



# PrimaryData Software Support Agreement

CLIENT:

Contact:

Address:

City, St, Zip:

Date Prepared:

EFFECTIVE DATE:

**PrimaryData Corporation**

8756 Dover Circle  
Arvada, CO 80005  
720-226-9270 Office  
303-204-5753 Cell  
866-852-4731 Fax  
support@primarydatacorp.com  
www.primarydatacorp.com

Software Support Fee/Initial Period (Circle one):

month      3 months      6 months      yearly

CLIENT acknowledges that CLIENT has read all of the terms and conditions of this agreement. CLIENT represents to PrimaryData Corporation that CLIENT understands those terms and conditions and agrees to be bound by them.

Name of Client:

Accepted by:

PrimaryData Corporation

By:

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Name (Type/Print)*

Michael T. Wallace \_\_\_\_\_  
*Name (Type/Print)*

\_\_\_\_\_  
*Title (Type/Print)*

President \_\_\_\_\_  
*Title (Type/Print)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## ARTICLE 1.0. Definitions.

For purposes of this Software Support Agreement (Agreement), the following capitalized words and phrases shall have the following meanings with respect to each Software Product:

- 1.1. Support Fee: the fee payable by CLIENT to PrimaryData Corporation (PDC) for the Software Support Services for the Software Product:
  - (a) for the Initial Period, the amount specified under "Software Support Fee" on the first page of this Agreement; and
  - (b) for periods thereafter, the standard fee then charged by PDC if Client elects to continue Software Support. Monthly and quarterly fees will remain the same for at least six months from the Effective Date.
- 1.2. CLIENT: the client of PDC specified next to "CLIENT" on the first page of this Agreement.
- 1.3. Effective Date: the date labeled "EFFECTIVE DATE" on the first page of this Agreement.
- 1.4. Event of Default: the occurrence of any one or more of the following events:
  - (a) a breach of default by CLIENT in the payment or performance of any of CLIENT's obligations under this Agreement;
  - (b) the insolvency (however evidenced) of CLIENT, an assignment for the benefit of creditors by CLIENT, or the filing of any petition or the commencement of any proceeding by or against CLIENT under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment or indebtedness, reorganizations, compositions, or extensions (and, in the case of an involuntary petition or proceeding, the failure to cause the same to be dismissed or otherwise terminated within sixty (60) days of the filing or commencement thereof); or
  - (c) the dissolution, termination of business existence, business failure, suspension of the transaction of the usual business, or appointment of a receiver of or for CLIENT.
- 1.5. Improvement: any enhancement or modification to the Software Product along with any documentation which is distributed generally by PDC at no additional charge to PDC' software support clients for Software Product.
- 1.6. Initial Period: the initial period of time for which Software Support Services are to be provided under this Agreement, which period of time shall commence on the Effective Date and shall continue thereafter, unless otherwise stated on the first page of this Agreement.
- 1.7. Software Support Services: as defined in Article 6.0 of this Agreement.
- 1.8. Software Support Term: the Initial Period; provided that the Software Support Term shall automatically be extended thereafter for successive periods unless and until either (a) the Software Support Services for the Software Product are terminated as provided in this Agreement, or (b) this Agreement is terminated.

## ARTICLE 2.0. Software Support.

2.1. Support Services. Subject to and upon the terms and conditions of this Agreement, PDC agrees to provide CLIENT with the Software Support Services for Software Product during the Software Support Term.

2.2. Support Conditions. PDC' obligation to provide Software Support Services for the Software Product is subject to the following conditions:

- (a) Support Fees for the period Software Support Services are requested have been paid by the CLIENT;
- (b) Software Product is in the form of the most recent or immediately prior release of the Software Product and has not been modified from the standard form of Software Product;
- (c) Software Product is being used by CLIENT in accordance with the terms and conditions of its License;
- (d) CLIENT shall have provided PDC with all information reasonably requested by PDC from time to time in connection with PDC' performance of Software Support Services for Software Products;
- (e) the processor on which Software Product is being used, any operating system and other system software associated with such processor, and all other software upon which Software Product relies or with which Software Product is interdependent, shall be operating properly.

## ARTICLE 3.0. Payment Terms.

3.1. Initial Period. The Support Fee for Software Product for the Initial Period shall be payable in full upon the execution of this Agreement. Except as may otherwise be specifically agreed in writing by PDC, no termination of Software Support Services shall relieve CLIENT from the above payment obligations, it being acknowledged by PDC and CLIENT that PDC has agreed to fix the amount of CLIENT's payment obligations for the Initial Period in exchange for CLIENT's commitment to pay for Software Support Services throughout the Initial Period.

3.2. Subsequent Periods. For each subsequent period following the Initial Period, CLIENT agrees to pay to PDC the Support Fee for the Software Product on or before the first (1st) day of the period if CLIENT elects to continue Software Support.

3.3. Non-Refundability. ALL SOFTWARE SUPPORT FEES ARE NON-REFUNDABLE.

3.4. Taxes. CLIENT agrees to pay all federal, state, and local taxes (including, without limitation, sales and use taxes, privilege and excise taxes, and all other taxes of any kind or nature, exclusive only of taxes based on PDC' income) related to or arising out of this Agreement, however such taxes may be designated, levied, or based, and whether on any of the fees set forth in this Agreement, the Products, the Services, or any other performance whatsoever under this Agreement.

#### ARTICLE 4.0. Improvements to Software Product.

CLIENT agrees that CLIENT's obligations regarding the use of Software Product shall also extend and apply to any Improvements to Software Product that are delivered under this Agreement.

#### ARTICLE 5.0. Termination.

Software Support Services may be terminated by PDC or by CLIENT, as of the end of the Initial Period or any period thereafter, by providing the other party with a written notice of termination not less than thirty (30) days prior to the termination date. In addition, upon the occurrence of an Event of Default, PDC, at PDC' option, shall be entitled to terminate Software Support Services with respect to Software Product by giving written notice thereof to CLIENT at any time thereafter.

#### ARTICLE 6.0. Software Support Services

6.1. Access. Telephone, modem, and e-mail access is provided to the PDC technical staff for application software support.

6.2. Problem Diagnosis. PDC will provide diagnosis for problems occurring with Software Product. If the problem is determined to result from software not part of the Software Product, the problem diagnosis effort is billable to the CLIENT at PDC' standard hourly rates at the time the problem diagnosis effort was performed.

6.3. Software "FIXES". Software fixes will be provided for the Software Product. When a problem is determined to result from a third party software product (i.e., Unix, Windows, etc.), PDC will facilitate the problem resolution process and bring third party supplier technical resources to bear as appropriate. The timely creation of any required fix is the responsibility of the third party software developer.

6.4. PDC Support Hours. Support hours for the PDC technical staff are 8:00 am to 6:00 pm, Mountain Standard Time (MST). Monday through Friday.

6.5. Extended Hours Support Option. This service is available only to Software Support Services subscribers. An additional fee will be required based upon the specific coverage requirement. It will consist of a base rate of a one-hour minimum per call charge. All time involved in support activities including the initial call, problem diagnosis and resolution, and any follow-up activities or call backs will be billable at the then prevailing PDC hourly rates (currently \$75/hour).

Access to PDC technical staff will be available via a cell phone. The client will receive a call back within a reasonable period of time, usually within 1 hour.

6.6. Response Time Commitment. Support calls from Software Support Services subscribers receive priority response over non-subscribers. If the problem is determined to occur with a third party component of any Software Product, PDC will work with the third party vendor to facilitate the solution in the shortest possible time frame. In the event that the third party vendor can not supply a "fix" within a time frame acceptable to the CLIENT, PDC commits that all reasonable efforts will be made to create a "temporary fix" or "work around". The "temporary fix" or "work around" will be supported until the third party vendor provides a "permanent fix" for the problem.

6.7. Product Update Services. PDC developed product enhancements may be made available on a periodic basis. Some fixes or updates will be specified as mandatory. The CLIENT is required to implement all mandatory updates within 90 days of their availability. Failure to implement a mandatory update may result in PDC' inability to support the product.

Any system integration efforts or prerequisite software installation requirements (such as a specific operating system version) that are needed to utilize PDC Software Product enhancements or to bring the CLIENT up to the "latest" product release level are the CLIENT's responsibility. With reasonable notification PDC can provide technical resource to assist with these changes. All such work will be billable to the CLIENT at the then prevailing PDC hourly rates (currently \$75/hour).

#### ARTICLE 7.0. General Provisions.

7.1. Waiver. No Waiver by PDC or CLIENT of any breach or default by the other of any of the other's obligations under this Agreement shall be deemed to be a waiver of any other breach or default of the same or any other

nature. No failure by PDC or CLIENT on any one or more occasions to exercise any right or remedy provided in this Agreement shall preclude the exercise of such right or remedy on any other occasion.

7.2. Severability. Each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If there is any conflict between any term, condition, or provision of this Agreement and any statute, law, ordinance, order, rule or regulation, the latter shall prevail; provided that any such conflicting term, condition, or provision shall be curtailed and limited only to the extent necessary to bring it within the legal requirements and the remainder of this Agreement shall not be affected thereby.

7.3. Binding Effect. This Agreement shall be binding on and for the benefit of PDC and CLIENT and their respective legal representatives, successors, and assigns; provided that Client shall not be entitled to assign, sublicense, delegate, or otherwise transfer any of CLIENT's rights or obligations under this Agreement without the prior written consent of PDC. PDC agrees not to withhold PDC' consent unreasonably to a proposed transfer of all of CLIENT's rights and obligations under this Agreement to a third party that will be the successor to CLIENT's business by virtue of either (a) a statutory merger, consolidation, or share exchange, or (b) a sale of all or substantially all of the assets of CLIENT, so long as Client requests PDC' consent prior to the proposed transfer.

7.4. Entire Agreement. Any oral or written statements, understandings, correspondence, purchase orders, or agreements previously made by PDC and CLIENT with respect to the subject matter of this Agreement are merged into this Agreement, which alone fully and completely expresses the respective obligations of PDC and CLIENT. This Agreement is entered into by CLIENT after opportunity for investigation, and CLIENT represents that CLIENT is not relying upon any statements, understandings, correspondence, purchase orders, or agreements not embodied in this Agreement and made by PDC or on PDC's behalf.

7.5. Amendment. This Agreement may not be amended, in whole or in part, except by an instrument in writing signed by both PDC and Client.

7.6. Governing Law; Jurisdiction. This Agreement and all rights, remedies, and obligations under this Agreement, including matters of construction, validity, and performance, shall be governed exclusively by the laws of the State of Colorado. This Agreement shall be enforceable, at PDC' option, in any jurisdiction; provided, that CLIENT specifically consents to, and agrees that CLIENT is subject to, the jurisdiction of the state and federal courts of the State of Colorado with respect to any actions for enforcement of or breach of this Agreement.

7.7. Notices. Any demand, notice, or other communication required or permitted under this Agreement shall be in writing and shall be either (a) hand-delivered to the addressee, (b) faxed to a telephone number specified by the addressee in a previous notice, or (c) deposited in the mail (first class, registered, or certified) or delivered to a private express company, postage or freight prepaid, addressed to PDC at the PDC Address and to CLIENT at CLIENT's Address. Each party may change such party's fax number or address from time to time by giving the other party notice of the change.

7.8. Counterparts. This Agreement may be executed in one or more counterpart copies, each of which shall be deemed to an original, but all of which together shall constitute one and the same instrument.

7.9. Headings. The article and section headings used in this Agreement are for convenience and reference only, and the words contained therein shall not be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

7.10. Survival. The provisions of Articles 4.0 of this Agreement shall survive any termination of this Agreement.