

Element LIMS® Maintenance Agreement

This Maintenance Agreement (the "Agreement") is a legal agreement between the customer listed on the Promium Order document ("you" or "Customer") and Promium, LLC ("Promium") for maintenance and support services for the Element LIMS® software and related software applications (the "Software"). Maintenance and support are provided by Promium for the term of this Agreement. For license purchase customers, an initial one-year term is included as part of the Software license purchase. Thereafter, this Agreement shall automatically renew for subsequent one-year periods until terminated as described below unless otherwise specified. For lease customers, a Maintenance Agreement is in effect for the duration of the lease term.

Services not explicitly described in this document are not covered by the Maintenance Agreement or provided by Promium unless otherwise specified. Such items include conflicts that may cause Software failure due to firmware or device drivers or micro code problems introduced by the manufacturer or other parties; issues arising from software programs from other vendors; computer equipment, network equipment, database software, or any other product that may malfunction unless the malfunction is directly caused by the Software.

1. Technical Support Services:

a. Scope: Technical support services under this Agreement are limited to the two most recent major versions of the covered Software products and are available to customers who have a valid Maintenance Agreement.

b. Services: Unless otherwise communicated, telephone support is available Monday through Friday, 5:00am to 5:00pm Pacific Time, not including holidays recognized by Promium. At other times, a telephone or email message may be left and Promium personnel will respond within one business day. Emergency technical assistance provided outside of normal business hours may incur additional charges if specified in the contract. Online documentation and other support materials are available at www.promium.com/support or accessible directly through the product. Promium website is available twenty-four hours per day, seven days per week unless undergoing maintenance or repair.

Each Element LIMS customer requiring support must designate at least one primary contact person to manage technical support requests.

Support requests should be directed to:

Promium Customer Support (Help Desk)

425.286.9200 phone

425.286.9201 fax

support@promium.com

2. Software Updates:

Software updates to the core system, including Software revisions, are provided at no additional charge to customers who have a valid Maintenance Agreement. Updated system components such as executables, libraries, controls, Basic report formats and supporting files for the covered Software products and its companion applications are available from the Promium downloads section of the web site at www.promium.com/support. No additional tangible goods will be provided with the renewal of the maintenance subscription. Updates to Standard and customized Electronic Data Deliverables (EDDs) and reports are available at an additional charge.

3. Custom Programming Services

Promium may offer certain features, functions, reports, and other input or output which are not considered part of core Software or services by Promium. These items are considered custom work. Deliverables including but not limited to, custom programming, custom reports, proprietary electronic deliverable programs, other special program functions on behalf of the user, and other custom services, outside the original purchase agreement, may incur additional charges as quoted by Promium.

4. Services Not Included

Promium reserves the right to charge for support or programming services that are unrelated to the direct operation of its Software products. This includes conflicts that may cause Software failure due to firmware or device drivers or micro code problems introduced by the manufacturer or other parties. This also includes other Software programs that may interfere with its Software products.

5. Term & Renewal

This Agreement is effective for one year for license purchase customers. The effective (service start) date is within thirty (30) days of shipment of software unless otherwise specified. Upon the expiration of the initial one-year term (and unless otherwise terminated), this Agreement shall automatically renew for successive one-year periods unless either party gives written notice of its intent to terminate the Agreement before the then-current term expires, unless autorenal is prohibited by statute. For lease customers, this Agreement is effective for the period of the lease, and it shall continue automatically provided that lease payments are timely received by Promium.

6. Payment

For license purchase customers, annual maintenance payments shall be paid in advance. Costs for each renewal term are generally invoiced to you 45 days prior to the expiration of the renewal term and are due net 30 days from invoice date. Prices are subject to change. Payment not received on or before the Payment Deadline shall be subject to a one-and-one-half percent (1½%) monthly late fee. In the event that Customer fails to make timely payment under this Agreement, Promium reserves the right to terminate this Agreement and/or suspend the provision of services under it by providing Customer written notice of its election to do so. Maintenance for lease customers shall be paid in advance as provided in the Promium Software Lease Agreement.

7. Billing

Any services not covered under this Agreement will be billed at a rate set by Promium in its course of business. Payment for services billed shall be made within thirty (30) days of the date of invoicing or shall be subject to a one-and-one-half percent (1½%) monthly late fee.

8. Warranty Disclaimer and Limitation of Liability

a. THE PROMIUM MAINTENANCE SERVICES ARE PROVIDED "AS IS" AND PROMIUM MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES OF ANY KIND. PROMIUM HEREBY SPECIFICALLY DISCLAIMS ALL WARRANTIES, CONDITIONS, AND/OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, THAT MAY ARISE EITHER BY THE PARTIES' AGREEMENTS OR BY OPERATION OF LAW, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. PROMIUM MAKES NO OTHER REPRESENTATIONS OR WARRANTIES INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES THAT (A) THE SOFTWARE WILL MEET YOUR REQUIREMENTS, (B) THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR (C) ANY DEFECTS IN THE SOFTWARE WILL BE CORRECTED. This disclaimer shall not apply to the extent that it is prohibited by applicable law.

b. We will not be liable for any loss or damage caused by delay in furnishing the Software or any other performance under this Agreement.

c. Our entire liability and your exclusive remedies for our liability of any kind (including liability for negligence except liability for personal injury caused solely by our negligence) for the Software covered by this Agreement and all other performance or nonperformance by us under or related to this Agreement are limited to the remedies specified by this Agreement. REGARDLESS OF WHETHER ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE, THE LIABILITY OF PROMIUM SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT OF THE LICENSE FEES PAID TO PROMIUM FOR THE SOFTWARE MAINTENANCE SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE CLAIM. IN NO EVENT SHALL PROMIUM BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES, INCLUDING PUNITIVE DAMAGES AND LOST PROFITS, RELATED TO THE SOFTWARE OR ANY ASSOCIATED SERVICES THAT PROMIUM MAY PROVIDE, EVEN IF PROMIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

d. Some states or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for consequential or incidental damages, so the above exclusion may not apply to you. In such situations, Promium's liability shall be limited to the extent permitted by law. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

9. General

a. If Customer breaches any of the terms of this Agreement, Promium, in addition to any other legal remedy it may have, may cancel this Agreement effective upon written notice to Customer. This Agreement or other proof thereof must be presented by Customer as valid Maintenance coverage upon request.

b. In any suit, proceeding or action to enforce this Agreement, the substantially prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs and expenses in connection with such suit, proceeding or action, including appeal. This Agreement shall be governed by and construed under the laws of the State of Washington without regard to its conflict of laws principles. The jurisdiction and venue for any suit or action between the parties shall be the state and federal courts of King County, Washington.

c. Failure to enforce any rights granted herein shall not be deemed a waiver as to subsequent enforcement of such rights. If any part of this Agreement is found void and unenforceable, it shall be modified in such manner as to be valid and enforceable but so as to most nearly retain the intent of the parties; and if such modification is not possible, it shall be deemed severed from this Agreement and shall not affect the validity and enforceability of the balance of the Agreement.

d. This Agreement is not assignable and the licenses granted hereunder may not be sublicensed, assigned or transferred in any manner without the prior written consent of Promium. Any such attempted sublicense, assignment or transfer shall be void.

e. This Agreement, together with its accompanying Price quotation, Order, Maintenance Agreement and Payment Terms and Conditions, constitute the entire understanding and agreement of the parties with respect to its subject matter, and any and all prior agreements, understandings or representations with respect to its subject matter are merged herein. The terms and conditions of this Agreement prevail over the terms and conditions of any other order (such as a purchase order) submitted by Customer for maintenance services. This Agreement may be amended only by written instrument signed by both parties subsequent to the date hereof. Any terms of this Agreement which by their nature extend beyond the Agreement termination or expiration shall remain in effect until fulfilled. These include Sections 6, 8 and 9.

Master: 010422

Customer Revision:

*****The section below is only required if the previous agreement has already expired.*****

Annual Maintenance Coverage Effective Date: 1/1/2023 – 12/31/2025

City of Glendale

Organization Name

Ron Serio

Authorized Agent Name (print)

Water Services Director

Title E-SIGNED by Ron Serio

on 2022-12-19 12:50:16 MST

Signature

Date

Promium, L.L.C

Organization Name

Scott Coccia

Authorized Agent Name (print)

CEO

Title

Scott Coccia

Signature

12/6/22

Date

ADDENDUM to Element LIMS Maintenance (“Agreement”)

The City of Glendale, Arizona (“City”) and Promium, LLC (“Contractor”) further agree as follows:

I. Conflicts. Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

II. Lack of Appropriations. Nothing in this Agreement guarantees that some or all of the funds necessary to comply with all of the City's obligations under this Agreement will be appropriated or otherwise be available. The City agrees to seek such appropriations in good faith from the City Council and agrees not to use the lack of appropriation as a substitute for termination for convenience. If sufficient funds are not appropriated or otherwise available, the City may unilaterally terminate this Agreement after providing thirty (30) days written notice. In the event the City provides such notice, the City will not be entitled to a refund or offset of any amounts previously paid but will not pay any amounts that become due after providing such notice.

III. E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractor with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

IV. Attestation of PCI Compliance. The Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

V. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

VI. Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

VII. Non-Discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.


VIII. Governing Law and Venue. This Agreement and Addendum shall be governed by and enforced using the law of the State of Arizona. The parties agree that any judicial action brought to enforce the terms and conditions of this Agreement shall be brought in a court of competent jurisdiction in Maricopa County, Arizona.

IX. Addendum and Agreement Conflict. In the result of any conflict between the Agreement and this Addendum, the terms of this Addendum shall prevail.

CITY OF GLENDALE:

CONTRACTOR:

E-SIGNED by Ron Serio
on 2022-12-19 12:50:23 MST
By: Ron Serio, P.E.
Its: Water Services Director


By:
Its: Authorized Representative

Date

12/16/22
Date

ATTEST:

E-SIGNED by Julie K. Bower
on 2022-12-20 09:42:28 MST
Julie K. Bower
City Clerk

APPROVED AS TO FORM:

E-SIGNED by Michael D. Bailey
on 2022-12-20 09:10:01 MST
Michael D. Bailey
City Attorney

