

## INTRODUCTION

These terms and conditions relate to:

- The grant of a licence to you to use the Practice Software (“Practice Software”); and/or
- The grant of a licence to you to use the SaaS Product (“SaaS Product”); and/or
- The grant of a licence to you to use the My Practice Cloud Software and to receive the associated MyPractice Cloud Online services (“MPC Software and Services”); and/or
- The provision of certain support and maintenance services (“Support Services”) to you; and/or
- The provision of Patient Communication services and certain other patient communication systems and facilities to you; and/or
- The provision of certain reputation monitoring and management services (“RMS Services”); and/or
- The provision of certain call tracking and marketing analytics services (“CTM Services”);
- The provision of certain marketing management services (“MM Services”); and/or
- The provision of any other services related to the Practice Software or SaaS Product and not listed above.

The provision of the above licences and/or services are governed by the terms and conditions comprised in this document. The terms specific to UK, New Zealand, Australia and Ireland set forth herein will apply to you based on your location as set forth in your Sales Agreement.

## DEFINITIONS

**“Account”** means collectively the account you create with us to access, administer and use the Services.

**“Administrator”** means the person designated by you (i) as your primary administrative contact for the purposes of support, issues related to outages and other problems and technical items and (ii) who has authority from you to bind you and administer the Services and designate additional Users and/or Administrators. Unless otherwise designated by you, the first User is deemed to be designated as an Administrator.

**“Confidential Information”** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information including (but not limited to) all technical or commercial know-how, specifications, inventions, process or initiatives which are of a confidential nature and any other confidential information concerning either party’s business, its Products or Services.

**“Content”** means any information or materials you or any User provide, uploads or posts in connection with use of the Services, including without limitation, information about your Users and any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on or forms part of the Website or is otherwise incorporated into the Services.

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the applicable jurisdiction.

**“Effective date”** means the date the Sales Agreement is entered into between you and us.

**“CTM Services”** means the tracking and marketing analytics services;

**“EasyPost Service”** means the service facilitated by us which enables you to send letters directly from Practice Software through third party mailing carriers;

**“Hardware”** means, computer equipment, operating systems, digital imaging equipment and other third party software products;

**“Insolvency Event”** means the occurrence of any one or more of the following events in relation to a party:

(a) you become unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986), admit your inability to pay your debts or become insolvent;

(b) a petition is presented, an order made or a resolution passed for your liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution;

(c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to you and/or over all or any part of your assets;

(d) you enter into or propose any composition or arrangement concerning your debts with your creditors (or any class of your creditors) generally; or

(e) anything equivalent to any of the events or circumstances listed in limbs (a) to (d) (inclusive) occurs in any applicable jurisdiction;

**“Intellectual Property”** means all intellectual property rights anywhere in the world (including present and future intellectual property rights) relating to any confidential information, business names, copyright, database rights, patents, know-how, trade or service marks, trademarks, designs, software, software programmes and source code and all variations, modifications or enhancements associated with the Practice Software, SaaS Product, the MPC Software, and/or any of the Services provided under these Terms;

**“MailDrop Services”** means the facilitation of the distribution of hard copies of pamphlets and other marketing collateral within an agreed proximity of your Practice;

**“Maintenance Releases”** means a release of software or an application which corrects faults, adds functionality or otherwise amends or upgrades the MPC Software or Practice Software.

**“MM Services”** means marketing management services, including search engine optimization, keyword advertising, pay per click, the provision of infrastructure and templates for direct mail, email, SMS, and other types of digital marketing services and communications between you and your patients;

**“MPC Licence”** means the licence granted by us to you to enable you to utilise the MPC Software and MPC Services;

**“MPC Services”** means the services provided via the MPC Software such as financial and performance reports, the ability to view practice calendars, share documents and where applicable, company practice performance;

**“MPC Software”** means My Practice Cloud Software;

**“Non-excludable Rights”** means any right remedy, implied or express term or condition, warranty or statutory guarantee, the exclusion of which would contravene any statute or cause any part of these Terms to be void or unenforceable.

**“Patient Communication Services”** means MM Services, SMS, MailDrop Services, Patient Experience Services and EasyPost Services, and the SMS Service;

**“Patient Experience Services”** means the provision of a technology solution which enables you to interact with your patients in respect

of your ongoing relationship with your patients in respect of such things as on-line bookings, provision of access to medical records, and such other functions as agreed from time to time;

**“Practice”** means your dental practice delineated in the Sales Agreement;

**“Practice Software Licence”** means the licence granted by us to you to enable you to utilise the Practice Software;

**“Practice Software”** means:

- (a) if you have elected to acquire our EXACT Software application pursuant to a Sales Agreement, our EXACT Software; or
- (b) if you have elected to acquire our OASIS software application pursuant to a Sales Agreement, our OASIS Software.

**“Privacy Policy”** refers to the privacy policy of the applicable jurisdiction in which the Services are provided:

- (a) In the UK and Ireland, please refer to <https://www.softwareofexcellence.com/en-gb/legal-documents>
- (b) In New Zealand, please refer to <https://henryscheinone.co.nz/privacy-policy/>
- (c) In Australia, please refer to <https://henryscheinone.com.au/privacy-policy/>

**“Product(s)”** means the software or application detailed in the Sales Agreement (see below) or as otherwise agreed between you and us in writing, including but not limited to SaaS Product, Practice Software, and/or the MPC Software.

**“RMS Services”** means reputation monitoring and management services;

**“SaaS Product”** means software as a service products provided to third parties that are hosted by us, including our Dentally Software if you have subscribed to our Dentally Software Application.

**“SaaS Service” or “SaaS Services”** means collectively the online facilities, tools, services or information that we provide through our SaaS Product.

**“Sales Agreement”** means our standard form sales agreement or order, together with any other documentation evidencing the purchase or subscription for the various licences, Products and Services under these Terms, including any online subscriptions, which prescribes the details of the licences and Services being subscribed for, the details of the licence fees, service fees, and certain other information relating to the provision of the licences and Services to you, which is to be read subject to these Terms. In the event of conflict between the Sales Agreement and these Terms, the Sales Agreement will control.

**“Security emergency”** means a breach by you or a User of this Agreement that (a) could disrupt (i) Service Provider’s provision of the Services; (ii) the business of other subscribers; or (iii) the network or servers used to provide the Services; or (b) provides unauthorised third party access to the Services.

**“Services”** means the services to be provided under the Sales Agreement, or as otherwise agreed between you and us in writing, including but not limited to MPC Services, Support Services, Patient Communication Services, Patient Experience Services, and/or the SaaS Services.

**“SMS and EasyPost Services”** means the SMS and EasyPost Services to be provided to you by us;

**“SMS Service”** means the service facilitated by us which enables

you to send and receive Standard Rate Messages through third party Telecommunication Carriers.

**“Subscription Services”** means those Services purchased pursuant to a Sales Agreement on a subscription basis for a time period specified in the Sales Agreement.

**“Support Services”** means the support and maintenance services to be provided by us to you in accordance with the provisions of these Terms;

**“Terms”** means these terms and conditions;

**“User(s)”** means an individual person who accesses the Services by authority of an Administrator and which person is not employed by us but is acting in the course of their employment with you.

**“you” and “your”** means you, the customer who is purchasing the software licences, Products, and/or the Services referred to in these Terms;

**“we”, “us” and “our”** means the entity you contract with on the Sales Agreement to provide the Services.

**“Website”** means the website on which the SaaS Product is hosted.

**“Workstation”** means a single PC, terminal or remote connection, where one instance of the Practice Software is either installed or accessed.

## PART I PRACTICE SOFTWARE LICENCE – SPECIFIC TERMS AND CONDITIONS

### 1 Practice Software Licence

- 1.1 The provisions of this Part I of these Terms will apply if you have elected to subscribe for a Practice Software Licence in the Sales Agreement, or subsequently via an online subscription, or other subscription documented in writing.
- 1.2 We grant to you a non-exclusive, non-transferable, revocable license to use the Practice Software during the term set forth in your Sales Agreement solely for your internal purpose, for the number of Workstations set forth in your Sales Agreement, and subject to these Terms. Title and all ownership and proprietary rights to the Practice Software remains our property at all times.
- 1.3 Where applicable, subject to you paying any installation fee prescribed by us in respect of the installation of the Practice Software, we (or a third party nominated by us) will install the Practice Software for you at your Practice or at another location agreed in writing between us.
- 1.4 The Practice Software may be updated or enhanced by us during the duration of these Terms.

### 2 Permitted Uses

- 2.1 You may make one backup copy of the Practice Software for your own business use. If the original working Practice Software on the computer hard disk will no longer work properly, you may use the backup copy to restore the Practice Software onto the computer hard disk. The Practice Software License may only be used for one set of data at any one time and only on the number of Workstations for which the Practice Software Licence has been purchased.

#### Our obligations

- 2.2 We will provide the Practice Software with reasonable skill

and care.

- 2.3 We have the right to make any changes to the Practice Software which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Practice Software.

**Your obligations**

- 2.4 You shall:

- (a) provide us with all necessary co-operation in relation to these Terms;
- (b) provide us with all necessary access to your practice and such information as we may require, in order to install the Practice Software and provide the Services, including but not limited to customer data, security access information and configuration services; and
- (c) obtain and maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their respective obligations under these Terms.

**3 Practice Software Fees**

- 3.1 In consideration for the grant of the Practice Software Licence, you will pay to us the licence fees and charges prescribed in the Sales Agreement.
- 3.2 Unless otherwise specified in the Sales Agreement, fees shall be payable by direct debit, (BACS or SEPA if you are located in the UK or Ireland). Direct debit will be collected on the date(s) detailed on the Sales Agreement or as otherwise agreed in writing.
- 3.3 On or before the Effective Date you shall provide us with valid, up-to-date and complete bank details relating to the bank account from which direct debit payments (if applicable, on BACS or SEPA) should be withdrawn. It is your responsibility to notify us of any changes to such bank details.
- 3.4 **Practice Software Subscription Pricing and Term**

- (a) You will be subject to fees, which may include a deposit, as set out by the Sales Agreement for Services. Subscription Services will commence and end on the dates specified in the Sales Agreement, or in the absence of such dates, shall commence on the Effective Date and shall end on the anniversary of five (5) years of the Effective Date for UK Customers and three (3) years of the Effective Date for Australia and New Zealand Customers (the term set forth in the Sales Agreement or the default term described here, as applicable, the "Minimum Initial Term" and the Minimum Initial Term together with any renewal period, the "Subscription Period") Unless otherwise specified in a Sales Agreement, the term for any other products and services purchased in a Sales Agreement for Subscription Services shall run concurrently with the term for Subscription Services.
- (b) Where set forth in a Sales Agreement, you will pay a deposit against default of payment of any

subscription fees in accordance with the payment schedule set out in the Sales Agreement which shall be payable by you on or before the Effective Date. In the event that you are not in default, the deposit shall be applied against the subscription fees for the first three (3) months of the Minimum Initial Term.

- (c) Where you wish to terminate the Sales Agreement before the end of the Minimum Initial Term (other than as permitted by the Sales Agreement or these Terms) or we terminate it due to your breach of the Sales Agreement or these terms, without prejudice to any other rights or remedies to us, you shall pay to us on demand a sum equal to the whole of the subscription fees that would (but for the termination) have been payable if the Sales Agreement had continued from the date of such demand to the end of the Minimum Initial Term.
- (d) Any transfer of your Practice Software License before the end of the Subscription Service Term requires prior consent from us and requires written confirmation and agreement from the proposed transferee in a form acceptable to us to confirm the new Practice Software License subscriber will agree to accept responsibility for the remaining balance of the agreement under the same terms. Please notify us at least 30 days in advance of any proposed transfer. If you fail to notify us of a transfer or if the proposed transferee fails to accept responsibility for the remaining balance of the agreement under the same terms, you will remain liable for the remaining balance of the agreement, which will be due in full immediately upon the transfer of the Practice Software License.

**PART II MPC SOFTWARE LICENCE AND PROVISION OF MPC SERVICES – SPECIFIC TERMS & CONDITIONS**

**4 MPC Licence and Services**

- 4.1 The provisions of this Part II of these Terms will apply if you have elected to subscribe for an MPC Licence and to receive the MPC Services in a Sales Agreement.
- 4.2 We grant to you:
- (a) a non-exclusive, non-transferable, revocable licence to use the MPC Software ("MPC Licence") during the term set forth in your Sales Agreement in accordance with these Terms in order to access the MPC Associated Services; and
  - (b) a non-exclusive, non-transferable, revocable right to permit you to receive the MPC Services for your internal dental business operations during the term set forth in your Sales Agreement.

4.3 Subject to you paying any installation fee prescribed by us in respect of the installation of the MPC Software, we (or a third party nominated by us) will install the MPC Software for you at your Practice or at another location agreed between us.

**5 Maintenance of MPC Software**

- 5.1 We shall from time to time make Maintenance Releases available to you.

## 6 Provision of MPC Services

- 6.1 We shall provide the MPC Services to you.
- 6.2 The MPC Services may be updated or enhanced by us during the duration of these Terms.
- 6.3 We shall use commercially reasonable endeavours to make the MPC Services available 24 hours a day, 7 days a week, except for:
- (a) planned maintenance carried out at such hours as we may notify to you from time to time; and
  - (b) necessary unscheduled maintenance.
- 6.4 We will, as part of the provision of the MPC Services and at no additional cost to you, provide you during our normal business hours with such customer support services as are reasonably necessary to enable you to use the MPC Services.

## 7 Fees

- 7.1 In consideration for us licencing you to use the MPC Software, and to provide you with the MPC Services, you shall pay to us the fees detailed in the Sales Agreement .

## 8 Our obligations

- 8.1 We will provide the MPC Services with reasonable skill and care.
- 8.2 The MPC Services may be updated or enhanced by us during the duration of these Terms.

## 9 Your obligations

- 9.1 You shall:
- (a) provide us with:
    - (i). all necessary co-operation in relation to these Terms; and
    - (ii). all necessary access to your Practice and such information as we may require, in order to install the MPC Software and provide the MPC Services, including but not limited to customer data security access information and configuration services;
 and
  - (b) obtain and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their respective obligations under these Terms, including without limitation the provision of the MPC Services.
- 9.2 You acknowledge that we are expressly permitted to utilise the data captured by the MPC Software for our own benchmarking purposes, whilst maintaining client confidentiality at all times.

## PART III SAAS PRODUCT LICENSE – SPECIFIC TERMS & CONDITIONS

### 10 SaaS Product Licence

- 10.1 The provisions of this Part III of these Terms will apply if you have elected to subscribe to a SaaS Product licence in the Sales Agreement, or subsequently via an online subscription, or other subscription documented in writing.
- 10.2 We grant to you a non-exclusive, non-transferable, revocable limited licence to access and use the SaaS Product and SaaS Services during the term set forth in your Sales Agreement.
- 10.3 The SaaS Product may be updated or enhanced by us

during the duration of these Terms.

### Our obligations

- 10.4 We will provide the SaaS Product with reasonable skill and care.

### Your obligations

- 10.5 You shall:
- (a) provide us with all necessary co-operation in relation to these Terms;
  - (b) provide us with all necessary access to your practice and such information as we may require, in order to provide the SaaS Services, including but not limited to customer data, security access information and configuration services; And
  - (c) obtain and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their respective obligations under these Terms.

### Use of Services

- 10.6 You shall ensure any User of the SaaS Product licence complies with these Terms. You are responsible for the acts and omissions of any Users as though they were your own acts or omissions under these Terms. Without limiting the generality of the foregoing, you are responsible for any disclosure of Content arising out of features enabled by any User.
- 10.7 You and your Users are permitted to use the SaaS Services only in accordance with these Terms and any relevant law, regulation or other applicable instrument in your particular jurisdiction.
- 10.8 You may not engage in any conduct that may disrupt provision of the SaaS Services by us.
- 10.9 Subject to any express agreement to the contrary, you and any authorised User may not reproduce, copy, duplicate, trade or resell the SaaS Product or SaaS Services.
- 10.10 You and any authorised User's right to use the SaaS Services are non-exclusive, non-transferrable and fully revocable at our discretion.

### Fees

- 10.11 Subscription charges ("Subscription Fee") commence on the date that you activate your subscription. You will be billed by us on activation of your subscription. Thereafter, if you have a monthly subscription you will be charged in advance every thirty (30) days and if you have an annual subscription you will be charged annually on the anniversary date of the initial Subscription Fee charge. All charges are non-refundable (subject to any applicable Non-excludable Rights).
- 10.12 Your first payment will be the Subscription Fee agreed with us. The Subscription Fee and all subscription fees are exclusive of GST, VAT or other taxes which you agree to pay based on where you are primarily domiciled. We reserve the right to change the Subscription Fee from time to time.
- 10.13 You will provide us with a valid Direct Debit mandate from

your bank account in favour of us for payment of the applicable Subscription Fee. Depending on where you are primarily domiciled, you may be required to provide us with a valid Direct Debit mandate on BACS or SEPA.

- 10.14 If you terminate your subscription, you and any authorised User will continue to have access to the SaaS Services for the remainder of the prevailing Subscription Period up until the renewal date, whereupon access will cease unless you pay us the Subscription Fee to reactivate your subscription.
- 10.15 No refunds or credits will be issued for partial periods of service, upgrade/downgrade refunds, or refunds for periods unused with an active subscription, including, but not limited to, instances involving the removal of a User (subject to any applicable Non-excludable Rights).
- 10.16 Subscriptions cancelled prior to the end of their current billing cycle will not be charged again in the following cycle.
- 10.17 The amount charged on the next billing cycle will be automatically updated to reflect any changes to the subscription requested by you, including upgrades or downgrades. Subscription changes, including downgrades, may result in loss of access to Content, features, or an increase or reduction in the amount of available capacity for the Content provided by the SaaS Services.
- 10.18 All prices are subject to change upon at least thirty (30) days notice. Such notice may be provided by an e-mail message to the Administrator, or in the form of an announcement on the SaaS Services. If the price has been increased, you may terminate the affected subscription before the change in price comes into effect.
- 10.19 You are responsible for paying all taxes associated with the subscription to the SaaS Services. If we have the legal obligation to pay or collect taxes for which you are responsible under this clause, the appropriate amount shall be invoiced to and paid by you, unless you provide us with a valid tax exemption certificate authorised by the appropriate taxing authority.
- 10.20 Any and all payments by and on account of the compensation payable by you under the Sales Agreement shall be made free and clear of and without deduction or withholding for any taxes. If you are required to deduct or hold any taxes from such payments, then the sum payable shall be increased as necessary so that, after making all required deductions or withholdings, we receive an amount equal to the sum we would have received had no such deduction or withholding been made.

10.21 **API Use**

- (a) Any use of the SaaS Service using an Application Program Interface (“API”), including use of an API through a third-party product that accesses and uses the Services is prohibited unless an API Service is purchased from us.
- (b) Subject to any Non-excludable Rights, we shall not be liable to you or any User for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or corruption of data, or other intangible losses (even if we have

been advised of the possibility of damages), resulting from any use of an API or third party products that access and use the Service via an API;

- 10.22 We reserve the right at any time to modify or discontinue temporarily or permanently, access and use of the SaaS Services via an API, with or without notice.

**PART IV SUPPORT AND MAINTENANCE SERVICES – SPECIFIC TERMS AND CONDITIONS**

**11 Support provisions and obligations**

- 11.1 The provisions of this Part IV of these Terms will apply if you have elected to subscribe for the support and maintenance services in a Sales Agreement.
- 11.2 Subject to timely payment of fees and these Terms, we agree to support the Practice Software installed at your Practice from the date of the installation of the Practice Software at your Practice.

**Our fees for the provision of the Support Services**

- 11.3 In consideration for the provision of the Support Services to you, we will charge you the monthly support fee (“Support Fee”) delineated in the Sales Agreement.
- 11.4 For SaaS Product subscribers, the Support Fee is included in the Subscription Fee.
- 11.5 The Support Fee may increase if you purchase additional modules or licences. We reserve the right to adjust or modify the Support Fee, at any time upon not less than 30 days’ notice in writing, and such changes or modifications may be provided by an email message to You, or in the form of an announcement on the Service. Any such Support Fee increase will not exceed 5% of the Support Fees for the period immediately preceding the term of this Agreement, unless the pricing in the prior term was designated in the relevant Sales Agreement as a promotional or one-time offer, in which case the increase in Your Fee will not exceed 5% of our standard market rate for the provision of the same Support Services to You.

**Our Support and Maintenance obligations**

- 11.6 Within the contracted support hours as defined on our websites For New Zealand Customers: <https://henryscheinone.co.nz/support>,

For Australian Customers:

<https://henryscheinone.com.au/support>

For UK & Ireland Customers:

<https://help.softwareofexcellence.com> for

Practice Software and

<https://www.dentally.co/uk> for SaaS Product.

or within such hours as may be listed on the

Website from time to time, we will:

- (a) Provide telephone support to assist you in using the Practice Software or MPC Software (you must not however use this support as a replacement for user training);

- (b) Make available updates to fix defects or enhance the stability of the Practice Software;
- (c) Make available upgrades to the Practice Software as and when we release them;
- (d) Consult with you prior to installing any update or upgrade if we believe installation will affect your use of the Practice Software or cause compatibility issues;
- (e) Co-operate with the supplier of third party software/hardware to achieve resolution, where the problem is diagnosed and involves the operating system software, software other than the EXACT or OASIS application, or hardware. Our time for this work may be charged to you.

standard rates and charges applicable from time to time, plus travel and accommodation if applicable.

#### **Your obligations and responsibilities**

- 11.9 We will need you to make personnel available and to provide information, facilities, services and equipment as and when needed so that we can perform our obligations.
- 11.10 You agree to provide us with an internet connection to your practice computers, so we can remotely access your Practice Software using a remote connection tool. We may use this access to install updates and upgrades, to check the performance of the Practice Software and remedy any faults found, or to audit your use of the Practice Software.
- 11.11 We do not accept any liability for damage to data, the Practice Software or other systems as a result of remote access. You agree to implement security, backup and disaster recovery procedures to protect against damage as an unlikely result of remote access
- 11.12 You give us the authority to deal directly with your relevant service or network providers and/or any sub-contractors, on your behalf, in order to provide the Services set out in the Sales Agreement.

#### **Support Reinstatement**

- 11.13 If the provision of the Support Services is terminated or otherwise lapses, a recommencement fee will be charged to commence or reinstate our Support Services, in order to bring the Practice Software up to the latest specifications and releases. The reinstatement charge will be based on the current rate charged by us at the time.

#### **Subcontracting Support Services**

- 11.14 We may, without your prior written consent, sub-contract any of the Support Services to a third party. Unless otherwise notified by us, such third party costs and charges are included as part of our monthly support fee.

#### **Automatic Renewal of Support Services.**

- 11.15 Unless a different term is set forth in your Sales Agreement, we shall provide you with the Support Services for a period of 12 months from the Effective Date ("Support Service Term"). At the end of the Support Service Term, the contract between us for the provision of the Support Services shall automatically renew for successive monthly periods, unless you notify us in writing giving thirty (30) days' notice of your intention to terminate our contract for the provision of the Support Services.

#### **MPC Lite (Australia and New Zealand customers)**

- 11.16 Australia and New Zealand customers who have a valid subscription for support and maintenance services under this Part IV are eligible to receive My Practice Cloud Software Lite ("MPC Lite").
- 11.17 If you terminate your support and maintenance services subscription and otherwise wish to continue to subscribe to MPC Lite, additional charges will apply.
- 11.18 If you do not wish to continue to subscribe to MPC Lite your

#### **Support Exclusions**

11.7 The Support Fee does not include:

- (a) Support for hardware systems including printers and scanners, networks, dongles, and operating systems;
- (b) Support for malfunction of systems caused by theft, fire, natural disaster, intentional/unintentional damage/deletion of files. It is strongly recommended that the client has adequate business insurance to cover such events and subsequent costs;
- (c) Supporting systems damaged by a virus, regardless of source. It is your responsibility to maintain and operate current and comprehensive anti-virus protection;
- (d) Rectifying data corruption problems caused by hardware failure or third party software;
- (e) Configuration changes, moves, add or changes after installation setup may incur additional charges;
- (f) Responsibility for backups;
- (g) Rectifying problems as a result of deficient or non-current back-up;
- (h) On-site support;
- (i) Re-configuration, de-installation or re-installation of the Practice Software or MPC Software as a result of modifications to your local area network, changes to the operating system or hardware platform or your moving the Site or due to any malfunction in hardware;
- (j) On-going training of your staff other than initial training at the time of installation. Where requests from customers indicate the need for tuition, tuition will be offered at a mutually agreed time and billed at the prevailing charge rate;
- (k) Enhancements which are not considered defects and will go through our product development processes to determine viability for new version or upgrade inclusion; and
- (l) Out of contracted hours work.

11.8 If we agree to provide support for any of the items stated above in clause 11.7, we may charge for that support at our

MPC Lite subscription will terminate at the same time as your support and maintenance service.

## **PART V PATIENT COMMUNICATION SERVICES – SPECIFIC TERMS AND CONDITIONS**

### **12 Provision of Patient Communication Services**

12.1 The provisions of this Part V of these Terms will apply if you have elected to subscribe for the Marketing Manager (MM) Services, the SMS Service, the MailDrop Services, the Patient Experience, the SMS and EasyPost Services, or patient communication services provided through SaaS Product (together referred to as the “Patient Communication Services”) in the Sales Agreement.

12.2 We agree to use reasonable endeavours to provide email, SMS and EasyPost Services to you through the Practice Software or SaaS Product in partnership with our network of Telecommunication Service Providers (“Telecommunication Carriers”) and Mailing Service Providers (“Mailing Carriers”).

12.3 For the purposes of these Terms, the terms “SMS Service” and “EasyPost Service” are collectively referred to as “Communication Services”; and “Telecommunication Carriers” and “Mailing Carriers” are collectively referred to as “Carriers”

12.4 We agree to provide the Patient Communication Services to you in accordance with any specifications contained in the Sales Agreement.

#### **Pricing & Invoicing**

12.5 The fees that you will pay us for the provision of the SMS Messaging service, EasyPost service, MM Service, MailDrop Service and Patient Experience Services will be delineated in the Sales Agreement.

12.6 Charges for the SMS top up and EasyPost will be invoiced by us to you on a monthly basis on or around the 5<sup>th</sup> day of each month. Invoices are due and payable by Direct Debit 10 days from the date of issue.

12.7 We reserve the right to adjust the pricing contained within the Sales Agreement with thirty (30) days’ notice in writing to you. If the price has been increased, you may terminate the affected service before the change in price comes into effect.

#### **Content of Communication**

12.8 You and any authorised User agree not to use the Patient Communication Services to transmit any information or material that breaches any law, or transmit any material that is in contravention of any privacy or copyright rules or any other proprietary interest.

You and any authorised User agree not to use or seek to use the Patient Communication Services for publishing, reproducing or advertising any message, information, symbol or other communication which is offensive or abusive or of an indecent, obscene or menacing character or for the purpose of causing annoyance, inconvenience or needless anxiety to any person, or for any unlawful purpose. You and any authorised User acknowledge that carriers and we may audit content of Services from time to time (to the extent permitted by law) and that a breach of this condition may result in termination of your

Patient Communication Services.

12.9 In accordance with anti-SPAM legislation, guidelines, codes of practice and applicable law, you and any authorised User agree not to use the Patient Communication Services to circulate or send any unsolicited or unauthorised marketing, publicity or advertising material message to any person (including a message that is designed to promote goods or services (“Marketing Message”) to any person unless:

- (a) The recipient has first consented to receiving the Marketing Message;
- (b) The recipient has been provided with a means to opt-out of receiving any further Marketing Messages, such as a statement in the message of ‘Reply Stop to opt-out’;
- (c) The recipient can clearly identify that you are the sender of the Marketing Message and the Marketing Message includes information about how the recipient can readily contact you; and
- (d) Upon receipt of an Opt-Out request, you will remove the recipient from the relevant marketing list as soon as practicable and in any case within thirty (30) days (or a shorter time if required by the relevant anti-SPAM legislation);
- (e) You acknowledge that we may request explicit confirmation of compliance with this clause from time to time; and
- (f) You otherwise comply with all applicable laws.

12.10 You and any authorised User agree to comply with any reasonable instructions concerning access to and/or use of the Patient Communication Services that we may give to you from time to time and agree not to do anything that may jeopardise the security or integrity of any part of our or any of the carrier’s systems or platforms.

12.11 You accept responsibility for all aspects of your Account, including the actions of all persons in possession of your username and password.

12.12 You are solely responsible for any and all Content that you or your authorised Users submit or create. We do not endorse, support, represent, or otherwise guarantee the accuracy or reliability of such Content.

12.13 You acknowledge that a standard SMS, that is no longer than 160 characters, counts as one 1 SMS. For messages longer than 160 characters, each block of 153 characters or part thereof are counted as one SMS. A ‘character’ includes each individual letter, digit, punctuation and other symbol in the message. Some special symbols and non-English letters may comprise more than one character and you will be charged accordingly. Where an SMS is sent to multiple End Users, each one is counted separately. If you include any Unicode characters and send via a Unicode supported service, content that contains more than 70 characters counts as one SMS for each block of 67 characters or part thereof.

12.14 You and any authorised User agree that the Patient Communication Services are to be used solely for the provision of general information to your customers and the provision of Restricted Content is specifically prohibited. You acknowledge

that we and/or the carriers may audit the content of services from time to time (to the extent permitted by relevant laws) and that a breach of this clause may result in a breach of your obligations under these Terms, or potentially the termination of these Terms. If any Content is found to be in breach of these terms and conditions, we reserve the right to remove it without notice and may terminate your access to the Services.

- 12.15 You and any authorised User agree not to use the Patient Communication Services, connections, or facilities to:
- (a) transmit computer worms or viruses;
  - (b) access, any other of our and/or Telecommunications Carrier's computer systems or networks without our consent or disrupt or damage any of ours, or the Carrier's computer systems or network;
  - (c) forge any messages or impersonate other people; or
  - (d) send any obscene, sexually explicit, abusive or defamatory;
  - (e) material or material that breaches or is contrary to any law or regulation or guidelines
  - (f) Distribute any Restricted Content.
- 12.16 For the purposes of these Terms, the term "Restricted Content" means content that: (a) is likely to be, having regard to the contemporary attitudes of society, offensive to reasonable adults; (b) is likely to be, having regard to the contemporary attitudes of society, unsuitable for minors; (c) promotes, incites or instructs in matters of crime; (d) describes, incites or promotes unlawful sexual activity; (e) promotes or incites violence against any person or group, or incites racial hatred; (f) causes unnecessary alarm, distress or panic; (g) breaches a code of practice that applies to the Service; (h) is false, misleading or deceptive, or likely to mislead or deceive; (i) provides financial advice to any person; (j) is out of date, having regard to information generally available, subsequently published, or released, or made available; or (k) is for the purpose of providing any warning or notification about a serious risk to the safety of persons or property (for example, emergency services).

### 13 Information Security

- 13.1 You accept responsibility for all aspects of your Account, including the actions of all persons in possession of your username and password.
- 13.2 You and any authorised User acknowledge that the internet is not an inherently secure system and undertakes responsibility for the protection of your information and data. You and any authorised User will be responsible at all times for maintaining the security of yours and your end user's data.
- 13.3 You and any authorised User acknowledge that the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within your system and agree to provide your own mechanism for checking your system for viruses.
- 13.4 You and any authorised User agree to comply with any instructions concerning access to and/or use of the Patient

Communications Services that we may give to you from time to time and agree not to do anything that may jeopardise the security or integrity of any part of our systems or platforms.

### 14 Disclaimer

- 14.1 You and any authorised User acknowledge that we are in part reliant on carriers and other third party suppliers and therefore we do not warrant that the Patient Communication Services will be error-free or uninterrupted, or that transmission will be instantaneous.
- 14.2 You and any authorised User accept that we are reliant on carriers and other third party suppliers (collectively referred to as "Providers") and that you will not hold us liable in any way whatsoever for our inability to provide the Patient Communication Service as a result of faults that are the responsibility of the Providers.
- 14.3 You and any authorised User accept that letters may sometimes be delayed in the post for reasons beyond our control, and as such we do not accept any responsibility for delayed letters caused by the postage and mail system.
- 14.4 You and any authorised User will be responsible at all times for maintaining the security of yours and your customer's data, and we bear no liability for the loss or damage in part or whole, of such data, to the extent that such loss or damage has been caused or contributed to by you or us.
- 14.5 You and any authorised User acknowledge that you have not relied on our skill or judgement or written or oral representations in deciding whether our Patient Communication Services are fit for a particular purpose or meets particular criteria.
- 14.6 We shall use reasonable endeavours to ensure that all information provided in the Products or on the Website and SaaS Services is accurate and up to date. However, we make no warranty or representation that this will always be the case. We make no guarantee of any specific results from the use of the Products, Website or the SaaS Services.
- 14.7 No part of the Website, Practice Software, or the SaaS Services is intended to constitute advice and the content of the Products, Website and the Services should not be relied upon when making any decisions or taking any action of any kind.
- 14.8 Whilst every effort has been made to ensure that all descriptions of SaaS Services available from us correspond to the actual services available, we are not responsible for any variations from these descriptions.
- 14.9 Additionally, we make no warranty or representation that the Website, Products or Services will:
- (a) Meet any requirements
  - (b) Be of satisfactory quality
  - (c) Not infringe the rights of third parties, or
  - (d) Be compatible with all systems.
- 14.10 Nothing in this clause 14 excludes or limits any applicable Non-excludable Rights.

### 15 Confidentiality

- 15.1 Notwithstanding any other provision of this Agreement, we have the unconditional and irrevocable right to disclose your



identity and address and any end user (in accordance with applicable law) in the event of any complaint received from any regulatory or Government body or Telecommunications Carrier, in connection with the Content made available by you.

## 16 Indemnities

16.1 You shall defend and indemnify us, and hold us harmless from all costs (including legal costs on a full indemnity basis), expenses, loss, liabilities, suits, actions, damages or claims (“Loss”) arising or in any other way connected with your use of the Website, Practice Software, SaaS Product, MPC Software and Services, Support Services or the Patient Communication Service, or any other person using your username and password, except to the extent such Loss was caused by our breach of the Sales Agreement or these Terms.

## PART VI PROVISION OF REPUTATION MONITORING AND MANAGEMENT SERVICES

### 17 Provision of Services

17.1 The provisions of this Part VI of these Terms will apply if you have elected to subscribe for the Reputation Monitoring and Management Services (“RMS Services”) in the Sales Agreement.

17.2 We agree to provide RMS Services to you in conjunction with Reputation.com, Inc.

#### Pricing & Invoicing

- 17.3 You will pay us the fees associated with the RMS Services delineated in the Sales Agreement. We reserve the right to adjust the pricing contained within the Sales Agreement with 30 days’ notice in writing to you. If the price has been increased, you may terminate the affected service before the change in price comes into effect.

#### Application of standard terms and conditions to the provision of the RMS Services

- 17.4 The RMS Services are provided to you subject to the then current standard terms and conditions promulgated by Reputation.com, Inc. The standard terms and conditions can be found at [www.reputation.com/legal/local\\_business\\_terms](http://www.reputation.com/legal/local_business_terms).

#### Your specific acknowledgements, obligations and warranties

17.5 During the term of this Agreement, you unconditionally and irrevocably acknowledge that:

- (a) notwithstanding any provision to the contrary in these Terms, it is intended that we may enforce the benefits conferred on us by this clause 17 in accordance with the terms of the Contracts (Rights of Third Parties) Act 1999 or any similar legislation in any applicable jurisdiction;
- (a) You shall have no editorial or other control over the content, use or placement of any review promulgated through the RMS Services (“Review”);
- (b) You must post all reviews on the Reputation website, whether favourable or not;
- (c) We may disclose your patients personal

information to our service providers, including but not limited to Reputation.com, Inc for the purpose of providing the RMS Services, and other services under these terms to your dental practice;

- (d) You warrant that you have in place, and continue to maintain, a privacy policy which complies with the Data Protection Legislation;
- (e) You have obtained the consent of your patients to you passing on their email addresses and other personal information to us, and to Reputation.com, Inc, for the purposes of enabling us to provide you with the RMS Services;
- (f) You warrant that our, and Reputation.com, Inc’s use of your patients information referred to in this clause 17.5 will not breach the Data Protection Legislation, such that both us and Reputation.com, Inc are able to use your patients email addresses and names for the purposes of providing the RMS Service;
- (g) You indemnify us, and Reputation.com, Inc from any loss or liability that either of us may suffer or incur as a result of our respective use of your patients personal information in accordance with this clause 17;
- (h) We and/or Reputation.com, Inc have the right to remove any Review which may contain any information which may contravene, infringe or potentially breach any law or regulation;
- (i) You are not permitted to remove a Review, or request that a Review be removed, from the Reputation.com, Inc website.

#### Termination of RMS Services

- 17.6 If our Independent Reseller Agreement with Reputation.com, Inc is terminated for any reason then we may cease to provide you with the RMS Services with effect from the date of the termination of that Independent Reseller Agreement. If that happens, we will refund any pre-paid fees for the RMS Services on a pro-rata basis.

## PART VII PROVISION OF CALL TRACKING AND MARKETING ANALYTICS SERVICES

### 18 Provision of Services

- 18.1 The provisions of this Part VII of these Terms will apply if you have elected to subscribe for the call tracking and marketing and analytics services (“CTM Services”) in the Sales Agreement.
- 18.2 We agree to provide CTM Services to you in accordance with the provisions of these Terms and the Sales Agreement.

#### Pricing & Invoicing

- 18.3 The fees that you will pay us for the provision of the CTM Services will be delineated in the Sales Agreement. We reserve the right to adjust the pricing contained within the Sales Agreement with thirty (30) days’ notice in writing to you. If the price has been increased, you may terminate the

affected service before the change in price comes into effect.

## PART VIII GENERAL TERMS AND CONDITIONS

### 19 CONTEXT

- 19.1 The provision of this Part VIII is applicable to the application of Parts I, II, III, IV, VI and VII of these Terms having regard to the context of each of the provisions within this Part VIII.
- 19.2 Use of the Website, Practice Software, SaaS Product, MPC Software and Services, Patient Communication Services, Support Services, and RMS Services are also governed by our Privacy Policy which is incorporated into these Terms by this reference.

### 20 PROHIBITED USES

20.1 You acknowledge and agree that any breach of this clause 20 will constitute a material breach. For the duration of these Terms you or any authorised User may not:

- (a) Exceed the maximum number of users specified in the Sales Agreement, or as otherwise agreed to in writing.
- (b) Use the Practice Software, SaaS Product, or the MPC Software in a way that could damage, disable, overburden, impair, or compromise our systems or security or interfere with other users.
- (c) Collect or harvest any information or data from any Practice Software, SaaS Product, or the MPC Software or any related systems or attempt to decipher any transmissions to or from the servers running any service of ours.
- (d) Without our prior written consent, at any time from the Effective Date to the expiry of twelve (12) months after the termination of the Sales Agreement, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of ours and who has had contact with you during the Sales Agreement;
- (e) Modify, merge, translate, decode or otherwise alter the Practice Software, SaaS Product or the MPC Software;
- (f) Transfer the Practice Software, SaaS Product or the MPC Software, or sublicences, leases or other rights to the Practice Software, SaaS Product or the MPC Software to others or permit or allow others to use the Practice Software, SaaS Product or the MPC Software;
- (g) Use, copy or transfer the Practice Software, SaaS Product or the MPC Software, in whole or in part, except where such copying is necessary for the purpose of back-up or operational security, or as expressly provided for by these Terms;
- (h) Alter, adapt, translate, download, convert, reverse engineer, disassemble or de-compile the Practice Software, SaaS Product or the MPC Software, nor

permit any third party to. This restriction shall not apply to Content submitted or created by a particular authorised User where that User is downloading their Content, nor to any other Content that User may have permission to access;

- (i) Remove any proprietary notice or labels on or in the Practice Software, SaaS Product or the MPC Software;
- (j) Have additional workstations installed above the number purchased without prior written authorisation from us;
- (k) Permit any software, other than software supplied by us, to read or write directly to/from our database;
- (l) Permit any third-party software to be utilised in conjunction with our software, unless the use of such third party software has been previously approved by us in writing;
- (m) Permit any third party to provide, or otherwise make available the Practice Software, SaaS Product or the MPC Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person other than authorised Users unless it has been approved by us in writing.
- (n) Use the Practice Software, SaaS Product, or the MPC Software in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms, or act fraudulently or maliciously;
- (o) Store, distribute or transmit any viruses or any material, information or data into any software or operating system which is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities, or causes damage or injury to any person or property;
- (p) Access all or any part of the Services in order to build a product or service which competes with the Services;
- (q) Use the Services to provide services to third-parties; or
- (r) Attempt to undertake any security testing of the Services without our prior written consent.

### 21 TERM AND TERMINATION

#### Practice Software Licence and MPC Licence

- 21.1 The Practice Software Licence is effective until terminated. You may terminate the Practice Software Licence or the MPC Licence by giving us not less than 30 days' notice in writing of your intention to terminate the license. We may also terminate the Practice Software License and/or the MPC Licence immediately if:

- (a) You fail to comply with any of these Terms that are not capable of remedy; or
- (b) You suffer an Insolvency Event; or
- (c) You fail to materially comply with these Terms, or are in material violation and/or breach of the Sales Agreement or these Terms; or
- (d) You create a Security Emergency; or
- (e) We are required to by law; or
- (f) In our opinion, or the opinion of our affiliates or advisers, it has become no longer commercially viable to continue providing the MPC Licence, Practice Software Licence to you.

21.2 You agree upon termination of the Practice Software Licence and/or the MPC Licence by either party to: (a) immediately cease using the Practice Software and/or the MPC Software, (b) permanently remove the Practice Software and/or the MPC Software from your Workstations, (c) return all related manuals and documentation to us, and (d) destroy the Practice Software and/or the MPC Software together with all copies in any form.

21.3 On termination of the Practice Software Licence and/or the MPC Licence you will remain liable for any accrued charges and amounts that become due for payment before or after termination.

21.4 As applicable and to the extent permitted by law, where fees have been pre-paid or for a fixed term, the fees are non-refundable unless we otherwise agree in writing (subject to your Non-excludable Rights). We do not provide refunds or credits for any partial months of use of the Practice Software.

21.5 If the Practice Software Licence is terminated, our obligation to provide the Support Services shall immediately terminate.

21.6 Termination of the Sales Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Sales Agreement which existed at or before the date of termination.

#### **Termination of SaaS Product**

- 21.7 The term of this Agreement with respect to SaaS Services will commence upon User's acceptance of these Terms and shall continue for the duration of the use of such Services until terminated either by you through the Administrator or by us pursuant to this Agreement or the Sales Agreement.
- 21.8 We, in our sole discretion, have the right to suspend or terminate the Services at any time and without notice for actions by you which (a) are in material violation and/or breach of this Sales Agreement (b) create a Security Emergency (c) indicate, expressly or impliedly, that you do not intend to or are unable to comply with these Terms (d) we are required to do so by law (e) in our opinion, it has become no longer commercially viable to continue providing the Services or (f) you suffer an Insolvency Event.
- 21.9 If we terminate your Account as a result of your breach of these Terms you will not be entitled to any refund.
- 21.10 If we terminate your Account or subscription for any other

reason, you will be refunded any remaining balance of your Subscription Fee.

- 21.11 In the event that we terminate your Account or subscription, you will cease to have access to the Services from the date of termination.
- 21.12 If you terminate your Account or subscription, you will continue to have access to the Services for the remainder of the prevailing Subscription Period, with termination becoming effective at the end of that Subscription Period.
- 21.13 In the event that your Account or subscription is terminated, your Account will be closed and your access to the Services will be suspended. Any Content that you have submitted or created will become inaccessible to you from the date on which the Services become inaccessible, however, copies may be retained by us as part of standard backup procedures and, upon written request by the Administrator we may at our sole discretion, provide Content to the Administrator. Following ninety days (90) from cancellation or termination of a subscription, all Content associated with such subscription will be irrevocably deleted from the Services.
- 21.14 Upon termination of the Sales Agreement, you shall cease to be bound by all obligations set out in these Terms with the exception of those expressly stated to survive the termination of the Sales Agreement.
- 21.15 You will obligate each User to inform the Administrator and for the Administrator to inform us if your User has reason to believe that your Account details have been obtained by another without consent.

#### **Termination of the provision of the Support Services**

- 21.16 The minimum term for the provision of the Support Services is one year from the date of the installation of the Practice Software at your Practice, subject to any specific term delineated in the Sales Agreement, which shall prevail.
- 21.17 Subject to clause 21.16, either party may terminate the provision of the Support Services on 30 days prior written notice to the other after the expiry of any delineated minimum term specified in these Terms, or the Sales Agreement (as the case may be). For the avoidance of any doubt, the termination of the provision of the Support Services does not constitute a termination of the Practice Software Licence and/or the MPC Licence.
- 21.18 If the Support Services are terminated in accordance with clause 21.17, you must pay all fees up to, and including the date of termination.
- 21.19 We, in our sole discretion, have the right to suspend or terminate the Support Services at any time and without notice for actions by you which (a) are in material violation and/or breach of this Sales Agreement (b) create a Security Emergency (c) indicate, expressly or impliedly, that you do not intend to or are unable to comply with these Terms (d) we are required to do so by law (e) in our opinion, it has become no longer commercially viable to continue providing the Support Services or (f) you suffer an Insolvency Event.
- 21.20 If you call our support centre after the date of the termination of the provision of the Support Services, you will be charged our then current casual support fees per call.

21.21 If the provision of Support Services arrangement is terminated, you will not be entitled to new releases of Practice Software, or upgrades, or updates, free of charge. If for any reason, the Practice Software Licence is terminated by us, the provision of the Support Services will also be automatically terminated as well.

#### Termination of the provision of the Patient Communication Services

21.22 Either of us may terminate the provision of the Patient Communication Services on the provision of thirty (30) days written notice. We may also terminate the provision of the Patient Communication Services immediately if you breach a material provision of these Terms or you suffer an Insolvency Event.

#### Termination of the provision of the RMS Services

21.23 Either of us may terminate the provision of the RMS Services on the provision of thirty (30) days written notice. We may also terminate the provision of the RMS Services immediately if:

- (a) you breach a material provision of these Terms;
- (b) the Independent Reseller Agreement between us and Reputation.com, Inc is terminated; or
- (c) you suffer an Insolvency Event

#### Termination of the provision of the CTM Services

21.24 Either of us may terminate the provision of the CTM Services on the provision of thirty (30) days written notice. We may also terminate the provision of the CTM Services immediately if you breach a material provision of these Terms or you suffer an Insolvency Event.

## 22 YOUR RESPONSIBILITIES

22.1 Any training or other services ordered will be available for the period running ninety (90) days from the date you first receive access to the Services.

22.2 You shall be solely responsible for the protection of your system and associated data by:

- (a) Performing regular back-ups of your data and software and store same off site;
- (b) Validating the fidelity and recoverability of your back-ups;
- (c) Installing and maintaining up-to-date anti-virus and malware protection of your data and software;
- (d) Using trained personnel to operate the Practice Software, SaaS Product and/or the MPC Software in accordance with our training recommendations and these Terms, and you shall be solely responsible for any authorised User's breach of these Terms or Sales Agreement;
- (e) Ensuring appropriate hardware and technical conditions are maintained for the Practice Software, SaaS Product and/or the MPC Software;
- (f) Promptly notifying us of any error messages or problems with the Practice Software, SaaS Product and MPC Software (as the case may be);

(g) Informing us immediately in writing to suspend your Account if you have reason to believe Account details have been obtained by another without consent.

22.3 You must:

- (a) Use best endeavours to secure and prevent the unlawful use or copying of the Practice Software, SaaS Product and the MPC Software (as the case may be);
- (b) Obtain and maintain all necessary licences, consents and permissions necessary for us, our contractors and agents to perform our obligation under the Sales Agreement, including without limitation the provision of the Practice Software, SaaS Product and/or the MPC Software;
- (c) Treat any user identification code, password or other piece of information that is considered part of our security procedures as Confidential and not disclose it to any third party;
- (d) Ensure any personal details or information submitted to us is accurate and truthful; all such information will be kept accurate and up-to-date and the means by which you or any authorised Users identify themselves does not breach any part of these Terms or applicable laws;
- (e) Comply with all relevant laws and regulations as required to enable us to provide the Practice Software, SaaS Product and/or the MPC Software;
- (f) Ensure that your premises are properly prepared prior to the implementation of the Practice Software, SaaS Product and/or the MPC Software (as the case may be), to a level where the Practice Software, SaaS Product and/or the MPC Software can be installed in a manner which ensures performance to specification;
- (g) Ensure that designated equipment upon which the Practice Software, SaaS Product and/or the MPC Software (as the case may be) is to be installed meets or exceeds specifications advised by us;
- (h) Ensure your employees, subcontractors, or agents who have access to the Practice Software, SaaS Product and/or the MPC Software (as the case may be) comply with these terms and conditions and to maintain safe custody of that software;
- (i) Not access, store, distribute or transmit any viruses to us or any third party during the course of your use of the Practice Software, SaaS Product and/or the MPC Software, and whilst you receive any Services provided by us under these Terms;
- (j) not rent, lease, sub-licence, loan, translate, merge, adapt, vary or modify the Practice Software, SaaS Product and/or the MPC Software (as the case may be);
- (k) not to make alterations to, or modifications of, the whole or any part of the Practice Software, SaaS Product and/or the MPC Software (as the case may be);

- (l) except where such restriction is prohibited by law, not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Practice Software, SaaS Product and/or the MPC Software (as the case may be), nor attempt to do any such things except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Practice Software, SaaS Product and/or the MPC Software (as the case may be) with another software program, and provided that the information obtained by you during such activities:
    - (i). is used only for the purpose of achieving inter-operability of the Practice Software, SaaS Product and/or the MPC Software (as the case may be) with another software program;
    - (ii). is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
    - (iii). is not used to create any software which is substantially similar to the Practice Software, SaaS Product and/or the MPC Software (as the case may be);
    - (iv). to supervise and control use of the Practice Software, SaaS Product and/or the MPC Software (as the case may be) (as applicable), the MPC Services and the Support Services and ensure that those software applications and Services are used by your employees and representatives in accordance with these Terms;
    - (v). not to provide, or otherwise make available, the Practice Software, SaaS Product and/or the MPC Software (as the case may be) in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person other than your employees without our prior written consent;
    - (vi). to use its best endeavours to prevent any unauthorised access to or use of the Practice Software, SaaS Product and/or the MPC Software and notify us as soon as you become aware of any unauthorised use of the Practice Software, SaaS Product and/or the MPC Software (as the case may be) by any person;
  - (m) not to deal in any other manner with any or all of its rights and obligations under these Terms without our prior written consent;
  - (n) not to connect, or permit to be connected, any third party software to any part of the Practice Software, SaaS Product and/or the MPC Software (as the case may be) without our express prior written consent. This clause shall survive the termination of these Terms;
  - (o) ensure that each User keeps any password(s) for their use of the SaaS Product secure and confidential;
  - (p) maintain a written, up to date list of current authorised Users and provide such list to the us within five (5) Working Days of our written request; and
  - (q) in the event that a User leaves employment or engagement with you, you shall disable such individual's passwords within five (5) days.
- 22.4 You are solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.
- 22.5 If our performance of our obligations under these Terms is prevented or delayed by any act or omission of yours or your agents, sub-contractors or employees, we shall have no obligation to provide or have any liability for failure to provide Services while such conditions remain and you shall in all circumstances be liable to pay to us on demand all reasonable direct costs, charges or losses sustained or incurred by us, subject to us confirming such costs, charges or losses to you in writing.
- ## 23 PAYMENT
- 23.1 All sums are to be paid in full without set-off or counterclaim and, except as required by law, free and clear of any deduction for tax or otherwise. All amounts exclude sales taxes, unless stated otherwise.
- 23.2 If you default in payment of any amounts due to us under these Terms, we may, without prejudice to any other rights or remedies we may have and without liability to you or any other person:
- (a) suspend the provision of the Services;
  - (b) suspend the operation of the Practice Software, SaaS Product and/or the MPC Software (as the Case may be);
  - (c) terminate all or part of the Services and the applicable Sales Agreement;
  - (d) if you are located in Australia or New Zealand, we may charge interest on any unpaid amount from the due date until the date of actual payment at five percent (5%) per annum over the base overdraft facility charged by our bankers from time to time, until the payment is made in full.
  - (e) if you are located in the UK or Ireland, we may charge interest on the overdue amount at the rate of four percent (4%) per annum above HSBC Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount;
- 23.3 All fees and other payments and other payments due to us under these Terms and the Sales Agreement shall be

payable by you to us by the manner prescribed in the Sales Agreement. All payments under these Terms and the Sales Agreement shall be due and payable on the date(s) detailed on the Sales Agreement Form (unless the payment date falls on a bank holiday, in which case the payment date will fall on the following day, time being of the essence.

- 23.4 All payments payable to us shall become due immediately on termination of these Terms, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under these Terms. We may, without prejudice to any other rights we may have, set off any liability of you to us against any liability of us to you.
- 23.5 If you transition from one of our software or Services to another, all amounts due to us must be paid before commencement of the new software or service, unless otherwise agreed to by the parties in writing.
- 23.6 Fees for Subscription Services fees may be increased annually, as from each anniversary of the Sales Agreement entered into. You shall be notified of any increase in writing not less than one month before such anniversary of any pricing changes.

#### Training Fees

- 23.7 Where applicable and subject to the payment of the appropriate fee ("Training Fee"), training services shall be provided by our representative applying the training option agreed (e.g. on premise, remote etc ). Training services will be scheduled at a time mutually suitable to both parties. In the event of a change or cancellation at your request (for whatever reason), the following cancellation charge will be payable by you:
- (a) For UK Users, the cancellation charge will be as follows:
    - (i). More than three (3) weeks but less than (4) weeks prior to the agreed date, ten percent (10%) of the training fee unless the full time slot can be re-utilised by us
    - (ii). More than two (2) weeks but less than three (3) weeks prior to the agreed date, forty percent (40%) of the training fee unless the full time slot can be re-utilised by us.
    - (iii). More than one (1) week but less than two (2) weeks prior to the agreed date, seventy percent (70%) of the training fee unless the full time slot can be re-utilised by us.
    - (iv). Within one (1) week prior to the agreed date, one hundred percent (100%) of the training fee unless the full time slot can be re-utilised by us.
  - (b) For Users in New Zealand or Australia, the cancellation charge will be as follows:
    - (i) Within forty-eight (48) hours of the scheduled service, twenty five percent (25%) of the service fee will apply.

## 24 CONFIDENTIALITY

- 24.1 We will treat all customer data provided by you to us in accordance with these Terms in accordance with:
- (a) the requirements of Data Protection Legislation; and
  - (b) our Privacy Policy, which will be amended from time-to-time.
- 24.2 In the course of fulfilling our obligations under these Terms, we may see your Confidential Information. We instruct all of our employees, contractors, officers and other related persons to use all reasonable endeavours to treat such Confidential Information as strictly confidential to your practice.
- 24.3 Neither of us may disclose to any third-party information regarding the other party's internal relations which a party has become aware of because of these Terms except where the disclosure is required by law. The confidentiality undertakings by us shall survive after the expiration or termination of these Terms.
- 24.4 You agree to treat all of our Confidential Information as confidential, whether expressly identified as Confidential Information or reasonably believed to be Confidential Information due to the nature of the information, or in the medium or manner by which it was provided, and not use or disclose such Confidential Information except as necessary to perform your obligations under these Terms or the Sales Agreement. You shall restrict disclosure of Our Confidential Information to such of your employees, agents or sub-contractors as need to know it for the purpose of discharging your obligations to us, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind you.
- 24.5 Confidential Information shall not include information that (1) is or becomes publicly known other than through any act or omission of the receiving party, (2) was in the other party's lawful possession before the disclosure, (3) is lawfully disclosed to the receiving party by a third-party without restriction on disclosure, (4) or is independently developed by the receiving party, which independent development can be shown by written evidence.
- 24.6 We reserve the right to provide your Confidential Information to third parties as required and permitted by the law (such as in response to a court order). If we are required by law to make any disclosure of the Confidential Information that is prohibited or otherwise constrained by this Agreement, then we will provide you with prompt written notice (to the extent permitted by law) prior to such disclosure so that you may seek injunctive relief or other appropriate relief. Subject to the foregoing sentence, we may furnish that portion (and only that portion) of the Confidential Information that is legally compelled or otherwise legally required to disclose. Ftraing
- 24.7 You grant us a nonexclusive, royalty free licence during your use of the Products and Services, to use the Confidential Information for the sole purpose of performing our obligations under the Sales Agreement, in accordance with these Terms. Such licence shall include permission for us to

generate and publish aggregate, anonymized (de-identified), reports on system usage and Content trends and type, provided they do not conflict with the provisions of this Confidentiality clause.

## 25 INTELLECTUAL PROPERTY

- 25.1 You acknowledge that all Intellectual Property rights in the Practice Software, SaaS Product and/or MPC Software (as the case may be) is our sole property and you will not dispute our ownership of such Intellectual Property rights in any way.
- 25.2 Subject to the exceptions in 25.4 of these Terms, all content included in Products or on the Website, unless submitted or created by your authorised User, including, but not limited to, text, graphics, logos, icons, images, sound clips, video clips, data compilations, page layout, underlying code and software is the property of ours and our affiliates or other relevant third-parties.
- 25.3 You acknowledge that you have no right to have access to the Practice Software, SaaS Product and/or MPC Software in source code form or in unlocked coding.
- 25.4 Third Party Intellectual Property. Where expressly indicated, certain content, such as advertising material, and the Intellectual Property Rights subsisting therein belongs to other parties. This content, unless expressly stated to be so, is not covered by any permission of these Terms. Any such content will be accompanied by a notice providing the contact details of the owner and any separate use policy that may be relevant. You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that your materials or content infringe the Intellectual Property Rights of a third-party.

## 26 WARRANTIES

- 26.1 Subject to Non-excludable Rights, the Website, Products and Services are provided "as is" and on an "as available" basis.
- 26.2 For the Practice Software and MPC Software, we warrant that:
- (a) The Practice Software and MPC Software is owned exclusively by us or, that we hold a licence for such components that confers on you a right to use the Practice Software and MPC Software on the number of Workstations indicated in the Sales Agreement, provided that you comply with your obligations under these Terms;
  - (b) We will provide operational software that is ready to use for your dental business. In the event of a material defect being discovered in the software, we will undertake to remedy such defect as expeditiously as practical, provided that the software version has not been superseded for a period exceeding six months and provided that the software is operating on hardware that meets the specifications as set out in our document entitled "Client's Hardware" for customers in Australia and New Zealand, and "Minimum System Requirements" for customers in the UK;
  - (c) Once installed the Practice Software and/or the

MPC Software (as the case may be) will, when properly used on an operating system for which it was designed, perform substantially in accordance with the functions described in any supporting documentation supplied by us to you.

- 26.3 Any warranty given by us in respect of the Practice Software and the MPC Software is expressly conditional upon your observance of the operating, security and data control procedures required by the terms of the respective software application. We shall not be responsible for obsolescence of the software or any part thereof that may result from changes in your requirements. We assume no responsibility for the use or superseded, outdated, or uncorrected versions of the software or any part thereof.
- 26.4 To the maximum extent permitted at law, subject to Non-excludable Rights, and subject to clauses 34 and 26.1 to 26.3 (inclusive), we disclaim all other warranties, either express or implied, including, but not limited to, any implied warranties of satisfactory quality or fitness for a particular purpose, non-infringement or title, accuracy of information, compatibility or satisfactory quality with regard to the Practice Software and the MPC Software, the MPC Services, the Support Services, SaaS Product the Patient Communication Services, the CTM Services and the RMS Services. Without limiting the generality of the foregoing, we will have no responsibility for damage or destruction to any computer system, data, information property or equipment.
- 26.5 Subject to Non-excludable Rights, we shall not in any circumstances be liable to you or any authorised User:
- (a) for failure to provide the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services (as the case may be) in accordance with any timetable detailed in the Sales Agreement, or otherwise;
  - (b) for a failure or delay in providing the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services caused by any act or omission of yours or your customer's agents, sub-contractors or employees; or
  - (c) for a failure or delay in providing the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services caused by any act or omission of a third party;
  - (d) for any disruption or non-availability of the Practice Software and the MPC Software, the SaaS Product, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services resulting from external causes including, but not limited to, Internet Service Provider equipment failure, host equipment failure, communications

network failure, power failure, natural events, acts of war or legal restrictions and censorship.

- (e) if any defect or fault in the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services (as the case may be) results from you or your authorised User having altered or modified the Practice Software or the MPC Software; or
- (f) if any defect or fault in the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services (as the case may be) results from you or your authorised User having used the Practice Software or the MPC Software in breach of these Terms.

26.6 We (to the maximum extent permitted by law, subject to Non-excludable Rights):

- (a) do not warrant that your or your authorised Users use of the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services will be uninterrupted or error-free; or that the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services and/or the information obtained by you or your authorised User through the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services will meet your requirements; we reserve the right to alter or suspend the provision of the Practice Software, SaaS Product or MPC Software without prior notice to you or authorised Users;
- (b) are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the MPC Services, SaaS Product, Practice Software, the Patient Communication Services, the CTM Services and the RMS Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
- (c) are not responsible for the legality, reliability, integrity, accuracy and/or quality of any data (including, but not limited to, any reports) generated in connection with the Practice Software, SaaS Product and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM

Services and the RMS Services. For the avoidance of doubt, we shall have no liability to you or any authorised User in the event that you suffer loss as a result of its reliance on such data.

- 26.7 You and any authorised User acknowledge and agree that we may use third party vendors and hosting partners to provide the necessary hardware, software, storage and related technology required to run the Services.
- 26.8 We may provide the ability to integrate the Services with third party products and the services that you may use at your option and risk. Access to and use of any third party products and services are subject to the separate terms and conditions required by the providers of the third party products and services. You and any authorised User agree that we have no liability arising from your use of any integrations or arising from the third party products and services. We may modify or cancel the integrations at any time without notice. For purpose of calculating downtime of the Websites or Services, calculation does not include the unavailability of any integration or any third party products or services.

## 27 LIMITATION OF LIABILITY

- 27.1 Subject to clauses 27.2, 27.3, 27.4, 27.5 and 27.7, our total and aggregate liability to you (including under each Sales Agreement) in respect of any and all causes of action arising under or in relation to these Terms, whether arising in contract, liability under any indemnities, tort (including negligence), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise shall be limited to the total fees paid by you to us in the six (6) month period relating to that particular service prior to the claim first arising.
- 27.2 Nothing in these Terms excludes or restricts our liability for: (a) death or personal injury resulting from any negligence; (b) fraud or fraudulent misrepresentation on our part; or (c) any other liability which cannot be excluded or limited by law.
- 27.3 Except as expressly provided in these Terms, you assume sole responsibility for results obtained from the use of the Practice Software, SaaS Product, and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services by you and/or your authorised Users, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors and omissions in any information, instructions or scripts provided to us by you in connect with any Products or Services, or any actions taken by us at your direction.
- 27.4 Subject to clause 27.2, in no event shall we be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any : (a) loss of profits, (b) loss of business, (c) depletion of goodwill or similar losses, (d) loss of anticipated savings, (e) loss of goods, (f) loss of contract, (g) loss of use, (h) loss or corruption of data or information, or (i) any special, indirect consequential losses, including pure economic loss, costs, damages, charges or expenses, in each case however arising under or in connection with these Terms and even if we were



aware of the possibility that such losses or damage might be incurred.

27.5 We shall not (subject to Non-excludable Rights) be liable for (a) failure to provide any Products or Services in accordance with any timetable detailed in the Sales Agreement or otherwise; (b) for a failure or delay in providing the Products or Services caused by any act or omission of you or your authorised Users, agents, subcontractors or employees; (c) for a failure or delay in providing any Products or Services caused by any act or omission of a third-party; (d) if any defect or fault in any software provided pursuant to the Services results from your having altered or modified the software; (e) if any defect or fault in the software is caused by your hardware; or (f) if any defect or fault in the software results from you having used the software in breach of the Terms.

27.6 Where diagnostic assistance is requested from us and it becomes evident that the fault is caused by third party hardware or software and not our software, we reserve the rights to charge for time and costs involved. Such charges will be made at the rate current on the day that assistance is provided.

27.7 You acknowledge the risk that information and the Content stored and transmitted electronically through the Services may be intercepted by third parties. You agree to accept that risk and will not hold us liable for any loss, damage or injury resulting from the interception of information. Only we, at our reasonable discretion, may access and transfer the Content and only to provide you with the Services. We will make reasonable efforts to provide notice to you prior to such access and transfer. Our actions will comply with our obligations as to Confidentiality, Security and Access as provided for in these Terms.

## 28 AUDITS

28.1 We shall be entitled to enter your premises on reasonable notice in order to inspect the Practice Software, SaaS Product and/or the MPC Software in any reasonable manner during regular business hours to verify your compliance with these terms and conditions.

## 29 ASSIGNMENT

29.1 You shall not have any right to assign any right, title or interest under these Terms without our prior approval in writing.

29.2 We may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of our rights and obligations under these Terms. This will not affect your rights or obligations under these Terms.

## 30 AMENDMENT

30.1 If any provision or part-provision of the Sales Agreement or these Terms are or become invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. If such modification is not possible, the relevant provision or

part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Sales Agreement or these Terms.

## 31 SEVERANCE

31.1 Whilst every effort has been made to ensure that these Terms adhere strictly with applicable law, (including the relevant provisions of the Unfair Agreement Terms Act 1977, if applicable) in the event that any of these terms are found to be unlawful, invalid or otherwise unenforceable, that term is to be deemed severed from these Terms and shall not affect the validity and enforceability of the remaining terms and conditions. This term shall apply only within jurisdictions where a particular term is illegal.

## 32 SURVIVAL

32.1 Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Sales Agreement, shall remain in full force and effect.

## 33 ENTIRE AGREEMENT

33.1 These Terms together with the Privacy Policy and any other policies available on the Website, and where applicable the Sales Agreement, embody and set forth the entire agreement and understanding between you, any authorised Users and us and supersede all prior oral or written agreements, understandings or arrangements relating to the subject matter of these Terms ("Pre-Contractual Statements"). Neither you nor any authorised User or us shall be entitled to rely on any Pre-Contractual Statements (whether made innocently or negligently) in relation to the subject matter of these Terms (or the Sales Agreement). Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on, and hereby waives all rights and remedies which might otherwise be available to it in relation to, any Pre-Contractual Statements. Nothing in this clause shall limit or exclude the liability of either party arising out of any pre-contractual fraudulent misrepresentation or fraudulent concealment.

## 34 EXCLUSION OF STATUTORILY IMPLIED GUARANTEES AND WARRANTIES

### Australia

34.1 Our liability for breach of a Non-excludable Right (including a consumer guarantee under the Australian Consumer Law) is limited to (at our election) to the extent permitted by law:

- (a) in the case of a supply of goods:
  - (i). replacing the goods or supplying equivalent goods; or
  - (ii). paying the cost of replacing the goods or acquiring equivalent goods; and
- (b) in the case of a supply of services:
  - (i). resupplying the services; or
  - (ii). paying the cost of having the services supplied again.

34.2 The benefit of any warranties against defects set out in these Terms are in addition to other rights and remedies under any applicable Non-excludable Rights.

34.3 Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

34.4 The rights described in clause 34.3 above may be limited in accordance with clause 34.1 if it is fair and reasonable to do so and the goods or services are not of a kind ordinarily acquired for personal, domestic or household use.

34.5 To make a claim under any warranty provided in these Terms please contact us by email to: HS1Accounts@henryscheinone.co.nz or by calling 1300 889 668. You will bear your own expenses of making such a claim.

#### **New Zealand, EU and UK**

- 34.6 For avoidance of doubt, you confirm and agree that:
- (a) you are acquiring the goods and/or services under these Terms for a business purpose; and
  - (b) insofar as is permitted by law, all statutorily implied warranties in respect of the provision of goods and services (including but not limited to those statutory guarantees imposed by the New Zealand Consumer Guarantees Act) are excluded from the arrangements contemplated within these Terms.

#### **35 FORCE MAJEURE**

35.1 Neither party will be liable under these Terms for a failure or default or delay in performing their respective obligations under these Terms or at law (excluding any obligation to pay money) if the failure arises from or is in connection with any of the following force majeure events (whether happening in New Zealand, Australia, the United Kingdom or elsewhere), namely any acts of God, refusal of licence, government act, fire, explosion, accident, industrial dispute, impossibility of obtaining materials, pandemic, epidemic or anything beyond the relevant party's reasonable control. You acknowledge and agree that we will not be liable for a failure arising from or in connection with any failure by a network or service provider, or a force majeure event applicable to its employees, suppliers, agents, subcontractors outside of our control. In such circumstances, we may in our discretion determine whether the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed and/or terminate the Sales Agreement by giving ten (10) days' written notice to you.

#### **36 DISPUTES**

- 36.1 Disputes will be resolved in accordance with the applicable jurisdiction, as detailed on the Sales Agreement.
- 36.2 All Sales Agreements made with Software of Excellence UK Ltd will be governed by the law of England and Wales.

#### **37 DISPUTES (EU, UNITED KINGDOM & IRELAND)**

37.1 These Terms, the Sales Agreement, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of England and Wales. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of in connection with these Terms and/or the Sales Agreement or their subject matter or formation.

#### **38 DISPUTES (NEW ZEALAND AND AUSTRALIA)**

38.1 Either party may require any dispute between the parties arising out of or in connection with these terms and conditions which has not been resolved within 10 working days to be referred to arbitration. The arbitrator will be mutually appointed by the parties. In the event that the parties cannot agree on an arbitrator, the Arbitrator will be appointed by the by the President of the Auckland District Law Society for New Zealand users, and by the President of the Victorian Law Society for Australia users.

38.2 The arbitrator will conduct the arbitration in accordance with those guidelines agreed between the parties or, if the parties cannot agree on those guidelines within 14 days following appointment of the arbitrator, in accordance with the guidelines set by the arbitrator.

38.3 In the event of an arbitration carried out in accordance with clause 38.1:

- (a) The arbitration shall be conducted pursuant to the then current New Zealand Arbitration Act; and
- (b) The parties' respective responsibilities for the costs of the arbitration shall be determined by

the arbitrator.

38.4 The decision of the Arbitrator shall be final and binding on the parties. The provisions of clauses

40.2 to 40.4 will not limit or affect the right of either party to apply to a court at any time for any interim or preliminary relief in respect of the Dispute.

#### **39 DATA PROTECTION AND SECURITY**

39.1 Both parties will comply with all applicable requirements of Data Protection Legislation.

39.2 We will not be liable for, and you must indemnify us against, any claim brought by a data subject arising from any action or omission of ours, to the extent that such action or omission resulted directly from your instructions to us concerning the processing, use or disclosure.

39.3 You warrant to us that you have obtained all required consents and given all notifications required to allow us to collect, use and disclose personal information in accordance with these Terms.

39.4 For more information on our policies in regard to Data Protection and Security, including customer data, please refer to our Privacy Policy.

#### 40 LINKS TO WEBSITES

40.1 The Website may provide links to other websites. Unless expressly stated otherwise, such websites are not under the control of us or our affiliates. We assume no responsibility for the content of the websites and disclaim liability for any and all forms of loss or damage arising out of the use of them or reliance on their content. The inclusion of a link to another website on this Website does not imply any endorsement of that website or of those in control of it.

#### 41 COMMUNICATIONS BETWEEN US (UNITED KINGDOM)

41.1 You agree all notices intended for us shall be sent to us in writing either by post to our premises at Medcare South Bailey Drive, Gillingham Business Park, Gillingham, Kent, ME8 0PZ, England or by email to: [accounts@soeuk.com](mailto:accounts@soeuk.com). Such notice will be deemed received 3 days after posting if sent by first class post, the day of sending if the email is received in full on a business day and on the next business day if the email is sent on a weekend or public holiday.

41.2 You agree that all notices intended for you shall be sent by us to the email address provided by you in the Account information or in the Sales Agreement. Such notice will be deemed received the day of sending if the email is received in full on a business day and on the next business day if the email is sent on a weekend or public holiday.

41.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 42 COMMUNICATIONS BETWEEN US (NEW ZEALAND AND AUSTRALIA)

42.1 If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide in the Sales Agreement. You are responsible for notifying us of any changes to your address.

42.2 For New Zealand and Australia users, all notices intended for us shall be sent to us by email to: [HS1Accounts@henryscheinone.co.nz](mailto:HS1Accounts@henryscheinone.co.nz).

#### 43 NO WAIVER

43.1 If we fail to insist that you and/or any authorised User perform any of your obligations under these Terms, and/or if we do not enforce our rights against you or any authorised User, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you and/or any authorised User, we will only do so in writing, and that will not mean that we will automatically waive any later default by you and/or any authorised User.

#### 44 CHANGES TO TERMS

44.1 We may, at our sole discretion and with such notice as may be required by law, if any, change these Terms to reflect changes in law or best practice or to deal with additional features introduced by us.

44.2 From time to time, we may automatically, and at our sole discretion, update or change any Products or Services to improve performance, enhance functionality, make changes to the operating system, platform support or hardware specification or to address security issues or make Maintenance Releases available to you. Additionally, we may ask you to install updates for these reasons and shall provide commercially reasonable advance notice of any such request.

44.3 If you do not accept the notified changes or choose not to install such updates or Maintenance Releases, you may continue to use the Products or Services in accordance with the existing terms but certain new features may not be available to you.

#### 45 ENFORCEMENT

45.1 Subject and without prejudice to clause 17.5 (aa): (i) no one other than a party to the Sales Agreement, their successors and permitted assignees, shall have the right to enforce any of these Terms; and (ii) a person who is not a party to the Sales Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999. The rights of the parties to rescind or vary these Terms are not subject to the consent of any other person.

#### 46 PUBLIC ANNOUNCEMENT

46.1 No party shall make, or permit any person to make, any public announcement concerning the Sales Agreement or these Terms without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

#### 47 AUTHORITY

47.1 You represent and warrant to us that you have the authority to enter into a Sales Agreement, use the Services, and perform any and all acts as may be necessary under these Terms.

