

# END USER LICENCE AGREEMENT FOR CUSTO MED SOFTWARE

## 1. Terms of the Licence Agreement

This Licence Agreement ("EULA"- End User Licence Agreement) applies to the relationship between the purchaser – hereinafter referred to as the Customer – and the company custo med GmbH – hereinafter referred to as custo med.

BY INSTALLING OR USING CUSTO MED'S SOFTWARE, THEIR UPGRADES OR UPDATES, THE ASSOCIATED MEDIA OR INTERNET-BASED SERVICES, THE CUSTOMER EXPRESSLY INDICATES HIS ACCEPTANCE OF THE PROVISIONS OF THIS LICENCE AGREEMENT. OTHERWISE, THE CUSTOMER IS NOT AUTHORISED TO INSTALL THE SOFTWARE, REPRODUCE OR USE THE SOFTWARE OR MEDIA IN ANY WAY.

In addition, explicit reference is made to custo med's General Terms and Conditions (T&C), which are also included in this Licence Agreement and which form an integral part thereof. The T&C are available on the Internet at [www.customed.de](http://www.customed.de). On request, they will also be sent to you.

custo med licences the software to the Customer as a licence holder solely in accordance with the following licensing terms.

## 2. The Subject of the Granting of Licences

### 2.1 The Subject Matter of the Agreement

The subject of this Licence Agreement is the right to use the software delivered on a data carrier or as a download from custo med and/or its licensors.

The term software includes:

- computer programs, data files, images, databases, database systems or similar elements which are normally distributed or used with computer software products, versions, updates and upgrades or other additions,
- all related data carriers, program descriptions, Operating Manuals and any other documentation (contains physical, electronic and online documents),
- the licence key belonging to the Agreement and/or the associated software protection key (hereinafter referred to as custo diagnostic software protection).

The Customer is only granted ownership of the physical original data carrier on which the software is stored, but not of the software itself. The Customer acknowledges that the software is a protectable computer program as defined by Article 2, Paragraph 1 Number 1, Article 69a of German Copyright law (UrhG) and, that custo med is the licensor as defined by German Copyright Law. The copyright also includes the program code, documentation, appearance, structure and organisation of program files, program name, logos and other display formats in the software.

As the purchaser of the software, the Customer is only granted the right to use the copyright-protected work and to use the software for his own purposes.

The scope and the quality of the usage right depends foremost on the product description (Operating Manual) included with the software and the given specification of the program licences of the respective licence model and/or system purchased.

The Customer is authorised to make a copy of the data carrier or the software provided it is for backup purposes only. He is obliged to either attach or include reference to the copyright notice of custo med in the copy.

The Customer acknowledges that all displays, results, automatic analysis and resulting unconfirmed reports obtained from the software should only be considered as suggestions and that for diagnosis and therapy purposes it is essential that the results are checked and assessed by a qualified physician.

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## 2.2 Use of the custo diagnostic Software as Stipulated by the Agreement

The Customer is authorised to install the software on as many single computers as required and/or on a storage medium of his choice (e.g. server).

The software must only be used in conjunction with the custo diagnostic software protection.

The Customer is required to carefully observe all instructions contained in the Operating Manual and any other instructions concerning the software and the modules, relating to his version, and to use the software for its intended purpose only.

## 2.3 Product-Specific Licence Agreement Relating to the custo viewer

The custo Viewer is a software which is available free of charge in the form of a CD or as a download which is identified as such and which can be used for an unlimited period and without the custo diagnostic software protection.

The software is licensed for read-access only and entitles the Customer to display the custo diagnostic analyses which were stored as a file. Analyses cannot be created or changed with this software.

The licence permits the duplication of analyses by printout.

## 2.4 Product-Specific Licence Agreement Relating to the DEMO Software

The DEMO software is a software which is available free of charge in the form of a CD or as a download and which can be used for an unlimited period and without custo diagnostic software protection.

The licence permits the use for demonstration purposes to illustrate and evaluate the custo diagnostic software only. The DEMO software's functions may be restricted and it is only intended to provide the end user with the option of saving DEMO analyses.

DEMO analyses cannot be transferred to the custo diagnostic software (full version).

## 3. Damage to or loss of the custo diagnostic software protection

In the event of a fault or damage, the custo diagnostic software protection shall only be replaced by custo med against a service fee, if the Customer can prove that he has duly acquired the right to use the licence. This is also required if the licence needs to be replaced as the Customer's computer system needs to be authenticated again.

custo med will not accept any liability or responsibility should the Customer lose the custo diagnostic software protection due to loss, theft or in any other way. custo med reserves the right to block any licenses stored in the custo diagnostic software protection if the loss is reported by the registered customer. Replacement of licences is only possible on presentation of a written declaration by the Customer or a police report and, for a service fee.

## 4. Upgrades and Updates

This Licence Agreement also applies to any upgrades, updates or additions and Internet-based services relating to the software that custo med may make available to the Customer, provided he has a valid licence for the previous software version or a lower version of the software.

This licence does not give the Customer an automatic right to any software upgrades or updates.

UPDATES are defined as new software versions in which the main version numbers have not changed. (The main version numbers are the first and second digits of the software version label. Example: The main version numbers of "1.2.3.4." are 1.2.)

Available UPDATES are provided by custo med free of charge via the authorised custo med dealers. The Customer must bear the costs of acquiring and/or installing the UPDATES.

## 5. Transfer of Rights / Amortisation

The Customer is authorised to transfer his rights to use the software resulting from this Licence Agreement in their entirety to a third party.

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custo med will consent to the transfer to a third party subject to the following conditions:

- a) The previous licence holder transfers to the third party all parts of the software product (original data carrier) including all component parts, any upgrades and updates, the custo diagnostic software protection and any related written documentation material as well as a copy of this Licence Agreement.
- b) The Customer shall delete all other copies, in particular on data carriers and read-only or main memories including backup copies and permanently relinquish use. He shall provide written confirmation to custo med that he has met all these requirements.
- c) The third party declares in writing to custo med that he has received the above-mentioned components and that he acknowledges this Licence Agreement as a legal relationship between himself and custo med.
- d) There are no fundamental reasons known to custo med opposing the transfer.

The transfer of the software to a third party automatically terminates the previous customer's right to use the software, the related written documentation material as well as all other component parts (custo diagnostic software protection).

## 6. Obligation to Adhere to the Licence Agreement

This Licence Agreement is valid for an indefinite period. However, the Customer is entitled to terminate this Agreement at any time by providing written confirmation to custo med. Such termination automatically cancels the rights of use specified in this Licence Agreement.

The Customer is obliged to destroy the original data carrier, all written material, all copies of the software and to also confirm in writing to custo med that the aforementioned has been completely destroyed, if so requested.

custo med is entitled to revoke the rights of use for important reasons. An important reason exists in particular if the Customer violates the terms of use and also fails to comply with the terms of use even after receiving a written warning threatening to terminate the licence from custo med.

Unauthorised copying of the software, accompanying documentation or the licence key automatically ends the Agreement.

## 7. Secrecy

The Contracting Parties undertake to treat any objects they receive from the other Contracting Party or any objects they gain knowledge of (e.g. software, documents, information) which are legally protected or contain any business or company secrets as confidential, unless these are in the public domain without any breach of the obligation of confidentiality. The Contracting Parties shall store and save these objects in such a way that any unauthorised access by third parties is excluded.

The Customer shall permit access to the subjects of the Agreement only by his personnel or third parties requiring access in order to perform their assigned tasks.

custo med shall store the Customer's data required for processing the transaction in compliance with legal data protection provisions. The Customer hereby agrees to such use.

## 8. Restriction of Publication

The Customer hereby acknowledges that the processing, duplication (copies of any kind) or distribution by public presentations of any software elements and displays for commercial purposes is only permitted with the express consent of custo med.

## 9. Duplication and Copyright

Changes to the copyright-protected software are not permitted. In particular the Customer is not authorised to decompile, disassemble, or otherwise reverse engineer the software or attempt to determine the source code in any other way. The Customer is also prohibited from modifying the binary code of the software in order to alter or bypass the functions or the use of the custo diagnostic software protection.

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Any duplication, use, disclosure, modification or reproduction of the contents of the software that has not been expressly authorised and which is therefore contrary to the terms of the Agreement will be prosecuted under civil and criminal law. This also applies to the case that the software is used in whole or part without the custo diagnostic software protection or the software is modified in any way.

The Operating Manual as well as the documents belonging to the software are also protected by copyright. Any duplication, alteration or disclosure of the written material is prohibited.

## 10. Liability for Defects, General Liability and Compensation

custo med will provide the Customer with software that is free of any material and legal defects.

a) The following regulations apply to material defects:

- (1) Product restrictions which affect the software's suitability for use to a minor extent only shall not be considered as defects for the purposes of this Agreement. Any functional impairment caused by the hardware and software environment provided by the customer, operator error, defective external data, computer network malfunctions or any other reasons belonging to the customer's sphere of responsibility shall not be considered as defects for the purposes of this Agreement.

Any information given in documentations and/or advertising materials which refer to the expansion options for the software product are non-binding, in particular, as the products are subject to continuous adjustment and development.

- (2) It is the Customer's responsibility to ensure the operation of the program's working environment. In particular, the Customer shall make any necessary changes to his data protection mechanisms and to his network and/or server.

The encryption and/or any other data protection measures are the Customer's responsibility.

The risk of incompatibility of the software with the Customer's software and hardware shall not be the responsibility of custo med.

- (3) The Customer is aware that creating a backup of all data at suitable intervals (at least once a day) is recommended in order to avoid data loss and that such data backups are the sole responsibility of the Customer.

- (4) custo med shall eliminate any defects in quality by repair or replacement, at its discretion. The defect may be remedied by providing updates to the Customer or by custo med demonstrating options by means of which the effects of the defect can be avoided.

The customer shall support custo med in its analysis and elimination of any defects by providing a concrete and detailed description of the problems as well as analysis data such as log files (e.g. error.log), configuration database, patient master database, analysis files (\*.cst) and, by granting custo med the time and opportunity required to eliminate the defects.

- (5) custo med may demand compensation if the software has been modified, used outside the specified environment or incorrectly operated. The same shall apply in cases where no defect is found or an error was insufficiently or incorrectly communicated. The burden of proof is with the Customer.

- (6) Unless otherwise stipulated above, custo med shall be exempt from further liability for material defects. In particular, liability for defects does not apply if and to the extent that the software is improperly used by the Customer or used in a defective or incompatible hardware or software environment. The same applies in the event that the Customer makes unauthorised modifications to the software.

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b) The following applies to legal defects:

- (1) custo med guarantees that no rights of third parties are violated through the use of the software by the Customer in accordance with the provisions of the Agreement. In the case of legal defects, custo med shall give its assurance that it will provide the Customer with a legally unchallengeable option to use either the software or equivalent software.
- (2) The Customer shall notify custo med immediately in writing in the event that a third party claims industrial property rights against him. custo med shall, at its discretion and after consultation with the customer either defend or satisfy such claims. The Customer shall not acknowledge any such claims made by third parties. custo med shall defend at its own cost any such claims by a third party and shall hold the Customer harmless with regard to any costs and any damage related to the defending of such claims as aforesaid unless these are caused by the Customer violating his obligations.

c) Should subsequent performance be unsuccessful, the Customer has the right to demand either a reduction in price or withdraw from the Agreement. Paragraph 10 d below shall apply with respect to claims for damages

d) The following shall apply with respect to claims for damages:

custo med shall pay damages or refund any wasted expenditure for whatever legal reason (e.g. breach of duty, unlawful act) to the following extent only:

- (1) In the case of intent as well as in the event of assumption of a guarantee with regard to the condition agreed upon in the Agreement
- (2) In the case of wilful negligence in the amount of foreseeable and typical damage which should have been prevented by the exercise of due care
- (3) In other cases, only on breach of an essential contractual duty, claims for defects and delay, for the replacement of such typical and foreseeable damage, limited to the amount of the price of the software at the time of purchase per claim and to twice that amount for all claims arising from this contractual relationship.

The statutory liability for personal injury and according to the product liability law shall remain unaffected. The right to contest the charge of contributory negligence remains open to custo med.

## 11. Limitation

Claims made by the Customer concerning quality or legal defects (paragraph 10) shall be limited to one year from delivery.

For other claims of the Customer ensuing from a contract or from a contractual obligation (Article 311 Paragraph 2 of the German Civil Code (BGB)) a limitation period of one year shall apply from the start of the statutory period of limitation.

## 12. Miscellaneous

This Licence Agreement is subject to the law of the Federal Republic of Germany.

Dealers or representatives authorised by custo med as well as other licence holders are not authorised to amend this Agreement or oblige custo med by additional statements, warranties or guarantees.

Verbal agreements made by dealers or representatives authorised by custo med require the written confirmation by custo med.

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