access or use of TestGold ("Customer-provided SaaS Data"). As between aiChemistry and Customer, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer-provided SaaS Data. Data sent to TestGold will include snapshots of html from Customer's web application. This data is securely sent to an isolated location that will only be visible to and leveraged by the customer. The on-prem edition does not send any data externally. Customer hereby provides to aiChemistry all necessary rights to Customer-provided SaaS Data to enable aiChemistry to provide TestGold. aiChemistry will use Customer-provided SaaS Data only as necessary to provide TestGold, technical support, or as otherwise required by law.
8. **Personal Data.**
- a. If, in the course of providing TestGold, aiChemistry agrees in writing to process Customer Personal Data, aiChemistry shall process such data only as permitted under this Agreement and in compliance with data protection legislation to which aiChemistry is subject as a service provider and processor of Customer Personal Data.
- b. "Customer Personal Data" means personal data of which Customer or its affiliates is the controller and which aiChemistry processes in the course of providing TestGold. The terms "controller", "processor", "process", "processed", "processing", and "personal

data” used in this Agreement shall be as defined by EU Directive 95/46/EC, unless otherwise defined by applicable data protection legislation.

9. **Data Security.** aiChemistry implements technical and organizational measures to protect Customer-provided SaaS Data. The Supporting Material for each TestGold describes the measures implemented for such TestGold.
10. **TestGold Performance and Operations.** aiChemistry’s ability to deliver TestGold will depend on Customer’s reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver TestGold.
11. **TestGold Operations.** So long as during the SaaS Order Term, aiChemistry does not materially degrade the functionality, as described in Supporting Material, of TestGold: (i) aiChemistry may modify the systems and environment used to provide TestGold; and (ii) aiChemistry reserves the right to make any changes to TestGold that it deems necessary or useful to maintain or enhance the quality or delivery of aiChemistry’s services to its customers, the competitive strength of or market for aiChemistry’s services, or TestGold’s cost efficiency or performance. aiChemistry may use global resources, such as aiChemistry affiliates or third parties in worldwide locations to provide TestGold and perform its obligations.
12. **License Grant to Software in connection with TestGold.** To the extent that aiChemistry provides software in connection with TestGold, aiChemistry grants Customer a non-exclusive and non-transferable license to use the version or release of the aiChemistry-branded software listed in the Order or the applicable Supporting Material (the “Licensed Software”) during the SaaS Order Term. Unless otherwise stated in writing, Customer may only use the Licensed Software for internal purposes and not for further commercialization. Customer may make a copy or adaptation of the Licensed Software only for archival purposes or when it is an essential step in the authorized use of the Licensed Software. Customer agrees that it will not modify, reverse engineer, disassemble, decrypt, decompile, or make derivative works of any Licensed Software unless permitted by statute, in which case Customer will provide aiChemistry with reasonably detailed information about those activities. For non-aiChemistry branded software, the third party’s license terms will govern its use. aiChemistry may monitor and audit Customer use of the Licensed Software and compliance with any associated license terms and, if aiChemistry makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may not sublicense, assign, transfer, rent, or lease the Licensed Software except as permitted in writing by aiChemistry.
13. **Warranty:** aiChemistry WILL PERFORM TestGold BY QUALIFIED PERSONNEL AND IN A WORKMANLIKE MANNER CONSISTENT WITH THE SUPPORTING MATERIAL. TO THE EXTENT PERMITTED BY LAW, aiChemistry DISCLAIMS ALL OTHER WARRANTIES. aiChemistry DOES NOT WARRANT THAT TestGold WILL BE UNINTERRUPTED OR ERROR FREE. IF aiChemistry PROVIDES CUSTOMER WITH A FREE-OF-CHARGE SAAS ORDER TERM, INCLUDING BUT NOT LIMITED TO TestGold PROVIDED ON AN EVALUATION OR “FREEMIUM” BASIS, TestGold IS PROVIDED “AS IS” AND TO THE EXTENT PERMITTED BY LAW, aiChemistry DISCLAIMS ALL WARRANTIES AND LIABILITY.
14. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants aiChemistry a non-exclusive, worldwide, royalty-free right and license to any intellectual property, including Customer-provided SaaS Data, that is necessary for aiChemistry and its designees to perform TestGold.

15. **Intellectual Property Rights Infringement.** aiChemistry will defend and/or settle any claims against Customer that allege that an aiChemistry-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party. aiChemistry will rely on Customer's prompt notification of the claim and cooperation with our defense. aiChemistry may modify the product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the balance of any pre-paid amount for the affected TestGold. aiChemistry is not responsible for claims resulting from Customer-provided SaaS Data or from any unauthorized use of the products or services. This section shall also apply to Licensed Software identified as such in the relevant Supporting Material except that aiChemistry is not responsible for claims resulting from Customer-provided SaaS Data, customized configurations or designs (i) performed or provided by Customer or (ii) performed at Customer's direction. Customer will defend or indemnify aiChemistry from and against third party claims arising from Customer-provided SaaS Data or customized configuration or designs (i) performed or provided by Customer or (ii) performed at Customer's direction.
16. **Limitation of Liability.** aiChemistry's liability to Customer under this Agreement is limited to the amount payable by Customer to aiChemistry for the relevant TestGold Order that is the subject of the claim for the twelve (12) month period immediately preceding the act or omission giving rise to the claim. This limit applies collectively to aiChemistry, its employees, subsidiaries, contractors, and suppliers. Neither Customer nor aiChemistry will be liable for lost revenues or profits, downtime costs, or indirect, special, or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence, acts of fraud, nor any liability which may not be excluded or limited by applicable law. Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control, except for payment obligations. If aiChemistry provides customer with a free-of-charge SaaS Order Term, including but not limited to TestGold provided on an evaluation or "freemium" basis, TestGold is provided "as is" and to the extent permitted by law, aiChemistry shall not be responsible for any loss or damage to Customer, its customers, or any third parties caused by TestGold or Licensed Software that makes available for Customer.
17. **Suspension.** aiChemistry may suspend Customer's access and use rights to TestGold where Customer fails to make payments when due, Customer breaches sections 4, 5, 6, 7, or 12 of this Agreement or Customer's use of TestGold is in violation of law. Customer remains responsible for applicable fees through date of suspension including usage and data storage fees, Customer will not be entitled to service credits during any suspension period.
18. **Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership, or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. aiChemistry may terminate this Agreement where Customer's access and use rights are suspended pursuant to section 17 or to comply with applicable laws or regulations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.

19. Effect of Expiration or Termination. Except for termination for cause, termination of this Agreement shall not entitle Customer to any refund, and payment obligations are non-cancelable. Upon expiration or termination of a SaaS Order Term, except as otherwise provided in the Supporting Material:

a. aiChemistry may disable all Customer access to the applicable TestGold, and Customer shall promptly return to aiChemistry (or at aiChemistry's request destroy) any Licensed Software provided with TestGold; and

b. aiChemistry may make available certain data in the format generally provided by aiChemistry, subject to the terms of the applicable Supporting Material.

General. This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to this Agreement will be made only through a written amendment signed by both parties. The Agreement will be governed by the laws of the country of aiChemistry or the aiChemistry affiliate accepting the Order and the courts of that locale will have jurisdiction; however, aiChemistry or its affiliate may bring suit for payment in the country where the Customer affiliate that placed the Order is located. Customer and aiChemistry agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state of California, excluding rules as to choice and conflicts of law.