

ProChemist/AS Service Condition of Use

THIS ASP Service Condition of Use (“this Condition”) made by and between: Customer which submit ProChemist/AS Application Form (“CUSTOMER”); and NEC Corporation, a corporation organized and existing under the laws of Japan and having its principal place of business at 7-1, Shiba 5-chome Minato-ku, Tokyo 108-8001, Japan (“NEC”). WITNESSETH: WHEREAS, CUSTOMER is willing to use the ASP service from NEC as defined in ARTICLE 1 hereof; and WHEREAS, NEC is willing to provide such ASP service to CUSTOMER. NOW, THEREFORE, in consideration of the mutual covenants and understandings hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE 1 DEFINITIONS

In addition to the words and the terms elsewhere defined in this Condition, the following words and terms as used in this Condition shall have the following meanings unless some other meaning is apparent in the context in which the words and terms are used.

- (i) “Service” means the ASP Service described in the Service Level Agreement (ProChemist/AS Service: for Supplier).
- (ii) “ASP Facility” means hardware and software which NEC sets up in order to provide the Service to Customer.
- (iii) “Customer Data” means all data Customer inputs and/or stores in the computer memory of the ASP Facility.
- (iv) “Customer Equipment” means the hardware and software which the Customer is required to have in use in order to use the Service to be provided in accordance with this Condition.

ARTICLE 2 MAINTAIN OF THE ENVIRONMENT FOR THE USAGE

- 2.1 Customer can use the Service through the userID provided by NEC.
- 2.2 Customer shall, at its expense and responsibility, set up the Customer Equipment and subscribe to internet-access service.
- 2.3 Customer shall, at its expense and responsibility, operate and maintain the Customer Equipment and Internet-access service.
- 2.4 Customer may use the Service 24 hours a day, 365 days a year unless in the event stipulated in ARTICLE 6 and ARTICLE 7.

ARTICLE 3 REPRESENTATIVE PERSON

Customer shall nominated the representative person relating to the Service and notify NEC of such representative person by e-mail.

ARTICLE 4 USER REGISTRATION

- 4.1 Customer shall submit to NEC the documents described the following items relating to user registration.
 - (i) Company Name;
 - (ii) Name of the person in charge ;
 - (iii) Other requirement ;
- 4.2 In response to the notification stated in previous clause, NEC shall furnish to Customer the user ID and Password for use of the Service.
- 4.3 In the event that the Customer requests to change or renew the user registration stipulated in Article 4.1 hereof, Article 4.1 and Article 4.2 shall be applied.

ARTICLE 5 PROHIBITED MATTERS

Customer shall not:

- (i) Store harmful computer programs to the ASP Facility;
- (ii) Infringe copyright or other intellectual property right of a third party;
- (iii) Feature pornography or defamation of people or be detrimental to one's reputation;
- (iv) Infringe property right or privacy right of a third party;
- (v) Store untrue information or meaningless information to the ASP Facility;
- (vi) Violate all applicable international, national, state, regional and local laws and regulations in its performance hereunder with respect to the Service; and
- (vii) Do any action which prevent the continuous and normal provision of the Service.

ARTICLE 6 DISCONTINUATION OF THE SERVICE

- 6.1 NEC may discontinue providing all or part of the Service to Customer in the event that the following events occur.
 - (i) NEC is required to maintain or construct the ASP Facility
 - (ii) NEC is required discontinuation of the Service by the applicable law.
 - (iii) NEC judges that the continuation of the business of the Service is difficult.
- 6.2 In case of discontinuation of the Service, NEC shall, except in an emergency, notify Customer by putting the message on the Website.

ARTICLE 7 SUSPENSION OF THE SERVICE

- 7.1 NEC may suspend to provide all or part of the Service to Customer in case of the following circumstances.
 - (i) Customer fails to perform, or commits a material breach of, any part, provision, or covenant of this Condition.
 - (ii) Customer affects NEC's operations in the process of its usage of the Service.
- 7.2 In case of suspension of the Service, NEC shall, except in an emergency, notify Customer the date, time and reason of the suspension of the Service in writing or by e-mail in advance.

ARTICLE 8 NO WARRANTY

NEC MAKES, AND CUSTOMER RECEIVES, NO WARRANTY FOR THE USE OR THE RESULT OF THE SERVICE HEREUNDER, EXPRESS OR IMPLIED, INCLUDING NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE OR AGAINST INFRINGEMENT.

ARTICLE 9 LIMITATION OF LIABILITY

IN NO EVENT SHALL NEC BE LIABLE FOR ANY LOSS OR DAMAGES (INCLUDING WITHOUT LIMITATION, SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGE RESULTING FROM LOSS OF USE, DATA OR PROFITS WHETHER FOR CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) CLAIMED TO HAVE RESULTED FROM THE USE OF THE SERVICE, REGARDLESS OF THE FORM OF ACTION.

ARTICLE 10 INDEMNIFICATION

Customer agrees to indemnify and hold NEC harmless from and against any claim, suit or proceedings brought against NEC so far as such claim, suit or proceedings is based on a claim that the information constitutes an infringement of any rights (including without limitation, patent, copyright or other intellectual property rights) of a third party provided that Customer is notified promptly in writing of such claim, suit or proceeding and given full and complete authority, information and assistance for the defense of the same. Customer shall pay all damages and costs finally awarded therein against NEC.

ARTICLE 11 NON-ASSIGNABILITY

Neither party may assign any rights or obligations under this Condition without the prior written consent of the other party.

ARTICLE 12 SUBCONTRACTING

NEC may subcontract the Work, in part or in all, to any third party (the “Subcontractor”) without the prior written consent of CUSTOMER.

ARTICLE 13 CONFIDENTIALITY

13.1 “Confidential Information”, as used herein, shall mean any and all information disclosed by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) in a written or other tangible form clearly marked as being “confidential” or “proprietary” (or words of similar connotation), or in an electronic form clearly marked as being “confidential” or “proprietary” (or words of similar connotation), at the time it is provided. Oral information shall not be Confidential Information unless it is (a) designated as confidential or proprietary by the Disclosing Party at the time of the oral disclosure, and (b) summarized and identified as being confidential or proprietary in writing or in electronic form, which shall be received by the Receiving Party within thirty (30) days after such oral disclosure.

13.2 The parties agree to treat and maintain as confidential and proprietary all Confidential Information furnished pursuant to or in connection with this Condition to the same extent and with the same degree of care as the Receiving Party uses in handling its own confidential and proprietary information of similar nature (but with not less than a reasonable degree of care), and further agree not to use the Confidential Information for any purpose other than the performance of any obligation under this Condition. Neither party shall disclose any Confidential Information to anyone other than its employees who have a need to know the Confidential Information in the performance of this Condition. Notwithstanding the foregoing, NEC may disclose the Confidential Information of CUSTOMER to its Subcontractor set forth in ARTICLE 12, provided that NEC shall impose confidentiality obligations no less restrictive than this ARTICLE 13.

13.3 ARTICLE 13.2 hereof shall not apply to any information that; (i) on the date of disclosure was already known to the Receiving Party or generally available within the industry; (ii) after the date of disclosure becomes rightfully known to the Receiving Party without restriction from a source other than the Disclosing Party or becomes generally available in the industry other than by unauthorized disclosure by the Receiving Party; (iii) is legally furnished to the Receiving Party by a third party without restriction; (iv) was or is developed by the Receiving Party independently without any use of any of the Confidential Information or (v) is disclosed pursuant to a lawful requirement of a governmental agency or to a court order in connection with a judicial proceeding, but then only to the extent so required or ordered; in such case Receiving Party will use reasonable efforts to timely advise the Disclosing Party prior to disclosure so that Disclosing Party will have an opportunity to seek a protective order or other appropriate relief.

13.4 The Receiving Party's obligation under this ARTICLE with respect to particular Confidential Information shall continue for three (3) years after receipt of such Confidential Information. This ARTICLE 13.4 survive any termination or expiration of this Condition.

ARTICLE 14 EXPORT CONTROL

CUSTOMER agrees that the Service provided under this Condition shall not be used for the development, manufacture and/or use of weapons of mass destruction, for any purposes that might disrupt world peace or security, or for use in or as any other type of weapons.

ARTICLE 15 TERMINATION

If either party hereto commits any material breach of the terms of this Condition and such breach is not corrected within sixty (60) days after notice specifying the nature of the breach, the other party may terminate this Condition immediately.

ARTICLE 16 DISCLAIMER OF AGENCY

Neither party has the authority to make any statement, representation, warranty or other commitment on behalf of the other party. Nothing contained herein or done pursuant to this Condition shall constitute the parties as entering into a joint venture or partnership, or shall constitute any party as the agent of any other party for any purpose whatsoever.

ARTICLE 17 FORCE MAJEURE

17.1 If the whole or any part of the performance by NEC of any part of its obligation hereunder is prevented, hindered or delayed or otherwise made impracticable by reason of strikes, labor troubles, floods, fires, accidents, earthquakes, riots, explosions, wars, hostilities, acts of government, customs barriers or taxes, delay in the customs clearance, export control regulations, or other causes of like or different character beyond the control of NEC, NEC shall be excused from such performance during the continuance of any such contingency and for so long as such contingency shall continue to prevent, hinder or delay such performance.

17.2 If the contingency specified in ARTICLE 17.1 above shall continue for more than six (6) months from its occurrence, NEC may terminate this Condition forthwith without any liability by giving a written notice to Customer.

ARTICLE 18 PUBLIC ANNOUNCEMENT

Each party shall obtain prior written consent of the other if it desires to make any public announcement relative to this Condition.

ARTICLE 19 INDEPENDENT CONTRACTOR

The relationship of CUSTOMER and NEC in the performance of this Condition shall be that of an independent contractor.

ARTICLE 20 WAIVER

The failure to exercise or delay in exercising a right or remedy under this Condition shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Condition shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

ARTICLE 21 SEVERABILITY

The illegality, invalidity or unenforceability of any provision or term of this Condition for any reason whatsoever shall not affect the validity of any other provisions or terms of this Condition and the illegal, invalid or unenforceable provision or term shall be severable from this Condition and shall be deemed deleted from this Condition.

ARTICLE 22 HEADINGS

The headings of this Condition are for convenience of reference purpose only and are not intended to be a part of or to affect the meaning or interpretation of this Condition.

ARTICLE 23 GOVERNING LAW

The validity, interpretation and implementation of this Condition shall be governed by the laws of Japan.

ARTICLE 24 DISPUTES

All disputes arising out of this Condition shall be subject to the exclusive jurisdiction of Tokyo District Court.

ARTICLE 25 LANGUAGE

The body of this Condition shall be written and executed in the English language only, which language shall control and any version in any other language shall only be for purposes of accommodating individual parties hereto and shall not be binding upon the parties hereto.

ARTICLE 26 ENTIRE AGREEMENT

This Condition constitutes the entire agreement between the parties hereto relating to the subject matter thereof and supersedes all previous agreements, negotiations, commitments and/or representations made between the parties hereto either orally or in writing.