

END USER LICENCE AGREEMENT

FOR

IMBA Professional Plus SOFTWARE, INCLUDING THE Base Unit and the Add-Ons

For Windows™ 95/98/NT/2000/XP

IMPORTANT - READ CAREFULLY. This End User Licence Agreement (EULA) provides a legal relationship between the Customer (hereinafter referred to as “the licensee”) and Radiation Protection Division, Centre for Radiation, Chemical, and Environmental Hazards, of the Health Protection Agency, Chilton, Didcot, OXON OX11 0RQ, UK (hereinafter referred to as “the HPA”) for the SOFTWARE PACKAGE identified below (hereinafter referred to as the “SOFTWARE PACKAGE”). By installing, copying, or otherwise using the SOFTWARE PACKAGE, you agree to be bound by the Conditions stated herein. *If you do not agree to the Conditions stated herein, then DO NOT install or use the SOFTWARE PACKAGE.*

CONDITIONS OF USE

This SOFTWARE PACKAGE is licensed for Installation and Use on multiple computer systems under the direct control of the Licensee, under the conditions defined herein.

All recipients of this software shall hereby agree not to duplicate the installation CD-ROM(s) provided to them. On being provided by the HPA with an updated version of the SOFTWARE PACKAGE, all recipients of an UPDATED SOFTWARE VERSION shall hereby also agree to uninstall the previous version completely from any and all machines on which it has been installed, and to keep only the original installation CD-ROM(s) for archival purposes.

1. DEFINITIONS

Under this Agreement, unless the context otherwise requires, the following expressions have the following meanings;

“**CD-ROM**” means compact disk read only memory;

“**CPU**” means Central Processing Unit;

“**Concurrent Use**” means the simultaneous Use of the Licensed SOFTWARE PACKAGE by not more than five users of the Licensee;

“**HTML Help File**” means the compiled file written in Hypertext Markup Language (and incorporated in the Licensed SOFTWARE PACKAGE) to assist the User in navigating the software’s User interface and in performing the various calculation tasks for which the software is designed.

“**Microsoft Visual Basic® 6.0**” means the current (as of August, 2001) version of Microsoft’s Windows software application development system, where Visual Basic is a registered trademark of Microsoft Corporation.

“**IMBA modules**” means the suite of executable software modules owned and quality assured by HPA which perform the actual calculations of intakes and/or doses resulting from intakes of radionuclides, and the associated radionuclide database files;

“**Base Unit**” means the software, written in Microsoft Visual Basic 6, to perform bioassay calculations and dose assessments utilising the IMBA modules, together with the incorporated HTML Help files and Technical Documentation;

“**Add-On**” means the additional program which works together with the base unit to enhance the functionality of the software.

“**IMBA Professional Plus**” means the compiled software known as IMBA Professional Plus, which incorporates the IMBA modules; the Base unit and any of the associated Add-Ons (as indicated on the order form); software codes, HTML Help files.

“Technical Documentation” means (a) the material incorporated in the HTML Help File which gives technical descriptions of the methods used by IMBA Professional Plus to perform the various calculations, and (b) a hard copy of the User Manual.

“Licensed SOFTWARE PACKAGE” means IMBA Professional Plus together with the Technical Documentation;

“Licence” has the meaning expressed in Clause 2.1;

“Licence Fee” means the Licence fee specified in the Order Form payable by the Licensee to the HPA;

“RAM” means random access memory;

“Support Services” means the services provided by the HPA to the Licensee specified in Clause 3;

“Systems” means the Licensee’s computer systems.

“Use” means and is limited to:

- (a) utilisation of the Licensed SOFTWARE PACKAGE by copying, transmitting or loading the same into the temporary memory (RAM) or installing into the permanent memory of the System for the processing of the System instructions or statements contained in such SOFTWARE PACKAGE;
- (b) copying the Licensed SOFTWARE PACKAGE which is in machine-readable form for use by the Licensee on the Systems specified in Clause 2.2;
- (c) storing the whole or any part of the Licensed SOFTWARE PACKAGE on the System or other storage unit or disk;
- (d) utilising (but not copying) the HTML Help Files including the Technical Documentation in HTML format. However, as per Sub-Clause 11.1 below, on written application to HPA, permission may be granted to the Licensee for any disclosure of Help File materials and Technical Documentation (in hard copy) required by any governmental agency having regulatory authority over the Licensee.

2. LICENCE

2.1. Upon receipt of payment of the one-time Licence Fee to the HPA, the HPA grants and the Licensee accepts a non-exclusive, non-transferable Licence to Use the Licensed SOFTWARE PACKAGE concurrently on not more than **five** of the Licensee’s Systems;

2.2. The Licence entitles the Licensee only to:

2.2.1 receive from the HPA one master copy of the Licensed SOFTWARE PACKAGE for Use on the Licensee’s Systems on media appropriate to the Systems, together with the necessary Installation Instructions and HTML Help File to install and Use the same;

2.2.2 load, install and Use the Licensed SOFTWARE PACKAGE on the CPUs of the Licensee’s Systems with not more than five concurrent users;

2.2.3 load, install and Use the Licensed SOFTWARE PACKAGE on a portable, lap-top or home computer where the Licensed SOFTWARE PACKAGE is permanently installed on the hard disk(s) or other storage device(s) of the Licensee’s Systems (but not a file server) for Use by the Licensee’s relevant employee(s) or persons contracted by the Licensee to perform calculations;

2.3 A person contracted by the Licensee to Use the Licensed SOFTWARE PACKAGE (including the Help Files and Technical Documentation) to perform calculations shall be required to Register with the HPA in order to obtain written permission for such Use. The Licensee’s Contractor shall be required to sign an Agreement with the HPA to the effect that, on termination of the Contract with the Licensee that requires the Contractor to Use the Licensed SOFTWARE PACKAGE for calculations; (i) the Licensee’s Contractor shall, within fourteen (14) days after the date of such termination, return the Licensed SOFTWARE PACKAGE (including the Help Files and Technical Documentation) to the Licensee, and (ii) the Licensee’s Contractor shall retain no copies of the Licensed SOFTWARE PACKAGE (including the Help Files and Technical Documentation). On being granted the HPA’s written permission, the Licensee’s Contractor shall then be entitled to Use the Licensed SOFTWARE PACKAGE (including the Help Files and Technical Documentation), but expressly and only in support of the Licensee’s work.

3. SUPPORT SERVICES

Support Services provided by the HPA to the Licensee shall be limited to:

- 3.2.1 reasonable Help Desk facilities by e-mail at the address imba@hpa-rp.org.uk (UK).
- 3.2.2 reasonable Help Desk facilities by telephone Monday to Friday (09:00 –17:00) +44 (0) 1235 822655.
- 3.2.3 such Help Desk facilities (3.2.1 and 3.2.2 above) shall be available free of charge to the Licensee for the period of one calendar year after initial delivery of the Licensed SOFTWARE PACKAGE, and shall be limited to User help with the installation and operation of the Licensed SOFTWARE PACKAGE for the purposes for which it was designed. Future support may be available at the discretion of the HPA but may be subject to an additional charge;
- 3.2.4 correction of critical errors or assistance to overcome problems. The HPA may, in their sole discretion, correct errors by “patch” or by new version;

4. LICENCE FEE AND SUPPORT CHARGES

- 4.1. The Licensed SOFTWARE PACKAGE will be dispatched with an invoice from the HPA for the Licence Fee, the invoice is payable by the Licensee within 30 days of the issue date. These arrangements may be amended at the discretion of the HPA.
- 4.2. Any Support Charges for Help Desk support beyond the initial one-year period of free Help Desk support, and any additional Technical and/or Scientific Support Services related to applications of the Licensed SOFTWARE PACKAGE shall be provided by the HPA, in its sole discretion. Charges for such additional Support Services shall be agreed between the Licensee and HPA in advance, and shall be invoiced by the HPA.
- 4.3. The HPA may, in its sole discretion, offer to provide such additional Support Services on a renewable annual basis, for which the Support Charge would be invoiced and payable in advance.
- 4.4. All charges herein before referred to are exclusive of and net of any taxes, duties or such other additional sums including, but without prejudice to the foregoing generality, value added or purchase tax, excise tax, tax on sales, property or use; import or other duties, whether levied in respect of this Agreement, the Licensed SOFTWARE PACKAGE, its use or otherwise.

5. LICENSEE’S UNDERTAKINGS

- 5.1. The Licensee undertakes:
 - 5.1.1 not to copy the Licensed SOFTWARE PACKAGE (other than for normal system operation and as specified in Clause 2 above) nor otherwise reproduce the same provided that the Licensee may copy the Licensed SOFTWARE PACKAGE for back-up purposes or incidentally, in the course of converting the Licensed SOFTWARE PACKAGE in accordance with 5.1.3 below;
 - 5.1.2 not to translate, adapt, vary, modify the Licensed SOFTWARE PACKAGE.
 - 5.1.3 not to disassemble, decompile or reverse engineer the Licensed SOFTWARE PACKAGE.

In addition, the Licensee undertakes:

- 5.2 to maintain accurate and up-to-date records of the number and location of all copies of the Licensed SOFTWARE PACKAGE and ;
- 5.3 to supervise and control Use of the Licensed SOFTWARE PACKAGE in accordance with the terms of this Agreement;
- 5.4 to replace the current version of the Licensed SOFTWARE PACKAGE with the updated version forthwith upon receipt;
- 5.5 to reproduce and include the copyright notices of HPA on all and any copies, whether in whole or in part, in any form, including partial copies of the Licensed SOFTWARE PACKAGE made herein;

- 5.6 not to provide or otherwise make available the Licensed SOFTWARE PACKAGE in whole or in part, in any form to any person other than the Licensee's employees or persons contracted by the Licensee to perform calculations in support of the Licensee's work without prior written consent from the HPA;
- 5.7 within thirty (30) days after discontinuance of this Agreement for whatever reason (other than with respect to the Support Services only), to return or destroy (as the HPA shall instruct) the Licensed SOFTWARE PACKAGE and, in the event of termination of the Support Services, and all copies, in whole and in part, in any form including partial copies or modifications of the Licensed SOFTWARE PACKAGE received from the HPA or made in connection with this Agreement and all documentation relating thereto and to furnish the HPA with a certificate, certifying that the same has been done, unless the Licensee has obtained the HPA's prior written authorisation to retain one copy for archive purposes for a period of time sufficient to either support the Licensee's obligations to any agency having regulatory authority over the Licensee or to support litigation.
- 5.8 to allow the name of the Licensee's company to be published on the IMBA Professional web site for illustrative purposes only;

6. SUPPORT NOT INCLUDED AND WHICH SHALL BE CHARGED FOR

- 6.1. The following are not Support Services and additional fees shall be payable (as agreed by the HPA) by the Licensee to the HPA for these and for the avoidance of doubt such additional fees shall become part of the Support Charges:
- 6.1.1. support of other software, accessories, attachments, machines, systems or other devices not supplied by the HPA under this Agreement;
- 6.1.2. rectification of lost or corrupted data arising for any reason other than the HPA's own negligence;
- 6.1.3. attendance to faults caused by using the Licensed SOFTWARE PACKAGE outside design or other specifications or outside the provisions laid down in any documentation or manual supplied with the Licensed SOFTWARE PACKAGE;
- 6.1.4. diagnosis and/or rectification of problems not associated with the Licensed SOFTWARE PACKAGE;
- 6.1.5. loss or damage caused directly or indirectly by operator error or omission.

7. WARRANTY

- 7.1. The Licensee acknowledges that Licensed SOFTWARE in general is not error-free and agrees that the existence of such errors shall not constitute a breach of this Agreement.
- 7.2. The HPA expressly warrants that for a period of 180 days from the date of delivery (the "warranty period") the Licensed SOFTWARE PACKAGE provided by the HPA shall conform in all respects to the specifications set forth in the Preface to the User Manual.
- 7.3. In the event that the Licensee discovers an error which substantially affects the Licensee's use of the same and notifies the HPA of the error within the warranty period, the HPA shall at its sole option either refund the Licence fee or use all reasonable endeavours to correct by patch or new release (at its option) that part of the Developed Software which does not so comply PROVIDED THAT such non-compliance has not been caused by any modification, variation or addition to the Developed Software or not performed by the HPA or caused by its incorrect use, abuse or corruption of the Licensed SOFTWARE PACKAGE or by use of the Licensed SOFTWARE PACKAGE or with other software or on equipment with which it is incompatible.
- 7.4. To the extent permitted by the applicable law, the HPA disclaims all other warranties with respect to the Licensed SOFTWARE PACKAGE, either express or implied, including but not limited to any implied warranties of merchantability or fitness for any purpose beyond the scope of the software specifications.
- 7.5. Although the HPA does not warrant that the Licensed SOFTWARE PACKAGE supplied hereunder shall be free from all known viruses commercially reasonable efforts have been taken to check for the most commonly known viruses prior to packaging but the Licensee

is solely responsible for virus scanning the Licensed SOFTWARE PACKAGE, prior to installation.

8. HPA's LIABILITY

- 8.1. The HPA shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Licensed SOFTWARE PACKAGE, its use, the Support Services or otherwise, including but not limited to, loss of profit, data, or use of the software or special, incidental or consequential damages. Any liability shall be limited to the one-time Licence Fee.
- 8.2. Notwithstanding the generality of 8.1 above, the HPA expressly exclude liability for consequential loss or damage which may arise in respect of the Licensed SOFTWARE PACKAGE, its use, the System or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 8.3. The HPA does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of HPA, its employees or authorised representatives.

9. COPYRIGHT, PATENTS, TRADEMARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS

- 9.1. The Licensee acknowledges that any and all of the copyright, trade marks, trade names, patents and other intellectual property rights subsisting in or used in connection with the Licensed SOFTWARE PACKAGE and Support Documentation shall be and remain the sole property of HPA, and that the HPA has an Agreement with any third parties having any rights in the Licensed SOFTWARE PACKAGE, as the case may be. The Licensee shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute HPA's ownership of the Licensed SOFTWARE PACKAGE.
- 9.2. In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Licensee acknowledges the same shall be the property of the HPA unless otherwise agreed in writing by the HPA.
- 9.3. The Licensee shall indemnify the HPA fully against all liabilities, costs and expenses which the HPA may incur as a result of work done in accordance with the Licensee's specifications involving infringement of any patent or other proprietary right.

10. INDEMNITY

- 10.1. The HPA agrees to indemnify and save harmless and defend at its own expense the Licensee from and against any and all claims of infringement of copyright, patents, trade marks, industrial designs, or other intellectual property rights affecting the Licensed SOFTWARE PACKAGE, as the case may be PROVIDED THAT (i) the Licensee shall not have done, permitted or suffered to be done anything which may have been or become an infringement of any rights in any copyright, patent, trade mark or other rights as hereinbefore provided, and (ii) the Licensee shall have exercised a reasonable standard of care in protecting the same; failing which the Licensee shall indemnify the HPA or the Owner against all actions, proceedings, costs, claims and expenses incurred in respect thereof.
- 10.2. The Licensee undertakes that the HPA shall be given prompt notice of any claim specified in 10.1 above that is made against the Licensee, or the HPA. The HPA shall have the right to defend any such claims and make settlements thereof at its own discretion and the Licensee shall give such assistance as the HPA or the Owner may reasonably require to settle or to oppose any such claims.
- 10.3. In the event that any such infringement occurs or may occur, the HPA may at its sole option and expense:
 - 10.3.1. procure for the Licensee the right to continue using the Licensed SOFTWARE PACKAGE, or infringing part thereof; or
 - 10.3.2. modify or amend the Licensed SOFTWARE PACKAGE or infringing part thereof so that the same becomes non-infringing; or
 - 10.3.3. replace the Licensed SOFTWARE PACKAGE or infringing part thereof by other Software of similar capability; or

- 10.3.4. repay to the Licensee the Sub-License Fee relating to the whole or the infringing part of the Licensed SOFTWARE PACKAGE.

11. CONFIDENTIAL INFORMATION

- 11.1. All information, data, drawings, specifications, documentation, listings, or object code which the HPA may have imparted and may from time to time impart to the Licensee relating to the Licensed SOFTWARE PACKAGE, (other than the ideas and principles underlying the same) or Support Documentation or procedures or modems is proprietary and confidential. The Licensee hereby agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement (in whole or with respect to the Support Services only), disclose the same, whether directly or indirectly to any third party without the HPA's prior written consent. Permission will be granted for any disclosure required by a governmental agency having regulatory authority over the Licensee.
- 11.2. The Licensee further agrees that it shall not itself or through any subsidiary, or third party modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Licensed SOFTWARE PACKAGE, modifications, copies, releases, versions or enhancements thereof or any or have any Licensed SOFTWARE PACKAGE or other program written or developed for it based on any confidential information supplied to it by the HPA unless the Licensee has obtained the written consent of the HPA to do so.
- 11.3. The foregoing provisions shall not prevent the disclosure or use by the Licensee of any information which is or hereafter, through no fault of the Licensee, becomes public knowledge or to the extent permitted by law.

12. FORCE MAJEURE

- 12.1. The HPA shall be under no liability to the Licensee in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of *force majeure*, namely, circumstances beyond the control of the Licensor which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Licensed SOFTWARE PACKAGE or the Support Services; the breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

13. TERMINATION

- 13.1. In addition to provisions for termination as herein provided, the HPA (jointly or severally) may by notice in writing to the Licensee terminate this Agreement if any of the following events shall occur:
- 13.1.1. if the Licensee is in material breach of any term, condition or provision of this Agreement or required by applicable law and fails to remedy such breach (if capable of remedy) within 30 days of having received written notice of such breach from the HPA;
- 13.1.2. if the Licensee, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation); shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by the relevant statutory provisions under the applicable law, or any similar law in another jurisdiction, to be unable to pay its debts.
- 13.2. Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the HPA may have under this Agreement or in law.
- 13.3. In the event that this Agreement expires or terminates with respect to the Support Services only, the Licensee shall comply with the provisions of Clause 5.7 where the same relates to any and Support Documentation supplied by the HPA (as the case may be) in performance of the Support Services under this Agreement.

- 14. ASSIGNMENT**
The Licensee shall not assign or otherwise transfer all or part of the Licensed SOFTWARE PACKAGE, or this Agreement without the prior written consent of the HPA.
- 15. WAIVER**
Failure or neglect by the HPA to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the HPA's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the HPA's rights to take subsequent action.
- 16. HEADINGS**
The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of these terms and conditions of this Agreement.
- 17. SEVERABILITY**
In the event that any of the terms, conditions or provisions contained in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.
- 18. NOTICES**
Any notice to be given by either party to the other may be sent by recorded delivery to the address of the other party as appearing herein or such other address as such party may from time to time have communicated to the other in writing and if so sent shall be deemed to be served 7 working days following the date of posting.
- 19. LAW**
These conditions are subject to the laws of England and Wales and the exclusive jurisdiction of the English and Welsh courts.