

Historion® Radiation Safety Software End User Licence Agreement

Introductory

1. About this document: This document sets out the terms of a binding legal agreement between you and us for the use of the Software.
2. Consent: You signify your consent to be bound by the terms set out in this document by doing any one or more of the following acts:
 - a) signifying that you accept these terms prior to downloading the Software;
 - b) installing the Software onto a computer owned or controlled by you;
 - c) using the Software; and
 - d) paying for the Full Licence.You give your consent on behalf of –
 - e) the organisation nominated by you immediately prior to downloading the Software; and
 - f) any other organisation which you assist or enable to use the Software;and you represent to us that you have the capacity and authority to bind that Organisation to the terms of this Agreement.
3. Defined terms: The meanings of capitalised terms in this document and the rules for interpreting this Agreement are set out in Clauses 52 and 53 below.

Trial Licence

4. Trial Licence: Subject to your compliance with the terms of this Agreement, we grant a non-exclusive licence to you to install and use a copy of the Software on one or more computers owned or controlled by you for the purpose of evaluating its suitability for your use of it under a Full Licence.
5. Duration. The Trial Licence lasts for the Trial Period only.
6. Limited functionality: If you are using the Software under the Trial Licence, you only have the right to import a maximum of:
 - a) 10 dose reading reports into the Historion® Database; and
 - b) 10 dose readings per wearer.¹
7. No fee payable for the trial: To avoid doubt, you are under no obligation to pay any fee for the use of the Software under the Trial Licence during the Trial Period.
8. Single trial only: You must not use the Software under the Trial Licence for more than one Trial Period unless we specifically agree otherwise in writing.

Full Licence

9. Full Licence: Subject to the payment of the appropriate licence fee, we grant a non-exclusive licence to you to install and use a copy of the Software on one or more computers controlled by you strictly for the purposes set out in Clause 17.
10. Duration: The licence granted in Clause 9 is for the Licence Period.
11. Licence Fee: You must pay the Licence Fee sufficient to cover every Active Wearer on every Data Import Date during the Licence Period. If the number of Active Wearers exceeds the amount that you have paid for on any Data Import Date, then we will notify you of this fact. We have the right to lock the Software to prevent further use of it by you until you have paid for an appropriate number of Active Wearers. The number of Active Wearer is not subject to any form of annualization or reduction resulting from Wearer turnover, or other situations leading to Wearers being monitored for less than 12 months in the Licence Period.
12. Number of installations and users: To avoid doubt, the Full Licence does not impose any limitations on:
 - a) the number of desktop installations of the Software by you;
 - b) the number of user accounts that you may create or maintain using the Software; or
 - c) the number of databases used by the Software.

Renewal

13. Licence licenses: If you pay the Renewal Fee to us, then we will extend your right to use the Software under the Full Licence for a further Licence Period.
14. Failure to renew: If you fail to pay the Renewal Fee to us before the expiry of the current Licence Period, then we have the right to lock the Software to prevent further use of it by you after the expiry of the Term.
15. Price increases: We have the right to increase the Renewal Fee provided we give you notice three months prior to your renewal of the Full Licence under Clause 13 above.
16. Not Applicable.

Purpose and restrictions on use of the Software etc

17. Purpose: You acknowledge that the purpose of the Software is strictly to:
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¹ Please note: the Software has been programmed to prevent usage exceeding the limitations detailed in Clause 6.

- a) function as a record keeping system to assist in the safe management of radiation exposure;
 - b) assist you to comply with particular aspects of the Official Guidelines and Requirements strictly to the extent specified in writing by us; and
 - c) assist you to deal with any audit relating to your management of radiation exposure;
18. **Official Guidelines and Requirements:** If we specify that the Software can be used to assist you to comply with any particular aspects of the Official Guidelines and Requirements, then – unless the context clearly indicates otherwise – it is only designed to assist you with the particular aspects specified and not to the Official Guidelines and Requirements in their entirety.
19. **Restrictions:** Except to the extent that any applicable law expressly permits it, you must not use the Software for any purpose that is not expressly permitted by this Agreement, or permitted by necessary implication. In particular, you must not::
- a) rent, lease or lend the Software to any third party;
 - b) host the Software for use by any third party;
 - c) allow or enable the Software to be copied by any third party;
 - d) reverse engineer, decompile or disassemble the source code of the Software;
 - e) alter or edit the Software's source code for any purpose, including the purpose of improving or fixing it; and
 - f) do anything to disable, circumvent or defeat the encryption of the Software.

Your systems

20. **Minimum Specifications:**
- a) You must supply, operate and maintain hardware and software that meet the Minimum Specifications at all times.
 - b) We have the right to alter the Minimum Specifications so that they take effect immediately upon the expiry of the current Licence Period.
21. **Security etc:** You are responsible for ensuring that your data, computer systems and networks are properly secured and maintained and are free from bugs, viruses, Trojans and other security risks.²
22. **Privacy:** You are responsible for maintaining the privacy and confidentiality of the Data while it is stored on systems owned or controlled by you, and you must take all reasonable measures to prevent its disclosure to, or use by, unauthorized persons, including:
- a) implementing and enforcing appropriate password policies; and
 - b) ensuring that only authorised personnel have access to the Software.

Use of the data

23. **Importing of Data:** You are responsible for –
- a) generating or otherwise obtaining; and
 - b) importing;
- the Data into the Software using –
- c) a CSV file; or
 - d) any other data format specified by us in writing from time to time.
24. **Data quality:** You must ensure that the Data is consistent, accurate and complete. You acknowledge that the quality of the information and reports generated by the Software is dependent upon the quality of the Data.
25. **Obligation to take care etc:** You must exercise all due care, skill and judgment when importing, generating, interpreting, using and acting upon information using the Software, including –
- a) creating, maintaining and implementing policies for the management of radiation dosages which are -
 - i) compliant with all applicable laws (including laws relating to occupational health and safety); and
 - ii) appropriate for the particular people who are exposed to radiation in your facilities, having regard to accepted industry practice;
 - b) ensuring that any alerts for individual Active Wearers and centres are set at appropriate levels having regard to accepted industry practice and your policies;
 - c) exercising your own independent judgment regarding:
 - i) the meaning and implication of reports and alerts generated by the Software;
 - ii) the need to inform Active Wearers of their dosage readings; and
 - iii) measures to be taken in response to reports and alerts generated by the Software
 - d) Not Applicable;
 - e) ensuring that you continuously comply with all regulatory and other requirements associated with the proper management of

² Please note that we warrant certain things with respect regarding the security measures taken in the Software itself in Clause 35.

radiation exposure; and

f) to the extent (if any) that you rely on the software for the purposes of regulatory compliance, that the software is suitable for these purposes in your particular jurisdiction when used in conjunction with your systems and processes;

and you acknowledge that you have sole responsibility for taking such measures.

26. **Right to access and use data:** You must ensure that your use of the Software is consistent with any obligations that you might have with any third party providers of the data.

27. **Backups:** You must make and keep functional backups of all systems, software (including the Software) and data (including the Data), and acknowledge that –

- a) the creation and safe keeping of functional backups is necessary to avoid potential loss of data; and
- b) you have sole responsibility for taking such measures.

Support etc

28. **Manuals:** We will provide information in the form of user Manuals or forums to assist you to use the Software which will be updated regularly. We are under no obligation to provide printed or hard copy manuals to you.

29. **Media:** To avoid doubt, we are under no obligation to provide the Software to you in the form of physical media such as on DVD or CD-ROM.

30. **Basic support services:** Subject to Clauses 31 to 34 below, we will provide support for the Software to you during the Term by endeavouring to –

- a) answer your reasonable questions regarding the Software; and
- b) fixing identified problems with the Software.

To avoid doubt, these obligations are in addition to any referred to in Clause 36 below.

31. **Access:** In order to access our basic support services. You must submit a support request in writing through our contact page on our website located at <http://www.historion.com.au/contact-us>, or via any other means as notified by us to you in writing from time to time.

32. **Response times:** We must endeavour to respond to any support request within two Business Days.

33. **Your obligations when seeking support:** In using our support services, you must –

- a) clearly explain or demonstrate the identified problem to us;
- b) make any or all of the following available to us at our request:
 - i) a person who is suitably qualified and experienced to answer questions we have and follow directions we give;
 - ii) remote access to the systems on which the Software is installed; and
 - iii) a copy of the Data;³ and

c) promptly respond to requests for information and to directions made by us;

and we are under no obligation to provide support to you unless you have complied with these obligations.

34. **Exclusions and limitations:** To avoid doubt, we are under no obligation under this Agreement to:

- a) provide on-site maintenance or support services;
- b) provide support:
 - i) outside of 9.00 am to 5.00 pm on any Business Day; or
 - ii) on any day that is not a Business Day;
- c) provide personal training on the use of the Software;
- d) support or solve issues that are caused by third party software, including third party anti-virus software;
- e) support or solve issues caused by hardware problems;
- f) support or solve issues that are caused by your failure to provide a system which matches the Minimum Specifications;
- g) support the Software on any computer system with an operating system or database application for which Microsoft does not provide support to you; or
- h) provide advice or support relating to audit standards or regulatory requirements in any form, including audit standards or regulatory requirements relating to the management of radiation exposure.

Guarantees etc

35. **Warranties:** We warrant that the Software:

- a) is designed and developed with security measures reasonably expected of a software program designed to hold sensitive personal information in enterprise environments;⁴

³ Please note, Clause 47 imposes obligations of confidentiality upon us with respect to the Data.

- b) is free from bugs, viruses, Trojans and other security risks;
- c) does not infringe the intellectual property of any third party; and
- d) performs as advertised.

36. **Implied guarantees:** The law in the country in which you use the Software may imply warranties or guarantees into this Agreement which cannot be excluded. In Australia, these include guarantees that goods and services are –

- a) of acceptable quality; and
- b) fit for the purpose for which they are intended.

If applicable, these implied guarantees and warranties form part of this Agreement, and nothing here is intended to exclude, restrict or modify those terms.

37. **Other guarantees etc.:** We –

- a) exclude all warranties and guarantees implied by statute which may be excluded; and
- b) make no warranties or guarantees to you other than those referred to in Clause 35 and 36.

38. **No guarantee etc. as to compliance:** To avoid doubt, we make no guarantee or representation to you that use of the Software without anything further will result in compliance with all laws, regulations or standards associated with the management of radiation exposure.⁵

Liability etc.

39. **Professional indemnity insurance:** We must:

- a) take out and maintain throughout the Term a professional indemnity insurance which insures us for up to \$20 million for any one claim, and in aggregate;
- b) provide you with a certificate of currency issued by our insurer upon written request at any time during the Term.

40. **Exclusion of Liability:** Subject to Clauses 35, 36 and 43, and our obligation under any law not to exclude or restrict our liability, we exclude all liability to you -

- a) of whatever nature (whether any indirect, incidental, special or consequential loss or damage or otherwise, including loss of business or other profits); and
- b) however arising (whether through the law of negligence or tort generally, breach of contract, breach of statutory duty or otherwise).

41. **Proportionate liability:** To avoid doubt, and to the maximum extent permitted by law, our liability to you abates proportionately to the extent that any loss is caused by your failure to comply with your obligations under Clause 25.

42. **Limitation of Liability:**

- a) Our liability to you, whether under this Agreement or otherwise does not exceed the amount covered by the professional indemnity insurance policy referred to in Clause 39.
- b) This Clause 42 prevails over Clause 41, in the event of any inconsistency.

43. **Indemnity:** We indemnify you against any claims, actions, liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) arising out of a claim that the Software infringes the intellectual property rights of a third party.

Affiliations

44. **No affiliation:** Unless we specifically state otherwise in writing, neither we nor the Software have any –

- a) affiliation with; or
 - b) sponsorship, endorsement or approval from;
- the owners of any third party software (including Microsoft) or any third party providers of the Data.

Intellectual property etc.

45. **IP in the Software:** All intellectual property in –

- a) the Software (including the “Historion” trade mark, and copyright in its source and object code); and
- b) any manuals and specifications associated with the Software;

is owned by us and our licensors. Nothing in this Agreement transfers these rights to you.

46. **Ownership of the data:** Nothing in this Agreement affects the ownership of any Data or the data in any database.

47. **Confidentiality:**

- a) Neither Party may disclose the other’s Confidential Information to any third person without the written permission of the other.

⁴ Please note that Clause 21 imposes obligations on you regarding the security of your networks etc.

⁵ In this regard, please refer to Clause 25(e) above, which requires you to exercise all due care, skill and judgment in ensuring that you comply with all regulatory requirements etc.

- b) We may only use your Confidential Information for the purpose of providing support services to you.
- c) You may only use our Confidential Information to the extent strictly necessary to exercise your rights under this Agreement.

General

- 48. Assignment etc.: You have no right to assign, sub-licence or encumber your rights or obligations under this Agreement without our prior written consent. We have the right to assign our rights and obligations under this Agreement by giving 30 days' written notice to you.
- 49. No Waiver: No delay or failure by us to exercise any right or remedy operates as a waiver unless it is in writing. Each written waiver is valid only to the extent specifically referred to.
- 50. Joint and separate liability: Where the term "you" refers to more than one entity, this Agreement binds each entity jointly and separately.
- 51. Governing law: This Agreement is governed by the laws in force in Victoria, Australia and the Parties submit to the jurisdiction of the courts in that State.

Interpretation

- 52. When interpreting this Agreement, unless the context clearly requires otherwise:
 - a) a reference to "we", "us", and "our" is a reference to Cybermynd Information Systems Consulting Pty Ltd (ABN 24 094 169 749);
 - b) a reference to "you" or "your" is a reference to any person or entity covered by Clause 2;
 - c) a reference to a "Clause" means a clause of this Agreement;
 - d) a reference to the "Software" includes the whole Software and any part of it;
 - e) a reference to "written notice" or "writing" includes communications by email and fax, and via any website owned or controlled by us;
 - f) a reference to a "Party" means either you or us;
 - g) a reference to "the Parties" means both you and us;
 - h) headings and footnotes form part of this Agreement and may be used to aid in its interpretation;
 - i) the singular includes the plural and vice versa; and
 - j) all fees are in Australian dollars.

Defined terms

- 53. In this Agreement, italicised words have the following meanings, unless the context requires otherwise:
 - a) Active Wearer means, in relation to any particular Data Import Date, any person who has at least one radiation dose reading in the Historion® Database that was taken in the 12 months preceding the relevant Data Import Date.
 - b) Business Day means any day other than a Saturday or a Sunday or a public holiday in Melbourne, Victoria;
 - c) Confidential Information means:
 - i) any data of a personal or sensitive nature included in the Historion® Database; and
 - ii) any of the Software's source code or object code;
 - d) Data means the information regarding radiation dose readings and associated personal information generated by you or obtained from third parties;
 - e) Data Import Date means each date on which any Data is added to the Historion® Database;
 - f) Full Licence means the licence granted by us to you under Clause 9;
 - g) Historion® Database means any database that is created, accessed or controlled by the Software;
 - h) Licence Fee means the fee specified by us from time to time;
 - i) Licence Period means –
 - i) in the case of the first Full Licence issued to you, the period of 12 months commencing from the date upon which you first pay the Licence Fee to us;
 - ii) in the case of a Full Licence other than that covered by Clause 53(i)(i) above, the period of 12 months commencing on the first day after the previous Full Licence expired;
 - j) Minimum Specifications means any hardware or software requirements for the Software which are provided by us in writing from time to time;
 - k) Official Requirements and Guidelines means –
 - i) any requirements imposed by legislation and statutory instruments including regulations, by-laws and ordinances; and
 - ii) any guidelines, recommendations or standards issued by government departments (including ARPANSA) and standards bodies (including Standards Australia);
 - iii) which relate to the safe and proper management of radiation exposure in the workplace;
 - iv) that are designated by us in writing from time to time (including in any user manual for the Software);
 - v) as having requirements, standards, practices or recommendations that are addressed by the Software;

- l) Renewal Fee means the Licence Fee for any Licence Period beyond the current Licence Period;
- m) Software means:
 - i) the radiation data management and reporting software marketed by us under the name "Historion";
 - ii) the software tool referred to as the "Historion® Connection Tool" provided by us to assist in the creation of a structured SQL database suitable for the storage of the Data; andany modifications, updates or improvements to the above;
- n) Term means the period commencing upon the first payment from the date upon which you first pay the Licence Fee to us and ending with the last Licence Period which has been paid for by you;
- o) Trial Licence means the licence granted by us to you under Clause 4; and
- p) Trial Period means the period commencing on the first day which you install the Software, and ending 30 days from that date.