



# Customer Agreement

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This Cysure Customer Agreement (called the “Agreement”) governs transactions by which you purchase Equipment, License Programs, and acquire Services from Cysure Inc (“Cysure”).

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A Transaction Document or in certain circumstances Attachments, will contain the specific details of each business transaction. Each Transaction Document incorporates the terms of this Agreement and represents a separate agreement which is legally independent from any other. This Agreement and its applicable Attachments and Transaction Documents are the complete agreement regarding each transaction and replace any prior oral or written communications between us.

For the purposes of this Agreement, “you” and “your” means the person, firm or corporation identified as the Customer on a relevant Transaction Document (“the Customer”).

## 1. Definitions

**Equipment** includes any machine that Cysure may provide to you. It includes its features, conversions, upgrades, elements, or accessories, or any combination of them. **Customer set-up Equipment** is a Machine that you install according to the manufacturer's instructions.

**Date of Installation** is the following:

1. for Equipment that Cysure is responsible for installing, the business day after the day Cysure notifies you it has installed it or, if you defer installation, makes it available to you for subsequent installation by Cysure;
2. for a Customer set-up Equipment, the second business day after the Equipment's standard transit allowance period as specified by the manufacturer; and

**Designated Equipment** is either 1) the machine on which you will use a Program for processing and which Cysure, or the original manufacturer requires you to identify to it by type/model and serial number, or 2) any machine on which you use the Program if Cysure or the manufacturer does not require you to provide this identification.

**Enterprise** is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States of America.

**Machine Code** is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with a Machine.

**Materials** are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that Cysure may deliver to you as part of a Service. The term "Materials" does not include Programs or Machine Code.

**Non-Cysure Program** is a Program licensed under a separate third-party licence agreement.

**Product** is Equipment or a Program.

**Program** is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any Non-Cysure Program that Cysure may provide to you. The term does not include Machine Code or Materials.

**Service** is performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as access to an information database) Cysure makes available to you.

**Specifications** is a document that provides information specific to a Product.

**Specified Operating Environment** is the machines and programs with which a Program is designed to operate, as described in the Program's Specifications.

**Transaction Document** (may also be called a supplement, schedule, exhibit, statement of work, change authorisation, or addendum) is a document that will contain the specific details of each business transaction.

## **2. Agreement Structure**

This Agreement supersedes and invalidates all other commitments, representations and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date hereof and which shall become null and void from the date this Agreement is activated by signing a Transaction Document. Each party warrants to the other that it has not relied on any such commitment, representation, or warranty in entering into this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

Cysure provides additional terms for Products and Services in documents called "Attachments" and "Transaction Documents". All transactions have one or more associated Transaction Documents (such as a supplement, schedule, exhibit, statement of work, change authorisation, or addendum).

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

You accept the terms in Attachments and Transaction Documents by 1) signing them, 2) using the Product or Service, or allowing others to do so, or 3) making any payment for the Product or Service.

You may cancel any order without liability to Cysure if a Transaction Document incorporates either 1) additional contractual terms or 2) a new or revised Cysure Customer Agreement of which you were not notified by Cysure before the date of your order, provided that you notify Cysure of such cancellation either 1) within 5 business days of receipt of the Transaction Document or 2) before the first delivery of the relevant goods or provision of a Service, whichever is the earlier.

A Product or Service becomes subject to this Agreement when Cysure accepts your order by 1) sending you a Transaction Document, 2) shipping the Machine or making the Program available to you, or 3) providing the Service.

## **3. Delivery**

Cysure will use reasonable endeavours to meet your delivery requirements for Products and Services you order and will inform you of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

## **4. Charges and Payment**

The amount payable for a Product or Service shall include the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). Cysure will inform you in advance whenever additional charges apply.



Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed from time to time, and which may be in advance, periodically during the performance of the Service, or after the Service is completed.

Services for which you prepay must be used within the contract period. Unless Cysure agreed otherwise, Cysure does not give credits or refunds for unused prepaid Services.

### **Charges**

One-time and recurring charges are based amongst other criteria on measurements of actual or authorised use (for example, number of users or processor size for Programs, meter readings for maintenance Services or connect time for network Services). You agree to provide on demand actual usage data if Cysure so requests. If you make changes that impact use charges (for example, change processor size or configuration for Programs), you agree to promptly notify Cysure and forthwith pay any applicable charges. Recurring charges will be adjusted accordingly. Unless Cysure agrees otherwise, Cysure does not give credits or refunds for charges already due or paid.

You receive the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

Cysure may vary recurring charges for Products and Services, as well as labour rates and minimum charges for Services provided under this Agreement, in line with the notice periods given by the manufacturer and for Cysure products and services by giving you not less than two months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date Cysure specifies in the notice.

Cysure may increase one-time charges at any time subject as below. An increase to one-time charges does not apply to you if 1) Cysure receives your order before the announcement date of the increase and 2) one of the following occurs within 28 (twenty-eight) days after Cysure' receipt of your order:

1. Cysure ships you the Machine or makes the Program available to you;
2. you make an authorised copy of a Program or distribute a chargeable component of a Program to another Machine; or
3. a Program's increased use charge becomes due.

### **Payment**

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges and without any set-off or deductions.

If full payment is not made within 14 days from the date of invoice (or in the case of quarterly advance billing of recurring charges, within 45 days from the date of invoice) Cysure shall be entitled to late payment charges. Such charges will be calculated at a monthly rate of 2% of the invoice amount, unless otherwise governed by applicable law.

Cysure's rights relating to late payment charges shall be in addition to any other right that Cysure may have in the event that you fail to promptly make full payment due to Cysure under this Agreement.

Cysure shall be entitled to require payment in advance of delivery or other security for payment before performing the services hereunder.

If any authority imposes a duty, tax, levy, or fee, upon any transaction under this Agreement, you agree to pay that amount as a precondition to Cysure providing or continuing to provide its services hereunder.

## 5. Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, Cysure may require changes to the terms of this Agreement and Product and Service offerings by giving you not less than two months' written notice, such changes not to be retrospective. They shall apply, as of the effective date Cysure specifies in the notice, to new orders, renewals, and ongoing transactions that have yet to expire (except those changes to licence termination terms are effective only for new orders). For ongoing transactions with a defined renewable contract period, Cysure may defer the effective date of a notified change until the end of the current contract period if (i) the change materially adversely affects your current contract period, and (ii) you can demonstrate the change is unreasonable in all the circumstances.

You agree that any of the following actions (or failure to act) by you will be deemed to be an acceptance of a notified change, and will result in implementation of the change for all applicable transactions as of the specified effective date:

1. you place a new order for a Product or Service after the specified effective date;
2. you do not object to renewal for a Product or Service offering within 30 days after notification of the change; or
3. you do not request either deferral of the change effective date until the end of the current contract period or termination per current Agreement terms for a Product or Service offering ongoing transaction within 30 days after notification of the change.

Changes to charges for Products and Services will be implemented as described in the Charges and Payment section above.

In any other circumstances, for any change to be valid, both of us must sign it. Additional or different terms in any written communication from you (such as an order) are void and shall be of no effect.

## 6. Cysure Business Partners

Cysure has signed agreements with certain organisations (called "Cysure Business Partners") to promote, market, and support certain Products and Services. When you order non-Cysure Products or non-Cysure Services (marketed to you by Cysure) under this Agreement, it is hereby agreed that the original manufacturer is responsible for providing the Products or Services to you under the warranties and other terms of their agreements. Cysure is not responsible for 1) the actions of Cysure Business Partners, 2) any additional obligations they have to you or 3) any products or services that they supply to you either under their agreements or through Cysure.

## 7. Patents and Copyrights

For the purposes of this section, the term "Product" includes Materials and Machine Code.

If a third-party claims that a Product Cysure provides to you infringes that party's' patent or copyright or other intellectual property rights, then:

1. In a case where such product has been produced or created by Cysure and Cysure is the owner of the intellectual property rights therein, you will:
  - i. promptly notify Cysure in writing of the claim; and

- ii. Allow Cysure to have the conduct and control of all discussions and negotiations and cooperate with Cysure in the defence of any related or settlement negotiations, court proceedings, arbitrations or other steps aimed at addressing or dealing with such claims;
2. In the case of such Product having been produced or created by a supplier or sub-contractor to Cysure, then you agree that such supplier or subcontractor shall have the conduct of any defence, discussions, or negotiations, and that you will promptly notify such supplier in writing of the details of the claim, and that you will copy all correspondence in that respect to Cysure. In addition, you will not hold Cysure responsible in any part for any alleged infringement in relation to such Product.

### **Remedies**

If such a claim regarding a Cysure Product or materials is made or appears likely to be made, you agree to permit Cysure to modify the Product, or replace it with one that is at least functionally equivalent. If Cysure determines that none of these alternatives is reasonably available, you agree to forthwith return the Product to Cysure on its written request. Cysure will then give you a credit equal to:

1. for Cysure Equipment, your net book value provided you have followed generally accepted accounting principles;
2. for a Cysure Program, the amount paid by you or 12 months' charges (whichever is less); and
3. for Materials, the amount you paid Cysure for the creation of the Materials.

The parties hereby agree that this is Cysure's entire obligation to you regarding any claim of infringement, to include all or any consequential losses or costs.

The parties hereby agree that Cysure shall have no obligation to you regarding any claim relating to non-Cysure Products or Materials.

### **Claims for which Cysure is Not Responsible**

Cysure has no obligation regarding any claim based on any of the following:

1. anything you provide which is incorporated into a Product or Cysure's compliance with any designs, specifications, or instructions provided by you or by a third party on your behalf;
2. your modification of a Product, or a Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of a Product with other products not provided by Cysure as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that Cysure did not provide, or the distribution, operation or use of a Product for the benefit of a third party outside your Enterprise; or
4. infringement by a non-Cysure Product, Program, Equipment or Materials alone.

## **8. Limitation of liability**

1. The following provisions set out the entire financial liability of Cysure (including any liability for the acts or omissions of its employees, agents and sub-contractors) to you in respect of:
  - (a) any breach of this Agreement Contract, any Transaction Documents and Attachments;
  - (b) any use made by you of the Services, the Materials, any Products or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement, any Transaction Documents and/or any Attachments.
2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement, any Transaction Documents and/or any Attachments.
3. Nothing in these conditions excludes the liability of Cysure:
  - (a) for death or personal injury caused by the Cysure' negligence; or
  - (b) for fraud or fraudulent misrepresentation.
4. Subject to condition 1.8.2 and condition 1.8.3:
  - (a) Cysure shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of:
    - (i) profits; or
    - (ii) sales; or
    - (iii) revenue; or
    - (iv) turnover; or
    - (v) business; or
    - (vi) anticipated savings; or
    - (vii) goods; or
    - (viii) contract; or
    - (ix) use.
  - (b) Cysure shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
    - (i) loss or corruption of data or software or information; or
    - (ii) depletion of goodwill or similar losses; or
    - (iii) any special, indirect, consequential or pure economic loss, liquidated or punitive damages, costs, damages, charges or expenses; or
    - (iv) any intellectual property infringement claims; or
    - (v) claims relating to computer virus', logic bombs, or Trojan horses; or
    - (vi) claims relating to obscenity, blasphemy or pornographic material; or
    - (vii) claims relating to date recognition; or
    - (vii) claims relating to or resulting from war, terrorism or nuclear risks.
  - (c) Subject to section 1.7, Cysure' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or a Transaction Document and Attachments, for each claim or series of claims, shall be limited to \$200,000 (two hundred thousand US Dollars) or the price paid for the Services, Materials and/or Programs (whichever is applicable) in the year in which the liability arises, whichever is the lowest.
  - (d) This section 1.8 shall also apply to Cysure' subcontractors and Program developers and sets out the maximum amount for which Cysure and such subcontractors and Program developers are collectively responsible.

## **9. Indemnity**

You will hold harmless and indemnify Cysure and its affiliates, officers, agents, and employees from any claim, suit or action arising from or related to the use of the Services or Products or violation of these terms, including any liability or expense arising from claims, losses, damages, suits, judgments, litigation costs and attorneys' fees.

## **10. Force Majeure**

Any delay or failure by a party to perform its obligations hereunder shall be excused if and to the extent that it was caused by an event or occurrence beyond the reasonable control of that party and without fault or negligence ("Force majeure"). Force majeure includes, but is not limited to, acts of God, acts of any governmental authority (valid or not), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, terrorist acts, injunctions or judicial orders. A party invoking a case of Force majeure must notify the other party in writing (including the expected duration of the delay) within ten days of the occurrence of the case of Force majeure. If the delay lasts more than 30 days, or if the party claiming Force majeure does not provide the other party with sufficient assurances that the delay will end within 30 days, the other party may terminate this agreement upon written notice to the party claiming force majeure.

## **11. General Principles of our Relationship**

1. Neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
2. All information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
3. Each of us is free to enter into similar agreements with third parties.
4. Each of us grants the other only the licences and rights specified. No other licences or rights (including licences or rights under patents) are granted or shall be implied.
5. To the extent permissible under applicable law, each of us may communicate with the other by electronic means and such communication shall be binding on the parties.
6. Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.
7. Neither of us will bring any legal action arising out of or related to this Agreement more than two years after the cause of action arose.
8. Neither of us is responsible for failure to fulfil any obligations due to causes beyond its direct control.
9. Neither of us may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so shall be deemed to be of no effect. Neither of us will unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organisation by merger or acquisition does not require the consent of the other. Cysure is also permitted to assign its rights to payments under this Agreement without obtaining your consent. Notwithstanding the above Cysure shall be entitled to divest any portion of its business.
10. You agree not to resell any Service without Cysure' prior written consent. Any purported sale shall entitle Cysure to immediately terminate this contract and to recover damages for breach thereof.
11. You agree that this Agreement will not create any right or cause of action for any third party, nor will Cysure be responsible for any third-party claims against you except as described in



the Patents and Copyrights section above or as permitted by the Limitation of Liability section above for bodily injury (including death).

12. You agree to acquire Equipment with the intent to use it within that portion of your Enterprise physically located within the United States and not for reselling, leasing, or transferring to a third party. However, you may arrange lease-back financing for the Equipment.
13. You agree to allow Cysure to install engineering changes (such as those required for safety) on a Machine. Any parts Cysure removes become Cysure' property or the property of the maintenance company or service provider in line with contractual agreements made by the manufacturer. You warrant that you have the permission from the owner and any lien holders to transfer ownership and possession of removed parts to the appropriate organisation.
14. You agree that you are responsible for the results obtained from the use of the Products and Services.
15. You agree to provide Cysure with sufficient, free, and safe access to your facilities and systems to enable Cysure to fulfil its obligations.
16. You agree to allow Cysure Limited and its subsidiaries, parent companies and successors and assignees to store and use your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of Cysure Limited and its subsidiaries for uses consistent with their collective business activities, including communicating with you (for example, for processing orders, for promotions, and for market research).
17. You agree to comply with all applicable export and import laws and regulations.

## **12. Agreement Termination**

Either of us may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice thereof and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to both of our respective successors and assignees.

## **13. Geographic Scope and Governing Law**

Except as may be agreed between the parties, or as legally required, all your rights, all Cysure' obligations and all licences (except as otherwise specifically granted) are valid only in the United States.

The laws of California govern this Agreement and both of us agree to submit all disputes relating to the Agreement to the exclusive jurisdiction of the California Courts. Except where required by law, Cysure has no obligation to provide any Products or Services outside the United States.

If any provision of this Agreement is held to be invalid or unenforceable, such provisions shall be severed and the remaining provisions of this Agreement shall remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

#### **14. Personnel**

Each of us is responsible for the supervision, direction, control, and compensation of our respective personnel.

The parties agree that Cysure may nominate its personnel for the contract and may subcontract a Service, or any part of it, to subcontractors selected by Cysure.

#### **15. Materials Ownership and Licence**

Cysure will specify Materials to be delivered to you. Cysure may identify them as being “Level I Materials,” “Level II Materials,” or otherwise as they may specify. If not specified, Materials will be considered Level II Materials.

Level I Materials are those, created during the Service performance period, in which you will have all right, title, and interest (including ownership of copyright). Cysure will retain one copy of the Materials. You hereby grant Cysure 1) an irrevocable, nonexclusive, world-wide, paid-up licence to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Level I Materials and 2) the right to authorise others to do any of the former.

Level II Materials are those, created during the Service performance period or otherwise (such as those that pre-exist the Service), in which Cysure or third parties have and retain all right, title, and interest (including ownership of copyright). Cysure will deliver one copy of the specified Materials to you. Cysure grants you an irrevocable, nonexclusive, world-wide, paid-up licence to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of Level II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licences granted in this section.

#### **16. Automatic Service Renewal**

Renewable Services renew automatically for a same length contract period unless either of us provides written notification (at least 45 days prior to the end of the current contract period) to the other of its decision not to renew.

#### **17. Termination and Withdrawal of a Service**

Either of us may terminate a Service if the other does not meet its obligations concerning the Service provided the one who is not complying is given written notice and reasonable time to comply.

You may terminate a Service on notice to Cysure provided you have met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.



You agree to pay Cysure for 1) all Services Cysure provides and any Products and Materials Cysure delivers through Service termination, 2) all expenses Cysure incurs through Service termination, and 3) any charges Cysure incurs in terminating the Service.

Cysure may withdraw a Service or support for an eligible Product on one months' written notice to you. If Cysure withdraws a Service for which you have prepaid and Cysure has not yet fully provided it to you, Cysure will give you a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

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