

**BLUEWATER SYSTEMS DBA PERCONTI DATA SYSTEMS, INC.**  
**Maintenance and Support Agreement for Florida Customers in Calendar Year 2024**

This Maintenance and Support Agreement is made and entered into by and between Bluewater Systems, Inc. DBA Perconti Data Systems, Inc., hereinafter referred to as "Support Vendor" or "Contractor", and a licensee of the Perconti Data Systems, Inc. Licensed Program, hereinafter referred to as "Customer" or "City/County". This Agreement is considered binding upon full payment by Customer of the proper Perconti Data Systems, Inc. maintenance invoice for Calendar Year 2024.

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 licensor 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 promises 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 **CD-Plus**. 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, calendar year 2024, shall begin upon full payment of the maintenance invoice and end on the maintenance end date specified on the maintenance invoice.

**"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.

**"Approved Interface."** The online support programs and mechanism by which the Support Vendor accesses the Licensed Programs installed at the Customer's location. All Approved Interfaces will be listed on the Support Vendor's web site ([www.perdasys.com](http://www.perdasys.com)). Customers may submit programs to the Support Vendor for approval and addition to the list. Addition to the Approved Interface list is at the sole discretion of the Support Vendor. The Support Vendor will make available at least one Approved Interface solution which will cost the Customer less than \$199.

#### **Scope of Services**

During the Agreement Term, Calendar Year 2024, 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 email address that allows Customer to report system problems and seek assistance in use of the Licensed Program.

- 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 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 customers 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.

Support Vendor will provide support for a set number of hours per month according to the published maintenance schedule, (available upon request) selected and paid for by the customer. These hours will be based on a rolling average of the set monthly maintenance hours. These hourly allotments are used primarily to establish staffing levels. Customer may not accumulate or carry over monthly maintenance hours. No refunds will be given for any reason. Customer may keep a list of outstanding problems / issues / requests and Customer and Vendor will work together to establish support priorities. Special projects or conditions may be granted an exception to standard maintenance hours use, but any special exceptions must be approved by Perconti Data Systems, Inc. prior to the start of the project or condition. All customers that utilize the CD-Plus OPRS/Web Services will be required to maintain a minimum Gold support level.

### **Public Records Requirements**

- A. If, under this Contract, Contractor is providing services and is acting on behalf of City/County as provided under section 119.011(2), Florida Statutes, Contractor, shall:
1. Keep and maintain public records required by City/County to perform the service;
  2. Upon request from City/County's custodian of records, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract term and following completion of this Contract if Contractor does not transfer the records to City/County; and,
  4. Upon completion of this Contract, transfer, at no cost, to City/County, all public records in possession of Contractor or keep and maintain public records required by City/County to perform the service. If Contractor transfers all public records to County upon completion of this Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Contract, Contractor shall meet all applicable requirements for retaining public records. All records

stored electronically must be provided to County upon request from City/County's custodian of public records in a format that is compatible with the information technology systems of City/County.

- B. "Public Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by the City/County. In the event that the City/County delegates any of governmental or legislative functions to the Contractor, records made or received pursuant to law or ordinance or in connection with the transaction of any governmental or legislative function delegated to the Contractor are also to be considered public records.
- C. If Contractor fails to provide the public records to City/County within a reasonable time or otherwise fails to comply with this section, Contractor may be subject to penalties under Section 119.10, Florida Statutes and may be subject to unilateral cancellation of this Contract by City/County.
- D. **IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTRACTOR WILL CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY/COUNTY'S DIRECTOR OF PUBLIC RELATIONS.**

Contractor acknowledges City/County's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. Contractor acknowledges that County is required to comply with Article 1, Section 14, Florida Constitution and Chapter 119, Florida States, in the handling of the material created under the Agreement and said statute controls over the terms of the Agreement. As such, notwithstanding anything to the contrary contained in the Agreement, the definitions of "Confidential" and/or "Proprietary" information, the parties' abilities and obligations to maintain and disclose same, and the methods for such disclosure, shall be determined according to Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, as same may be amended from time to time. City/County shall have no liability for any such disclosure nor shall such disclosure be considered a breach of the Agreement.

### **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 at the start date 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.

Notwithstanding any clauses concerning payments, late fees, or penalties, all payments by City/County pursuant to this Agreement shall be made pursuant to the Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

### **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 the maintenance invoice end date.
- 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 nonrefundable. 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 invoice.

### **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 supersedes 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.

Nothing in the Agreement shall constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Further, the limits set forth in Florida Statutes, 768.28, shall apply whether the underlying action sounds in contract or tort.

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. Notwithstanding any terms to the contrary, this Agreement shall be governed by the laws of the State of Florida and any controversy shall be tried or arbitrated in Customer's jurisdiction. 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 the licensed program.

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:

BLUEWATER SYSTEMS, INC. DBA PERCONTI DATA SYSTEMS, INC.  
333 3<sup>rd</sup> Ave N. Suite 400  
St. Petersburg FL 33701

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