

## Promium® DataConcourse® Hosted Software Service Agreement

This Hosted Software Service Agreement ("Agreement") is a legal agreement between the customer listed on the Promium Order document or online product order form, as applicable ("you" or "Customer") and Promium®, L.L.C. ("Promium"). It governs the use of the online, hosted service versions of DataConcourse® computer software, and any related documentation or downloadable applications provided to you by Promium (collectively, the "Software"). The term "Software" shall also include any printed documentation that may be provided to you.

By entering an order for a subscription to one or more of the Software products or using any part of them, you agree to be bound by the terms of this Agreement.

PROMIUM IS WILLING TO GRANT YOU A RIGHT TO USE ITS SOFTWARE ONLY IF YOU ACCEPT AND AGREE TO BE BOUND BY ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. If you do not agree to these terms, do not use the Software.

If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or the entity to this Agreement; and (ii) you agree, on behalf of the party that you represent, to be bound by this Agreement. If you do not have such legal authority to bind your employer or the applicable entity, please contact Promium and do not access, download (as applicable), or use the Software.

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold.

### 1. USE OF SOFTWARE.

a. Unless otherwise specified in writing by Promium, you may access and use the hosted version of the Software on an unlimited number of computers; provided however, that they may be used by a single business or government entity only.

b. You agree that Promium may audit and inspect your use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse Promium for all reasonable expenses related to such audit in addition to any other liabilities you may incur as a result of such non-compliance.

c. To ensure optimal performance and security of the hosted Software, Promium will routinely perform maintenance on a regularly scheduled basis within its published maintenance windows. This may require specific services to be suspended during the maintenance period. Promium schedules maintenance windows outside of generally accepted business hours. As applicable, Promium will use commercially reasonable efforts to notify you in advance of any scheduled maintenance that may adversely affect hosted services. Under certain circumstances Promium may need to perform emergency maintenance, such as security patch installation or hardware replacement.

## 2. MAINTENANCE AND SUPPORT.

a. Maintenance and support is in effect for the duration of your Software subscription. The maintenance and support covers the current version of the Software product.

b. 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. Online documentation and other support materials may be available at [www.promium.com/support](http://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.

c. Each customer requiring support must designate a primary contact person to manage technical support requests. Support requests should be directed to:

Promium Customer Support (Help Desk)

425.286.9200 phone or toll free at 877-Promium (776-6486)

425.286.9201 fax

[support@promium.com](mailto:support@promium.com)

## 3. PAYMENT

a. Unless otherwise agreed in advance, all subscriptions for the DataConcourse products shall be paid by credit card. The billing functionality of the DataConcourse systems will provide the subscriber contact person with a weekly invoice detailing the units used in the preceding month and charges for them. These invoices can be accessed through the subscriber's account. For accounts that are not on a prepaid subscription, charges are billed to the credit card on file approximately seven days after the invoices are issued.

b. Services for customers whose account includes any overdue balances may be suspended without notice. Payments not made on or before the payment deadline shall be subject to a one-and-one-half percent (1½%) per month interest charge. In the event that Customer fails to make timely payment under this Agreement, Promium reserves the right to terminate this Agreement by providing Customer written notice of its election to do so

c. Promium may revise its subscription and per-unit charges from time to time upon notice to Customer. For prepaid subscriptions, the revisions shall be effective upon the renewal date of Customer's subscription.

#### **4. OWNERSHIP.**

a. Title. Use of the Software is licensed to you for use only under the terms of this Agreement. Except as expressly licensed to you herein, Promium reserves the right, title and interest in the Software and all associated copyrights, trademarks, and other intellectual property rights therein. Promium retains all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Software, whether made by Promium or any third party.

b. Confidentiality. You acknowledge that the Software contains confidential, proprietary information and trade secrets of Promium. You agree, and shall take all appropriate steps, to ensure that the Software, or any portion thereof, is not disclosed or made available by you or anyone in your organization to any other unauthorized person, firm or organization without the prior written consent of Promium. You agree to properly restrict any persons permitted access to the Software so as to enable you to satisfy your obligations under this Agreement.

c. Ownership and Retrieval of Data. All data created by you and residing in your database and records in the Software is fully owned by you. A data download can be provided by Promium if requested. An additional fee may apply. For at least 12 months from the date of the original entry of a particular data record, Promium will store this record for you at no charge. After the no-charge storage period, your data may will be deleted according to Promium's data purge policy. If you need additional storage time beyond 12 months, data storage subscriptions are available from Promium for an additional fee.

d. Storage Size of Data. Promium imposes a maximum storage limitation for each of its products per its then-current storage policy, and it reserves the right to collect additional fees for or decline to accept excessive storage beyond the storage limitations.

#### **5. OTHER RIGHTS AND LIMITATIONS.**

a. Restrictions on Use. You agree to use the Software only for your own business or organization. You shall not (i) permit any parent, subsidiaries, affiliated entities or third parties to use the Software unless otherwise specifically agreed in writing by Promium, (ii) use the Software to process or permit to be processed the data of any other party, including any of your affiliates or related companies, (iii) use the Software in the operation of an ASP service, service bureau or similar services, or (iv) allow access to the Software through any computers located outside of your main facility or your designated remote facilities (this does not preclude laboratory clients from accessing appropriate data and reports via the Internet features of the Software as discussed above).

b. Limitations on Downloading, Copying, Reverse Engineering, and Similar Activities. You may not download, copy, reverse engineer, decompile, or disassemble the Software. For purposes of this Agreement, "reverse engineering" shall mean the examination or analysis of the Software or Proprietary Information to determine its source code, sequence, structure, organization, internal design, algorithms or encryption devices, and "Proprietary Information"

shall mean all data, material, text, software, scripts, processes, graphics, other information or materials or portions thereof that are built into the Software.

c. Unauthorized Use. You may not distribute, rent, lease or sublicense the Software.

d. Non-Competition. In no event may you use the Software or Proprietary Information to provide services similar to the Software in competition with Promium. In order to protect Promium's confidential information and trade secrets, you may not develop, provide, sell, rent, or resell any product or service which competes with the Software, or create or implement any such product or service for the purpose of competing with the Software provided hereunder while this Agreement is in effect and for a period of one (1) year following termination of this Agreement.

## **6. RESPONSIBILITY FOR USE.**

a. Responsibility for Use. You assume sole responsibility for the use of the Software and for any results obtained by you from the Software. You shall be solely responsible for necessary audit and verification of the sufficiency and accuracy of all reports, documents and other information prepared using the Software. You shall also be solely responsible for the nature and content of all data, information, materials or any other content submitted by you or your users through the Software.

b. Responsibility for Content. You acknowledge and agree that: (i) Promium does not screen content imported from Element LIMS or other systems into the Promium software or any other content entered or imported into the Promium software, and it does not guarantee or warrant the accuracy, integrity, or quality of any such content; (ii) you will evaluate and bear all risks associated with the use by you or third parties of any such content, including any reliance on the accuracy, completeness, or usefulness of any laboratory testing or other information; and (iii) Promium shall not be liable in any way for any such content, including, but not limited to, any errors or omissions in it, or for any loss or damages of any kind incurred as a result of the use of any such content by you or any third party.

c. Compliance with Laws -- All Products. You agree not to use the Software to violate any applicable local, state, national or international law or regulation. Although Promium does not actively monitor use of or data uploaded into the Software by its clients or their users, Promium reserves the right to suspend any use of the Software or any part thereof, or to remove or disable any content, which it reasonably believes violates this Agreement or any applicable law or regulation.

d. Indemnification -- All Products. Customer shall indemnify and defend Promium and hold it harmless from and against any loss, damage, or expense, including reasonable attorney's fees, arising out of: (i) claims by third parties relating to analytical results, reports or other output provided to third parties by Customer from Customer's use of the Software (unless such claim is due to Promium's willful misconduct); (ii) unauthorized use of the Software by Customer as described in Sections 1 (Use of Software) and 5 (Other Rights and Limitations); (iii) any data, information or other content processed through the Software by Customer or Customer's sample generators or other users; or (iv) the failure of Customer to meet any of its obligations as described in this Agreement.

## **7. LIMITED SOFTWARE PRODUCT WARRANTY.**

Promium warrants, for a period of ninety (90) days after access is first provided to you, that the Software will operate in conformance with the documentation supplied with the Software. Promium's sole obligation under this warranty is to, at Promium's sole option, correct or replace the Software so that it will perform as above warranted or refund a prorated portion of the related service fee. This warranty is void if any unauthorized modifications are made to the Software or if the Software is not used in compliance with its documentation.

## **8. DISCLAIMER OF WARRANTY AND LIMITATION OF REMEDIES AND LIABILITY.**

a. THE LIMITED WARRANTY PROVIDED HEREIN IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, THE SOFTWARE AND ANY ASSOCIATED 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 NON-INFRINGEMENT. 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. Promium will not be liable for any loss or damage caused by delay in furnishing the Software or any other performance under this Agreement.

c. Promium's entire liability and your exclusive remedies for liability of any kind (including liability for negligence) related to the Software covered by this Agreement and all other performance or nonperformance by Promium 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 SERVICE FEES PAID TO PROMIUM FOR USE OF THE SOFTWARE 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. U.S. GOVERNMENT END-USERS.**

For U.S. government end-users, Promium's Software and its documentation constitute a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 and 48 C.F.R. §227.7202. All U.S. government end-users acquire the Software with only those rights set forth herein, consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable. Manufacturer/contractor is Promium, L.L.C., 3350 Monte Villa Parkway, Suite 220, Bothell, Washington 98021.

## **10. TERMINATION.**

a. This Agreement shall continue for the period of your Software subscription, unless terminated earlier as provided in this Agreement. Promium reserves the right to update or change it from time to time, effective upon 60 days after notice is given of the changes.

b. Without prejudice to any other rights, Promium may terminate this Agreement if you fail to comply with the terms and conditions of this Agreement, including failing to make payments as due, by giving you written notice of such termination. After any termination of this Agreement, you must cease all use of the Software and immediately return any copies of the Software in your possession or under your control to Promium.

## **11. MISCELLANEOUS**

a. 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.

b. 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/or 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. If any material limitation or restriction on the grant of any license or restrictions on use of the Software under such license by Customer under this Agreement is found to be void or unenforceable, such license shall immediately terminate.

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

d. This Agreement, together with the online product order, constitute the entire understanding and agreement of the parties with respect to its subject matter. 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 the Software. 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 4, 5, 6, 8, 10(b) and 11.

e. Should you have any questions concerning this Agreement or its associated documents, or if you desire to contact Promium for any reason, please contact:

Promium, L.L.C.  
3350 Monte Villa Parkway, Suite 220  
Bothell, Washington 98021  
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