



Medical Objects Software Suite™ End User Agreement

Warning: Use of **Medical Objects Software Suite™** is conditional upon you (“the **Customer**”) agreeing to the terms of this **Agreement**. Choosing “I accept the terms and conditions of this **Agreement**” when installing **Medical Objects Software Suite™** shall be deemed to be your acceptance of the terms of this **Agreement**. If you do not agree, choose “do not accept” and do not proceed to install or use **Medical Objects Software Suite™** and contact **Medical-Objects Pty Ltd ABN 18 100 735 037** (“**Medical-Objects**”) to arrange for any applicable refund.

Operative Part

1. Definitions

1.1 In this **Agreement**, unless inconsistent with the context:

- (a) **Agreement** means this agreement, its recitals, provisions and any schedule of this agreement.
- (b) **Confidential Information** includes information which relates to **Medical Objects Software Suite™** including account details, passwords, certificates and activation codes, development concepts, source code, object code, specifications, data models and schema, protocols, algorithms, manuals, drawings and data created or used by **Medical-Objects, Medical-Objects’** personnel, **Medical-Objects’** policies, **Medical-Objects’** business strategies and the terms of this **Agreement**.
- (c) **Clause** means a clause of this **Agreement**.
- (d) **Critical Fault** means a fault whereby none of the **Specifications** are satisfied.
- (e) **Confidential Client Data Information** means information which relates solely to **Customer’s** business or patients and does not include any underlying data structures or concepts.
- (f) **Duration** means initially 7 days but upon payment of the amount specified in an invoice issued by **Medical-Objects** the **Duration** shall be extended for the period specified in that invoice.
- (g) **Fees** means either the agreed fees of **Medical-Objects** or, if none, the published fees of **Medical-Objects** as amended from time to time.
- (h) **Force Majeure** means an act, omission or circumstance over which **Medical-Objects** could not have reasonably exercised control including telecommunication failures.
- (i) **Intellectual Property Right** includes any right arising from or capable of arising from the: *Circuits Layout Act 1989* (Cth); *Copyright Act 1968* (Cth); *Designs Act 2003* (Cth); *Patents Act 1990* (Cth); *Trade Marks Act 1995* (Cth); any similar legislation outside the Commonwealth of Australia; any similar unregistered right and **Confidential Information**.
- (j) **Interest Rate** means the rate of 10% per annum calculated monthly in arrears and added to the outstanding sum.
- (k) **Material Fault** means a fault whereby one or more of the **Specifications** are not satisfied.

- (l) **Minor Fault** means a fault for which a work around is made available.
- (m) **Party** and **Parties** means a party to this **Agreement** and their respective successors, trustees and permitted assigns.
- (n) **Specifications** means the documentation issued for the relevant component of the **Medical Objects Software Suite** by **Medical-Objects**.
- (o) **Sub-clause** means a sub-clause of this **Agreement**.
- (p) **Support Times** means the help desk hours set out at <http://www.medical-objects.com.au/Customersupport/tabid/103/Default.aspx>.
- (q) **Support Levels** means (all references are to **Support Times**) refer to the Support Matrix provided in the Schedule:
- (r) **Support Rebate** means 10% of the applicable support (not licence) fee for the relevant calendar month.
- (s) **Taxes** includes taxes, duties and government charges, fees, levies, any penalty for not paying same and any liability for same.

2. Interpretation

2.1 In this **Agreement**, unless inconsistent with the context:

- (a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
- (b) Words denoting the singular number shall include the plural number and vice versa.
- (c) Words denoting any gender shall include all other genders.
- (d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.
- (e) Money references are references to Australian currency.
- (f) A reference to “**includes**”, “**including**” or “**inclusive**” is to be construed as being a reference to “includes, without limitation”, “including, without limitation”, and “inclusive, without limitation” respectively.
- (g) Headings used in this **Agreement** are for convenience and ease of reference only, and are not part of this **Agreement** and shall not be relevant or affect the meaning or interpretation of this **Agreement**.
- (h) Every obligation express or implied into this **Agreement** and entered into by more than one **Party** shall bind them jointly and each of them severally.
- (i) Every right express or implied into this **Agreement** granted in favour of one more or **Parties** shall be for the benefit of each of them jointly and severally
- (j) A provision of this **Agreement** shall not be construed adversely to the **Party** that drafted it.
- (k) If any provision or part provision of this **Agreement** is held invalid, unenforceable or illegal for any reason, this **Agreement** shall remain otherwise in full force apart from such provision or part provision which shall be deemed deleted.
- (l) This **Agreement**, any invoice issued by **Medical-Objects** and any proposal written by **Medical-Objects** form part of this **Agreement** and shall be read in that order of precedence.

- (m) No remedy, expressly granted to **Medical-Objects** excludes or shall be deemed to exclude or modify any other right or remedy which would otherwise be available to **Medical-Objects**.

3. Customer's Right to Use Medical Objects Software Suite™

- 3.1 Subject to the terms of this **Agreement** **Medical-Objects** grants **Customer** a revocable non-exclusive right to use **Medical Objects Software Suite™** for the **Duration** as follows.
- 3.2 The scope of the rights granted to the **Customer** are determined solely by the configuration invoiced by **Medical-Objects**.
- 3.3 The available configurations can be found at <http://www.medical-objects.com.au/Pricing/tabid/129/Default.aspx>
- 3.4 The available configurations may vary on 30 days notice.
- 3.5 **Medical-Objects** shall, from time to time, provide certificates and access codes to permit **Customer** to use **Medical Objects Software Suite™**.

4. Customer's Responsibilities

4.1 **Customer** shall:

- (a) pay the **Fees** specified in an invoice;
- (b) keep its user accounts, passwords, certificates and activation codes details confidential and not disclose same to any other party. **Customer** shall be responsible for all use of same whether authorised by **Customer** or not. Should any such disclosure occur **Customer** shall report same to **Medical-Objects** in writing as soon as possible;
- (c) provide equipment which **Medical-Objects** considers suitable to use **Medical Objects Software Suite™**;
- (d) comply with all the terms and conditions associated with any certificate or token issued by third party providers such as Medicare Australia. The details of such terms and conditions can be found at <http://www.medicareaustralia.gov.au/provider/business/online/register/apply.shtml>;
- (e) comply with **Medical-Objects'** Reasonable Use Policy which may be updated and changed from time to time and is currently located at <http://www.medical-objects.com.au/CompanyInformation/ReasonableUsePolicy.aspx>
- (f) comply with **Medical-Objects'** Publishing Policy which may be updated and changed from time to time and is currently located at <http://www.medical-objects.com.au/CompanyInformation/PublishingPolicy.aspx>;
- (g) apply, without delay, all updates issued by **Medical-Objects** from time to time to which it is entitled;
- (h) backup its data wherever same is stored;
- (i) agree to and comply with the terms and conditions of any third party software or services supplied by **Medical-Objects** or made available with **Medical Objects Software Suite™** and or not use such third party software and services;
- (j) comply with all applicable laws and standards;
- (k) conduct all appropriate virus and security checks;
- (l) ensure that its customers, employees, sub-contractors and other agents who have authorised access to **Medical Objects Software Suite™** are made aware of the terms of this **Agreement**;

- (m) supervise and control the use of **Medical Objects Software Suite™** in accordance with the terms of this **Agreement**;
- (n) immediately advise **Medical-Objects** in writing upon **Customer** becoming aware of any person using **Medical Objects Software Suite™** who is not authorised by **Medical-Objects** to do so; and
- (o) train its staff in the use of **Medical Objects Software Suite™** and the internet;

4.2 **Customer** shall not:

- (a) copy, reproduce, translate, adapt, vary, modify, decompile, disassemble, reverse engineer, create derivative works of, sub-license, rent, lease, loan or distribute **Medical Objects Software Suite™** other than as expressly authorised by this **Agreement**;
- (b) engage in password sharing, remote desktop access or port aggregation without the express permission of **Medical-Objects**; Remote Desktop Access is allowed only where a customer is connecting to their own system from an offline location.
- (c) exceed the licensed number of users or machines;
- (d) install, upload or execute any computer programs which have not been checked and are not expressly specified by **Medical-Objects** as suitable;
- (e) interfere with the network or disrupt any other user, service or equipment;
- (f) permit any act which infringes the **Intellectual Property Rights** which subsist in **Medical Objects Software Suite™** and which belong to **Medical-Objects**.
- (g) provide or otherwise make available **Medical Objects Software Suite™** in any form to any other person;
- (h) use **Medical Objects Software Suite™** for any illegal, unauthorised or dangerous purpose including unsolicited commercial e-mail;
- (i) use **Medical Objects Software Suite™** for or in connection with an unauthorised service bureau operation; or
- (j) use **Medical Objects Software Suite™** to publish any material for which it is not the **Intellectual Property Right** owner or licensed by the **Intellectual Property Right** owner or is defamatory.

5. **Customisations**

5.1 **Customer** may from time to time request customisations including device integrations to the **Medical Objects Software Suite™**.

5.2 **Medical-Objects** may in its sole discretion elect to supply or not supply such customisations.

5.3 Such customisations shall be:

- (a) supplied pursuant to the terms and conditions of this **Agreement** as if such customisations were part of the **Medical Objects Software Suite™**;
- (b) supplied in accordance with a timetable and release schedule determined at the sole discretion of **Medical-Objects**;
- (c) only available after:
 - (i) the provision of any information requested from time to time by **Medical-Objects**;
 - and

- (ii) the payment of the price determined by **Medical-Objects** to be payable for such customisations.

6. Supplier's rights

6.1 **Medical-Objects** may, whilst being under no obligation to do so and at its sole discretion, without notice or giving any reason or incurring any liability for doing so:

- (a) delete, remove or refuse to publish any material which is, in its sole opinion, without limitation:
 - (i) dangerous;
 - (ii) found in an unauthorised area;
 - (iii) excessive in volume;
 - (iv) unauthorised;
 - (v) uncollected for an excessive period;
 - (vi) unlawful;
 - (vii) in breach of **Medical-Objects'** Reasonable Use or Publishing Policy; and
- (b) take action if it suspects that malicious, illegal or unacceptable usage of **Medical Objects Software Suite™** is occurring or has occurred, including destruction or disposal of **Customer's** access passwords;
- (c) terminate without notice and without further obligation the provision of any customisations (subject only to a refund of any amount which has been paid in advance and for which no work has been undertaken).

7. Disclaimer & Acknowledgments

7.1 **Customer** acknowledges that:

- (a) The provision of medical services is a complex area and **Medical Objects Software Suite™** is not designed as a substitute in any way for the application of **Customer's** professional skill. **Customer** shall apply all appropriate professional care before using or relying on the **Medical Objects Software Suite™**;
- (b) supplied with **Medical Objects Software Suite™** are certain notes and instructions and a failure to follow those instructions or notes carefully could result in erroneous data being produced or actions being taken or not taken by **Medical Objects Software Suite™**;
- (c) whilst **Medical Objects Software Suite™** may be used by persons without a detailed knowledge of computers, **Medical Objects Software Suite™** is designed to be used by persons who are familiar with the provision of medical services. **Customer** shall check all data stored or provided by **Medical Objects Software Suite™** for any anomalies and compliance with law;
- (d) **Medical Objects Software Suite™** does not check for all anomalies and data incorrectly entered may be processed without question;
- (e) **Medical Objects Software Suite™** does not necessarily comply with any standard or legislation;
- (f) **Medical Objects Software Suite™** is licensed on the strict understanding that, subject to the warranties below, **Medical-Objects** is not responsible for the results of any actions taken, either by **Customer** or a third party relying on data supplied or not supplied by **Medical Objects Software Suite™**;

- (g) **Medical-Objects** cannot and does not warrant that **Medical Objects Software Suite™** shall be available 24 hours a day or that any defect shall be corrected within a specific time frame;
- (h) **Medical Objects Software Suite™** is not necessarily without defect; and
- (i) **Medical-Objects** is not responsible for:
 - (i) ensuring that **Medical Objects Software Suite™** is suitable for **Customer's** requirements or fit for any purpose;
 - (ii) any interruption to **Medical Objects Software Suite™** due to equipment failure, the need for routine maintenance, peak demand etc;
 - (iii) the supply or maintenance of **Customer's** equipment, software or telephone lines;
 - (iv) monitoring, controlling or ensuring the accuracy, appropriateness or content of any information on the internet and does not do so; and
 - (v) any software available on the internet or supplied by third parties.

8. Support

- 8.1 **Medical-Objects** may, from time to time, make available various support services and other assistance in relation to **Medical Objects Software Suite™**. The details of which are available at <http://www.medical-objects.com.au/Pricing/tabid/129/Default.aspx>.
- 8.2 Should **Customer** wish to use such services then **Customer** shall pay the then published rate of **Medical-Objects** in relation to such services. Such services are supplied pursuant to the terms and conditions set out in this **Agreement**.

9. Support Levels

- 9.1 **Medical-Objects** shall comply with the **Support Levels**.
- 9.2 If **Medical-Objects** fails to comply with 3 or more **Support Levels** in one calendar month then **Customer** shall be entitled to a credit of the sum of the **Support Rebate**.
- 9.3 The credit is not redeemable for cash.

10. Intellectual Property Rights

- 10.1 **Medical-Objects** retains all the **Intellectual Property Rights** in **Medical Objects Software Suite™** and the trade mark **Medical Objects Software Suite**.
- 10.2 Save for the rights expressly granted to **Customer** pursuant to this **Agreement**, **Customer** hereby assigns all its worldwide right, title and interest in any **Intellectual Property Rights** that it may have now or in the future in whole or in part to the **Medical Objects Software Suite™**.
- 10.3 **Customer** shall retain the **Intellectual Property Rights** in all patient materials supplied by **Customer** to **Medical-Objects**, however, nothing in this **Sub-clause** grants **Customer** the right to continue to edit Confidential Client Data any **Confidential Client Data Information** until all **Fees** are paid in full. Data Extractions are available upon request at a reasonable service charge.

11. Confidential Information

- 11.1 To the extent that **Confidential Information** is not in the public domain (other than by way of breach of this **Agreement**) and is not known by the **Customer** at the time of disclosure, **Customer**:
 - (a) shall:
 - (i) keep such information confidential;

- (ii) take all necessary precautions to prevent any disclosure of **Confidential Information** to unauthorised third parties; and
 - (iii) inform **Medical-Objects** of any suspected or actual disclosure of **Confidential Information**; and
- (b) shall not, without the express written consent of **Medical-Objects**:
 - (i) directly or indirectly divulge or communicate or otherwise disclose any **Confidential Information**, in whole or part to any third party;
 - (ii) use any **Confidential Information**, other than for the express purpose set out in this **Agreement**; or
 - (iii) remove or cause to be removed from **Medical-Objects'** systems any **Confidential Information**.

11.2 This **Clause** shall survive the termination of this **Agreement**.

12. Confidential Client Data Information

12.1 To the extent that **Confidential Client Data Information** is not in the public domain (other than by way of breach of this **Agreement** and is not known by **Medical-Objects** at the time of disclosure, **Medical-Objects**:

- (a) shall keep such information confidential;
- (b) shall not, without the express written consent of **Customer**:
 - (i) directly or indirectly divulge or communicate or otherwise disclose **Confidential Client Data Information**, in whole or part to any third party; or
 - (ii) use **Confidential Client Data Information** for its own purposes;

12.2 This **Clause** shall survive the termination of this **Agreement**.

13. Fees

13.1 **Customer** shall pay **Medical-Objects** the **Fees** without withholding, deduction or offset of any amounts for any purpose.

13.2 An account rendered by e-mail or otherwise by **Medical-Objects** shall be prima facie evidence for a Court of the provision of the items referred to in same to **Customer** by **Medical-Objects**.

14. Tax

14.1 Unless expressly stated to the contrary and to the extent permitted by law:

- (a) the **Fees** are exclusive of all **Taxes** which may arise in relation to the subject matter of this **Agreement**;
- (b) **Customer** shall immediately pay any applicable **Taxes** to **Medical-Objects**; and
- (c) **Customer** shall indemnify and keep indemnified **Medical-Objects** from payment of the **Taxes** and any penalties arising from non-payment of same.

15. Interest

15.1 **Customer** shall pay **Medical-Objects** interest at the **Interest Rate** on all overdue amounts from the due date until payment is made.

16. Suspension of Obligations

16.1 If **Customer** breaches any provision of this **Agreement** **Medical-Objects** may, without further notice to **Customer**,

- (a) suspend all its obligations to **Customer** under this **Agreement**;
- (b) disable the **Medical Objects Software Suite**[™] in whole or part using time out codes, remote access or other technological measures; and or
- (c) withdraw any discount which was otherwise applicable to the **Fees**.

17. Force Majeure

17.1 **Medical-Objects** shall not be liable for any delay or failure to perform its obligations if such a failure or delay is due to **Force Majeure**.

18. Limited Warranty

18.1 **Medical-Objects** shall supply **Medical Objects Software Suite**[™] with all due care and skill.

18.2 **Medical-Objects** shall re-supply any component or part of the **Medical Objects Software Suite**[™] which is not supplied in accordance with this **Clause** provided that **Customer** notifies **Medical-Objects** of same within a reasonable time. This remedy shall be **Customer's** sole and exclusive remedy for breach of this **Agreement** or any other cause of action against **Medical-Objects**.

19. Limitation of Liability

19.1 To the extent permitted by law and except as expressly provided to the contrary in this **Agreement**, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this **Agreement** or to this **Agreement** generally, are excluded. Where legislation implies in this **Agreement** any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included in this **Agreement**. However, the liability of **Medical-Objects** for any breach of such term shall be limited, at the option of **Medical-Objects**, to any one or more of the following: if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

19.2 To the extent permitted by law and except as expressly provided to the contrary in this **Agreement**, **Medical-Objects** shall not be under any liability (contractual, tortious or otherwise) to **Customer** in respect of any loss or damage (including consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to this **Agreement** or an act, failure or omission of **Medical-Objects**.

19.3 **Customer** warrants that it has not relied on any representation made by **Medical-Objects** or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by **Medical-Objects**.

20. Indemnity

20.1 To the extent permitted by law, **Customer** shall release, indemnify and keep indemnified **Medical-Objects**, its officers, employees and agents, against any injury, death, damage, loss, costs (including legal costs on an indemnity basis), expenses, interest, taxes or liability whether direct or indirect and whether sustained by **Medical-Objects**, **Medical-Objects'** officers, employees and agents, **Customer**, **Customer's** patients, officers, employees and agents or a third party arising out of:

- (a) a breach of this agreement by **Customer**;

- (b) any wilful, unlawful or negligent act or omission of **Customer**, its officers, employees or agents;
- (c) any injury suffered by **Customer's** officers, employees or agents; and
- (d) the discharge of **Customer's** obligations pursuant to this **Agreement**.

20.2 This indemnity applies regardless of whether or not legal proceedings are instituted.

20.3 This indemnity applies to any payment, settlement, compromise or determination regardless of whether same is authorised by **Customer** or not.

20.4 It is not necessary to incur any expense or make any payment before enforcing any right of indemnity under this **Agreement**.

20.5 This **Clause** survives termination of this **Agreement**.

21. Waiver

21.1 No right of **Medical-Objects** under this **Agreement** shall be deemed to be waived except by notice in writing signed by **Medical-Objects**. Any such waiver shall be limited to its express terms.

21.2 Any failure by **Medical-Objects** to enforce any provision of this **Agreement**, or any forbearance, delay or indulgence granted by **Medical-Objects** shall not be construed as a waiver of **Medical-Objects'** rights.

22. Survival

22.1 The provisions of this **Agreement** which are capable of having effect after the expiration of this **Agreement** shall remain in full force and effect following the expiration of this **Agreement**.

23. Assignment, Novation and Sub-Contracts

23.1 **Customer** shall not sub-contract, sub-licence, assign or novate, in whole or part, any entitlement or obligation under this **Agreement** without the prior written consent of **Medical-Objects**.

23.2 **Medical-Objects** may:

- (a) sub-contract for the performance or part performance of this **Agreement**; and
- (b) assign this **Agreement** to a third party without notice and in such circumstances, **Medical-Objects'** rights and obligations under this **Agreement** shall be immediately terminated upon assignment.

24. Notices

24.1 Notices under this **Agreement** may be delivered by hand, by mail or by facsimile to the addresses supplied by the **Parties** from time to time.

24.2 Notices shall be deemed given in the case of:

- (a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
- (b) email, immediately upon acceptance of same from a machine outside the control of the sender;
- (c) posting, 3 days after dispatch; and
- (d) facsimile, upon completion of transmission.

25. Early Termination

- 25.1 If **Customer** accepts an offer from **Medical-Objects** which is for a fixed period and before that fixed period has expired terminates this **Agreement** then **Customer** shall pay **Medical-Objects** by way of liquidated damages the full amount remaining to be payable for that fixed period.
- 25.2 The **Parties** agree that amount is a genuine pre-estimate of the loss or damage which **Medical-Objects** would suffer in such circumstances.

26. Termination

26.1 **Medical-Objects** may terminate this **Agreement** immediately if:

- (a) any payment due from **Customer** to **Medical-Objects** remains unpaid for a period of 28 days;
- (b) **Customer** breaches any provision of this **Agreement** and such breach is not remedied within 28 days of notice by **Medical-Objects**;
- (c) **Customer** becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (d) **Customer**, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (e) **Customer** being a natural person, dies; or
- (f) **Customer** ceases or threatens to cease conducting its business in the normal manner.

26.2 In addition to terminating this **Agreement**, **Medical-Objects**:

- (a) may repossess any software in the possession, custody or control of **Customer** which was supplied by **Medical-Objects** and has not been paid for in full;
- (b) may disable the **Medical Objects Software Suite**[™] using time out codes, remote access or other technological measures;
- (c) may retain any moneys paid;
- (d) may charge a reasonable sum for any un-invoiced items;
- (e) shall be regarded as discharged from any further obligations under this **Agreement**;
- (f) shall be under no liability to **Customer** for damages or compensation or any other payment whatsoever;
- (g) may immediately erase all **Confidential Client Data Information** stored by **Medical-Objects**; however an option will be provided to send a data extraction back to the customer at a reasonable service charge and
- (h) may pursue any additional or alternative remedies provided by law.

27. Entire Agreement

27.1 Unless stated expressly to the contrary in this **Agreement**:

- (a) this **Agreement** constitutes the entire agreement between the **Parties** for the subject matter referred to in this **Agreement**. Any prior arrangements, agreements, representations or undertakings are superseded;
- (b) this **Agreement** is not to be construed as creating a joint venture, partnership or agency situation between the **Parties**. No **Party** may represent that there exists such a relationship between the **Parties**;

- (c) no **Party** may bind another **Party** to any agreements, arrangements, contracts or understanding or represent that they have such authority; and
- (d) no modification or alteration of any provision of this **Agreement** shall be valid except in writing signed by each **Party** save that **Medical-Objects** may on 30 days notice change any term of this **Agreement** and in such a case **Customer** may terminate this **Agreement** during that notice period without further obligation.

28. Governing Law

28.1 This **Agreement** shall be governed by and construed according to the law of **Queensland**.

28.2 The **Parties** irrevocably submit to the exclusive jurisdiction of the Courts of Queensland and the Commonwealth of Australia. Any proceedings in a Commonwealth Court shall be commenced in **Queensland**.