

## 1. Scope

1.1. These users’ terms and conditions of Cybernano SAS (hereinafter the “**Users’ Terms**”) regulate the contractual relationship between Cybernano SAS (hereinafter “**Cybernano**”) and any of its Client (hereinafter the “**Client(s)**”) in connection with the software programs (hereinafter “**Software**”) that are developed, manufactured and provided by Cybernano through a remote access as a “*Software as a Service*” on Cybernano’s web platform, including in particular Cybernano’s Software and products called “i-cardio” and “i-cell”. These Users’ Terms also cover the Client’s storage of data on the servers and computing center of Cybernano. The Customer is not allowed to use the Software if he does not accept these Users’ Terms.

1.2. Any other services to be provided by Cybernano to Clients (hereinafter the “**Service(s)**”) will be covered by Cybernano’s General Terms for Services (hereinafter the “**General Terms for Services**”), which are available on Cybernano’s website.

1.3. Any diverging terms and conditions arrangements between Cybernano and a Client must be recorded in writing and signed by Cybernano to be binding upon Cybernano.

1.4. General terms or conditions of the Client, even if they are attached to Client’s purchase order, notice, acceptance etc., will not apply to the relationship between Cybernano and the Client.

1.5. The contract and other agreements will be effective only after written confirmation of Cybernano, or upon acceptance by the Client of the present Users’ Terms and any other commercial terms of Cybernano available on Cybernano’s web platform (hereinafter the “**Contract**”).

## 2. Fees

2.1. The amount of fees due by the Client to Cybernano for the Software and/or Services is stated in the Contract and is calculated plus V.A.T. (if any). The fees for the performance of a Service or for the use of a Software is fully charged in advance by means of an invoice. Cybernano shall not be bound to start the performance of any Service or to provide access to any Software until it has received the payment of the owed fees by the Client.

2.2. If a payment is delayed by the Client beyond its due date, Cybernano may charge an administrative fee of Eur 40 and interests for late payment in the amount of 8 percent above the base rate. Cybernano’s right to claim further damages shall remain unaffected.

## 3. Performance covered by the Contract

3.1. Use of Software. Subject matter of the Contract is for Cybernano to allow the Client to use one or more Software as listed in the Contract, which is determined in detail by the specifications and terms of the Contract, in the way of remote access via the Internet (“*Software as a Service*”) as well as enabling the storage of data by the Client on servers that are operated on behalf of Cybernano. The connection of the Client to the Internet is not the subject of the Contract with Cybernano, but it is within the usage requirements of Client’s responsibility. Individual extensions and/or adaptations of Software functionality must be negotiated and agreed separately with Cybernano on a case by case basis.

3.2. Operational maintenance. The monitoring of the basic features of the Cybernano’s Software is generally 7 days a week / 24 hours daily. The maintenance operation is generally Monday to Friday, from 9 a.m. to 6 p.m. on weekdays in France. Cybernano will do his best efforts to debug and restore the Software and/or its website within a reasonable time. Bugs in the above mentioned sense are documented and repeatable disturbances that result in the impossibility of Software operating, or data corruption, or loss of data that are processed with a Software or generated by it. The Client shall take all reasonable measures to facilitate the identification of bugs, errors and their causes and provide Cybernano with any useful information.

## 4. Range of functions – Quality

4.1. The function range of a Software is derived from Cybernano’s manual that has been made available to the Client. The use of the functions of a Software by the Client requires authorization to access the Software which - for its part - affects the function range provided for the user.

4.2. No functionality beyond the quality of contractual Software is owed. Technical data, specifications and performance figures in public statements, particularly in advertising materials, are not quality descriptions.

4.3. The continual Software development is an integral part of the Services offered by Cybernano. These include the Software optimization, the adaption to technical progress and the consideration of current operational requirements. In the context of software development, the individual functions can be changed or omitted as far as the attainment of the Contract purpose is not at risk.

## 5. Field of responsibility of the Client – Client’s obligations

5.1. It is the Client’s own responsibility,

- to check in advance if the Software and Services proposed by Cybernano is likely to meet his needs, and if necessary to obtain expert consulting services for that purpose;

- to ensure that its existing software and hardware fulfil the minimum requirements of the Software in order for the Client to be in a position to use such Software efficiently;

- to carefully consider the Software specifications in Cybernano’s documentation and manuals, and other instructions of Cybernano;

- to immediately prepare error messages while appointing knowledgeable contact partners for the troubleshooting identification and information gathering;

- to follow guidance provided by Cybernano in order to avoid errors, and to consider measures for protection of hardware and Software (Client system);

- to take reasonable measures to protect Client’s local IT systems against corruption by possible viruses, Trojans or similar malware;

5.2. The Client is prohibited to transmit passwords and other personal logins and access data to any third parties. All credentials must be stored protected, so that third parties cannot access them. Key words and passwords have to be changed not only before the first use of a Software, but also at regular intervals. ID and password must be changed immediately, as far as cause or suspicion emerge that third parties have obtained possession of the data. Key words and passwords may not be stored in an unencrypted form on a PC or other storage devices (CD-ROM, USB stick, etc.).

5.3. The Client has to observe and to respect the national and international copyright and trademark, patent, trade name and trademark rights and other intellectual property rights as well as personal rights of third parties and Cybernano.

5.4. Claims, losses and any additional cost for Cybernano resulting from the violation by the Client of these obligations are at the sole expenses of the Client.

## 6. Availability, maintenance, malfunctions

6.1. Unless expressly otherwise agreed between the parties, Cybernano guarantees an availability of remote access to the Software of 98% on an annual basis. Some failures are not seen as periods of unavailability as well as restrictions by Software accessibility and /or by Software provision during regular maintenance windows and/or during maintenance, installation or modification coordinated with the Client as well as with the Client planned and coordinated deactivations or tag outs during these times.

6.2. The regular maintenance windows are daily between 9 p.m. and 6 a.m. on weekdays in France. Time periods in which the Software is unavailable due to technical or other circumstances beyond the control of Cybernano (e.g. force majeure, faults in the telecommunication lines, acts of third parties) shall not be considered as “periods of unavailability” for the purpose of this Section 6.

6.3. Further, shall not be considered as “periods of unavailability” for the purpose of this Section 6, time periods due to:

- an acute threat to Cybernano’s data, hardware / software infrastructure and the data hardware / software infrastructure of the Client because of external threats (e.g. viruses, Port- Hacking attacks by Trojans), or
- a significant threat to the security of the operation or integrity of the network temporarily restricts access to the Software.

By such a decision, Cybernano shall show – as far as possible – consideration on the legitimate interests of the Client, to immediately inform the Client about the measures taken and take all reasonable measures in order to fix the restricted access as quickly as reasonably possible.

6.4. The responsibility of Cybernano for components used for the Services ends in the data interfaces of the Cybernano data centers to the public data networks, unless otherwise agreed between the parties.

6.5. The Client shall immediately report if interruptions of availability take place. The availability counts as reduced only after the Client presents a trouble report and only if a fault is present. Restrictions on data transmission, which are caused in the local IT system of the Client or in a disruption of the Client’s access at the agreed transfer point (e.g. line failure or interference with other providers or telecom companies), shall not be considered as “periods of unavailability” for the purpose of this Section 6.

## 7. Warranty

7.1. Cybernano only warrants that the Software will comply with the rules of the rental law (rent of Software), unless otherwise agreed. The strict liability for defects is excluded.

7.2. Cybernano’s warranty is excluded if the Client has made unauthorized changes to the Software or if the Client uses the Software for unforeseen and/or unexpected purposes.

7.3. Unless otherwise agreed, claims for defects shall expire twelve months after the end of each Services.

## 8. Data storage and protection

8.1. Should personal data and/or protected data be transmitted by the Client to Cybernano for the use of the Software, the Service delivery will be made by Cybernano in compliance with the French legal and statutory requirements.

8.2. The data gathered, created and processed by the Software is stored on the server at the computing center. The Client is the only person that has rights over the data and can at any time, especially in case of termination of the Contract, require the transfer of particular or of the total data, in which case Cybernano will not withhold any of it. The transfer of the data will be done electronically through a data network or upon a special agreement by handing over of a data carrier. The Client is not entitled to any right over the Software required for processing the data apart from the right to use expressly granted by Cybernano to the Client. The Client carries the whole responsibility for the admissibility, processing and using of the data, as well as protecting the rights of the concerned parties (providing of information, usage, rights, blocking, erasing).

8.3. The Client is aware that the data might be at risk due to viruses and third-party intervention in connection with using the Internet. Cybernano applies for specific purpose the appropriate current Software for detecting viruses or other sabotage

programs through “state of the art” software. Further, firewall will be supported and will be updated regularly.

8.4. The Client warrants and represents to Cybernano that all Client’s Information and data, products, samples, materials, processes provided or communicated to Cybernano by the Client or on behalf of the Client is the lawful property of the Client, or is validly and lawfully licensed to the Client, and that the access to, use or change of such information, data, products, materials, by Cybernano in the framework of Cybernano’s performance of the Services is lawful and does not breach or infringe any right of third parties. Therefore the Client shall indemnify and hold Cybernano harmless from and against any dispute, claim, litigation, damages, losses or actions from third parties alleging that their rights could be the subject of any infringement or potential infringement by Cybernano and/or the Client.

#### 9. Property of the Software - Client’s Right to use the Software

9.1. Cybernano shall at all times remain the sole and exclusive owner of the Software and all manual, documentation, information or know-how which could be disclosed or communicated by Cybernano to the Client and/or implemented or used by Cybernano for the performance of the Services. All intellectual property rights relating to the Software, drawings, plans, samples, processes, know-how, reports and/or other documents provided or communicated to the Client remain the sole and exclusive ownership of Cybernano and is protected by law. Copyright, patent, trademark, and all other ancillary rights to the Software and to any other deliverable that Cybernano makes available to its Client is solely and exclusively owned by Cybernano.

9.2. Cybernano grants the Client, for the duration of the Contract, a non-exclusive, non-assignable and non-transferable limited right (without right to sub-license) to use the Software specified in the Contract and the related user documentation as agreed in the Contract, solely for the Client’s internal use. Use is made through access to the Software functionality via the Internet. Transfer point for Cybernano’s SaaS Services is the router-output of Cybernano used data center to access the Internet.

9.3. Any utilization of the Software beyond the permitted use under the Contract is not permitted. The Client is not entitled to (i) download or copy the Software, (ii) to provide any access to use the Software to any third party, (iii) to copy or sell the Software or parts of this Software. If a third party uses a Software with the help or through the negligence of a Client, or if the Client is responsible for this use, the Client shall be held liable therefore and shall also be held jointly and severally liable with such third party(ies) for the payment of any corresponding fees.

9.4. The Client is not entitled to decompile, to “reverse engineering”, to disassemble, or reproduce all or any part of the Software in order to create a separate application or to create any software competing directly or indirectly with the Software. The Client is not allowed to remove, change or modify the copyright information of Cybernano in connection with the Software.

9.5. Cybernano is entitled, in case of serious breaches against its obligations by the Client, to block the access of the Client, at the Client’s expense. Such blocking does not release the Client from the obligation to pay the fee for the use of Software.

#### 10. Confidentiality

10.1. Any information provided by one party to the other, verbally or in writing, regarding its products, concepts, ideas, strategies, procedures, processes, specifications, documents, drawings, calculations, software, plans and any item, sample, specimens, including its know-how, its intellectual property, its data and any elements of information, documents and legal, technical or business database (the « Information ») shall be treated as strictly confidential information by that other party and shall not be provided to any third party without the disclosing party’s prior and written consent. The said Information shall be exclusively used by the parties for the purpose of the performance of their respective obligations.

10.2. This mutual confidentiality clause shall remain effective throughout the whole term of the performance of the respective order and for 5 years following the end date of each Service.

10.3. Unless otherwise agreed Cybernano is authorized to name the Client’s commercial name or brand in its commercial references, on all type of support including its website, it being understood that Cybernano will in no event disclose confidential information of the Client.

#### 11. Contract period and termination

11.1. If there is no maximum term set in the Contract for the period of use by the Client of the Software, the agreed maximum term shall be 12 months. After the expiration of the maximum term, the Contract will be automatically terminated. This shall not affect the right of either party to terminate the Contract for good cause.

11.2. In the event of any breach of contract by the Client or any failure by the Client to comply with its contractual duties, Cybernano shall be allowed, through a written notification, and without prejudice to any other claim, to terminate all or part of the respective contract or purchase order without any responsibility or liability whatsoever. In addition, Cybernano shall be allowed to be reimbursed by the Client for all costs and expenses incurred by Cybernano as a result thereof and to seek compensation for any loss or damage it sustains in connection with the Client’s failure to perform the respective contract or purchase order. In addition, Cybernano shall be exempted from any undertaking to the Client.

#### 12. Liability - Liability exclusions - Limitations of liability

12.1. Cybernano is only liable for willful misconduct or gross negligence. Cybernano is not liable for ordinary negligence, unless it is a violation of a material contractual obligation the fulfillment of which is essential for due implementation of the Contract and on which the other party is reasonably expected to rely upon. In these cases, Cybernano’s liability shall be limited to such direct harmful consequences which - according to the type of business - are typical and able to predict, subject however to Section 12.5 below.

12.2. For the loss of data, Cybernano is liable pursuant to the preceding paragraphs only if such loss could not have been avoided by reasonable measures of data backup on the part of the Client.

12.3. Cybernano is obliged to provide the customary care. In determining whether Cybernano has to be blamed is to consider that a software cannot be created free of defects.

12.4. The liability of Cybernano shall not be incurred as a result of the decisions or orientations made by the Client based on the data resulting from the Client’s use of the Software or based on the reports provided by Cybernano.

12.5. Cybernano shall incur no responsibility nor any liability for any punitive damage or indirect or non-consequential losses or damages of the Client including but not limited to production or operational losses, profit losses, productivity losses, financial or business losses, arising – directly or indirectly – from any use of the Software and/or their consequences. Notwithstanding any other term or applicable provision of these Users’ Terms and conditions or any other contractual agreement, the liability of Cybernano shall be in any case limited to the total amount of each Service performed for the Client. The Client waives any other claim against Cybernano beyond that amount and agrees to secure such a waiver from its own insurers.

#### 13. Force Majeure

13.1. No party shall be liable for events of force majeure, which render impossible the performance of Services or even significantly impede the proper execution of the Contract.

13.2. Force majeure means any circumstances which are beyond the control of the parties, such as war and other military conflicts, mobilizations, blockades, civil disturbances, terrorism, embargo, confiscations, natural disasters, strikes, lockouts and other labor unrest, government policies, decisions or other authorities unforeseen by the parties, serious and unforeseeable circumstances.

13.3. No force majeure event preventing the use of the results of the Software or reducing the needs of the Client shall allow it to suspend or delay any payment owed nor to terminate any order. If however a force majeure event make it impossible to perform an order for a period of more than three months, the order may be automatically terminated without any formality by one of the parties.

#### 14. Applicable law - Jurisdiction

14.1. The law of France applies to the present Users’ Terms and to any Contract with Cybernano.

14.2. It is agreed between the Parties that should a dispute arise between them, the Parties shall try to promptly find, in good faith, an amicable solution and try to reconcile before any legal action. To that effect, the claiming party shall state its claims by registered mail with receipt confirmation to the other party and suggest holding a meeting. Failing reaching an amicable solution within one month following the receipt of the letter containing the claims, and provided at least one conciliation meeting took place between the parties, the parties shall recover their freedom of action.

14.3. These Users’ Terms are exclusively governed by the laws of France excluding any other law. Any dispute relating to the interpretation and performance of these Users’ Terms shall be brought exclusively to the Business Court (*Tribunal de Commerce*) of Nancy, France.

#### 15. Other agreements - Alteration of the Contract - Severability

15.1. Agreements deviating from these Users’ Terms and contract changes shall be in writing, particularly in regard to the amendment of this form requirement. Single verbal agreements shall be a part of the Contract, if they represented in the Contract; § 2 shall apply accordingly.

15.2. Unilateral changes to these general contract conditions by Cybernano shall become part of the Contract if they were given to the Client of Cybernano in written form; if the Client does not expressly contradict in writing within a period of six weeks as from receipt of the notification of the amendment and shall be informed of this consequence in the change notification.

15.3. If any provision of these Users’ Terms is completely or partially invalid (or has been omitted), the validity of the remaining provisions shall not be affected. In such a case, the parties shall arrange in good faith that the invalid (or omitted) provision will be replaced (or completed) by another provision which reflects the economic intend as closely as possible.

15.4. Cybernano’s contact details: 193 avenue Paul Muller – Telecom Nancy – 54602 Villers Les Nancy, France - <http://www.cybernano.eu/>