

# MIMS AUSTRALIA

## Software License - MIMS on PDA & MIMS Interact on PDA

**IMPORTANT - CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE VALIDATING YOUR MIMS ON PDA. VALIDATING MIMS ON PDA INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THEM, PROMPTLY UNINSTALL MIMS ON PDA AND NOTIFY US AND YOUR MONEY WILL BE REFUNDED.**

MIMS Australia and its publisher CMPMedica Australia Pty Ltd ("We" or "Us" or "Our") provides the Application and grants You a non-exclusive license to use it in Australia on the terms set out in this Agreement. You assume responsibility for the selection of the Application to achieve Your Intended Results and for the installation, use, and results obtained from the Application.

### 1. Territory

The Application contains information intended for use in Australia only. If You use the Application outside Australia, You do so at Your own risk and, to the extent permitted by law; We will have no liability to You or any third party for such use.

### 2. License

2.1 In consideration of the payment of the Fees to Us You may: use the Application solely for Your own internal business purposes in Australia; copy the Application into any machine readable form for backup purposes in support of Your own internal business use of the Application. We, however, may include mechanisms to limit or inhibit copying.

2.2 To the extent permitted by law, You may not (nor permit any third party to): alter, merge, modify or adapt the Application, including disassembling or decompiling (except as, and only to the extent, expressly permitted by law); loan, rent, lease or license this Application or any copy; transfer the Application, or any copy, in whole or in part in anyway, including disassembling or decompiling, except as expressly provided for in this license ("the Prohibited Acts"). Information necessary to achieve interoperability and security testing of the Application within the meaning of the Copyright Act 1968 is available from Us upon request. If You do any of the Prohibited Acts, Your license is automatically terminated and legal action may be initiated.

### 3. Term

3.1 Your license to use the Application in accordance with these terms and conditions lasts for twelve (12) months from the date We receive payment from You ("the Term") and the Term is automatically renewed, subject to clause 5.

3.2 This license is automatically transferred with the receipt by You of each New Release (provided You have paid the Fees for that New Release), subject to clause 5.

#### 4. Updates

We will provide Updates via Web download from the MIMS web site on the day or the day prior to the 1st of each month during the Term. Please be aware that the embargo period for the public release of TGA approved information means that TGA approved information must not be released earlier than seven (7) days before its effective date. The cost of the Updates is included in the Fees.

#### 5. Termination

- 5.1 This license automatically terminates: if You have not paid for a New Release or You do not order a New Release, ten (10) days after the date We release the next New Release; or if You destroy the Application (in which case You must also destroy all copies of the Application in any form; or if You fail to comply with any term of this Agreement.
- 5.2 In addition, We may terminate this license without fault by You if We provide You with three (3) months prior notice and if We do terminate this license without fault by You, Our sole liability to You will be to repay You the relevant fee You paid for the release of the Application then in Your possession less a reasonable amount for Your use of the Application.
- 5.3 Upon any termination You will destroy all versions of the Application, any copies of the Application and any related documentation.

#### 6. Limited Warranty

We warrant that, for a period of one (1) month from the date We release each New Release: that New Release will substantially conform to the applicable online user documentation. If the Application does not meet such warranties, to the extent permitted by law, Our sole and exclusive liability to You (and Your sole remedy) will be (at Our option), the replacement of the defective New Release at no charge, provided You notify MIMS Australia within the one (1) month warranty period. If We are unable to replace the defective New Release, We will refund the amount You paid for that release. Except as specifically provided herein, and to the extent permitted by law We make no warranty or representation either express or implied, with respect to the Application, including the quality, performance, merchantability, or fitness for a particular purpose. We do not warrant that the functions contained in the Application will meet Your requirements or that the operation of the Application will be uninterrupted or error free. To the extent permitted by law the warranties, conditions, representation, terms and remedies set forth in this Agreement are exclusive and in lieu of all others, oral or written, expressed or implied. No distributor, agent or employee is authorised to make any modification or addition to this warranty.

## 7. Intellectual Property

- 7.1 All Intellectual Property Rights and other proprietary rights in or related to the Application are and will remain Our exclusive property, whether or not specifically recognised or perfected under local applicable law and You must not take any action that jeopardises Our proprietary rights. Subject to the license set out above, no license, right or interest in any of Our trade marks, service marks or trade names is granted to You under this Agreement. If an action is brought against You claiming that the Application infringes the Intellectual Property Rights of a third party, We will, at Our own expense, defend or, at our option, settle the action and, subject to this clause, indemnify You against any loss, cost or expense (including reasonable legal fees and expenses on a solicitor client indemnity basis), demand or liability, whether direct or indirect, arising out of any such claim, but only if: (a) You notify us promptly of any infringement, suspected infringement or alleged infringement; (b) we have sole control over the defence of the claim and any negotiation for its settlement or compromise; (c) You make no admission of liability, do not incur any legal expenses in connection with the claim except as would be reasonable in the circumstances, or agree to any compromise or settlement without Our prior written consent, and take no other action that is contrary to Our interests; and (d) You provide Us with all available information and assistance as We may reasonably require in respect of any proceedings.
- 7.2 If a claim described above has been asserted, We will, at Our sole option and expense: (a) procure the right for You to continue using the Application; or (b) replace or modify the Application to eliminate the infringement while providing functionally equivalent performance; or (c) accept the return of the Application and refund to You the amount of the fees actually paid to Us for such Application, less a reasonable amount for Your use of the Application. We will have no obligation to defend and indemnify You for any claims that the Application infringes the Intellectual Property Rights of a third party, to the extent that the claim results from: (a) a correction or modification of the Application not provided by Us; (b) use of the Application other than in accordance with the relevant documents or this Agreement; (c) You using an out of date release of the Application; or (d) the combination of the Application with other products that are not owned by Us (other than as contemplated by this Agreement).
- 7.3 To the full extent permitted by law, the remedies contained in this section constitute Your sole and exclusive remedies and Our entire liability under this Agreement with respect to infringement of third party Intellectual Property Rights.

## 8. Limitation of Liability

To the fullest extent allowed under law, and subject to any terms or conditions implied by legislation which cannot be excluded, We exclude all liability for breach of any other warranty or condition of any kind in respect to the Application, and if such exclusion is not permitted by law, Our sole liability for breach of such implied warranty or condition will be limited (at Our option) to the replacement or repair of the Application. To the full extent permitted by law, in no event will We be liable for any indirect, consequential or special damages or any loss of profit or goodwill in connection with or arising out of performance of the Application and in no event will Our liability to You for any claim or damage arising out of or in connection with this Agreement exceed the amount paid by You for the Application. Because databases are inherently complex and may not be completely free of errors, You are advised to make backup copies.

## 9. Indemnity from You

You agree to indemnify, defend and hold Us harmless against any claims, liabilities, proceedings, costs, losses, expenses or damages incurred by Us in connection with Your use of the Application (including, without limitation, any use by You of an out of date release of the Application or use of the Application outside Australia), breach of this Agreement or any other negligent or wrongful act by You.

## 10. Disclaimer

### 10.1 MIMS Interact on PDA – Disclaimer

Interactions are checked between classes of generics rather than between brands.

This drug interactions database (MIMS DrugAlert) can be used to check the documented or theoretical interactions between two nominated (selected) generic substances. When a brand is selected, each generic component (or its allocated class) is compared against each other generic (both those on the prescription being generated and those on the patient's current medication list) on an individual (paired) basis. When more than two generic substances are being prescribed, the database can check the interaction between all possible paired combinations of generics, but can not provide information about the overall combination.

Please note that not all generic entities have been classified into specific classes. Such generics fall into two groups: those that do not have significant interactions and those that have not yet been evaluated for their potential interactions, e.g. newer chemical entities.

Even if no interaction message appears it doesn't necessarily mean that none applies for the generic selected. It is the responsibility of the end user to evaluate all information in the clinical setting before making any final prescribing decision.

The compound effect of the interactions arising from the combination of more than two generics cannot be evaluated using this database (the number of possible permutations and combinations make it impossible to generate full interaction data using current technology). Therefore, the prescribing doctor must assess the combined consequences of all the displayed interactions in each patient.

The information provided by this package should not be substituted for good clinical knowledge and practice.

Although every effort has been made in compiling and checking the information in this database to ensure that it is accurate and up-to-date the authors, editors, publishers and their servants or agents shall not be responsible for any errors, omissions or inaccuracies in this database, whether arising from negligence or otherwise howsoever or for any consequences arising there from.

## 10.2 MIMS Interact on PDA – Limitations

The following is provided to demonstrate the limitations of computer technology and database applications, and reinforce that there is no substitute for good clinical knowledge and practice.

The information that is provided by this database can help You in Your decision making, but how You apply this information in a clinical setting for an individual patient is still Your responsibility.

As described in the 'Disclaimer' the MIMS DrugAlert database can only allow the checking of interactions between generics on a paired basis and the cumulative effects of multiple generics or the effect of a specific resultant interaction on all other generics cannot possibly be provided.

The following are two examples where the database will not provide all the information required for a final prescribing decision.

### **Example 1. Cumulative effects of multiple generics**

Four drugs are prescribed. The database will allow checking of the six possible combinations

Possible Combinations	Result of Interaction
Drug 1 with Drug 2	Moderate renal toxicity
Drug 1 with Drug 3	No interaction
Drug 1 with Drug 4	No interaction
Drug 2 with Drug 3	No interaction
Drug 2 with Drug 4	No interaction
Drug 3 with Drug 4	Moderate renal toxicity

Two interaction messages will be displayed - both of moderate renal toxicity. The additive effects of the interactions between drugs 1 and 2 and drugs 3 and 4, i.e. moderate toxicity plus moderate toxicity, which in a clinical situation may result in severe renal toxicity will not be displayed.

### **Example 2. The effect of a resultant interaction (between two drugs) on a third drug**

Three drugs are prescribed. Drug 1, Drug 2 and Drug 3

The database will allow the checking of the three possible combinations:

Possible Combinations	Result of Interaction
Drug 1 with Drug 2	Hypokalaemia
Drug 1 with Drug 3	No interaction
Drug 2 with Drug 3	No interaction

Drug 3 causes arrhythmias in the presence of hypokalaemia. However, in this case, the only warning that will be displayed is that hypokalaemia may occur if prescribing Drug 1 and Drug 2 together. The clinician must apply this information to the patient being treated and any other drug being prescribed.

In summary only drug/drug combinations can be checked and not resultant interaction/drug or resultant interaction/resultant interaction combinations.

MIMS DrugAlert and the advice contained herein is updated on a regular basis. This reflects the availability of new case reports and clinical studies published in acknowledged primary and secondary sources and other reliable sources of drug information including manufacturers' information, federally sponsored adverse drug event reporting agencies and college provided clinical best practice guidelines.

### 10.3 General Disclaimer

The Application is Our copyright and is for Your sole use according to this License. Apart from any fair dealing for the purposes of private study, research, criticism or review as permitted under the *Copyright Act*, no part may be reproduced by any process or stored in, transmitted by any retrieval system without Our written permission. Enquiries should be addressed to Us.

The Application provides information to You on the most commonly prescribed medicines in Australia. The information has been produced by the review of the TGA approved prescribing information and product packaging (where appropriate). Any omissions are due to the necessary information not being available to Us at the time of publication. Although every effort has been made in compiling and checking the information in the Application to ensure that it is accurate, the authors and Us and Our servants and agent shall not be responsible for the continued currency of the information for any errors, omissions or inaccuracies in the Application, whether arising from negligence or otherwise, howsoever or for any consequences arising there from.

It is important to remember that the selection of a therapy based on the information contained in the Application should always be overlaid against the profile of the individual patient. Clinical decisions are the responsibility of the User and where any doubt exists regarding the appropriateness or not of any therapy, referral to a relevant specialist and/or specific pharmaceutical manufacturer is recommended. There will inevitably be clinical situations that will not be fully covered by the TGA approved information. In these circumstances it is strongly recommended that You obtain further advice before prescribing.

The Application also includes information provided by third parties. This information is identified with the name of the source and has been chosen for publication because We believe it to be reliable. To the extent permitted by law, We, Our employees and agents accept no liability (including negligence) for any injury, loss or damage caused by the reliance on any part of this third party information.

The Application may also contain links to third party Internet sites. We do not have knowledge of the information contained in such other sites. To the extent permitted by law, We, Our employees and agents accept no liability (including negligence) for any injury, loss or damage caused by reliance on the part of this third party information.

## 11. General

- 11.1 You may not assign or transfer this Agreement. You agree to comply with all applicable laws.
- 11.2 **YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.**
- 11.3 This agreement is governed by the laws of New South Wales, Australia.

## 12. GST & Fees

- 12.1 You must pay the Fees for the License to Us within thirty (30) days of the date of the Tax invoice We issue to You.
- 12.2 If We are liable by law for any GST on any Primary Payment, then You must pay to Us the amount of GST.
- 12.3 You must pay to Us an amount in respect of any GST that We are required to pay under this License:
- (a) at the same time; and
  - (b) in the same manner as You are required to pay for the Primary Payment in respect to which the amount of GST relates.
- 12.4 We must issue to You a Tax Invoice in accordance with the requirements of the law relating to GST.
- 12.5 If We refund to You any amount under this License We must also refund to You an amount in respect of any GST that You have paid in respect of that amount.

## 13. Dictionary

**"Application"** means the program downloaded from the Internet, including the database of information and the operating software contained therein, any new releases, the database of information and the operating software contained therein provided to You during the Term and any updated data files downloaded by You during the Term from the MIMS website;

**"Fee"** means any fee charged by Us to You for the Application;

**"GST"** means a goods and services tax, consumption tax, value-added tax, retail turnover tax or a tax of a similar nature;

**"Input Tax"** means an amount equal to the amount of GST paid or payable for the supply of any thing acquired;

**"Intellectual Property Rights"** means all right, whether registrable, registered or unregistered in any patent, trade mark, trade name, business name, company name, copyright, registered design or other design right or circuit layout right, or any applications for, or rights to obtain or acquire, any such rights;

**"Intended Results"** means the use of the Application as a reference product to return information to the user.

**"MIMS Website"** means [www.mims.com.au](http://www.mims.com.au) or any new website notified to You by Us.

**"New Release"** means any updated version of the Application.

**"PDA"** means Personal Digital Assistant.

**"Primary Payment"** means any payment by You to Us of any fees or other amount payable by You to Us under This License;

**"Tax Invoice"** means an invoice in the format required by the law and which also shows the amount of the GST payable by Us in respect of the relevant Primary Payment;

**"Term"** means the period specified in clause 3.

**"Updates"** means updated information including data files for the Application which will be provided to You in accordance with clause 4 of this License.

**"User"** means You or Your employee using the Application.

**"We", "Us" or "Our"** means MIMS Australia and its publisher CMPMedica Australia Pty Limited (ACN 050 695 157) of Level 2, 1 Chandos Street, St Leonards NSW 2065;

**"You"** means anyone We have licensed to use the Application.

Should You have any questions concerning this agreement, please write to Us at:

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