

MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

NOT FOR EDITING OR NEGOTIATION

Effective Date: MARCH 30, 2021

These Master Services Agreement Terms and Conditions, including all attachments, addenda, schedules and exhibits, and documents at referenced URLs (collectively, this “**Agreement**”) are entered into by and between Cysiv, Inc. (“**Cysiv**”), and the entity identified as the “**Customer**” (“**Customer**”) in the signature block of the Cysiv Service Order executed by and between Cysiv and Customer (the “**Service Order**”), as of the date specified in such Service Order (the “**Effective Date**”).

1. Definitions

In addition to initially capitalized definitions set forth elsewhere in this Agreement and the Cysiv Privacy Policy, which is located on Cysiv’s website and is incorporated herein by this reference (including all policies, procedures, and Cysiv websites made a part thereof), the following terms, as used in this Agreement, shall have the definitions set forth below and shall be equally applicable to the singular, plural, and derivative forms thereof.

“**Affiliate**” means, as to a Party, each person that is Controlled by such Party, that Controls such Party, or that is under common Control with such Party.

“**Applicable Law**” means all mandatory national, federal, provincial, state, municipal, and local laws, statutes, acts, ordinances, regulations, rules, codes, treaties, executive orders, supervisory requirements, official directives, circulars, opinions, interpretive letters and other official releases that are applicable from time to time to a Party’s performance of its obligations and exercise of its rights hereunder, including data protection and privacy laws, corrupt activities and illegal payment laws, economic/trade sanctions rules and regulations and export and import laws.

“**Confidential Information**” has the meaning set forth in [Section 4.1](#) below.

“**Control**” means the direct or indirect ownership of more than fifty percent (50%) of the equity shares or interests (or the maximum equity ownership permitted by Applicable Law, if such Party is not permitted to own more than 50%) entitled to vote for the directors or other management of such Party or the equivalent, but only for as long as such ownership relationship continues to exist. Upon request, each Party agrees to confirm in writing to the other Party the status of any or all Affiliates.

“**Customer Materials**” has the meaning set forth in [Section 3.4\(b\)](#) below.

“**Customer Networks**” means Customer’s information technology networks, systems, assets, files, information, data and Required Products.

“**Customer’s Clients**” means any client or customer of Customer, or any other party with which Customer has a business relationship or to which Customer owes or has any obligations or duties under Applicable Law, privacy policies or other policies of Customer, website terms of use or contract.

“**Data of Customer’s Clients**” means data and information obtained or received from, regarding, concerning or otherwise relating to Customer’s Clients.

“**Deliverables**” means the deliverables defined in the Service Order, which Cysiv agrees to provide to Customer pursuant to the Service Order.

“**Effective Date**” means the Effective Date as defined in the introductory paragraph of this Agreement.

“Hardware” means any hardware provided to Customer for Customer’s use as part of the Services, under and subject to the Service Order.

“Intellectual Property Rights” means, on a worldwide basis, any and all tangible and intangible: (i) copyrights; (ii) trademarks, service marks, logos, trade dress, trade names and the goodwill associated therewith; (iii) rights relating to know-how or trade secrets; (iv) patents; (v) rights in domain names, universal resource locator addresses, telephone numbers (including toll free numbers) and similar identifiers; (vi) all other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (vii) all registrations, initial applications (including intent to use applications), renewals, extensions, continuations, divisions or reissues of any of the foregoing now or hereafter in force (including any rights in any of the foregoing).

“Party” or **“Parties”** means each of the persons entering into this Agreement, in the singular, and both of the persons entering into this Agreement, in the plural. All other persons, such as Affiliates and contractors of each Party, are third parties without rights or benefits hereunder.

“Process” means any operation or set of operations which is performed on Third-Party Data, whether or not by automated means, such as collection, recording, organization, structuring, storing, adapting, altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning, aggregating, or combining.

“Required Access” means the Customer Networks identified by Cysiv for the purposes of Cysiv providing the Services and Deliverables described in this Agreement.

“Required Access Rights” means the full license, rights and authorizations obtained by Customer, at its sole costs and expense, that are necessary to allow Cysiv to access or use Customer Networks in order to provide the Services and Deliverables.

“Required Products” means the third-party Hardware, Software, appliances, telecommunications, Internet and other connectivity (but only the model, version, release or other technical specifications of the foregoing that are supported by Cysiv from time to time) as may be specified by Cysiv in the Service descriptions for each applicable Service set forth in the Service Order.

“Service Order” means the Service Order as defined in the introductory paragraph of this Agreement.

“Service Period” means, with respect to each Service, the period for which Customer is subscribing to the Services ordered in order to obtain the associated pricing, as specified in the Service Order.

“Services” means the Cysiv services to be provided to Customer under the Service Order. Cysiv’s Affiliates and third-party contractors may provide the Services to Customer on behalf of Cysiv. Customer acknowledges and agrees that such Affiliates and third-party contractors will be entitled to provide the Services to Customer.

“Software” means any software owned or licensed by Cysiv and provided to Customer under the Service Order or used by Cysiv to provide the Services under the Service Order, whether stand alone or as incorporated in Hardware, including any APIs, guides and documentation provided therewith.

“Term” means the term of this Agreement as defined in [Section 6.1](#).

“Third-Party Authorization” means, with respect to Third-Party Data, all rights necessary (whether by valid consent of, approval or authorization from, or agreement with such third party, or as otherwise required under Applicable Law, contract or terms of use with such third party, or Customer’s own policies and procedures regarding Third-Party Data) to allow Cysiv to have the Required Access necessary to provide the Services and Deliverables, to permit Cysiv to use, disclose, and exercise such other rights as are described in

this Agreement with respect to such Third-Party Data, or to otherwise Process such Third-Party Data under this Agreement.

“**Third-Party Data**” means any files, information or data concerning, belonging, or relating to a third party or to which such third party otherwise has rights to authorize, restrict, limit or prevent further disclosure or Processing.

“**Vulnerability**” means any potential or actual computer, information, cyber, software, technology or similar security risks, threats, unwanted content, viruses, vulnerabilities, malware, issues, alerts, events, indicators or incidents.

“**Work Product**” means all deliverables (including Deliverables), data, information, reports, software, works of authorship, materials, inventions and discoveries created, developed or reduced to practice by Cysiv or its personnel or contractors as part of or in the course of providing the Services. For clarity, Work Product does not include Customer’s Confidential Information.

2. Rights and Obligations

2.1 Purchase and Provision of Services. All Services to be provided by Cysiv hereunder shall be purchased under the Service Order. Unless explicitly included in the Service Order, the Services do not include any Required Products. Any Required Products included in the Services will be subject to the terms and conditions governing Customer’s license or use of such Required Products, as set forth in the Service Order. The Service Order is subject to and governed by the terms and conditions of this Agreement. The Service Order will cover only the Customer entity specifically identified therein.

2.2 Required Products.

(a) **Not Included in Services.** Customer shall, at its sole cost and expense, procure and maintain during the Service Period all Required Products and all appropriate licenses and rights thereto, including rights of use and rights of access, for Customer, Customer’s Affiliates (if applicable) and for Cysiv, its Affiliates and third-party contractors, as necessary or desirable for Cysiv to provide the Services.

(b) **Included in Services.** Notwithstanding Section 2.2(a) above, if and to the extent any such Required Products are explicitly included in the Services as set forth in the Service Order, Cysiv shall provide such Required Products as part of the Services pursuant to and in accordance with the terms and conditions of the Service Order. In such event, any licenses to the Required Products will remain the property of Cysiv.

2.3 Required Access. Customer shall provide the Required Access and Required Access Rights to Cysiv. Customer agrees and acknowledges that Cysiv will be unable to provide the Services to Customer unless Customer provides the Required Access and Required Access Rights to Cysiv.

2.4 Required Decisions. Customer shall timely provide to Cysiv all such decisions and/or approvals relating to the Services and Deliverables that are identified or requested by Cysiv (the “**Required Decisions**”). In the event that Customer does not timely provide a particular decision or approval to Cysiv (as determined by Cysiv), Cysiv shall not be obligated to provide any affected Service or Deliverable.

2.5 Installation and Configuration.

(a) **Customer Responsibilities.** Customer shall, at its sole cost and expense, install, configure, and set up all Required Products and any other Software, Hardware or other products, as required by Cysiv, to ensure that all data and information necessary or appropriate for Cysiv

to provide the Services is delivered and transmitted to and received by Cysiv in the form, format, and timing required by Cysiv.

- (b) **Additional Professional Services.** Any professional services work in addition to or separate from installation services may be provided by Cysiv at Cysiv's then-current rates under a separate service order to be executed by the Parties.

2.6 Fees.

- (a) **Invoicing and Payment.** Cysiv shall invoice Customer for the fees for the Services and Deliverables in accordance with the Service Order. Unless otherwise set forth in the Service Order, Customer shall pay each invoice within 30 days after Customer's receipt thereof, without deduction, setoff or delay for any reason, including circumstances arising under any other service order executed by the Parties.
- (b) **Overdue Payments.** If any payments are not received from Customer by the due date, then such charges will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date Cysiv receives such payment.
- (c) **Suspension of Services.** In addition to the foregoing, if any payment from Customer is not received by Cysiv within 90 days of the due date, Cysiv may, without limiting its other rights and remedies, suspend the provision of Services until such payment is received by Cysiv.

2.7 Taxes. The fees stated in the Service Order are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including sales, services, use, and value-added taxes, but excluding taxes based on the net income of Cysiv) which are imposed by or under the authority of any government or any political subdivision thereof on the fees for any of the Services, Software, Hardware, and/or other products shall be borne by Customer and shall not be considered a part of, a deduction from or an offset against such fees. All payments due to Cysiv shall be made without any deduction or withholding on account of any tax, duty, charge or penalty except as required by law in which case the sum payable by Customer in respect of which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, Cysiv receives and retains (free from any liability in respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding.

3. **Intellectual Property**

3.1 Intellectual Property Rights in Work Product, Services and Software. Subject to any licenses or use rights granted to Customer under this Agreement and the Service Order, all Intellectual Property Rights in the Work Product, Services and Software are and will remain solely and exclusively the property of Cysiv. Customer agrees that all work product, inventions, discoveries, ideas, concepts, designs, specifications, feedback, observations, suggestions, reports, data, software, information systems, processes, methods, formulas and techniques, as well as improvements thereof or know-how related thereto, which relate to the Work Product, Services or Software shall be the sole property of Cysiv.

3.2 License from Cysiv for any Software and Required Products included in Services. To the extent any Software or Required Products are included as part of the Services in the Service Order and subject to Customer's compliance with this Agreement, including payment of all applicable fees and payments owed to Cysiv hereunder, Cysiv grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license and right to use such Software and/or Required Products, for

its internal business purposes only and for no other purposes, for the Service Period under the conditions and requirements set forth in the Service Order.

3.3 Restrictions. Customer is expressly prohibited from copying, sublicensing, selling, renting, leasing or otherwise distributing copies of the Work Product, Services or Software or permitting either direct or indirect use of the Work Product, Services or Software by any third party, unless and only to the extent as may be explicitly permitted in the Service Order. Customer shall not, and shall not permit any third party to: (a) create derivative works based on the Work Product, Services or Software or copy any features, functions or graphics of the Work Product, Services or Software; (b) copy any part or content of the Work Product, Services or Software; (c) reverse-engineer the Work Product, Services or Software; or (d) access the Work Product, Services or Software in order to (i) build a competitive product or service, or (ii) copy any features, functions or graphics of the Work Product, Services or Software.

3.4 License from Customer.

(a) **Vulnerabilities.** Notwithstanding the provisions of Section 4 of this Agreement, Customer grants to Cysiv a non-exclusive, royalty-free, fully paid-up, sublicensable, transferrable license, in perpetuity, for all business purposes, to use, reproduce, distribute, display, create derivative works based on, and disclose to third parties all data and information provided or made available by Customer or its personnel, contractors, or representatives or otherwise learned or observed by Cysiv in connection with the Services regarding: (i) potential or actual Vulnerabilities; (ii) the detection, identification, blocking, removal, remediation, or resolution thereof; or (iii) all logs and data, coming from the Customer Network, whether from Required Products or Cysiv tools or agents deployed within the Customer Network, including any Cysiv connectors, Cysiv collectors, or otherwise. Except as required by Applicable Law, Cysiv may not, without Customer's approval, identify Customer in connection with its disclosure of the data and information licensed to Cysiv under this Section to third parties.

(b) **Customer Materials.** To the extent Customer delivers to Cysiv, or provides Cysiv access to, any software, specifications, documentation, data, hardware, tools, know how, methodologies, processes and/or any other materials, information or intellectual property owned, leased, and/or licensed by Customer (collectively, "**Customer Materials**"), Cysiv will have the right to use such Customer Materials solely for Customer's benefit and solely for the purpose of performing its obligations to Customer under this Agreement. Notwithstanding the foregoing, Cysiv shall have the right to compile, collect, copy, modify, and use anonymous and aggregated data generated from or based on Customer's data and/or Customer's use of the Services (the "**Anonymous Aggregated Data**") solely for analytical and ongoing product development and improvement purposes only (and under no circumstances shall Customer be personally identified as part of such use of the Anonymous Aggregated Data). Except for the limited rights expressly granted above, Customer does not grant to Cysiv any other rights or licenses in or to the Customer Materials. Cysiv will return to Customer all Customer Materials in its possession (excluding the Anonymous Aggregated Data) upon Customer's request.

4. Confidential Information

4.1 Definition. As used in this Agreement, "**Confidential Information**" means all confidential or proprietary information belonging to either Party hereto (the "**Disclosing Party**") and disclosed or made available to the other Party (the "**Receiving Party**"), whether orally, in writing, by computer

memory or other media, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes all trade secrets, pricing information, forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if: (a) the Disclosing Party has taken reasonable measures to keep such information confidential; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information. Confidential Information shall include, but not be limited to, the terms of this Agreement, Data of Customer's Clients, and any information which concerns technical details of operation of any of Cysiv's Services or any of Cysiv's Software or Hardware offered, sold, provided or used to provide the Services hereunder. Confidential Information shall not include, however, any information which, as demonstrated by the Receiving Party: (i) was publicly known prior to the time of disclosure by the Disclosing Party, or becomes publicly known after disclosure by the Disclosing Party through no action or inaction of the Receiving Party in violation of this Agreement; (ii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party; (iii) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

- 4.2 Use of Confidential Information. The Receiving Party will only use and disclose the Disclosing Party's Confidential Information as reasonably necessary to exercise its rights and obligations under this Agreement and the Service Order. Any other use or disclosure to a third party is prohibited unless expressly permitted in writing by the Disclosing Party. The Receiving Party agrees to hold the Disclosing Party's Confidential Information in strict confidence and use reasonable measures to protect it as confidential. The Receiving Party shall be permitted to disclose Confidential Information to third parties only to the extent required by law, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement and, upon the request of the Disclosing Party, cooperates in good faith and at the expense of the Disclosing Party in any reasonable and lawful actions that the Disclosing Party takes to resist such disclosure or limit the information to be disclosed.
- 4.3 Return of Confidential Information. Upon written request by the Disclosing Party, the Receiving Party will promptly return or destroy all of the Disclosing Party's Confidential Information, provided that the Receiving Party shall have the right, subject to the confidentiality requirements of this Agreement, to retain the Disclosing Party's Confidential Information only to the extent contained in the Receiving Party's (a) professional work papers, and (b) secure, archival computer back-up files maintained in the ordinary course of business. If so requested by the Disclosing Party, the Receiving Party shall promptly certify to the Disclosing Party that all Confidential Information has been returned or destroyed in compliance with this Section.

5. Representations, Warranties and Indemnifications

- 5.1 Customer Representations and Warranties. Customer represents and warrants to Cysiv that: (a) it has the corporate power and authority and legal right to enter into this Agreement and to fully perform its obligations under this Agreement; (b) it will not make any unauthorized representation

- or warranty to any third party relating to any Services, Software, Hardware or other products; (c) it has obtained and will obtain all required authorizations, consents, permissions, and rights to provide and give access and rights to any and all Customer Materials, data, information, hardware, software and other products to Cysiv that Customer provides and gives access to Cysiv in connection with Cysiv's provision of the Services; (d) providing and granting access to such Customer Materials and data identified in clause (c) to Cysiv complies with Customer's own privacy policies; (e) it has obtained all Required Access Rights described in Section 2.3 and will obtain and maintain all such Required Access Rights throughout the Term; and (vi) it shall at all times comply with all Applicable Laws.
- 5.2 Cysiv Representations and Warranties. Cysiv represents and warrants to Customer that it has the corporate power and authority and legal right to enter into this Agreement and to fully perform its obligations under this Agreement.
- 5.3 Disclaimer of Warranties. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 5.4 No Assurances. CYSIV DISCLAIMS AND CANNOT, AND DOES NOT HEREIN, PROVIDE ANY ASSURANCE, WARRANTY, OR GUARANTEE THAT THE RECEIPT, USE, OR IMPLEMENTATION OF THE WORK PRODUCT, SERVICES, SOFTWARE OR ANY INSTRUCTIONS IN CONNECTION WITH THIS AGREEMENT OR ANY RESULTS ACTUALLY OR PURPORTEDLY RELATED THERETO WILL ASSURE OR GUARANTEE, COMPLETE, OR PERFECT PROTECTION FROM AND AGAINST OR DETECTION, IDENTIFICATION, BLOCKING, REMOVAL, REMEDIATION, OR RESOLUTION OF ANY OR ALL VULNERABILITIES OR PRESENT OR FUTURE SECURITY ATTACKS, INTRUSIONS, INCIDENTS, BREACHES, OR THREATS TO CUSTOMER, CUSTOMER'S CLIENTS OR TO NETWORKS, SYSTEMS, ASSETS, INFORMATION, AND/OR DATA OF CUSTOMER, CUSTOMER'S CLIENTS OR ANY OTHER PARTIES, AND NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO IMPLY SUCH AN ASSURANCE OR GUARANTEE. FURTHER, CYSIV DOES NOT ASSURE, WARRANT, OR GUARANTEE THAT ANY SERVICES WILL BE CONTINUOUSLY AVAILABLE OR USE THEREOF UNINTERRUPTED, THAT ANY PERFORMANCE, FUNCTIONS, OR FEATURES OF THE SERVICES WILL MEET ANY REQUIREMENTS OF CUSTOMER, CUSTOMER'S CLIENTS OR ANY OTHER PARTIES, THAT THE SERVICES WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE, SECURITY, OR OTHER NEEDS OR REQUIREMENTS OF CUSTOMER, CUSTOMER'S CLIENTS OR ANY OTHER PARTIES, THAT THE SERVICES WILL DETECT, IDENTIFY, BLOCK, REMOVE, REMEDIATE OR RESOLVE SOME, ANY OR ALL VULNERABILITIES, OR THAT THE USE OF THE SERVICES WILL KEEP CUSTOMER, CUSTOMER'S CLIENTS OR THE NETWORKS, SYSTEMS, ASSETS, INFORMATION AND/OR DATA OF CUSTOMER, CUSTOMER'S CLIENTS OR ANY OTHER PARTIES FREE FROM ANY OR ALL VULNERABILITIES OR SAFE FROM PRESENT OR FUTURE SECURITY ATTACKS, INTRUSIONS, INCIDENTS, BREACHES, OR THREATS.
- 5.5 Indemnification.
- (a) **By Cysiv.** Subject to the remainder of this Section 5.5, Cysiv shall defend Customer against any third-party claim, demand, suit or proceeding (each, a "**Claim**") made or brought against Customer (the "**Indemnitee**") to the extent such Claim is based upon an allegation that the use of the Services, as permitted hereunder, infringes or misappropriates the Intellectual Property Rights of a third party (each, a "**Covered Claim**"), and shall indemnify the Indemnitee for any damages, reasonable attorneys' fees and costs finally awarded against the Indemnitee as a result of, and for amounts paid by the Indemnitee under a court-

approved settlement of, a Covered Claim Against the Indemnitee. Notwithstanding the foregoing, Cysiv will have no obligation to defend, indemnify or hold harmless Customer against any Claim that is the result of specifications or modifications of the Services that were designed or requested by Customer.

- (b) **By Customer.** Customer shall indemnify, defend, and hold Cysiv harmless from all Claims asserted against Cysiv that arise from or relate to (i) any breaches of this Agreement by Customer; or (ii) any claims that Customer has breached its obligations to Customer's Clients.
- (c) **Indemnification Conditions.** In each instance, indemnification shall be made subject to the following conditions: (i) the indemnitee must promptly notify the indemnitor in writing of any claim, demand or cause of action made by any third party; (ii) the indemnitee must allow the indemnitor to assume full responsibility for conducting any defense (including the negotiation of any settlement, provided that the indemnitor may not settle any claim unless the settlement unconditionally releases the indemnitee of all liability) to any such third-party claim, demand or cause of action, including but not limited to the selection of counsel to represent the indemnitee in such defense; and (iii) the indemnitee must cooperate fully with the indemnitor in defending against any such third-party claim, demand or cause of action.
- (d) **Infringement Remedies.** In the event of a claim against Customer, or if Cysiv reasonably believes the Services (or part thereof) may infringe or misappropriate the Intellectual Property Rights of a third party, Cysiv may, in its discretion and at no cost to Customer, (i) modify the affected Services so that they no longer infringe or misappropriate, without breaching Cysiv's warranties hereunder, (ii) obtain a license for Customer to continue to use the affected Services in accordance with this Agreement, or (iii) terminate Customer's rights to use the affected Services upon 30 days' prior written notice and refund to Customer any prepaid fees covering the remainder of the applicable term of the affected Services after the effective date of termination.

6. Term and Termination

- 6.1 **Term.** The term of this Agreement commences as of the Effective Date and continues for the term of the Service Order or until either Party terminates in accordance with the provisions set forth herein (the "Term").
- 6.2 **Termination for Material Breach.** In the event that: (a) either Party commits any material breach of any of the representations, warranties, covenants, or obligations contained in this Agreement or the Service Order; and (b) such material breach is not cured within 30 days (or within five days with respect to a failure to make any payment required hereunder) after the non-breaching Party gives to the breaching Party written notice of such material breach, then the non-breaching Party will be entitled to terminate this Agreement and the Service Order immediately upon written notice thereof to the breaching Party.
- 6.3 **Bankruptcy.** In the event that either Party: (a) voluntarily or involuntarily becomes the subject of a petition in bankruptcy or of any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors that is not dismissed or discharged within 60 days after being commenced; (b) admits in writing its inability to pay its debts generally as they become due (or takes any corporate action tantamount to such admission); (c) makes an assignment for the benefit of its creditors; or (d) ceases to do business as a going concern; then in any such instance, the other Party will be entitled to terminate this Agreement and the Service Order immediately upon written notice thereof to the first Party.

- 6.4 Effect of Termination. Upon the expiration or earlier termination of this Agreement, all licenses granted to Customer hereunder will terminate and Customer shall cease using the Services in any form and engaging in other activities hereunder.
- 6.5 Rights and Remedies upon Termination. In the event of any termination pursuant to either Section 6.2 or Section 6.3, then the terminating Party will be entitled to all other rights and remedies which such Party may have under this Agreement and under applicable law.
- 6.6 Survival. The terms and conditions of this Agreement regarding confidentiality, indemnification, limitation of liability, accrued payment obligations and all others that by their sense and context are intended to survive the execution, delivery, performance, termination or expiration of this Agreement survive and continue in effect.

7. **Limitation of Liability**

EXCEPT FOR BREACHES OF CONFIDENTIALITY AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY AND ALL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, FROM ANY CLAIM OR CAUSE OF ACTION, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO CYSIV UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING SHALL IN NO WAY LIMIT CUSTOMER'S OBLIGATIONS TO PAY FOR THE SERVICES AS SET FORTH IN THE SERVICE ORDER AND/OR SECTION 2.6 OF THIS AGREEMENT.

8. **Exclusion of Certain Damages**

EXCEPT FOR BREACHES OF CONFIDENTIALITY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES OF ANY KIND, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, AND INCLUDING DAMAGES FOR INTERRUPTION OF BUSINESS, PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS, OR THE LIKE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES.

9. **General Provisions**

- 9.1 Notice. Any notice or other communication under this Agreement given by either Party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified in the Service Order.
- 9.2 Entire Agreement. This Agreement (including the Service Order), and any schedules or exhibits hereto or thereto, constitute the entire understanding and agreement between Cysiv and Customer with respect to any Software, Hardware and/or Services hereunder or thereunder, and supersedes any and all prior or contemporaneous oral or written representation, understanding, agreement or communication relating thereto.
- 9.3 Amendments and Waiver. Any term or provision of this Agreement (including the Service Order) may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the Parties to be bound thereby, and this Agreement may not be modified solely by submission of a purchase order or similar instrument referencing this Agreement. Except to the extent that the Service Order explicitly identifies an amendment to Section 3 of this Agreement, the Service Order shall not be construed to create any Intellectual Property Right(s) of Customer or any third party.

- 9.4 Force Majeure. Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other events beyond the reasonable control of such Party, provided that the Party relying upon this provision: (a) gives prompt written notice thereof to the other Party, and (b) takes all steps reasonably necessary to mitigate the effects of the force majeure event; provided further, that in the event a force majeure event extends for a period in excess of 30 days in the aggregate, either Party may immediately terminate this Agreement upon written notice to the other Party.
- 9.5 Severability. In the event that any provision of this Agreement should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained shall not, in any way, be affected or impaired thereby.
- 9.6 Compliance with Law, Export Requirements, and Foreign Reshipment Liability. Each Party agrees that it shall comply with all applicable federal, state and local laws, regulations, and export requirements in connection with its performance under this Agreement. Regardless of any disclosure made by Customer to Cysiv of an ultimate destination of the Software, Hardware, or technical data acquired from Cysiv and, notwithstanding anything contained in this Agreement to the contrary, Customer will not modify, export, or re-export, either directly or indirectly, any Software, Hardware, or technical data, or portions thereof, without first obtaining any and all necessary licenses from the United States government or agencies thereof or any other country that requires an export license or other governmental approval at the time of modification, export, or re-export. Cysiv shall have the right to suspend performance of any of its obligations under this Agreement, without any prior notice being required and without any liability to Customer, if Customer fails to comply with this provision.
- 9.7 Assignment. Neither Party may assign or transfer this Agreement or any obligation hereunder without the prior written approval of the other Party, except that, upon written notice, a Party may assign its rights and delegate its obligations under this Agreement, in whole or in part, without the approval of the other party (a) to an entity which acquires all or substantially all of the assets of the assigning party; (b) to any subsidiary or affiliate; or (c) to any successor in a divestiture, merger, or acquisition involving the assigning party. Any assignment in violation of this Section 9.7 shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.
- 9.8 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, joint venturer, or partner of the other Party. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. Each Party shall bear its own costs and expenses in performing this Agreement.
- 9.9 Governing Law, Jurisdiction, Venue. This Agreement (and the rights and obligations of the Parties with respect to their relationship under this Agreement) are governed by and must be construed and enforced in accordance with the laws of the State of Texas, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction. The Parties hereto consent to the jurisdiction of all federal and state courts in Texas, and agree that venue lies non-exclusively in Dallas, Texas.
- 9.10 Third Party Beneficiaries. No provisions of this Agreement are intended nor shall be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any other party.

- 9.11 Order of Precedence. In the event of a conflict between this Agreement and the Service Order, the terms of the Service Order shall govern, but only in regard to the specific Service provided under the Service Order.
- 9.12 Co-marketing. Customer agrees to participate in the Cysiv Global Reference Program, which provides a number of opportunities to showcase Customer's success, including award submissions, press activities, creation of a success story, jointly participating in industry events, and industry analyst activities.
- 9.13 English Version. In the event this Agreement is translated in any language other than the English language, then in the event of a conflict between the English language version and the translated version, the English language version shall prevail in all respects.
- 9.14 Publicity. Any and all press releases and other public announcements relating to the existence or terms of this Agreement or the related transactions between Cysiv and Customer must be approved in advance by the Parties in writing.