

SOFTWARE LICENCE TERMS & CONDITIONS - PHARMACIES

This Licence Agreement (Licence) contains the terms and conditions that govern your access to and use of the Software (as defined below) and is an agreement between Intellipharm Pty Ltd ABN 92 001 235 374 ('Intellipharm,' 'we,' 'us,' or 'our') and you or the entity you represent ('you', "your"). This Licence takes effect upon us agreeing to install the Software. If you are entering into this Licence for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

In consideration of Intellipharm allowing you to use the Software, you agree to be bound by the following terms.

1 INSTALLATION

- 1.1 Intellipharm will install the Software on your System.
- 1.2 Intellipharm may install the Software remotely, and you must provide Intellipharm with such access to your System to enable Intellipharm to install the Software remotely.
- 1.3 You must:
 - (a) give Intellipharm such reasonable assistance, including access to personnel and facilities, as Intellipharm reasonably considers necessary to ensure the satisfactory installation of the Software; and
 - (b) ensure that Intellipharm is granted all reasonable access to your facilities and System, including all necessary security clearances, for the purposes of installing the Software.

2 LICENCE

- 2.1 Intellipharm grants to you a non-exclusive, non-transferable licence (without the right to sub-licence) to use the Software on the terms set out in this Licence.
- 2.2 You acknowledge that you have no right, title or interest in the Software or in any modifications to the Software, except as expressly granted to you under this Licence.
- 2.3 You may only:
 - (a) install the Software on computers located in the Territory;
 - (b) use the Software in the Territory;
 - (c) use the Software and Documentation for the Permitted Purpose.
- 2.4 Except as otherwise expressly permitted under this Licence, you must not:
 - (a) sub-license all or any part of the Software or Documentation;
 - (b) resell, distribute or transfer all or any part of the Software or Documentation;
 - (c) use the Software to provide services to another person;
 - (d) attempt to disassemble, decompile or otherwise reverse engineer or reverse compile the Software, except as permitted under the Copyright Act;
 - (e) copy, alter, customise, modify or create derivative works of the Software or Documentation;
or
 - (f) remove, obliterate or alter any proprietary notice on the Software or Documentation.

- 2.5 You grant Intellipharm, its employees, agents and contractors the right to access, retrieve, transmit, use, store, copy, modify and create derivative works of, the Data stored on your System.
- 2.6 Nothing in this Licence affects the your ownership of, or rights to the Data and System.
- 2.7 You warrant that you own the Data and the System and/or that you have all necessary licenses, rights, consents, permissions and approval to access and use the Data and the System.
- 2.8 You indemnify Intellipharm against any loss, damage, liability, expense or cost of any nature or kind suffered or incurred by it in connection with a breach of the warranty set out in clause 2.7.
- 2.9 You grant Intellipharm permission to use your de-identified Data for benchmarking purposes (for example to provide reports on the community pharmacy industry) and Intellipharm agrees to ensure that no pharmacy or consumer will be identifiable (or capable of being identified) in any benchmarking materials it produces.
- 2.10 You are solely responsible for the use, supervision, management and control of the Software and Documentation.
- 2.11 You must ensure that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use.
- 2.12 You must (a) keep accurate records of use, copying, modification and disclosure of the Software; (b) permit Intellipharm to inspect such records at any time during your normal business hours; and (c) if Intellipharm requests, provide to Intellipharm a copy of all or any part of such records.
- 2.13 You must at all times indemnify and hold harmless Intellipharm and its Personnel and keep Intellipharm and its Personnel indemnified from and against any Claim made (including any Claims made by any third party) against, or any Liability incurred by, Intellipharm and its Personnel in connection with an IP Claim if such IP Claim arises from:
 - (a) your use of the Software contrary to:
 - (i) the Documentation;
 - (ii) other directions of Intellipharm; or
 - (iii) this Licence;
 - (b) any improper acts or omissions of you or your Personnel;
 - (c) use of the Software in combination with other software or equipment otherwise than as provided in the Documentation or with Intellipharm's consent;
 - (d) modification or alteration of the Software without Intellipharm's prior written consent.

3 UPDATES AND NEW RELEASES

- 3.1 Intellipharm may provide, at its discretion, updates and new releases of the Software to you as it becomes available, provided that Intellipharm is under no obligation to provide any update or new release, or any new features in updates or new releases.
- 3.2 You grant Intellipharm access to your System in order to provide updates and new releases and we may do so unassisted, automatically and remotely, or Intellipharm will inform you by electronic mail (or such other means of communication as may be agreed by the parties from time to time) of any update to the Software and you may download and install any such update from a website address supplied by Intellipharm.

4 PRIVACY

- 4.1 In this clause 4, the terms 'personal information', 'sensitive information', 'Australian Privacy Principles' (APPs) and 'Privacy Commissioner' have the same meaning as they have in the Privacy Act 1988 (Cth) (the Privacy Act).
- 4.2 Each party agrees in respect of its rights and obligations under this Licence:
- (a) to use personal information obtained during the course of exercising its rights and obligations under this Licence, only for the purposes of this Licence and in accordance with the Privacy Laws;
 - (b) not to do any act or engage in any practice that would breach an APP;
 - (c) to carry out and discharge the obligations contained in the APPs;
 - (d) to immediately notify the other if a party becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 4.2 (and in your case clause 4.3); and
 - (e) to comply with any mandatory directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 4.2.
- 4.3 Without limiting clause 4.2, you must:
- (a) provide privacy collection statements in accordance with the Privacy Laws to each individual from whom you collect personal information (and where you collect health information, obtain the consent of each individual from whom it collects personal information for the collection, use and disclosure of the health information to it and Intellipharm (and obtain updated consents where required)) before that personal information is provided to or accessed by Intellipharm; and
 - (b) provide copies of such privacy collection statements and consents to Intellipharm if requested;
 - (c) notify Intellipharm if an individual revokes their consent.
- 4.4 You must at all times indemnify and hold harmless Intellipharm and its Personnel and keep Intellipharm and its Personnel indemnified from and against any Claim made (including any Claims made by any third party) against, or any Liability incurred by, Intellipharm and its Personnel arising out of any breach of clauses 4.2 and 4.3.
- 4.5 A copy of Intellipharm's privacy policy can be found at: <http://www.intellipharm.com.au>.

5 OUR LIMITATION OF LIABILITY

- 5.1 The Software is provided "as is" and, to the fullest extent permitted by applicable law, Intellipharm does not represent, warrant or guarantee that the Software will perform error-free or

uninterrupted, or that the Software will provide any functions not expressly stated in the Documentation.

5.2 All express and implied terms, conditions, warranties and guarantees which otherwise might apply to, or arise out of, this Licence are excluded other than:

- (a) as provided in this Licence; and
- (b) terms, conditions, warranties and guarantees which cannot lawfully be excluded (for example our goods and services may come with guarantees that cannot be excluded under the Australian Consumer Law (being Schedule 2 to the Competition and Consumer Act) (**ACL**)).

5.3 If Intellipharm is liable for a breach of a term, condition, warranty or guarantee described in clause 5.2(b), Intellipharm's liability is, to the fullest extent permitted by applicable law, limited to any one or more of the following as Intellipharm determines in its absolute discretion:

- (a) in relation to goods:
 - (i) replacing or repairing the goods;
 - (ii) supplying an equivalent item of the goods;
 - (iii) paying the cost of replacing or repairing the goods; or
 - (iv) paying the cost of acquiring or hiring equivalent goods; and
- (b) in relation to services:
 - (i) the re-supply of the services; or
 - (ii) the payment of the cost of having the services re-supplied.
- (c) Intellipharm may not be able to rely on this clause 5.3 if it is not fair and reasonable under any law which cannot lawfully be excluded or modified by agreement including under section 64A(3) of the ACL and corresponding provisions of state legislation.

6 TERMINATION

6.1 We may terminate this Licence:

- (a) at any time upon 28 days' written notice;
- (b) immediately upon written notice if you breach an provision of this Licence and fail to remedy the breach within 7 days of receiving written notice from us requiring you to do so.

6.2 You may terminate this Licence at any time upon 28 days' written notice.

6.3 On termination of this Licence, all data extraction will cease.

7 CHANGES TO THESE TERMS

7.1 We may vary these terms by notice to you, which may be electronic or otherwise. Electronic notice may be given by posting the varied terms on www.intellipharm.com.au in which case the variations take effect on posting. Your continued use of the Software after such notification constitutes acceptance of the varied terms.

8 GENERAL

8.1 Each indemnity in this Licence is a continuing obligation separate and independent to your other obligations and survives expiry or termination of this Licence.

8.2 It is not necessary for either party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

8.3 Intellipharm holds the benefit of an indemnity of its related bodies corporate on trust for those companies.

8.4 If any clause or sub-clause of this Licence is deemed invalid, whether by a court or otherwise, it will be severed from this Licence, and such invalidity will not affect the validity of the remainder of the Licence.

8.5 A party's failure or delay to exercise a power or right under this Licence is not a waiver of that right, and the exercise of a power or right does not preclude the future exercise of that or any other power or right.

8.6 You agree to pay, or reimburse to Intellipharm, all local, state, or federal taxes or foreign government taxes as may be imposed upon Intellipharm, you or both, with respect to the ownership, leasing, licensing, possession or use of the Software or otherwise arising from this Licence.

8.7 You may not assign, sub-licence or otherwise deal with this Licence except with our prior written consent.

8.8 We may assign, otherwise deal or sub-contract the performance of the whole or any part of our rights and obligations under this Licence.

8.9 This Licence is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

8.10 In this Licence words or expressions:

(a) importing the singular include the plural and vice versa;

(b) importing a gender include all other genders; and

(c) denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities.

- 8.11 A reference to “includes” means includes without limitation.
- 8.12 A reference to this Licence is a reference to this Licence as amended, varied, novated, supplemented or replaced from time to time;
- 8.13 A reference to a party to this Licence includes that party’s executors, administrators, successors and permitted assigns;
- 8.14 Where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
- 8.15 A reference to a clause or sub-clause is a reference to a clause or sub-clause of this Licence;
- 8.16 A provision of this Licence must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Licence or the inclusion of the provision in this Licence.

9 Definitions

9.1 In this Licence, the following words have the following meanings:

- (a) Claim means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with this Agreement or its subject matter.
- (b) Data means the raw data that is transmitted to or imported by Intellipharm.
- (c) Documentation means the material for the Software provided to you by Intellipharm.
- (d) IP Claim means a claim or proceeding alleging that the whole or a part of the Software, or the Documentation, or both, or their use, infringes (or would infringe) another person’s intellectual property rights.
- (e) Liability means any liability, whether actual or contingent, present or future, quantified or unquantified, including any costs, losses, damages, fees (including reasonable legal fees), fines, taxes and expenses.
- (f) Permitted Purpose means your internal business purposes.
- (g) Personnel means, in relation to a party:
 - (i) its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth); and
 - (ii) that party’s, and its related bodies’ corporate, directors, officers, employees, agents, contractors and subcontractors, and the employees of its agents, contractors and subcontractors (excluding the other party and its employees, agents, contracts and sub-contractors).
- (h) Software means the POS and/or Dispense extraction software, LoyaltyOne, programs used to extract the data, connect Intellipharm support to the Licensees’ system, run the reporting platforms or e-commerce and loyalty programs.
- (i) System means the computing, information technology, data and data processing environment of you, whether operated, maintained or utilised by or on behalf of you.
- (j) Territory means Australia, or if agreed by Intellipharm, New Zealand.