

IMO® PERIOP MAPPER SOFTWARE

END USER LICENSE AGREEMENT

PLEASE READ THIS END USER LICENSE AGREEMENT (THE "AGREEMENT") CAREFULLY BEFORE ACCESSING OR USING THE SOFTWARE. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN THE PERSON, COMPANY, OR ORGANIZATION THAT WISHES TO LICENSE THIS SOFTWARE ("CLIENT") AND INTELLIGENT MEDICAL OBJECTS, INC. ("IMO"). BY ACCESSING AND/OR USING THE SOFTWARE, CLIENT (I) ACCEPTS THE SOFTWARE, (II) AGREES TO THE TERMS OF THIS AGREEMENT, (III) CONFIRMS ACCEPTANCE OF THE SOFTWARE AND (IV) AGREES TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF CLIENT DOES NOT AGREE TO BE BOUND BY THESE TERMS, OR DOES NOT HAVE AUTHORITY TO BIND CLIENT TO THESE TERMS, THEN CLIENT WILL NOT ACCESS OR USE THE SOFTWARE.

SECTION I. DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the definitions set forth below shall be applicable:

"End User" means any agent, employee, or contractor of Client authorized by Client to access or use the Software.

"Front End Code" means the user interface display and usability platform of the Software. This includes, but is not limited to, the layout, color scheme, and HTML pages.

"IMO Content" means the IMO® terminologies, including but not limited to AORN/IMO® Periop **ITD** terminology, and any portion thereof, accessed by Client and its End Users.

"IMO License Agreement" means the print license agreement executed by Client and IMO governing the use of the IMO Content within Client's applicable electronic medical/health record software or through any IMO web-based portal.

"Software" means only the web-based IMO® Periop Mapper software provided herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation, and any updates to such Software which Client is entitled to receive and that has been provided to Client by IMO.

SECTION II. OWNERSHIP AND USE

2.1 GRANT OF LICENSE.

SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IMO HEREBY GRANTS TO YOU A NON-EXCLUSIVE, NON-TRANSFERABLE, NON-SUBLICENSEABLE, LIMITED RIGHT AND LICENSE TO ESTABLISH ONLINE ACCESS TO THE SOFTWARE SOLELY FOR INTERNAL, NON-COMMERCIAL USE.

2.2 Restrictions.

Notwithstanding Section 2.1, Client may not:

- 2.2.1. Alter, merge, modify, copy, distribute, reproduce, adapt or translate the Software.
- 2.2.2. Decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.
- 2.2.3. Rent, lease, or sublicense the Software.
- 2.2.4. Allow or enable access to the Software by any person other than End Users.
- 2.2.5. Use any Front End Code to its advantage, the advantage of Client partner companies, or potential partner companies outside of the intended use for which IMO provided Client access to the Software.
- 2.2.6. Use the Software, in whole or in part, or services provided for any purpose of a competitive nature to the Software.

2.3 IMO Content Restrictions.

- 2.3.1.** Any and all use of the IMO Content within the Software shall be governed by the terms and conditions of the IMO License Agreement.
- 2.3.2.** Any alterations, modifications, or edits to the IMO Content made by IMO as a result of the use of the Software by Client shall be a derivative work of the IMO Content and IMO shall own with all rights assigned by Client to IMO.
- 2.4 Title.** This Software is licensed, not sold. IMO shall retain all right, title and interest (including all copyrights, patents, service marks, trademarks and other intellectual property rights) in and to the Software, including any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes thereto, and all related information, material and documentation, etc. Except for the license granted pursuant to this Agreement, Client shall not acquire any interest in the Software or any other services or materials, or any copies or portions thereof, provided by IMO pursuant to this Agreement. This Agreement does not grant Client any rights to trademarks or service marks of IMO. IMO shall retain all rights to proprietary application development, business and technical methodologies, implementation, business processes and all other aspects of IMO business, the Software, and services. The technology and business methodologies are proprietary and the sole property of IMO.
- 2.5 Consent to use of data.** Client retains all rights with regard to Client’s Data and Confidential Information and IMO may only use such information as expressly permitted in this Agreement or as agreed in an Order Document. IMO may use, disclose, and retain Data to perform, support, and improve the Licensed Solutions and for purposes permitted by Applicable Laws. IMO will strictly comply with Applicable Laws with respect to Aggregate Data. “Aggregate Data” means anonymized sets of data that have been gathered by IMO for the purpose of expressing information in summary form. Aggregate Data does not include any information that could be used to identify, or re-identify, Client or Client’s patients. Nothing in this Agreement transfers or conveys to IMO any ownership interest in the Data or Client’s Confidential Information.
- 2.6 Use of Name.** All of the IMO trademarks are owned by IMO and may not be used for any purpose without the prior written permission of IMO.

SECTION III. CONFIDENTIALITY

- 3.1 Confidential Information.** “Confidential Information” refers to the following items disclosed by IMO to Client: (i) any document IMO marks “Confidential”; or (ii) any document that in some other manner indicates its confidential nature and concerning IMO or its products and services. For the purposes of this EULA, the Software and any updates to any of IMO products shall be considered Confidential Information of IMO. Notwithstanding the foregoing, Confidential Information does not include information that: (A) is in Client’s possession at the time of disclosure; (B) is independently developed by Client without use of or reference to Confidential Information; (C) becomes known publicly, before or after disclosure, other than as a result of Client’s improper action or inaction; or (D) is approved for release in writing by IMO.
- 3.2 Nondisclosure Obligations.** Client shall not: (i) use Confidential Information for any purpose other than exercising the rights granted under this EULA; or (ii) disclose Confidential Information to any other third party without IMO’s prior written consent. Client will promptly notify IMO of any misuse or misappropriation of Confidential Information that comes to Client’s attention. Notwithstanding the foregoing, Client may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Client will give the IMO prompt notice of any such legal or governmental demand and reasonably cooperate with IMO in any effort to seek a protective order or otherwise to contest such required disclosure, at the IMO’s expense.
- 3.3 Injunction.** Client agrees that breach of this Section 3 would cause IMO irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, IMO will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 3.4 Retention of Rights.** This Section 3 does not transfer ownership of Confidential Information or grant a license thereto. IMO retains all right, title, and interest in and to all Confidential Information.

**SECTION IV.
TERM & TERMINATION**

4.1 Term. This Agreement is effective until terminated by either Client or IMO. Client's rights under this Agreement will terminate automatically without notice from IMO if Client fails to comply with any term(s) of this Agreement.

**SECTION V.
DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

5.1 DISCLAIMER OF WARRANTIES. THE SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IMO SPECIFICALLY DISCLAIMS ALL WARRANTIES WITH REGARD TO THE SOFTWARE AND SERVICES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, UNINTERRUPTED SERVICE OR FITNESS FOR A PARTICULAR PURPOSE.

YOU ACKNOWLEDGE THAT IMO IS NOT AFFILIATED WITH THE CENTERS FOR MEDICARE AND MEDICAID SERVICES AND THAT WHILE THE SOFTWARE IS A TOOL TO ASSIST YOU IN ANALYZING DATA, YOU SHALL NOT RELY ON THE INFORMATION PROVIDED BY THE SOFTWARE AND SHOULD INDEPENDENTLY VERIFY THE ACCURACY OF THE INFORMATION PROVIDED BY THE SOFTWARE. IMO DOES NOT GUARANTEE ANY PARTICULAR OUTCOME RESULTING FROM YOUR USE OF THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, YOUR PARTICIPATION IN MEDICARE AND MEDICAID ELECTRONIC HEALTH RECORD INCENTIVE PROGRAMS.

5.2 LIMITATION OF LIABILITY. IMO'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED TOTAL LICENSE FEES PAID TO IMO. IN NO CASE SHALL IMO BE LIABLE FOR DIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE LIABILITIES LIMITED BY THIS SECTION 5.2 APPLY: (I) TO LIABILITY FOR NEGLIGENCE; (II) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (III) EVEN IF IMO IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (IV) EVEN IF CLIENT'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 5.2 IMO'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

5.3 Client Warranty. Client represents and warrants that it shall, at all times, comply with, and shall remain solely responsible for compliance with, all applicable federal, state and local laws and regulations.

5.4 Indemnification. Client shall defend, indemnify, and hold IMO and its officers, directors, parent company and agents harmless from any claims, costs, liabilities, judgments, attorneys' fees, settlements, and penalties brought against IMO arising out of, related to, or alleging: (i) use of the Software by End-Users; (ii) the performance of this EULA by Client or any of its agents or employees; or (iii) Client's negligence; provided, the foregoing indemnity shall not apply to claims caused by IMO's gross negligence. IMO shall provide Client with prompt notice of any such claim so that Client's indemnification duties under this subsection are not materially adversely affected. Client shall have sole control of the defense of any such action, including appeals, negotiations, and any settlement compromise thereof; provided: (i) IMO will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects IMO to any ongoing obligations; and (ii) such approval by IMO shall not be unreasonably withheld or delayed.

**SECTION VI.
GENERAL PROVISIONS**

6.1 Assignment of Agreement. Client may not assign its rights or duties under this Agreement without the prior written consent of IMO. This Agreement shall inure to the benefit of the authorized successors and assigns of the parties.

6.2 Independent Contractor. IMO is an independent contractor, and this Agreement does not in any way create the relationship of principal and agent, franchisee, joint venture or partnership between the parties. Neither party shall be liable for any debts or obligations of the other.

6.3 Entire Agreement; Precedence. This Agreement contains the entire understanding between the parties and supersedes any prior verbal or written agreement between the parties with respect to use or access of the Software. No amendment or modification of the Agreement shall be valid, unless made in writing and signed by both parties hereto. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any term or condition of any exhibit hereto, the terms and conditions of this Agreement shall, in all instances, govern and control.

6.4 Governing Law; Venue. This Agreement in all respects shall be governed by, construed, and interpreted in accordance with the laws of the State of Illinois without regard to: (i) its conflict of law principles; or (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods. You irrevocably consent to personal jurisdiction and venue in the United States District Court for the Northern District of Illinois or any Illinois court of competent jurisdiction for any action brought in connection with this Agreement and waives any objection to the convenience of those forums. Any suit brought to enforce the provisions of these Terms of Use must be brought in the aforementioned forums. In the event of any dispute under this Agreement the prevailing party shall be entitled to recover its costs of litigation including reasonable attorney fees.

6.5 Force Majeure. Neither party hereto shall be in default hereunder by reason of its delay or failure to perform any of its obligations hereunder for any event, circumstance or cause beyond its control such as, but not limited to, acts of God, strikes, lockouts, general governmental orders or restrictions, war, threat of war, hostilities, revolution, acts of terrorism, riots, epidemics, fire, earthquake or flood. The performance of this Agreement shall then be suspended for as long as any such event shall prevent the affected party from performing its obligations under this Agreement.

6.6 Invalidity; Waivers. If any provision or portion of this Agreement is held invalid, illegal, void or unenforceable as it appears in this Agreement by reason of any rule of law, administrative or judicial provision or public policy, then such provision shall be construed as being enforceable to the extent such rule of law, administrative or judicial provision or public policy allows. All other provisions of this Agreement shall nevertheless remain in full force and effect. Neither of the parties shall be deemed to have waived any of its rights, powers or remedies hereunder unless the waiving party expresses such a waiver in writing.

6.7 Export Restrictions. Client and/or any End User may not export or re-export the Software, any part thereof, or any process or service that is the direct product of the Software (the foregoing collectively referred to as the "Restricted Components"), to any country, person, entity, or end user subject to U.S. export restrictions. Client specifically agrees not to export or re-export any of the Restricted Components (i) to any country to which the U.S. has embargoed or restricted the export of goods or services or to any national of any such country, wherever located, who intends to transmit or transport the Restricted Components back to such country; (ii) to any person who Client knows or has reason to know will utilize the Restricted Components in the design, development, or production of nuclear, chemical, or biological weapons; or (iii) to any person who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. Government. Client represents and warrants that no governmental authority has suspended, revoked, or denied Client's export privileges.

6.8 Restricted Rights. The Software and related documentation are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government End Users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

6.9 Survival of Terms. All provisions of this Agreement which by their nature should survive termination or recession of the Agreement including, but not limited to ownership and title, warranties, limitation of liability, precedence, and governing law shall survive termination or recession.

6.10 Headings; Counterparts. Paragraph headings used herein are for convenience purposes only and are not intended to be, nor shall they be, used as an aid in interpretation. This Agreement may be executed in counterparts.

Any questions related to this Agreement should be directed to: Intelligent Medical Objects, Inc., 9600 W Bryn Mawr Ave Suite 100 Rosemont, Illinois 60018, USA. E-mail: legal@imo-online.com.

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EXHIBIT A
CPT® Editorial Content Terms

These CPT Terms govern Client's use of the CPT Editorial Content as implicated by the license agreement executed by Client and IMO ("License Agreement"). Unless otherwise defined herein, all capitalized terms shall have the meanings as set forth in the License Agreement.

1. Grant of Rights; Restrictions

- (i) The S o f t w a r e contains CPT® codes and descriptors ("CPT Editorial Content") licensed by the American Medical Association ("AMA").
- (ii) The license granted for CPT Editorial Content is a nontransferable, nonexclusive license for the sole purpose of internal use by Client within the United States.
- (iii) Client is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the Service, or a copy or portion of the Service.
- (iv) The provision of updated CPT Editorial Content within the Service is dependent on a continuing contractual relationship between IMO and the AMA.
- (v) Client must ensure that anyone with authorized access to the Service will comply with the provisions of these CPT Terms.

2. Users. Users of CPT Editorial Content are defined as follows:

"User" means an individual who:

- (i) accesses, uses, or manipulates CPT Editorial Content contained in the Service; or
- (ii) accesses, uses, or manipulates the Service to produce or enable an output (data, reports, or the like) that could not have been created without the CPT Editorial Content embedded in the Service even though CPT Editorial Content may not be visible or directly accessible; or
- (iii) makes use of an output of the Service that relies on or could not have been created without the CPT Editorial Content embedded in the Service even though CPT Editorial Content may not be visible or directly accessible.

Client shall accurately calculate Users as defined above for CPT Editorial Content, as contained in the Service, as applicable, in accordance with the methods for the User Proxy Model Product Categories of the Service as detailed in the User Proxy Model Calculator in Exhibit A to these CPT Terms, and/or such other model as required by IMO under the license agreement between IMO and AMA. Client shall report to IMO the accurately calculated number of Users of CPT Editorial Content, as contained in the Service, as applicable, using this methodology (in order that IMO may accurately report and pay royalties to the AMA).

Client shall accurately count Users as defined above for CPT Editorial Content, as contained in the Service where IMO advises Client that IMO and Client are obligated to count Users in accordance with the license agreement between IMO and the AMA. Client shall report to IMO the accurately counted number of Users of CPT Editorial Content, as contained in the Service (in order that IMO may accurately report and pay royalties to the AMA).

2. Notices

Client acknowledges that:

- (i) CPT Editorial Content is copyrighted by the AMA;
- (ii) CPT is a registered trademark of the AMA; and
- (iii) U.S. Government Rights

The Service includes CPT which is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. The AMA does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items) or any other license provision. The AMA reserves all rights to approve any license with any Federal agency.

3. Back Up Rights

Client may only make copies of the Service for back up or archival purposes. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back up or archival copies made.

4. Miscellaneous

To the extent possible under the applicable laws, the warranties and liability for CPT Editorial Content as contained in the Service is provided "AS IS" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or that it will meet the Client's requirements, and the AMA's sole responsibility is to make available to IMO replacement copies of CPT Editorial Content if the data is not intact; and the AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in the CPT Editorial Content. These CPT Terms will terminate in the event of default. Client acknowledges that access to the CPT Editorial Content requires a license fee or other consideration. In the event a provision of these CPT Terms is determined to violate any law or is unenforceable the remainder of the CPT Terms will remain in full force and effect. The AMA is hereby named as a third-party beneficiary of these CPT Terms. Client hereby grants IMO permission to provide the AMA with Client's name.