



CONTINENTAL UTILITY SOLUTIONS, INC.

MMRS LICENSE AGREEMENT

**THIS MMRS LICENSE AGREEMENT ("Agreement")** is made as of the date of the Purchase Order (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 in the Purchase Order (the "**Licensee**").

Licensee desires to obtain the right to utilize CUSI's Mobile Meter Reading Software ("MMRS") licensed proprietary software for the benefit of Licensee for its internal business operations. This Agreement sets forth the terms and conditions under which CUSI will provide to Licensee the use of MMRS.

**1. DEFINITIONS.** As used in the Agreement:

**1.1 "Aggregated Statistics"** means data and information related to Licensee's and Licensee Customers' use of MMRS that is used by CUSI in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of MMRS.

**1.2 "Named User License"** means a license to enable a named user to connect to MMRS as a client.

**1.3 "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.

**1.4 "Documentation"** means the user guides, manuals and associated written documentation provided to Licensee along with MMRS.

**1.5 "Fees"** means, collectively, all fees due to CUSI hereunder.

**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 "Licensee Users"** means users that Licensee permits to access MMRS under its Named User License.

**1.9 "MMRS"** means CUSI's SaaS services for collecting meter reads on mobile devices, any modules, add-ons or interfaces, and any modified, updated or enhanced versions of such programs that CUSI may provide to Licensee.

**1.10 "Purchase Order"** means collectively the document documenting the commercial terms for use of MMRS purchased by Licensee from time to time.

**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 non-exclusive, non-transferable, non-sublicensable internal business license to: (a) access and receive all benefits of the use of MMRS subject to the number of Named User Licenses specified in the Purchase Order; and (b) copy and reproduce the Documentation provided to Licensee solely for the purposes of facilitating Licensee's use of MMRS.

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.

**2.2 Additional Licensee Customers or Increased Usage.** If Licensee wishes to add or subtract additional Named User Licenses for MMRS, Licensee shall notify CUSI in writing at least thirty (30) days in advance of the next invoice date.

**2.3 Restrictions On Use.** Licensee acknowledges that MMRS, and its structure, organization, and source code constitute valuable proprietary information and / or 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 MMRS or the Documentation; (b) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer MMRS or the Documentation to any third party; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for MMRS; (d) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in MMRS; or (e) otherwise use or copy MMRS except as expressly permitted under Section 2.1.

**2.4 Reservation of Rights.** As between the parties, MMRS and Documentation, and all worldwide intellectual property rights therein, are the exclusive property of CUSI and its licensors. All rights in and to MMRS 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 MMRS (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. ACCESS AND ACCEPTANCE.** Licensee shall be deemed to have accepted MMRS upon the earlier to occur: (a) completion of mutually agreed upon written acceptance criteria, or (b) use of MMRS in a production environment run for any of Licensee's customers.

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

**4.1 Term.** The initial term of this 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 Purchase Order, or if no period is specified in the Purchase Order for one (1) year (the "Initial Term"). This 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 Fees.** All Fees are specified in the original Purchase Order and any subsequent Purchase Order executed by both parties. CUSI shall be entitled to increase the Fees annually during the Initial Term and for each Renewal Term, provided that such increase shall not exceed the previous year's fee by the greater of either (1) 4% percent or (2) the percentage change in the Consumer Price Index for the U.S. City average as compiled and calculated by the Bureau of Labor Statistics of the United States Department of Labor, in "Consumer Price Index, All Urban Consumers" (or its appropriate successor Index) for the year immediately preceding the effective date of such increase. CUSI will provide Licensee with written notice of such revised Fees at least thirty (30) days prior to the annual increase. CUSI's invoice hereunder shall constitute notice for purposes of this Section 4.2.

**4.3 Payments.** 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 MMRS IS CONTINGENT ON LICENSEE'S PAYMENT OF THE FEES. IF LICENSEE FAILS TO REMIT ANY REQUIRED FEES AND THE AMOUNT DUE IS NINETY (90) DAYS OR OLDER FROM THE INVOICE DATE, CUSI SHALL HAVE THE RIGHT TO (i) TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO LICENSEE, OR (ii) SUSPEND OR DENY ACCESS TO MMRS 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 amount shall be paid in accord with the terms of this Section 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.

**4.4 Taxes.** The 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 MMRS when used in accordance with the Documentation, will operate substantially as described in the Documentation. CUSI does not make any representation or guarantees regarding uptime or availability of MMRS. 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 MMRS reported to CUSI by Licensee in writing. The performance warranty under this Section 5.1 does not extend to: (a) changes in the characteristics of the operating system or hardware of Licensee on which MMRS operates; (b) problems caused by the mishandling of or alterations to MMRS by Licensee or any third party; (c) problems caused by any Licensee Data input into MMRS; (d) data conversion errors or data accuracy issues or (e) problems caused by third party equipment.

**5.2 Disclaimers.** MMRS IS NOT SUBJECT TO ANY WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, 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 MMRS. 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 MMRS WILL FUNCTION TO MEET ALL OF THE BUSINESS REQUIREMENTS OF THE LICENSEE OR THAT THE LICENSEE'S USE OF MMRS WILL BE ERROR-FREE OR UNINTERRUPTED.

LICENSEE ACKNOWLEDGES THAT MMRS ARE PROVIDED TO ASSIST LICENSEE IN ITS BUSINESS OPERATIONS 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, MMRS ARE NOT WARRANTED TO BE IN COMPLIANCE WITH THESE LEGAL CHANGES AT ALL TIMES. LICENSEE IS SOLELY RESPONSIBLE FOR ANY LICENSEE DATA INPUT INTO MMRS, ALL INFORMATION AND LICENSEE DATA UPON WHICH CUSI RELIES IN PROVIDING MMRS AND THE ACCURACY OF ANY CONFIGURATION OF MMRS. MMRS IS 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, SERVICES AND INFORMATION OBTAINED THROUGH USE OF MMRS 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 MMRS OR RESULTS OF MMRS INTO A PRODUCTION ENVIRONMENT.

CUSI WILL NOT HAVE ANY RESPONSIBILITY FOR THE SECURITY OF ITS SYSTEMS AND LICENSEE DATA BEYOND THOSE SET FORTH IN SECTION 6.1.

IF MMRS IS ON LICENSEE'S SYSTEMS OR SYSTEMS UNDER LICENSEE'S CONTROL, LICENSEE SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY OF SUCH SYSTEMS AND LICENSEE DATA.

LICENSEE SHALL HAVE FULL RESPONSIBILITY FOR ACQUIRING AND MAINTAINING SECURE INTERNET ACCESS TO MMRS.

## **6. SECURITY; DATA.**

**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 MMRS, including the Licensee Data, to the extent that CUSI hosts MMRS.

**6.2 Licensee Data.** CUSI acknowledges that, as between CUSI and Licensee, Licensee owns all right, title, and interest, including all intellectual property rights, in and to the Licensee Data. Licensee hereby grants to CUSI a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Licensee Data and perform all acts with respect to the Licensee Data as may be necessary for CUSI to provide MMRS to Licensee, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Licensee Data incorporated within the Aggregated Statistics.

**6.3 Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, CUSI may monitor Licensee's and Licensee Customers' use of MMRS and collect and compile Aggregated Statistics. As between CUSI and Licensee, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by CUSI. Licensee acknowledges that CUSI may compile Aggregated Statistics based on Licensee Data input into MMRS. Licensee agrees that CUSI may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

## **7. INDEMNITIES**

**7.1 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 MMRS infringes any valid United States 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 MMRS 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 MMRS; (b) replace or modify MMRS so that it becomes non-infringing; or (c) accept return of MMRS, terminate this Agreement, in whole or in part, as appropriate, upon written notice to Licensee and refund to Licensee the Fees paid for MMRS 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 7.1 or otherwise with respect to any infringement claim based upon: (i) any use of MMRS not in accordance with this Agreement, including without limitation the Documentation; (ii) any use of MMRS in combination with products, equipment, software, or data not supplied by CUSI; (iii) any use of any release of MMRS other than the most current release made available to Licensee; or (iv) any modification of MMRS by any person other than CUSI or its authorized agents or subcontractors. THIS SECTION 7.1 STATES CUSI'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT.

**7.2 THIRD PARTY CLAIMS.** Licensee will defend at its own expense any action against CUSI brought by a third party, including Licensee's utility customers, except to the extent that the action is covered under Section 7.1 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.

**8. LIMITATION OF LIABILITY.** CUSI'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH MMRS 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 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 MMRS 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.

**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 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 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 Agreement may not be terminated, cancelled or modified except by the written mutual consent of both parties, or as otherwise provided in this Agreement, including without limitation non-renewal under Section 4.1. 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.

**10.2 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 rights of Licensee to utilize MMRS 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 Agreement is terminated for any reason other than by

Licensee for CUSI's material breach, then Licensee shall pay all Fees for the remainder of the then-current term.

**10.3 Survival.** Articles and Sections 1, 2.3, 2.4, 4.2, 5.2, 6, 7, 8, 9 and 10, together with any accrued payment obligations, will survive expiration or termination of the 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 Agreement (including its licenses with respect to MMRS) 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.

**11.2 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.

To CUSI: PO Box 1515 Jonesboro, AR 72403

**11.3 Governing Law; Dispute Resolution.** 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. For purposes of this Agreement and any controversy arising hereunder, Client hereby irrevocable 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 MMRS will be further enhanced by the timely and open resolution of any disagreements between such 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 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 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 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 Agreement, together with the Purchase Order, 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 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 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 Agreement, the Purchase Order 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 Agreement, (2) the Purchase Order.

The parties by their authorized representatives have entered into this Agreement as of the Effective Date by execution of the Purchase Order.

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