



**CONTINENTAL UTILITY SOLUTIONS, INC.
SOFTWARE LICENSE AGREEMENT
UTILITY MANAGEMENT SOLUTION .NET**

Licensee desires to obtain a license to use in its own business operations certain proprietary software of Continental Utility Solutions, Inc. ("CUSI"). This Software License Agreement ("Agreement") sets forth the terms and conditions under which CUSI will provide to Licensee the Licensed Software, as well as related Technical Support Services.

In exchange for payment of a one-time fee for this program, the Licensee of the Utility Management Solution.NET receives a license from CUSI to use the program subject to the following terms and conditions:

1. DEFINITIONS. As used in the Agreement or in any Exhibit hereto:

1.1 "Named User License" means a license to enable a named user to connect to the Licensed Software as a client.

1.2 "Confidential Information" means all trade secrets, business and financial information, computer software and documentation, machine and operator instructions, business methods, procedures, know-how, and other information that relates to the business or technology of either party.

1.3 "Documentation" means the user guides, manuals and associated documentation provided to Licensee along with the Licensed Software.

1.4 "Effective Date" means the date in which an applicable Sales Order is executed by the parties.

1.5 "Fees" means, collectively, the license fees and Technical Support Services fees.

1.6 "Licensed Software" means CUSI's computer software program Utility Management Solution.NET (*UMS.NET*), a customer information system and billing application for the management of customers, metered services and physical assets associated with a utility, any modules, add-ons or interfaces, and any modified, updated or enhanced versions of such programs that CUSI may provide to Licensee pursuant to the Technical Support Services.

1.7 "Sales Order" means collectively the documents documenting the Licensed Software and services purchased by Licensee from time to time.

1.8 "Service Location" means the location or delivery point to which a metered service is provided by Licensee that is managed by the Licensed Software.

1.9 "Site(s)" means the physical location(s) at which Licensee is entitled to use the Licensed Software.

1.10 "Technical Support Services" means those technical support and application maintenance services provided by CUSI to Licensee with respect to the Licensed Software.

2. LICENSE GRANT AND OTHER RIGHTS.

2.1 Software License Grant. Subject to the terms and conditions of this Agreement, CUSI grants to Licensee a perpetual, non-exclusive, non-transferable license to: (a) install and use the Licensed Software in executable form only on Licensee's servers and workstations at the Site(s), only for Licensee's internal business purposes, and subject to the number of Service Locations and Named User Licenses specified in the Sales Order; (b) make one (1) copy of the Licensed Software solely for backup or archival purposes, and one (1) copy for disaster recovery purposes; and (c) copy and reproduce the Documentation provided to Licensee solely for the purposes of facilitating Licensee's use of the Licensed Software.

2.2 Additional Named User Licenses and Service Locations. If Licensee wishes to order additional Named User Licenses or licenses for Service Locations in addition to the licenses granted in this Agreement, the parties shall execute a mutually agreed upon written Sales Order. No additional terms of an order submitted by Licensee or terms of such an order that are inconsistent with the terms of this Agreement will be binding on CUSI unless CUSI expressly agrees to

the applicability of such terms in writing signed by an authorized officer of CUSI.

2.3 Restrictions On Use. Licensee acknowledges that the Licensed Software and its structure, organization, and source code constitute valuable trade secrets of CUSI and its suppliers. Except as expressly permitted by this Agreement, Licensee agrees that Licensee shall not, and shall not permit any third party, to: (a) reproduce, modify, adapt, alter, translate, or create derivative works of the Licensed Software or the Documentation; (b) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer the Licensed Software or the Documentation to any third party; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Licensed Software; (d) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the Licensed Software; or (e) otherwise use or copy the Licensed Software except as expressly permitted under **Section 2.1**.

2.4 Reservation of Rights. This Agreement does not grant to Licensee any ownership interest in the Licensed Software or the Documentation. As between the parties, the Licensed Software and Documentation, and all worldwide intellectual property rights therein, are and shall remain the exclusive property of CUSI and its licensors. All rights in and to the Licensed Software and Documentation not expressly granted to Licensee in this Agreement are reserved by CUSI and its licensors. CUSI shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee or any other party relating to the Licensed Software to the extent it does not constitute Confidential Information of Licensee.

3. DELIVERY, ACCEPTANCE AND INSTALLATION. CUSI will deliver the Licensed Software to Licensee as mutually agreed to by the parties. Unless otherwise agreed to by the parties in a separate professional services agreement, Licensee will be solely responsible for installing and integrating the Licensed Software on its computers and with its systems as permitted under this Agreement. The Licensed Software will be deemed accepted upon delivery.

4. TECHNICAL SUPPORT SERVICES. Subject to Licensee's payment of all applicable Technical Support Service fees, CUSI shall provide Licensee with those Technical Support Services described in Section 12.

5. TRAINING SERVICES. CUSI will provide the training services defined in the applicable Sales Order. Licensee will be invoiced separately for any travel related expenses incurred by CUSI employees in connection with any such training services.

6. FEES AND PAYMENT.

6.1 Fees. All Fees are specified in the original Sales Order and any subsequent Sales Orders executed by both parties.

6.2 Payments. All payment terms are specified in the original Sales Order and any subsequent Sales Orders executed by both parties. All payments must be made in U.S. dollars. Any amounts not paid within thirty (30) days of the invoice date will accrue interest at the lesser of one and one-half percent (1½%) per month or the maximum rate permitted by applicable law, from the due date until paid. Licensee shall reimburse CUSI for all its costs and expenses, including reasonable fees of its legal counsel, reasonably incurred by CUSI in

collecting any amounts past due from Licensee that are not subject to good faith dispute.

6.3 Taxes. Fees exclude, and Licensee will make all payments of the Fees to CUSI free and clear of, all applicable sales, use, and other taxes and all applicable export and import fees, customs duties and similar charges. When applicable, CUSI may include any taxes that it is required to collect as a separate line item on an invoice.

6.4 Audit Rights. On CUSI's request, no more frequently than annually, Licensee shall furnish to CUSI an executed certification: (a) verifying that the Licensed Software is being used pursuant to the terms of this Agreement; (b) verifying the number of current Service Locations and Named User Licenses; and (c) listing the Site(s) where the Licensed Software is being used. Licensee agrees to grant CUSI reasonable access to Licensee's Site(s), upon two (2) weeks prior written notice during normal business hours to audit the use of the Licensed Software.

7. WARRANTIES.

7.1 Performance. For a period of ninety (90) days after the date of delivery of the Licensed Software (the "**Software Warranty Period**"), CUSI warrants that the Licensed Software, when used as permitted by CUSI and in accordance with the Documentation, will operate substantially as described in the Documentation. CUSI does not warrant that the functions provided by the Licensed Software will meet all of the business requirements of the Licensee or that the Licensee's use of the Licensed Software will be error-free or uninterrupted. CUSI will, at its own expense and as its sole obligation and Licensee's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Licensed Software reported to CUSI by Licensee in writing during the Software Warranty Period. Any such error correction provided to Licensee will not extend the original Software Warranty Period. The limited warranty granted under this Section does not extend to: (a) changes in the characteristics of the operating system or hardware on which the Licensed Software operates; (b) problems caused by the mishandling of or alterations to the Licensed Software by Licensee or any third party; (c) problems caused by any data input into the Licensed Software; or (d) problems caused by third party equipment or software.

7.2 Disclaimers. THE EXPRESS WARRANTIES IN THIS SECTION 7 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE LICENSED SOFTWARE AND TECHNICAL SUPPORT SERVICES, AND CUSI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN AND THAT NO WARRANTIES ARE MADE HEREIN BY ANY OF CUSI'S LICENSORS.

LICENSEE ACKNOWLEDGES THAT THE LICENSED SOFTWARE AND TECHNICAL SUPPORT SERVICES ARE PROVIDED TO ASSIST LICENSEE IN THE USE OF THE LICENSED SOFTWARE AND NOT AS A REPLACEMENT OF LICENSEE'S EXPERTISE AND KNOWLEDGE OF ITS BUSINESS. THE APPLICATION AND IMPACT OF LAWS CAN VARY WIDELY BASED ON THE SPECIFIC FACTS INVOLVED. GIVEN THE CHANGING NATURE OF LAWS, RULES AND REGULATIONS, THE LICENSED SOFTWARE AND TECHNICAL SUPPORT ARE NOT WARRANTED TO BE IN COMPLIANCE WITH THESE LEGAL CHANGES AT ALL TIMES. LICENSEE IS SOLELY RESPONSIBLE FOR ANY DATA INPUT INTO THE LICENSED SOFTWARE AND THE ACCURACY OF ANY CONFIGURATION OF THE LICENSED SOFTWARE, INCLUDING SITUATIONS WHERE CUSI HAS WORKED WITH LICENSEE THROUGH TECHNICAL SUPPORT SERVICES TO CONFIGURE THE LICENSED SOFTWARE. THE LICENSED SOFTWARE AND/OR TECHNICAL SUPPORT SERVICES ARE PROVIDED WITH THE UNDERSTANDING THAT CUSI IS NOT RENDERING LEGAL, ACCOUNTING, TAX OR OTHER PROFESSIONAL ADVICE OR OTHER PROFESSIONAL ADVICE OR SERVICES FROM CUSI. AS SUCH, SUCH CONSULTATION, TECHNICAL SUPPORT SERVICES AND INFORMATION OBTAINED THROUGH USE OF THE LICENSED SOFTWARE SHOULD NOT BE

USED AS A SUBSTITUTE FOR CONSULTATION WITH PROFESSIONAL ACCOUNTING, TAX, LEGAL OR OTHER COMPETENT ADVISERS AND FROM A COMPLETE REVIEW AND TESTING BY LICENSEE PRIOR TO IMPLEMENTING THE LICENSED SOFTWARE OR RESULTS OF TECHNICAL SUPPORT SERVICES INTO A PRODUCTION ENVIRONMENT.

LICENSEE AGREES THAT IT HAS FULL RESPONSIBILITY FOR THE SECURITY OF ITS SYSTEMS AND DATA AND THAT CUSI SHALL HAVE NO LIABILITY FOR A BREACH OF LICENSEE'S SYSTEMS OR ANY LOSS OF LICENSEE'S DATA.

8. INDEMNITIES.

8.1 INFRINGEMENT CLAIMS. CUSI will defend at its own expense any action against Licensee brought by a third party to the extent that the action is based upon a claim that the Licensed Software infringes any patents or any copyrights or misappropriates any trade secrets of a third party, and CUSI will pay those costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Licensee: (1) notifying CUSI promptly in writing of such action; (2) giving CUSI sole control of the defense thereof and any related settlement negotiations; and (3) cooperating and, at CUSI's request and expense, assisting in such defense. If the Licensed Software becomes, or in CUSI's opinion is likely to become, the subject of an infringement claim, CUSI may, at its option and expense, either: (a) procure for Licensee the right to continue using the Licensed Software; (b) replace or modify the Licensed Software so that it becomes non-infringing; or (c) accept return of the Licensed Software, terminate this Agreement, in whole or in part, as appropriate, upon written notice to Licensee and refund to Licensee the Fees paid for such Licensed Software upon such termination, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date. Notwithstanding the foregoing, CUSI will have no obligation under this Section 8.1 or otherwise with respect to any infringement claim based upon: (i) any use of the Licensed Software or the Documentation not in accordance with this Agreement; (ii) any use of the Licensed Software in combination with products, equipment, software, or data not supplied by CUSI; (iii) any use of any release of the Licensed Software other than the most current release made available to Licensee; or (iv) any modification of the Licensed Software by any person other than CUSI or its authorized agents or subcontractors. THIS SECTION 8.1 STATES CUSI'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT.

8.2 THIRD PARTY CLAIMS. Licensee will defend at its own expense any action against CUSI brought by a third party except to the extent that the action is covered under Section 8.1 and Licensee will pay those costs and damages finally awarded against CUSI in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on CUSI: (1) notifying Licensee promptly in writing of such action; (2) giving Licensee sole control of the defense thereof and any related settlement negotiations; and (3) cooperating and, at Licensee's request and expense, assisting in such defense.

9. LIMITATION OF LIABILITY. CUSI'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY LICENSED SOFTWARE OR TECHNICAL SUPPORT SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO CUSI UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL CUSI BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, TORT, LOST, DAMAGED OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OPPORTUNITY, LOSS OF GOODWILL OR REPUTATION, BUSINESS INTERRUPTION, WASTED MANAGEMENT TIME, DATA CONVERSION OR FOR DAMAGE TO LICENSEE'S COMPUTERS OR COMMUNICATIONS NETWORK, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR

RELATING TO THE LICENSED SOFTWARE, TECHNICAL SUPPORT SERVICES OR THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, TORT, INTENTIONAL MISCONDUCT, STRICT LIABILITY, CONTRACT OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR CUSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. CONFIDENTIALITY.

10.1 Confidentiality Obligations. Each party agrees to maintain any Confidential Information received from the other party in confidence using the same degree of care that it uses to maintain its own confidential information in confidence, but in no event not less than reasonable care. The recipient of any Confidential Information shall not disclose any Confidential Information to any third party without prior written approval of the disclosing party or use such Confidential Information for any purpose not contemplated by this Agreement. The foregoing restrictions shall not apply to any information for which the receiving party can document: (a) was already lawfully known to the receiving party at the time of disclosure by the disclosing party; (b) is disclosed to the receiving party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the receiving party has become, generally available to the public; or (d) is independently developed by the receiving party without access to, or use of, the disclosing party's Confidential Information. In addition, the receiving party may disclose Confidential Information of the other party to the extent required by applicable law or regulation; provided that the party required to make such disclosure gives the other party prompt written notice and sufficient opportunity to object to such disclosure, or to request confidential treatment.

10.2 Return of Confidential Information. The receiving party will return to the disclosing party or destroy all Confidential Information of the disclosing party in the receiving party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the disclosing party upon the expiration or termination of the Agreement. The receiving party will certify in writing signed by an officer of the receiving party that it has fully complied with its obligations under this **Section 10.2**.

11. TERM AND TERMINATION.

11.1 Term. The term of the Agreement will begin on the Effective Date and will continue unless earlier terminated by either party as provided in **Section 11.2**.

11.2 Termination. Either party may terminate the Agreement if the other party breaches any material provision of the Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof.

11.3 Effects of Termination. Upon termination of the Agreement for any reason: (a) any amounts owed to CUSI under this Agreement before such termination will be immediately due and payable; (b) all licensed rights granted in the Agreement will immediately cease to exist; and (c) Licensee must promptly discontinue all use of the Licensed Software, erase all copies of the Licensed Software from Licensee's computers, and return to CUSI or destroy all copies of the Licensed Software and Documentation on tangible media in Licensee's possession.

11.4 Survival. Sections 1, 2.4, 6.3, 6.4, 7.2, 8, 9, 10, 11.3, 11.4 and 12, together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

12. TECHNICAL SUPPORT SERVICES.

12.1 Technical Support Services. Technical support services shall include call management, entitlement verification, issue prioritization, installation assistance, issue analysis, program error re-creation, application diagnostics and the corresponding resolution of such issue or issues through operational instruction or corrections to the object code of the application.

12.2 Maintenance Services. Maintenance Services shall include all updates for the Licensed Software, including any related documentation, which is commercially released during the term of this Technical Support and Maintenance Services Agreement. Updates consist of new releases which may provide functional enhancements and error corrections. New products or separately serialized modules are not included in this Agreement. The Licensee understands and agrees that they shall have sole responsibility for the installation of any updates.

12.3 Discretionary Modification Services. CUSI may, upon Licensee's request and at CUSI's sole discretion, make an agreed upon modification to the Licensed Software setup or configuration. The Licensee understands and agrees that they shall be solely responsible for testing such modification in order to determine whether the modification meets the Licensee's specific outcomes, and that CUSI shall have no responsibility to Licensee with regard to the testing and verification of the modification's output and shall have no liability if the requested modification does not produce Licensee's desired outcomes.

12.4 Scope of Services. Services shall be provided during normal hours of operation Monday through Friday 7:00 AM to 6:00 PM Central Time excluding national holidays. Basic services shall include unlimited toll free, fax and email access to Technical Support as well as online access to CUSI's Client Services Website. Enhanced services may also be made available by CUSI from time to time and contracted by Licensee.

12.5 Term. Subject to the terms of this Agreement and the Software License Agreement, the Licensee is entitled to receive services described in this Section 12 for a period of one (1) year. The first year of service will begin 90 days from the delivery of the Licensed Software following the Software Warranty Period.

12.6 Annual Renewal of Service. Thirty (30) days prior to the annual expiration date of the services CUSI will send to Licensee an invoice for the annual renewal of services pursuant to the current terms, conditions and pricing then in effect. Such service will be automatically renewed unless canceled in writing by Licensee prior to the annual expiration date or in the event of non-payment.

12.7 Fees. Fees for such services are charged on an annual basis and are equal to twenty two percent (22%) of the then-current list price of the Licensed Software. Such amount is calculated on the date of annual renewal based upon the list price of the Licensed Software as if it were being purchased at such time. The Licensee will be invoiced for annual renewals on or before the date of expiration of the then current term. CUSI reserves the right to amend its Fees annually with prior written notice.

CUSI reserves the right to charge Licensee Fees for services rendered in connection with reported program errors which are subsequently determined to have been due to hardware or software not supplied by CUSI. CUSI will perform such services on a time and materials basis. Notwithstanding the foregoing, CUSI does not have an obligation to perform technical support services related to hardware or software not supplied by CUSI.

12.8 Payment. Licensee is responsible for the full payment including any applicable sales and/or use taxes. In the event of non-payment this Agreement shall immediately expire and the Licensee shall not be entitled to receive the services described herein. In the event of cancellation of services during the annual period, no refund, pro-rated or otherwise, will be provided.

12.9 Reinstatement of Services. In the event of cancellation of or non-payment for Technical Support Services, any subsequent renewals will be subject to a reinstatement charge of 25% multiplied by the then current Licensed Software license fee, plus any unpaid historical and current annual Fees.

12.10 Registered Users. Licensee shall provide and maintain a list of registered users that may be contacted by CUSI in support of

this Agreement. Licensee may amend the list of registered users at any time by providing written notice to CUSI.

12.11 Conditions of Service. The receipt and use of the Licensed Software is subject to the terms and conditions of the original Software License Agreement and the adherence to associated documentation and maintenance of the system requirements of the Licensed Software. CUSI reserves the right to suspend Technical Support Services for any outdated Versions of the Licensed Software with prior notification to Licensee.

13. GENERAL.

13.1 Assignment. Licensee may not assign or transfer, by operation of law, merger or otherwise, any of its rights under the Agreement (including its licenses with respect to the Licensed Software) to any third party without CUSI's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. In the event of a change of control of Licensee, Licensee shall provide CUSI with prior written notice of such intended change of control and shall consult with CUSI how the new ownership will work within the restrictions of this Agreement. CUSI shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

13.2 Notices. Any notice required or permitted by this Agreement will be in writing and will be deemed effective upon receipt, when sent by confirmed email or when delivered in person or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as such party may specify in writing.

13.3 Governing Law and Arbitration. This Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware, without reference to its choice of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any dispute arising out of or relating to this Agreement other than a dispute concerning a party's Confidential Information or intellectual property rights shall be resolved solely by final and binding arbitration as follows. Unless the parties otherwise agree, the arbitration shall be conducted in Wilmington, Delaware before a single arbitrator. The arbitrator shall have relevant knowledge and/or experience in software licensing and commercial transactions and shall be jointly selected and mutually approved by the parties or, if the parties are unable to agree, shall be appointed by the American Arbitration Association ("AAA"). The arbitration shall be conducted in accordance with the AAA's rules of commercial arbitration. The parties initially shall share equally the fees and expenses of the arbitration. However, the prevailing party (if applicable and as determined by the arbitrator) shall be entitled to recover from the non-prevailing party all such fees and expenses (including without limitation reasonable attorneys' fees). Any arbitration decision so rendered shall be final and binding, and judgment thereon may be entered in any court of competent jurisdiction.

13.4 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

13.5 Severability. If any provision of the Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

13.6 Force Majeure. No party shall be liable for failure or delay in performing its obligation (other than payment of money) for causes beyond its reasonable control.

13.7 Entire Agreement; Counterparts. This Agreement, together with any Exhibits and related Sales Orders, constitutes the entire agreement between the parties regarding the subject hereof and

supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement shall not be modified except by a subsequently dated written amendment signed by an officer of CUSI and a duly authorized representative of Licensee. This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

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