



1 Recitals

- 1.1 MED operates a secure, open, independent, business-to-business, Internet-based, e-prescription trading system built expressly for the Australian health system and provides various services relating to that marketplace and value-added e-commerce applications.
- 1.2 Customer wishes to obtain the Services from MED.
- 1.3 MED and Customer agree that the Services will be provided, and Customer's participation in and use of MediSecure® will be on the terms of this Agreement.

2 Term

- 2.1 This Agreement will commence upon acceptance by both parties in accordance with the acceptance clause on the face page and will continue for the Minimum Period of Services as set out in the Schedule, and after the expiry of the Minimum Period until terminated in accordance with this Agreement.

3 Scope and Structure

- 3.1 This Agreement sets out the governing terms and conditions of MED's provision of the Services to Customer (including Customer's access to, and use of MediSecure®), and incorporates the Participation Rules.
- 3.2 The Participation Rules will be posted by MED on the MediSecure® website. MED and Customer will comply with the Participation Rules in using or making available the Services or MediSecure®.
- 3.3 Unless otherwise specified, MED does not control the quality or availability of Prescriptions accessed through the Services and MED takes no responsibility for the quality, availability, fitness for purpose or accuracy of data of any such Prescription.

4 Non-exclusivity

- 4.1 Nothing in this Agreement prevents Customer from obtaining Prescriptions from patients in a paper form or entering into any other Prescription fulfillment transaction independently of MED or MediSecure® or obtaining services the same as, or substantially similar to, the Services from a third party.

5 Acknowledgments

- 5.1 Customer acknowledges and agrees that:
- a) Unless otherwise specified, MED has no responsibility for the terms or content of any Prescription downloaded by Customer from the MediSecure® ETP System or the performance by Customer or Other Customer of any Supply Agreement or other agreement to provide Prescriptions to Customer; and
- b) Customer is responsible for:
- Identifying the Other Customers which it wishes to engage in transactions;
 - The Transactions into which it decides to enter and their performance;
 - Ensuring its own compliance with the law; and
- c) Customer enters into any Transaction after receiving its own advice and considering its own legal position; and
- d) MED is not liable for any deficiencies in the performance of the Services or any loss incurred by Customer arising as a result of any information supplied by Customer or any Other Customer to MED being inaccurate, incomplete or late; and
- e) Customer shall use current MED-certified pharmacy dispensing software and maintain version upgrades as released from time to time; and
- f) Customer shall allow MediSecure® to capture medicines usage data from its pharmacy dispensing software from time to time, and acknowledges and agrees that MED may use the data for Commercial Purposes including to identify and report usage trends in pharmacy provided that MED does not disclose or identify the source thereof.
- 5.2 MED undertakes to treat the medicines usage data provided by Customer as confidential information and not to disclose the same in such a way that the source of the medicines usage data can be identified as Customer.

6 Representations and Warranties

- 6.1 Customer represents and warrants to MED that in using the Services, it will:
- comply with all applicable laws (including the Trade Practices Act 1974 (Cth) and State fair trading legislation);
 - use the Services strictly in accordance with this Agreement for the purposes contemplated by this Agreement;
 - provide such information to MED as is reasonably necessary for MED to provide or make available the Services and use reasonable endeavours to ensure that

this information is accurate and complete and delivered to MED in a timely manner;

- (d) not intentionally, recklessly or negligently interfere with Other Customers' use of the Services (including use of MediSecure®).
- 6.2 MED represents and warrants to Customer that in operating MediSecure® and providing the Services, it will:
- comply with all applicable laws (including the Trade Practices Act 1974 (Cth) and state fair trading legislation);
 - perform the Services with reasonable care and skill and in accordance with any applicable standards.

7 Fees, Invoicing and Payment Terms

- 7.1 MED will issue receipted invoices to Customer for the Fees set out in the Schedule. Such issue may be by hard copy, electronic copy, posting, or such other means as chosen by MED and shall contain the requirements of a Tax Invoice.
- 7.2 Payment must be made by agreed direct debit authority or credit card payment authority or direct payment authority.
- 7.3 Payment of Sign-on Fee and Usage Fee must be within 7 days after service by MED of a Sign-on Fee or Usage Fee Invoice and by the agreed electronic payment method.
- 7.4 Customer acknowledges and agrees that Fees are not refundable except as provided for under clause 15.2.
- 7.5 Customer acknowledges and agrees that it is liable to pay all of the Usage Fees for the initial Minimum Period as set out in the Schedule. Save and except where due to MED terminating this Agreement pursuant to clause 13.1 or Customer lawfully terminating this Agreement for cause pursuant to clause 14, if Customer ceases payment under the direct debit authority during the initial Minimum Period, then the whole of the Usage Fees for the remainder of that Minimum Period shall become immediately due and payable by Customer and MED may recover from Customer such amount as a debt then due and payable.

8 GST

- 8.1 The Fees set out in the Schedule include an amount for GST payable by MED for the provision of the Services, calculated at the rate of GST applying as at the date hereof.
- 8.2 If at any time the rate of GST increases or decreases from that applying as at the date hereof thereby causing an increase or decrease in the GST payable by MED then the Fees shall be adjusted to take account of such increase or decrease. Customer agrees to provide an amended direct debit authority to cover such change.

9 Disclaimer

- 9.1 Except for the express terms of this Agreement and any Prescribed Terms, MED makes no warranties with respect to its performance of the Services and expressly excludes all conditions, warranties and terms which would otherwise be implied by law, conduct or otherwise into this Agreement. To the extent permitted by law, MED limits its liability for a breach of any Prescribed Terms at its option to the repair or re-supply of the relevant Prescription or Prescriptions.

10 Limitation of Liability

- 10.1 Notwithstanding any other provision of this Agreement, to the maximum extent permitted by law:
- in no circumstances will either party be liable to the other for any indirect or consequential loss, damage, liability, costs or expenses (including loss of profits, transaction losses, opportunity costs, interruption of business, loss of use, loss of goodwill, or loss or corruption of data) arising out of or in connection with this Agreement, whether such liability arises under contract, tort (including negligence), law or otherwise; and
 - MED's total aggregate liability to Customer under or in connection with this Agreement for all loss, damage, liability, costs or expenses of a kind not excluded by paragraph a), whether arising under contract, tort (including negligence), law or otherwise is limited to an amount not exceeding the Fees paid by Customer during the 12 months prior to the date on which the claim arose less any amount previously paid by MED to Customer in relation to a claim under this Agreement.
- 10.2 Clause 10.1 b) does not limit in any respect Customer's obligation to pay the Fees.

11 MED Intellectual Property

- 11.1 Customer acknowledges that as between Customer and MED, MED owns all Intellectual Property (other than any Third Party Intellectual Property) subsisting within MediSecure® (including the design of MediSecure®) or subsisting in any content or material created, or made available, by MED in the provision of the Services ("MED Intellectual Property").
- 11.2 MED grants Customer a royalty free, non-exclusive, non-transferable licence to use the MED Intellectual Property and the Third Party Intellectual Property to the extent necessary for it to use the Services (including MediSecure®) in accordance with this Agreement. Customer is expressly prohibited from using the MED Intellectual Property for any other purpose.
- 11.3 Apart from any incidental use arising as a result of Customer's exercise of the licence contained in clause 11.2, Customer must not use the name, logo or associated trade marks of MED without the express written approval of MED (which approval may be given on such conditions as MED thinks fit including the condition that Customer will comply with MED's trade mark guidelines).

11.4 Other than as provided in this clause, nothing in this Agreement gives Customer any right, title or interest in or to the MED Intellectual Property.

12 Termination for Convenience

12.1 After the expiry of the Minimum Period of Services as set out in the Schedule, Customer may terminate this Agreement on giving 30 days' written notice of termination to MED.

13 Termination and Suspension by MED

13.1 Unless otherwise specified, MED may in its absolute discretion terminate this Agreement in whole or in part or suspend its provision of all or any part of the Services on 7 days' notice to Customer for the following reasons:

- (a) Lack of cooperation and commitment from Customer and Other Customers; or
- (b) Lack of interest in using MediSecure®.

13.2 MED may terminate this Agreement and cease its provision of the Services or may suspend its provision of the Services without notice where Customer fails to pay the Usage Fee in accordance with clause 7 of this Agreement.

14 Termination for Cause

14.1 Either party may terminate this Agreement immediately by written notice to the other party if:

- (a) The other party is in material breach of this Agreement and, if capable of remedy, has failed to remedy such breach within 20 days of receiving notice to do so; or
- (b) The other party becomes insolvent, has a receiver or receiver and manager appointed, enters into liquidation, provisional liquidation or administration, is subject to an arrangement with its creditors, fails to comply with a statutory demand, is otherwise unable to pay its debts when they fall due or something having a similar effect to the foregoing happens in connection with the party.

15 Consequences of Termination

15.1 Upon termination of this Agreement:

- a) MED will revoke all access means to MediSecure® (including the Customer ID and Password) and will provide direction to Customer on disengaging from MediSecure®, and
- b) Customer will cease to use MediSecure® and return all material that is the property of MED.

15.2 Where this Agreement is terminated pursuant to clause 12, 13 or 14, Fees will be payable by Customer up to the date of termination. Where MED has terminated this Agreement under clause 14, MED will refund Fees paid by Customer for Services not provided to Customer.

15.3 Where this Agreement has been:

- a) Terminated by Customer under clause 12; or
- b) Terminated by MED under clause 13.2 or 14,

MED may require Customer to pay any relevant Fees and any reasonable direct costs or expenses incurred by MED as a result of the termination. MED will endeavour to mitigate such costs and expenses.

16 Survival of Terms

16.1 Clauses 6, 7, 9, 10, 11, and this clause 16 survive termination of this Agreement.

16.2 The expiry or termination of this Agreement will not affect the accrued rights of the parties.

17 Assignment

17.1 Customer may not assign this Agreement in whole or in part or delegate or sublicense its rights under this Agreement (other than to Authorised Users) without the prior written consent of MED (which will not be unreasonably withheld). MED may assign or novate this Agreement in whole or in part or sublicense its rights and obligations under this Agreement at any time with 30 days notice to Customer. MED may assign or novate this Agreement in whole or in part to a Related Body Corporate without the consent of Customer.

18 Entire Agreement

18.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

19 Publicity

19.1 Customer may not make press or other announcements or releases relating to this Agreement and the transactions effected through MediSecure® without the prior written approval of MED as to the content, form and manner of the announcement or release.

19.2 Where Customer is required by law to disclose, such as under the continuous disclosure regime under the Corporations Law, clause 19.1 applies to the extent permitted by law and MED will treat such communication as confidential.

19.3 MED may promote the fact that Customer is a customer of MediSecure® and uses the Services. With the prior written approval of Customer, Customer licenses MED to use Customer's trade marks strictly in accordance with Customer's trade mark policies and requirements as notified by Customer to MED, as part of such promotion.

20 Governing Law

This Agreement will be governed by the laws in force in the State of Victoria, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of that State.

21 Definitions

These meanings apply in this Agreement, unless the contrary intention appears:

Agreement means the face page covering these Terms and Conditions including the Schedule, these attached Terms and Conditions and the Participation Rules.

Authorised Users means agents, advisers, contractors or personnel of Customer whom Customer has authorised to use the Customer ID and Password on its behalf.

Commercial Purposes means manipulating the generic data (which does not specifically refer to Customer or which may not be expected to identify Customer) to provide services which include reports, data, and information to Customer, Other Customers and third parties.

Customer ID means the identification code assigned to Customer by MED.

e-Script means any Prescription in electronic form that complies with the then prevailing standards and includes all information and an approved digital signature so as to be accepted as an electronic representation of a paper based Prescription as defined in the relevant state and Commonwealth legislation.

Fees mean the fees due to MED under this Agreement.

GST and Tax Invoice have the same meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

Intellectual Property means all rights conferred under statute, common law and equity in or in relation to inventions (including patents), copyright and neighbouring rights, registered and unregistered designs, logos and get up, circuit layouts, trade marks, know how and includes applications and the right to make applications for all of the above, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Other Customer means a registered customer of MediSecure® who has entered into an agreement substantially similar to this Agreement or other form of agreement approved by MED (but excludes Customer).

Other Customer Confidential Information means any information supplied to MED by an Other Customer relating to the use of MediSecure® which Other Customer treats, or may reasonably be expected to treat, as confidential.

Participation Rules means rules governing mechanical aspects of the use or provision of the Services or MediSecure® including rules relating to privacy, posting of information on the MED website and Customer support.

Password means the password assigned to Customer by MED.

Prescribed Terms means any terms, conditions, or warranties implied by law into contracts for the supply of goods or services including Prescriptions that cannot be excluded.

MED Confidential Information means any information supplied to Customer by MED relating to this Agreement (whether supplied before, on or after the date of this Agreement and including the Customer ID and Password) which MED treats, or may reasonably be expected to treat, as confidential.

MED Intellectual Property has the meaning set out in clause 11.1.

MediSecure® and MediSecure® ETP System means the service provided by MED to run the secure electronic prescription exchange described in the Schedule.

Prescription means a written order issued by a doctor or other qualified practitioner that authorizes a pharmacist or other registered dispensing organisation to supply a specific medication for a patient, with instructions on its use. A Prescription will generally comply with the requirements of the relevant state and Commonwealth legislation in relation to the control and use of medicines and other substances.

Related Body Corporate has the same meaning as in section 50 of the Corporations Act 2001.

Schedule means the Schedule set out on the face page covering these Terms and Conditions.

Services means the services MED may provide or make available to Customer (and Other Customers) under this Agreement.

Supply Agreement means the terms and conditions applying to the supply of Prescriptions to Customer by a medical practitioner, a patient or an institution.

Third Party Intellectual Property means Intellectual Property owned by a third party, which is required to be used in connection with the Services.

Transaction means the collection of a Prescription from the MediSecure® ETP Script Vault™ and includes the process of identifying the particular Prescription, validating the presence of that Prescription in the secure storage facility within the MediSecure® ETP System and the process of down loading that Prescription into the Pharmacy dispensing system via the secure transport connection of the MediSecure® ETP System.

Transaction Fee means a fee charged by MED for the use of MediSecure® to down load an electronic Prescription held in the secure MediSecure® ETP System and receive the Prescription into the Pharmacy dispensing system. A Transaction fee will only be charged where Customer is the receiver of the Prescription or transaction.