

**PERCONTI DATA SYSTEMS, INC.**  
**Maintenance and Support Agreement 2012**  
**Utopia**

This Maintenance and Support Agreement is made and entered into by and between Perconti Data Systems, Inc., hereinafter referred to as "Support Vendor", and a licensee of the Perconti Data Systems, Inc. Licensed Program, hereinafter referred to as "Customer". This agreement is considered binding upon full payment by Customer of the proper Perconti Data Systems, Inc. maintenance invoice.

WITNESSETH:

WHEREAS, the Customer has purchased a license to one or more modules of the computer system henceforth referred to as "Licensed Program". The Customer has obtained a non-exclusive, non-transferable license to use certain computer software (the "Licensed Program") on certain terms and conditions; and

WHEREAS, Support Vendor has, as the owner of the Licensed Program, the source code and other support documentation for the Licensed Program and has the requisite authorization to have access to the Licensed Program in Customer's possession and to make and offer to Customer the maintenance modifications, enhancements, and new releases provided for herein; and

WHEREAS, Support Vendor desires to offer Customer certain services with respect to the Licensed Program on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**Definitions**

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms:

**"Licensed Program."** The computer software henceforth referred to as **Utopia**. Including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to Customer under this Agreement or the License Agreement.

**"Agreement Term."** The Agreement Term shall begin upon full payment of the maintenance invoice and end on December 31, 2012.

**"Normal Working Hours."** The hours between 8:30A.M. and 5:00P.M. Eastern Time on the days Monday through Friday, excluding regularly scheduled holidays of Support Vendor.

**"Releases."** New versions of the Licensed Program, which new versions may include both Program Corrections and Enhancements.

**Scope of Services**

During the Agreement Term, Support Vendor shall render the following services in support of the Licensed Program, during Normal Working Hours.

- Support Vendor shall maintain a telephone hot line and/or email address that allows Customer to report system problems and seek assistance in use of the Licensed Program according to the applicable maintenance and support level.
- Support Vendor shall provide responsive support and maintenance by providing availability during Normal Working Hours with a goal of no longer than four (4)-hour response time. Support Vendor shall provide modem or Internet support.
- Support Vendor shall be responsible for using all reasonable diligence in correcting verifiable and reproducible program errors when reported to Support Vendor in accordance with Support Vendor's standard reporting procedures. Support Vendor shall, upon verifying that such an error is present, initiate work in a diligent manner toward development of a correction or "fix". -
- Support Vendor may, from time to time, offer Program Enhancements to its customers, generally for an additional charge.
- Subject to space availability, Customer may enroll its employees in Support Vendor's training classes, held at Support Vendor's

facility, for regular or advanced training.

- Support Vendor shall consider and evaluate the development of Program Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by Support Vendor and Customer.
- Customer shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware (other than the hardware constituting the program control center maintained at Support Vendor's facilities) necessary to operate the Licensed Software and to obtain from Support Vendor the services called for by this Agreement.
- Customer shall provide an online interface according to the specifications of the Support Vendor. Customer will permit access to system via online interface as required by Support Vendor. Failure to provide online access via an Approved Interface will result in suspension of the customer's maintenance for the current month and forfeiture of that month's maintenance hours. No refunds of maintenance fees will be provided and no rollover of maintenance hours will occur. Support Vendor will inform Customer of any such situation and allow the Customer 2 business days to correct the situation, prior to suspension.

## **Fees and Charges**

Customer shall pay the Support Vendor for the services of this Agreement an amount set forth in the Maintenance Invoice. Fees are due within thirty (30) days from the start of the agreement. All Fees paid for this agreement are nonrefundable. All Fees must be paid in full, no partial payments will be considered valid.

Customer shall pay Support Vendor for **additional services** its fees and charges based on the Perconti rate schedule (available upon request). Support Vendor reserves the right to change its rate schedule from time to time, provided that no such change will be effective until at least sixty (60) days after Support Vendor has given Customer notice of such change.

Support Vendor shall invoice Customer at the beginning of each calendar month for all fees and charges accrued, and all reimbursable expenses incurred, during the previous month, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Any amount not paid within 45 days after the invoice date shall bear interest at the lesser of one percent per month or the highest rate allowed by applicable law.

## **Proprietary Rights**

To the extent that Support Vendor may provide Customer with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works prepared by Support Vendor (collectively, "Vendor Programs"), Customer may

- install one set of the Vendor Programs, in the most current form provided by Support Vendor, in Customer's own facility;
- use such Vendor Programs in connection with the Licensed Programs, and in a manner consistent with the requirements of the Agreement, for purposes of serving Customer's internal business needs; and
- make copies of the Vendor Programs in machine readable form for nonproductive backup purposes only. Customer may not use, copy or modify the Vendor Programs, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Support Vendor. Customer's rights shall remain in effect for so long as Customer is authorized to use the Licensed Programs under the License Agreement. Upon termination of such License Agreement, Customer shall return or destroy the Vendor Programs, and returning the Vendor Programs in the manner required by the License Agreement shall be sufficient for such purpose.

The Vendor programs are and shall remain the sole property of Support Vendor, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Support Vendor for the use of the work product. Customer shall not assert any right, title or interest in such works, except for the non-exclusive right of use granted to Customer at the time of its delivery or on-site development.

## **Disclaimer of Warranty and Limitation of Liability**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUPPORT VENDOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED PROGRAM OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

In no event shall Support Vendor's cumulative liability for any claim arising in connection with this Agreement exceed the total fees and charges paid to Support Vendor by Customer under this agreement within the last twelve (12) months. In no event shall Support Vendor be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Support Vendor knew or should have known of the possibility of such damages.

## **Termination**

This Agreement may be terminated as follows:

- This Agreement shall terminate on December 31 of any calendar year.
- This Agreement shall immediately terminate upon the termination of the License Agreement.
- Failure to pay any proper invoice within 30 days or notify the Vendor within 15 days of a valid reason to withhold payment shall be cause for termination of this Agreement by the Support Vendor, at the Support Vendor's option. Partial payments will not cure a breach for non-payment.
- This Agreement may be terminated by either party upon 30 days prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

Following termination of this Agreement, Support Vendor shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Customer may continue to use any work supplied to Customer by Support Vendor for the remaining term of the License Agreement. All fees paid for maintenance are non-refundable. Any amount not paid within 45 days after the due date shall bear interest at the lesser of one percent per month or the highest rate allowable by applicable law. Termination of this Agreement by either party does not relieve Customer of its obligation to pay all proper invoices.

## **Miscellaneous**

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Specifically, this Agreement supercedes all previous Maintenance Agreements. This Agreement may not be modified except by a written instrument duly executed by the parties hereto. This agreement will be considered binding and in full effect upon full payment of the maintenance invoice. Partial payment of the maintenance invoice will not place this Agreement into effect.

This Agreement and the parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Florida.

The Customer and Support Vendor expressly agree that any claim or controversy arising out of or relating to this agreement, or breach thereof, shall be settled by arbitration before an arbitrator or arbitrators and in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The parties agree that all arbitration arising out of this agreement shall take place in Pinellas County, Florida. The parties also agree that the prevailing party in any arbitration shall be entitled to reimbursement of attorney's fees.

In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of all or substantially all of its business and properties.

The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof not of any further or additional right that such party may hold under this Agreement.

This agreement shall not be construed more favorably to one party than the other.

**Notices**

Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered postage prepaid, addressed as set forth below or to such other address as a party shall designate by written notice given to the other party.

Support Vendor:                      Agreements  
   Perconti Data Systems, Inc.  
   8950 Ninth St. N., Suite 200  
   St. Petersburg, Fl 33702

Customer:                                Customer Name  
   The same address to which the maintenance invoice was delivered.