

CONTINENTAL UTILITY SOLUTIONS, INC.

HOSTING SERVICES AGREEMENT

THIS HOSTING SERVICES AGREEMENT ("Hosting Agreement") is made as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between CONTINENTAL UTILITY SOLUTIONS, INC., a Delaware corporation with offices at 300 South Church Street, Suite 200, Jonesboro, Arkansas 72401 ("CUSI") and the party identified below (the "Licensee").

Licensee desires to obtain Hosting Services as delineated in a Sales Agreement, incorporated herein by reference, to host the Licensed Software. This Hosting Agreement sets forth the terms and conditions under which CUSI will provide to Licensee the Hosting Services.

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

**1.1 "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 or of Licensee's customers and their utility customers that is marked as "confidential" or should reasonably be understood to be confidential at the time of disclosure.

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

**1.3 "Hosting Fees"** means, collectively, all fees due to CUSI hereunder for the Hosting Services.

**1.4 "Hosting Services"** means the Azure private cloud services provided to Customer from CUSI via its status as a partner in Microsoft's Cloud Solution Provider program.

**1.5 "Licensed Software"** means CUSI's computer software programs set forth on the Sales Agreement.

**1.6 "Licensee Customer"** means those customers of Licensee.

**1.7 "Licensee Data"** means other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Licensee or a Licensee Customer through the Service.

**1.8 "Managed Data Services"** means those data management services provided by CUSI to Licensee with respect to the Licensed Software.

**1.9 "Sales Agreement"** means collectively the documents documenting the commercial terms for the use of the Licensed Software and receipt of Services, Technical Support and Maintenance Services, and Managed Data Services purchased by Licensee from time to time.

**1.10 "Services"** means the services accompanying the Licensed Software as listed on the Sales Agreements, that may include but are not limited to: providing Hosting Services, software-as-a-service, providing the Technical Support and Maintenance Services, and any custom development or customization services.

**2. HOSTING SERVICES.**

**2.1 Hosting Services.** CUSI shall provide Licensee with services for hosting the Licensed Software as set forth or described in the Sales Agreement. CUSI shall provide the Hosting Services such that the Licensed Software is accessible by Licensee Customers. Except as expressly provided herein, Licensee agrees that CUSI is responsible only for providing the Hosting Services, and CUSI is not responsible for providing any services or performing any tasks not specifically set forth in this Hosting Agreement or the Sales Agreement.

**2.2 Pass Through Terms.** The Hosting Services are made available in accordance with the Microsoft Customer Agreement available at [www.cusi.com/legal](http://www.cusi.com/legal) (including but not limited to the data use and privacy policies), attached hereto and incorporated herein by reference. In the event of a conflict between this Hosting Agreement and the applicable Microsoft Customer Agreement, the Microsoft Customer Agreement shall control. CUSI shall have no liability to Licensee in the event that Microsoft suspends or cancels Licensee's Hosting Services for any reason or no reason.

**2.3 Reservation of Rights.** As between the parties, the Services and Documentation, and all worldwide intellectual property rights

therein, are the exclusive property of CUSI and its licensors. All rights in and to the Services and Documentation not expressly granted to Licensee in this Hosting 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 Services (the "Feedback") to the extent it does not constitute Confidential Information of Licensee. Licensee hereby assigns all of its right, title, and interest in and to such Feedback to CUSI.

**3. AVAILABILITY AND SUPPORT.**

**3.1 Hosting Services and Licensee Data.** Except as expressly stated in a Sales Agreement, Licensee data storage of Licensee Data within the Services when provided via CUSI hosted services shall not exceed more than 10 years.

**3.2 Hosted Services Uptime.** The Hosting Services are hosted using the Azure platform, where CUSI shall provide the Hosting Services available to Licensee in accord with the availability standards available set forth in the applicable Azure policy posted at [www.cusi.com/legal](http://www.cusi.com/legal).

**3.3 Managed Data Services.** If purchased in a Sales Agreement, CUSI shall provide Managed Data Services as part of the Azure platform and in accord with and subject to the applicable Azure terms and conditions available at [www.cusi.com/legal](http://www.cusi.com/legal), including but not limited to the data use and privacy policies. The Managed Data Services offered by CUSI are all subject to the terms and conditions of the Data Management Agreement (available at [www.cusi.com/legal](http://www.cusi.com/legal)) and Sales Agreement, however, in the event of a conflict between these agreements and the applicable Azure documentation, the Azure documentation shall control.

**4. TERM, HOSTING FEES AND PAYMENT.**

**4.1 Term.** The initial term of this Hosting Agreement begins on the Effective Date and, unless terminated earlier pursuant to the terms of Section 10, will continue in effect for the period defined in the Sales Agreement, or if no period is specified in the Sales Agreement for one (1) year (the "Initial Term"). This Hosting Agreement will automatically renew for successive one (1) year terms (each a "Renewal Term") unless earlier terminated as expressly provided in Section 10, or either party provides written notice to the other party at least ninety (90) days prior to the date of termination.

**4.2 Effect of Termination.** Upon termination, the license granted to Licensee hereunder shall terminate, and Licensee shall immediately cease use of the Hosting Services. At the request of Licensee prior to the date of termination, CUSI shall assist Licensee in the transition of the Hosting Services to a new provider or itself, including the extraction of the Licensee Data pursuant to a separate services agreement, Sales Agreement, or as otherwise agreed by the Licensee and CUSI.

**4.3 Fees.** All Hosting Fees are specified in the original Sales Agreement and any subsequent Sales Agreements executed by both parties. The Hosting Fees are subject to rate increase and variability, and are billed based on actual usage for the time period specified in the Sales Agreement. CUSI may increase hosting fees at its discretion without prior notice to Licensee, where the applicable rate and usage shall be set forth in each invoice.

**4.4 Payments.** All payment terms are specified in the original Sales Agreement and any subsequent Sales Agreements 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. LICENSEE ACKNOWLEDGES THAT CONTINUED ACCESS TO THE HOSTING SERVICES IS CONTINGENT ON LICENSEE'S PAYMENT OF THE HOSTING FEES. IF LICENSEE FAILS TO REMIT ANY REQUIRED HOSTING FEES AND THE AMOUNT DUE IS NINETY (90) DAYS OR OLDER FROM THE INVOICE DATE, CUSI SHALL HAVE THE RIGHT TO (i) TERMINATE THIS HOSTING AGREEMENT UPON WRITTEN NOTICE TO LICENSEE, OR (ii) SUSPEND OR DENY ACCESS TO THE HOSTING SERVICES WITHOUT PRIOR WRITTEN NOTICE TO LICENSEE. If there is any dispute of an invoice, Licensee shall provide written notice to CUSI within fifteen (15) days after the date of the invoice, where all undisputed amounts shall be paid in accord with the terms of this Section 4.4. The parties shall negotiate in good faith to resolve any disputed amounts within thirty (30) days from the date of CUSI's receipt of the written notice of dispute.

**4.5 Taxes.** The Hosting Fees and other charges do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax, except tax on CUSI's income, shall be paid by Licensee and be paid over to the proper authorities by the Licensee or reimbursed by Licensee to CUSI on demand in the event that CUSI is responsible or demand is made on CUSI for the payment thereof. If Licensee is tax exempt, Licensee must provide CUSI with its tax exempt number or form.

## **5. PERFORMANCE; LIMITED WARRANTY.**

**5.1 Performance Standard.** CUSI warrants that the Hosting Services shall be performed in a professional and workmanlike manner. CUSI does not make any representation or guarantees regarding uptime or availability of the Hosting Services unless specifically identified in this Hosting Agreement. CUSI will, at its own expense and as its sole obligation and as Licensee's exclusive remedy for any breach of this provision, use commercially reasonable efforts to correct any reproducible error in the Hosting Services reported to CUSI by Licensee in writing. The performance warranty under this Section 5.1 does not extend to: (a) problems caused by the mishandling of or alterations to the Hosting Services by Licensee or any third party; (b) problems caused by any Licensee Data input into the Hosting Services; (c) data conversion errors or data accuracy issues or (d) problems caused by third party equipment or third party software.

**5.2 Disclaimers.** THE HOSTING SERVICES ARE NOT SUBJECT TO ANY WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE HOSTED 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 IN CONNECTION WITH THE HOSTED SERVICES, AVAILABILITY AND SUPPORT SERVICES, AND MANAGED DATA SERVICES. 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. CUSI DOES NOT WARRANT THAT THE HOSTING SERVICES WILL FUNCTION TO MEET ALL OF THE BUSINESS REQUIREMENTS OF THE LICENSEE OR THAT THE LICENSEE'S USE OF THE HOSTING SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED.

LICENSEE AGREES THAT CUSI WILL NOT HAVE ANY RESPONSIBILITY FOR THE SECURITY OF ITS SYSTEMS AND LICENSEE DATA BEYOND THOSE SET FORTH IN SECTION 6.

## **6. SECURITY.**

**6.1 Security.** CUSI shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards designed to protect the confidentiality, availability, and integrity of the Services, including the Licensee Data in connection with the Hosting Services.

## **7. INDEMNITIES**

**THIRD PARTY CLAIMS.** Licensee will defend at its own expense any action against CUSI brought by a third party, including Licensee's utility customers, arising out of (i) Licensee's negligence or willful misconduct, or (ii) Licensee's breach of this Hosting Agreement 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.

**8. LIMITATION OF LIABILITY.** CUSI'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY HOSTING SERVICES PROVIDED UNDER THIS HOSTING AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF HOSTING FEES PAID TO CUSI UNDER THIS HOSTING 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 LICENSEE 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 HOSTING SERVICES OR THIS HOSTING 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.

## **9. CONFIDENTIALITY.**

**9.1 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 Hosting 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.

**9.2 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 Hosting 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 9.2.

## **10. TERMINATION**

**10.1 Termination.** This Hosting Agreement may not be terminated, cancelled or modified except by the written mutual consent of both parties, or as otherwise provided in this Hosting Agreement, including without limitation non-renewal under Section 4.1. Either party may terminate the Hosting Agreement if the other party breaches any material provision of the Hosting Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof.

**10.2 Effects of Termination.** Upon termination of the Hosting Agreement for any reason: (a) any amounts owed to CUSI under this Hosting Agreement before such termination will be immediately due and payable; (b) all rights of Licensee to utilize the Licensed Software will immediately cease to exist; and (c) CUSI and Licensee will execute a fee agreement pursuant to which Licensee will pay CUSI to extract

Licensee's Licensee Data and provide it to Licensee in a mutually agreed upon format. Notwithstanding the foregoing, if this Hosting Agreement is terminated for any reason other than by Licensee for CUSI's material breach, then Licensee shall pay all Hosting Fees for the remainder of the then-current term.

**10.3 Survival.** Sections 1, 2.3, 4, 5, 7, 8, 9, 10, and 11 together with any accrued payment obligations, will survive expiration or termination of the Hosting Agreement for any reason.

**11. GENERAL.**

**11.1 Assignment.** Licensee may not assign or transfer, by operation of law, merger or otherwise, any of its rights under the Hosting 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 Hosting Agreement. CUSI shall have the right to assign this Hosting Agreement to any successor to its business or assets to which this Hosting Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

**11.2 Notices.** Any notice required or permitted by this Hosting 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 Hosting Agreement or such other address as such party may specify in writing.

To CUSI: PO Box 1515 Jonesboro, AR 72403

**11.3 Governing Law; Dispute Resolution.** This Hosting 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 Hosting Agreement. For purposes of this Hosting Agreement and any controversy arising hereunder, Client hereby irrevocably consents to the jurisdiction and venue of applicable federal or state courts located in Craighead County, Jonesboro, Arkansas and agrees to commence any litigation exclusively in such courts. The party's agree that the provision of the Services will be further enhanced by the timely and open resolution of any disagreements between the parties. Each party agrees to use its best efforts to cause any disputes or disagreements between such parties to be considered, negotiated in good faith, and resolved as soon as

possible. In the event that any dispute between the parties cannot be resolved to each party's satisfaction within ten (10) days after either CUSI's or Licensee's business or project managers have notified the other in writing of the need for resolution, then the dispute shall immediately be referred to the executive level of both CUSI and Licensee for consideration. In the event that such executives cannot resolve such dispute or disagreement to their mutual satisfaction within fifteen (15) days, either party may take any legal or equitable action available to it. No resolution or attempted resolution of any dispute or disagreement pursuant to this Article shall be to be a waiver of any term or provision of this Hosting Agreement or consent to any breach or default unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

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

**11.5 Severability.** If any provision of the Hosting 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.

**11.6 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, including but not limited to, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or pandemic.

**11.7 Entire Agreement; Counterparts.** This Hosting Agreement, together with any Exhibits and related Sales Agreements, 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 Hosting Agreement may be modified upon notice to Licensee, where notice for purposes of this Section 11.7 shall constitute posting on CUSI's website or email notice to CUSI's business contact of Licensee. This Hosting Agreement may be executed in counterparts, which taken together shall form one legal instrument.

**11.8 Rules of Interpretation.** To the fullest extent possible this Hosting Agreement, the Sales Agreement, and the documents incorporated herein by reference shall be construed wherever reasonable as being consistent with each other. When such construction is unreasonable, the order of precedence shall be: (1) this Hosting Agreement, and (2) the Sales Agreement.

**IN WITNESS WHEREOF,** the parties by their authorized representatives have entered into this Hosting Agreement as of the Effective Date.

<p><b>CONTINENTAL UTILITY SOLUTIONS, INC.</b></p> <p>Signed: _____</p> <p>Name: Michael F Guerriero</p> <p>Title: President</p> <p>Date: _____</p>	<p><b>LICENSEE:</b> _____</p> <p>Signed: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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