

# Continuity Software Software as a Service Terms of Use

This software as a service terms of use (the “**Agreement**”) sets forth the legal contract between you as an end user of Continuity’s services (“**You**” and “**Your**”) and Continuity Software Ltd., along with its subsidiaries and affiliates (“**Continuity**”) with respect to access to and use of Continuity’s software-as-a-service (the “**Services**”), and any associated materials or Documentation (“**Documentation**”) made available through Continuity’s websites, including <https://secure.continuitysoftware.com>, as well as any support provided by Continuity (“**Support**”).

WE PROVIDE THE SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY LOGGING INTO THE SERVICES, YOU ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS AND YOU REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT AND (II) IF YOU REPRESENT A COMPANY OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY AND BIND THE ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, WE WILL NOT AND DO NOT LICENSE THE SERVICES AND DOCUMENTATION TO YOU AND YOU MUST NOT USE THE SERVICES AND DOCUMENTATION.

## 1. GRANT AND SCOPE OF LICENSE.

**a. General.** Subject to and conditioned on Your payment of Fees and compliance with the terms and conditions of this Agreement, Continuity grants You a non-exclusive, non-transferable, non-sublicensable, limited license to use the Services and Documentation solely for Your personal or internal use.

## 2. ACCOUNT ACCESS.

**a.** In order to access and use the Services, You must set up an account with Continuity (the “**Account**”). You are responsible for maintaining the confidentiality of Your login credentials. You are responsible and liable for all uses of the Services and Documentation through access thereto provided by You, directly or indirectly. Specifically, and without limiting the generality of the foregoing, You are responsible and liable for all actions and failures to take required actions with respect to the Services and Documentation by You and Your Authorized Users or by any other person to whom You or Your Authorized Users may directly or indirectly provide access to or use of the Services and/or Documentation, whether such access or use is permitted by or in violation of this Agreement. Authorized Users means Your employees, consultants, contractors, and agents, (a) who are authorized by You to access and use the Services under rights granted to You pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

**b.** You must notify us immediately if You become aware that Your Account is being used without authorization. If Your access to the Services was previously terminated by Continuity, You may not register for a new Account, nor may You designate other individuals to use an Account on Your behalf.

**3. AGE RESTRICTION.** You affirm that You are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement. In any case, You affirm that You are at least 13 years of age. If You are under 13 years of age, You may not use the Services without the assistance of a parent or guardian.

**4. GENERAL RESTRICTIONS ON USE.** In connection with Your use of the Services, You agree not to, nor to allow or facilitate a third party to: copy, modify, or create a derivative work of the Services or Documentation; reverse engineer, reverse assemble, or otherwise attempt to discover any source code of the Services; sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in or access to the Services, or any other Documentation available via the Services without the prior written permission of Continuity; circumvent or manipulate any applicable fee structure, billing process, or fees owed either to us or to our third party providers; use the Services for illegal purposes or for promotion of dangerous activities; interfere with or disrupt the Services or servers or networks connected to the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Services; attempt to gain

unauthorized access to the Services, other accounts, computer systems, or networks connected to the Services through hacking, password mining, phishing or any other means; upload, post, email, transmit, distribute or otherwise make available any material that contains viruses, computer code, or any other technologies that may harm Continuity or the interests, information, or property of Continuity customers or limit the functionality of any software, hardware or other equipment; circumvent, disable or otherwise interfere with security-related features of the Services or features that prevent or restrict use or copying of any Documentation or enforce limitations on use of the Services; remove any proprietary notices from the Services or Documentation; use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; access or use the Services or Documentation for purposes of competitive analysis of the Services or Documentation, the development, provision, or use of a competing software service or product, or any other purpose that is to Continuity's detriment or commercial disadvantage; or use the Services and Documentation in any manner other than as permitted by this Agreement.

## 5. OWNERSHIP OF THE SERVICES.

**a. Services and Documentation.** All right, title, and interest in and to the Services and Documentation, including all intellectual property rights therein, are and will remain with Continuity. For all Third-Party Materials (as defined in Section 14) appearing in the Services, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Materials. You have no right, license, or authorization with respect to the Services, Documentation, or Third-Party Materials except as expressly set forth in this Agreement.

**b. Customer Data.** Customer Data means any data that You upload to the Services under Your Account or that You otherwise transfer, process, use, or store in connection with Your Account. Continuity acknowledges that, as between Continuity and You, You own all right, title, and interest, including all intellectual property rights, in and to the Customer Data. You hereby grant to Continuity a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Continuity to provide the Services to You.

**c. Resultant Data.** Resultant Data means data and information related to Your use of the Services that Continuity uses in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services. Continuity uses this data, without limitation, to improve the performance of the Services or develop important updates. Continuity never uses it to re-identify You. In furtherance of the foregoing, You hereby unconditionally and irrevocably grant Continuity an assignment of all right, title, and interest in and to the Resultant Data, including all intellectual property rights relating thereto.

**d. Feedback.** You may provide Continuity with bug reports, comments, suggestions, enhancement requests, recommendations, or other feedback related to the Services, including, without limitation, about how to improve the Services (collectively, "**Feedback**"). By submitting any Feedback, You hereby assigns to Continuity all right, title, and interest in and to the Feedback, including all Intellectual Property rights therein or relating thereto.

## 6. DATA PROTECTION

**a. Privacy Policy.** In the course of Your accessing and/or using the Services and receiving Support, Continuity may obtain information about You or You may provide certain personal information to Continuity. All uses of Your personal information will be treated in accordance with Continuity Privacy Policy available at <https://www.continuitysoftware.com/privacy-policy>, which is incorporated by reference and forms an integral part of this Agreement. The Privacy Policy is subject to change at Continuity discretion; however, Continuity policy changes will not result in a material reduction in the level of protection provided for the Customer Data You provide to Continuity in connection with Your receipt of the Services.

## 7. PAYMENT

**a. Payment of Fees.** You will pay to Continuity all license fees in accordance with Continuity's published pricing (the "**Fees**"). All Fees will be billed in advance and You will pay the Fees no later than thirty (30) days after You receive an invoice, unless You have a written agreement with express pricing terms executed by an authorized Continuity

representative. Continuity retains the right to change the published pricing at any time with notice to users. All Fees are non-refundable. All amounts are stated, billed, and collected in US dollars

**b. Taxes.** All Fees and other amounts payable by You under this Agreement are exclusive of taxes and similar assessments. You are responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by You hereunder, other than any taxes imposed on Continuity's income.

**c. Continuity Reseller End Users.** Notwithstanding the foregoing, if You access Continuity through a Continuity Reseller, your Reseller will establish any terms and conditions for pricing, invoicing, and payment. A Continuity Reseller means an entity authorized by Continuity to resell the Services to You. For the avoidance of doubt, a Continuity Reseller is not an authorized Continuity representative.

## 8. TERM AND TERMINATION

**a. Term.** This Agreement is effective upon your logging into the Services until it is terminated in accordance with this Section 8.

**b. Termination By Continuity.** Continuity may terminate this Agreement, effective on written notice to You, if You fail to pay any amount when due hereunder or if You breach any of Your obligations under this Agreement. Continuity may, directly or indirectly, suspend, terminate, or otherwise deny Your or any of your Authorized End Users', or any other person's access to or use of all or any part of the Services or Documentation, without incurring any resulting obligation or liability, if: (a) Continuity receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Continuity to do so; (b) Continuity believes, in its good faith and sole discretion, that: (i) You or any of Your Authorized End Users, have failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) You or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (c) this Agreement expires or is terminated. This Section 8(b) does not limit any of Continuity's other rights or remedies, whether at law, in equity, or under this Agreement. In the event Continuity terminates this Agreement in accordance with this Section 8(b), You will remain liable for all amounts due under this Agreement.

**c. Termination By You.** You may terminate Your use of the Services by providing at least 30 days' written notice of Your intent to terminate. You acknowledge that in any event there will be no refunds of any pre-paid Fees. If you have a separate, written agreement with Continuity that specifies termination rights, You may terminate in accordance with the terms of that agreement. If You access Continuity through a Continuity Reseller, your Reseller will establish the terms and conditions, if any, upon which You may terminate Your use of the Services.

**d. Effect of Termination.** Upon termination of this Agreement, the license granted hereunder shall also terminate, and You shall cease using the Services and Documentation.

**9. CONFIDENTIALITY.** From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, and other sensitive or proprietary information, whether orally or in written, electronic, or other form and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). For the avoidance of doubt and without limitation, Continuity roadmaps and information and documentation about Continuity's security architecture is the Confidential Information of Continuity. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the Receiving Party at the time of disclosure; (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (d) independently developed by the Receiving Party. The Receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations hereunder and who are bound by confidentiality restrictions no less restrictive than those applying to the Receiving Party hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order will, to the extent legally permitted, give the Disclosing Party prompt notice and cooperate

with the Disclosing Party to obtain an appropriate protective order or other appropriate remedy at the Disclosing Party's expense; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. Upon termination of this Agreement, the Receiving Party will, at the Disclosing Party's request and option, delete or return any Confidential Information in the Receiving Party's possession. Any Confidential Information returned to the Disclosing Party will be returned in a format mutually agreed to by the Parties. Notwithstanding anything in this Agreement to the contrary, the Disclosing Party may retain any Confidential Information required for it to comply with its legal or regulatory obligations, which Confidential Information will remain subject to the terms of this Agreement until deleted. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of your logging into the Services and will expire five years from the date first disclosed to the Receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

**10. CUSTOMER WARRANTIES.** You warrant and represent that:

- a. All information You provide to us as part of Your Account registration is true, accurate, current and complete, and You agree to maintain and promptly update such information to keep it true, accurate, current and complete.
- b. Any and all Customer Data supplied by You or otherwise accessed by Continuity through the provision of the Services is the sole and exclusive property of You or that You have secured any and all authorizations and rights to use the Customer Data as applicable;
- c. The Customer Data does not breach any relevant laws, regulations, or codes;
- d. The Customer Data does not infringe the intellectual property rights of any third party;
- e. And to the extent that the Customer Data contains personally identifiable information or Personal Data, You have obtained the necessary consents in order to transfer or permit access to such data in accordance with applicable privacy and data protection laws.

**11. CONTINUITY WARRANTIES; DISCLAIMERS**

a. **Warranties.** Continuity does not make any representations or guarantees regarding uptime or availability of the Services except as specifically identified in the Service Level Agreement published at <https://continuitysoftware.com/support>. The remedies set forth in the Service Level Agreement are Your sole remedies and Continuity's sole liability under the limited warranty set forth in this Section 11(a). **THE FOREGOING WARRANTY DOES NOT APPLY, AND CONTINUITY STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.**

**b. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 11(a) ABOVE, THE SERVICES AND ALL INFORMATION, DOCUMENTATION, AND MATERIALS RELATED THERETO ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND CONTINUITY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 11(a), CONTINUITY DOES NOT WARRANT THAT THE SERVICES, DOCUMENTATION, OR ANY MATERIALS AVAILABLE ON OR THROUGH THE SERVICES OR THROUGH CONTINUITY ARE OR WILL BE ACCURATE, CURRENT, ERROR-FREE, VIRUS FREE, RELIABLE OR APPROPRIATE FOR ANY PARTICULAR USE TO WHICH YOU OR ANY THIRD PARTY MAY CHOOSE TO PUT THEM, THAT THE SYSTEM IS OR WILL BE AVAILABLE ON AN UNINTERRUPTED AND ERROR-FREE BASIS, OR THAT DEFECTS WILL BE CORRECTED. CONTINUITY IS NOT THE PROVIDER OF, AND MAKES NO WARRANTIES WITH RESPECT TO, ANY THIRD-PARTY MATERIALS.

## 12. DAMAGES; LIMITATION OF LIABILITY

**a. DAMAGES.** IN NO EVENT WILL CONTINUITY BE LIABLE UNDER THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, ENHANCED, PUNITIVE, OR SPECIAL DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR WHETHER OR NOT CONTINUITY WAS ADVISED THAT SUCH DAMAGES WERE LIKELY OR POSSIBLE.

**b. LIMITATION OF LIABILITY.** IN NO EVENT WILL THE AGGREGATE LIABILITY OF CONTINUITY TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, OR THE USE OF THE SERVICES EXCEED: (A) THE AMOUNTS YOU HAVE PAID TO CONTINUITY FOR USE OF THE SERVICES DURING THE 12 MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES, IF YOU ARE REGISTERED FOR A PAID PLAN; OR (B) FIFTY US DOLLARS (\$50), IF YOU ARE REGISTERED FOR A TRIAL PLAN. YOU ACKNOWLEDGE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL TERM BETWEEN YOU AND CONTINUITY RELATING TO THE PROVISION OF THE SERVICES AND CONTINUITY WOULD NOT PROVIDE THE SERVICES TO YOU WITHOUT THIS LIMITATION. YOU AGREE THAT CONTINUITY WILL NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY TERMINATION OF YOUR ACCESS TO THE SERVICES OR DELETION OF YOUR ACCOUNT OR DOCUMENTATION.

**c.** Without limiting the foregoing, under no circumstances shall either Party be held liable for any delay or failure in performance resulting directly or indirectly from forces of nature, or causes beyond its reasonable control, including internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of god, war, governmental actions, orders of domestic or foreign courts or tribunals, or non-performance of third parties.

**13. INDEMNIFICATION.** To the extent permitted by applicable law, You agree to indemnify, hold harmless, and, at Continuity's option, defend Continuity, its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to reasonable attorney's fees) arising from: (i) Your use of and access to the Services in breach of this Agreement; (ii) Your violation of any term of this Agreement; or (iii) Your violation of any third party right, including any copyright, property, or privacy right. If Continuity elects to have You defend Continuity, You may not settle any claim unless it unconditionally releases Continuity of all liability and is limited to payment of money damages, which You agree to pay. This defense and indemnification obligation will survive this Agreement and Your use of the Services.

## 14. MISCELLANEOUS

**a. Modification of Terms.** Continuity may change this Agreement from time to time. Any such changes will become effective when posted on [www.continuitysoftware.com/SaaSSTC](http://www.continuitysoftware.com/SaaSSTC). If You object to any such changes, Your sole recourse will be to cease using the Services. Continued use of the Services following posting of any such changes will indicate Your acknowledgement of such changes and Your agreement to be bound by the revised Agreement, inclusive of such changes.

**b. Export Regulation.** The Services and Documentation may be subject to US export control laws, including without limitation the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Services or Documentation to, or make the Services or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or Documentation available outside the US.

**c. Third-Party Web Sites and Content.** The Services may contain links to third-party websites or services that Customer may use that are not owned or controlled by Continuity (“**Third-Party Materials**”). Continuity has no control over and assumes no responsibility for the Third-Party Materials. Accordingly, Continuity makes no warranties regarding such Third-Party Materials and will not be liable for any loss or damage caused by Your use of or reliance on such Third-Party Materials. The inclusion of Third-Party Materials in the Services does not imply any endorsement by Continuity.

**d. Electronic Communications.** The communications between You and Continuity will be primarily electronic. For contractual purposes, you (a) consent to receive communications from Continuity in an electronic form and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Continuity provides to you electronically have the same effect as if they were provided in writing and signed by Continuity and You in ink. The foregoing does not affect your non-waivable rights.

**e. No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Agreement, and this Agreement shall not provide any third person or entity with any remedy, claim, liability, reimbursement, claim of action, or other legal or equitable right.

**f. Arbitration.** This Agreement will be subject to and construed in accordance with the laws of the State of New York, excluding its rules regarding conflicts of law. Any controversy or claim between the parties arising out of or relating to this Agreement or the breach hereof shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be held in the city of Rochester, New York, and You may participate in the arbitration via remote teleconference. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**g. Conflicting Terms.** Except as otherwise specifically provided in this Agreement, in the event of a conflict between the terms and conditions of this Agreement and any separate services agreement (“**Services Agreement**”) executed by You and an authorized Continuity representative, as they apply to the relationship between Continuity and You, the terms and conditions of that separate Services Agreement shall govern.

**h. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**i. Survival.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 4, Section 8(c), Section 9, Section 11(b), Section 12, Section 13, and this Section 14.