

# Exhibit A

## SureSmile® General Terms & Conditions

These General Terms and Conditions (“**Terms**”) are effective for all purchases, leases and orders placed by Customer with **Dentsply Sirona Orthodontics Inc. d/b/a SureSmile®** (“**SureSmile**” or “**we**”) on or after \_\_\_\_\_, 2021 (the “**Effective Date**”). The Terms are incorporated into each purchase or order of SureSmile Products or Services, or lease of Software or Documentation, by a Customer through the SureSmile Aligner online platform, the SureSmile Ortho online platform (both platforms together “**the Platforms**”), or via a SureSmile Advanced Agreement (each online purchase or Advanced Agreement constituting an “**Agreement**”), entered into between the Customer and SureSmile.

### INTRODUCTION

Unless otherwise agreed in writing by SureSmile, on and after the Effective Date, these Terms and Conditions will supersede all prior terms and conditions regarding the purchase by Customer and sale or lease by SureSmile on a non-exclusive basis to Customer of any and all products, software, documentation or devices manufactured or sold by SureSmile (the “**SureSmile Products**”). SureSmile reserves the right at its sole discretion to further modify these Terms from time to time (the “**Modified Terms**”) either upon written notification to Customer by U.S. mail, electronic mail or by posting any changes on the Dentsply Sirona website or SureSmile websites ([www.suresmile.com](http://www.suresmile.com) or [www.https://www.dentsplysirona.com/en-us/categories/orthodontics/suresmile-aligner.html](https://www.dentsplysirona.com/en-us/categories/orthodontics/suresmile-aligner.html)) (referred to collectively as the “**Website**”), with the most current terms on the Website and the Effective Date of these Terms to be at the time Customer thereafter places an order or purchases the SureSmile Products. THE MODIFIED TERMS AND CONDITIONS SHALL BE EFFECTIVE FOR ALL ORDERS PLACED BY CUSTOMER AND ALL PURCHASES WITH SURESMILE ON OR AFTER THE EFFECTIVE DATE SET FORTH THEREIN. CUSTOMER SHALL BE DEEMED TO HAVE ACCEPTED THESE TERMS AND CONDITIONS AND ANY MODIFIED TERMS AND CONDIITONS UPON THE EARLIER TO OCCUR OF (1) CUSTOMER SIGNING A SURESMILE ADVANCED AGREEMENT OR AGREEING ONLINE TO THE TERMS IN THE ALIGNER OR ORTHO PLATFORMS’ REGISTRATION PROCESS OR (2) CUSTOMER CONTINUING TO USE THE WEBSITE AND/OR PLACING AN ORDER WITH SURESMILE OR MAKING A PURCHASE FROM SURESMILE BY ANY METHOD AFTER THE APPLICABLE EFFECTIVE DATE. PLEASE NOTE THAT BY ACCESSING OR USING ANY PART OF THE WEBSITE OR PLACING ANY ORDER OR MAKING ANY PURCHASE, CUSTOMER AGREES THAT CUSTOMER HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THESE TERMS AND

CONDITIONS AND ANY MODIFIED TERMS, INCLUDING THE APPLICABLE LAW AND VENUE PROVISIONS. IF CUSTOMER DOES NOT AGREE TO BE SO BOUND, CUSTOMER SHOULD NOT ACCESS OR USE THE WEBSITE OR MAKE A PURCHASE OR LEASE FROM SURESMILE.

## 1 DEFINITIONS

As used in the Agreement the following terms will have the meanings described below.

### 1.1 AUTHORIZED USER

**Authorized User** means an employee or contractor of Customer who Customer permits to access and use the Software and/or Documentation pursuant to Customer's license hereunder.

### 1.2 CONFIDENTIAL INFORMATION

**Confidential Information** means any information that is treated as confidential by a party, including but not limited to all non-public information about its business affairs, SureSmile Products or Services, Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether disclosed orally or in written, electronic, or other form or media, whether or not marked as confidential, provided by or learned about a Party in the course of the Parties' dealings with one another including, but not limited to, information about the SureSmile Services and SureSmile Products, the terms of the Agreement, and patient data. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

### 1.3 CUSTOMER

**Customer** means the health care practitioner (doctor(s)) who licenses the Software or orders the SureSmile Products sold or licensed by SureSmile, or, in case the order or license is made or received on behalf of a practice, partnership, corporate body or other legal entity for or with which the doctor works, this legal entity (the "**Practice**"), and not the patient receiving treatment. If a Practice is named on the invoice and/or that practice pays the invoice(s), then we are entitled to assume that it is the doctor who uses the SureSmile Software or SureSmile Products and places orders with the authorization of, for and on behalf of the Practice. Under these circumstances the Practice will also be SureSmile's Customer, and the doctor and the Practice shall be jointly and severally liable for obligations in these Terms which are obligations of "Customer." The doctor and the Practice must read and understand these Terms before downloading any Documentation or Software, uploading patient information or placing any order, because in each case, a contract will be formed, and the doctor and the Practice will be bound by these Terms which will govern that contract.

#### 1.4 DISCLOSING PARTY

**Disclosing Party** means a party that discloses Confidential Information under this Agreement.

#### 1.5 DOCUMENTATION

**Documentation** means the manuals, handbooks, installation guides and information related to the SureSmile Products or Software provided by SureSmile to Customer, including the Clinical Reference Manual, webinars, online courses, training, materials and quick tips made available through the SureSmile U™ education services (<https://suresmileu.com>), the Website, the HealthDocBox website (<https://healthdocbox.com>) or online on the Internet, plus Software reference information in the online help section of each platform, amended by SureSmile as necessary.

#### 1.6 ERROR

**Error** means a verifiable and reproducible failure of the SureSmile Software.

#### 1.7 HIPPA

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191 (Aug. 21, 1996), its implementing regulations, and the HITECH Act and its implementing regulations, and has the meaning given in Section 9.5.

#### 1.8 INTELLECTUAL PROPERTY RIGHTS

**Intellectual Property Rights** means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar rights or forms of protection in any part of the world.

#### 1.9 MAINTENANCE

**Maintenance** means the provision of Updates and telephone support.

#### 1.10 PROTECTED HEALTH INFORMATION

**Protected Health Information** has the same meaning as the term “protected health information” in 45 CFR (Code of Federal Regulations) § 160.103 (or its replacement), limited to the information created or received by SureSmile from or on behalf of Customer.

#### 1.11 RECEIVING PARTY

**Receiving Party** means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

## 1.12 SERVICES

**Services** mean the SureSmile Products, Software, Documentation, Training, Support, Maintenance and all other services provided to Customer as a result of an order placed by Customer through the SureSmile Software to SureSmile.

## 1.13 SOFTWARE

**Software** means (a) the SureSmile Software accessible by the Customer via the Internet at SureSmile Websites, and (b) any other application Software provided by SureSmile to Customer under the Agreement. Software does not include the source code.

## 1.14 SUPPORT

**Support** means telephone support at the SureSmile Customer Care Center (1-888-672-6387) designed to address issues or concerns with the SureSmile Products or Services. Support also includes SureSmile providing assistance and using reasonable efforts to resolve any reported issue with the SureSmile Products or Services. Support does not include training of Customer's personnel.

## 1.15 TERM

**Term**, unless terminated earlier as provided in the Agreement, is the time period defined in Section 8.1 of the Agreement.

## 1.16 UPDATE

**Update** means a modification or enhancement to the Software that is generally provided by SureSmile to all of its customers as part of standard maintenance. Updates do not include new modules added to the existing Software or new or separately marketed Software.

# 2 LICENSE

## 2.1 SOFTWARE & DOCUMENTATION LICENSE

Subject to the terms and conditions in the Agreement, Customer's payment of all amounts and Fees due under the Agreement, and Customer's compliance with the Agreement and Terms, SureSmile grants Customer, and Customer accepts, (subject to termination as provided in the Agreement), a non-transferable, non-exclusive, and non-sublicensable right to use the Software and Documentation solely for the intended use for the duration of the Agreement. To the extent SureSmile provides Software for installation on Customer's computer systems, Customer may make a reasonable number of copies of such Software for backup purposes. Any such copy of the Software: (a) remains SureSmile's exclusive property; (b) is subject to the Agreement and Terms; and (c) must include all copyright or other proprietary rights notices contained in the original. The Customer may only copy the Software in as far as this is covered by the intended use of the Software as determined in the Agreement. Necessary copying includes loading the Software into the main memory on the Customer's server, but not the installation or storage of the Software on data carriers (in particular, but not limited to, hard drives or similar) of the hardware used by the Customer, not even temporarily. The Software may neither be decompiled (i.e., recompiled into source code) without express written permission of SureSmile. Customer accepts that the Software,

Documentation, Training and materials, Support, Maintenance and all communications with the SureSmile technicians are in the English Language.

## **2.2 AUTHORIZED USERS**

The Customer may allow its staff to have access to and to use the Software as Authorized Users. The Customer may not make the Software available to third parties for use, with or without payment. Other than the license expressly granted in the Agreement, SureSmile retains all right, title and interest in and to the Software including, but not limited to, the Documentation, and all intellectual property rights therein.

## **2.3 SOFTWARE AND DOCUMENTATION RESTRICTIONS**

Customer shall not use the Software or Documentation for any purposes beyond the scope of the license granted in the Agreement. Without limiting the foregoing and except as otherwise expressly set forth in the Agreement, Customer shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Software or the Documentation, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or the Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (iv) remove any proprietary notices from the Software or the Documentation; or (v) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. In addition, SureSmile gathers certain navigational information about where you go in the Service. SureSmile will make reasonable efforts to avoid excessive or irrelevant collection of data.

## **2.4 RESERVATION OF RIGHTS**

SureSmile reserves all rights not expressly granted to Customer in the Agreement and Terms. Except for the limited rights and licenses expressly granted under the Agreement and Terms, nothing in the Agreement or Terms grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Software or Documentation.

## **2.5 DELIVERY**

SureSmile shall deliver the Software electronically, on tangible media, or by other means, in its sole discretion, to Customer within five business days following the Effective Date or Customer registration on the online platform. Risk of loss of any tangible media on which the Software is delivered will pass to Customer on delivery to carrier. (FOB Destination). Incoterms® 2020 shall apply.

## **2.6 CONNECTIVITY**

Throughout the Term, Customer shall provide and maintain, at Customer's expense, a broadband connection (including any necessary modem, hardware

and software) to the Internet to access the SureSmile Software that meets the specifications provided by SureSmile from time to time.

## 2.7 CUSTOMER RESPONSIBILITIES

Customer is responsible and liable for all uses of the Software and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall take reasonable efforts to make all Authorized Users aware of the Agreement's provisions as applicable to such Authorized User's use of the Software and shall cause Authorized Users to comply with such provisions. Customer will take all reasonable precautions to prevent unauthorized third-party access to the Software. Customer expressly warrants and represents that:

- The doctor is licensed or registered to practice dentistry and/or orthodontics without restriction in the country and state to which the Suresmile Products are to be shipped;
- The Practice has all licenses and authorizations to provide dental treatment in the country and state in which it operates;
- The Practice and doctor have authority to enter into the Agreement and to agree to the Terms;
- The Practice and doctor have the necessary expertise, experience and training to properly perform procedures associated or in conjunction with the SureSmile Products; and
- The Practice and doctor are not purchasing or acquiring SureSmile Products with the intent that they will be used by any other doctor and/or for the benefit of any patient other than Customer's own patients or otherwise outside the country to which the SureSmile Products are shipped.

Further Customer undertakes that Customer will (with these obligations being conditions of our contract with Customer):

- Not use the SureSmile Products if Customer's license or registration to practice expires, is not valid, is revoked, suspended or otherwise jeopardized or restricted at any time during the treatment of patients;
- Use the SureSmile Products only in accordance with generally accepted dental standards;
- Regularly reviews the Website to verify Customer is aware of any changes to pricing or other Terms; and
- Provide, upon request, feedback regarding the success of the SureSmile Products; and Promptly notify SureSmile and in any event within ten (10) days of any event (in all available detail) relating to Product use on any patient or Software use which SureSmile and/or the Customer is required to notify any governmental or regulatory authority.

SureSmile will not take any responsibility or liability with regard to harm caused by the Customer not complying with the instructions for use for the product or with regard to harm caused by the Customer irrespective of the quality of the SureSmile

products during patient treatment. In particular, Customer shall be responsible and SureSmile shall not be responsible for any malpractice and negligence during patient treatment.

### **3 AGREEMENT; SERVICES**

#### **3.1 AGREEMENT**

Customer may purchase, and SureSmile will provide, SureSmile Products and Services at the prices indicated when such Services are ordered. SureSmile and Customer agree that all purchases of SureSmile Products or licensing of Software or Documentation by Customer will be governed by the Agreement and these Terms. Customer acknowledges and agrees that acceptance by SureSmile of any order from Customer is expressly made conditional upon Customer's assent and shall be subject to these Terms.

#### **3.2 POINT OF CONTACT**

Customer will appoint one of its employees to clear all Support and Maintenance requests and serve as the primary point of contact with SureSmile. Customer will appoint a second employee as a backup. Either employee will be responsible for contacting SureSmile for Support and Maintenance.

#### **3.3 SUPPORT**

During the Term, SureSmile will provide Support to Customer's points of contact. Support in excess of that specified above will be available pursuant to hourly fee-schedules set forth by SureSmile.

#### **3.4 TRAINING**

SureSmile will provide Customer with training sessions, including online at the SureSmile U™. Any additional training will be quoted at then current rates and will be billed separately.

#### **3.5 MAINTENANCE**

SureSmile will provide Customer with Maintenance until the end of the Term. Customer shall install all applicable Updates on Customer's computers. Customer's failure to install an Update at SureSmile's request will constitute a material breach of the Agreement.

#### **3.6 LIMITATIONS & EXCLUSIONS**

SureSmile will not be responsible for providing Support or Maintenance relating to the following: (a) problems that result from Customer's use of the Software that is not in conformance with the Documentation; (b) problems caused by changes, alterations or revisions made by Customer or on Customer's behalf (other than by SureSmile); (c) problems caused by Customer's data, network, or operational or other environmental factors not within the direct control of SureSmile; or (d) faulty electrical systems.



## **4 ORDERS**

### **4.1 ORDERING PROCEDURE**

All orders will be placed with the online ordering system incorporated in the Software. During this process, SureSmile will propose and Customer will approve the SureSmile Products design and a treatment plan, based on which the Customer will place orders with SureSmile. Fees for all items are due and payable at the time of the corresponding order or within 30 days of receipt of an invoice. Each order shall be in a form approved by SureSmile and shall specify (a) the SureSmile Products being ordered, (b) the requested delivery location, (c) other appropriate information as may be required by SureSmile to complete the order, including a radiograph, optical or intraoral scan and photos, (d) the location to which the applicable invoice shall be tendered for payment, and (e) any other terms included in SureSmile's approved order, as may be amended by SureSmile from time to time. Customer agrees to use electronic invoicing.

### **4.2 INFORMATION**

Customer is responsible for providing SureSmile with all information necessary for SureSmile to manufacture SureSmile Products. SureSmile is not responsible for the accuracy or inaccuracy of any information received from Customer or third parties in connection with the applicable order. SureSmile Products shall be manufactured using the information Customer provides to SureSmile.

### **4.3 ACCEPTANCE OF ORDERS**

SureSmile shall have the right, at its sole and absolute discretion, to accept or reject any order (or any portion thereof) for any reason. No order shall be binding upon SureSmile unless and until shipment is tendered to the carrier.

### **4.4 CANCELLATION OF ORDERS**

Customer may not cancel an order once SureSmile begins any phase of the design or manufacture of the SureSmile Products.

### **4.5 RETURNS**

Returns are only permitted in the event that SureSmile Products do not meet their applicable Specifications. Customer must notify SureSmile promptly within receipt of the SureSmile Products of any issues with the SureSmile Products or damage to the SureSmile Products. All other SureSmile Products issues shall be discussed with the Customer who approved the SureSmile Products design and treatment plan. In the event a return is permitted, Customer shall first obtain a return authorization and return instructions from the customer Care Center before returning any SureSmile Products to SureSmile. The value of SureSmile Products returned shall not exceed the original Purchase Price paid for such SureSmile Products.

### **4.6 ALTERATIONS**

Customer may amend or refine an order only through the Software and as allowed by the Software and treatment plan. If an alteration of the treatment plan is required and approved by the Customer, then Customer must submit a Change Order through the Software, which shall include the new manufacturing specifications.



## 5 SHIPMENT AND DELIVERY

### 5.1 SHIPPING TIME

SureSmile Products manufactured by SureSmile pursuant to the applicable order will be delivered via overnight courier to the Customer. Any estimated shipping dates provided by SureSmile to Customer are based upon conditions existing at the time the applicable order is received by SureSmile. SureSmile shall endeavor to ship the applicable SureSmile Products by SureSmile's estimated shipping date, but shall not be responsible for any loss or damage resulting from delay in any shipment. Other than with respect to unusual or bulk orders, the applicable SureSmile Products are typically shipped within ten (10) business days from the date of SureSmile's acceptance of the applicable order. All dates are approximate only and the time of dispatch is not of the essence. With respect to unusual or bulk orders, SureSmile will provide Customer with an estimated shipping date for SureSmile Products applicable to such orders. SureSmile will notify Customer in the event that SureSmile experiences a delay in shipment of applicable SureSmile Products due to a backlog of orders, Software issues or manufacturing delays, and endeavor to begin shipment of the applicable SureSmile Products as soon as reasonably practicable thereafter. SureSmile shall deliver all applicable SureSmile Products FOB Destination unless otherwise agreed upon by the parties in writing. SureSmile shall have the right to ship goods from any factory anywhere in the world, as specified by SureSmile. Any loss or damage that occurs prior to shipment shall be the sole responsibility of SureSmile and, in such event, SureSmile's responsibility shall be limited to replacement or refund of the applicable SureSmile Products, in SureSmile's sole discretion.

### 5.2 PACKAGING

SureSmile Products will be packaged in accordance with FDA regulations and approval, and to SureSmile's Product specifications.

### 5.3 PASSAGE OF TITLE

Title to, ownership of, and risk of loss or damage to SureSmile Products manufactured pursuant to the applicable order shall transfer to Customer upon delivery of such SureSmile Products to the designated carrier. If a shipment is lost, SureSmile will replace (one time only) the Product at its cost.

## 6 PRICING

The purchase price of SureSmile Products and all applicable fees shall be in accordance with SureSmile's prices as in effect at the time of SureSmile's acceptance of the applicable order and/or specified in the Agreement. SureSmile may update the purchase price at any time and without notice in its sole and absolute discretion. Any changes to the purchase price will not affect existing orders that have been accepted by SureSmile prior to the effective date of the purchase price change. The purchase price does not include sales, use, excise, or any similar tax unless otherwise specified by SureSmile in writing.

## 7 PAYMENTS

### 7.1 FAILURE TO PAY

Payments are due upon placement of an order for pre-pay accounts. Payments for post-pay accounts are due 30 days from receipt of an invoice. All payments are to be paid in cleared funds in US Dollars. Time of payment is of the essence. In addition to other repercussions, SureSmile reserves the right to add 1 ½ % interest per month (18% A.P.R.) (or the maximum interest allowed by law if less) for all amounts past due until paid in full. Interest shall accrue on a daily basis. Customer agrees to pay the interest together with the overdue amount. Customer agrees to pay all amounts due in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Customer is responsible for payment of the invoices. In addition, and without prejudice to the responsibility of Customer, the Practice, if named on the invoice or if the practice habitually pays the SureSmile invoices, is jointly and severally liable with Customer for the payment of all invoices. SureSmile may therefore claim payment of any sums owed under any agreement against Customer personally and/or against the Practice. Customer waives diligence, demand, presentment for payment, notice of nonpayment and protest. In addition, Customer agrees to pay all reasonable expenses incurred by SureSmile in enforcing any collection of fees or other rights under the Agreement including, but not limited to, all expenses of any legal proceeding related thereto and legal fees.

### 7.2 METHODS OF PAYMENT

Depending upon the type of order, Customer may pay for the SureSmile Products and License by credit card (pre-pay or post-pay), check (post-pay) or wireless transfer (post-pay). Customer may provide credit card information to SureSmile, and authorize SureSmile to charge such credit card(s) (and any replacements or substitutes) for any and all fees and charges as they become due under the Agreement. Customer shall keep all credit card information up to date and shall ensure sufficient credit lines for all charges as they become due. Failure to keep the credit card information current or failure to maintain sufficient credit will result in the delay of delivery of SureSmile Products and Services and will constitute Customer's material breach of the Agreement. Payment by credit card may be subject to a service charge from the credit card provider.

### 7.3 CASE RELATED DISPUTE

Case disputes may be directed by Customer to the Customer Care Centers. In the event of one or more disputes related to the number of Cases started, SureSmile, at its own discretion, may give Customer at least three (3) business days' notice that it desires to audit Customer's applicable patient records. On the date specified in the notice, which, unless mutually agreed otherwise, shall be a normal business day, Customer shall make available the requested patient medical and office-visit records to SureSmile for auditing by SureSmile's authorized personnel or third party representatives. Such an audit by SureSmile will comply with all applicable State and Federal regulations, such as HIPAA, covering patient Confidential Information.

## 7.4 TAXES AND FEES

Customer shall be responsible for any duty tax/ sales tax/use tax/VAT/GST or consumption tax, fee or charge of any nature imposed by any governmental authority upon the sale of any Product to Customer. In the event SureSmile is required to pay such tax, fee or charge, Customer agrees to reimburse SureSmile within ten (10) days of notice of same. Alternatively, at SureSmile's option, Customer shall remit payment directly to such taxing authority.

## 8 TERM AND TERMINATION

### 8.1 TERM

Unless otherwise provided in the Agreement, this Agreement begins as of the Effective Date and continues on a month-to-month basis until terminated by either Party at the end of a calendar month with at least a 30-day advance written notice to the other Party.

### 8.2 TERMINATION FOR CAUSE

(a) In the event that either Party materially defaults in the performance of any of its obligations under the Agreement and does not substantially cure such default, or commence a cure (other than nonpayment), within thirty (30) days (ten (10) days in the case of nonpayment) after being given notice specifying the default, the non-defaulting Party may, by giving notice to the defaulting Party, terminate the Agreement as of a date specified in such notice of termination. The specified date shall be at least thirty (30) days (ten (10) days in the case of nonpayment) after the notice of termination. If SureSmile breaches its obligations under Section 9.5 of the Agreement, Customer may terminate the Agreement immediately.

(b) Either party may terminate this Agreement or any order, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within fifteen (15) business days or is not dismissed or vacated within thirty (30) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

### 8.3 TERMINATION FOR CONVENIENCE

SureSmile, in its sole discretion, may terminate this Agreement or any order, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to Customer.

### 8.4 EFFECT OF TERMINATION

Upon termination of the Agreement, for any reason, Customer will pay SureSmile for all Services performed by SureSmile up to the date of such termination, and all other amounts Customer owes to SureSmile under this Agreement. SureSmile will have no obligation to return any fees received from Customer or provide any compensation for Services that have not been rendered. Customer acknowledges

and agrees that SureSmile will have no liability for any loss of data resulting from exercising the rights set forth in this paragraph.

## **8.5 DATA STORAGE**

Following the expiration or termination of the Agreement, SureSmile will either, in its sole discretion, provide continuing storage and access to Patient data or, when available, provide Customer with a copy of the Patient data for storage. The foregoing will be provided according to SureSmile's then-current terms, conditions and fees for such service. Customer acknowledges and agrees that SureSmile will have no liability for any loss of data resulting from Customer's failure to agree to or comply with SureSmile's Agreement for such Services.

## **8.6 TREATMENT REVERSION**

At the end of the Term, should Customer elect not to enter into a new service Agreement with SureSmile, then Customer must revert to other methods for further treatment of patients undergoing treatment utilizing the SureSmile Services.

## **8.7 RETURN OF MATERIALS**

Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other party's Confidential Information, (ii) permanently delete all of the other party's Confidential Information from its computer systems, and (iii) certify in writing to the other party that it has complied with the requirements of this clause; provided, however, that SureSmile may retain copies of any Confidential Information of customer incorporated in the SureSmile Products or to the extent necessary to allow it to make full use of the SureSmile Products or as required by law.

## **8.8 SOFTWARE & DOCUMENTATION LICENSE**

In the event that the Agreement expires or is terminated, the license to the Software and Documentation will terminate and the restrictions in Sections 2, 9 and 11.2 will continue to apply.

## **8.9 SURVIVAL**

Subject to Section 8.7, the expiration or termination of the Agreement by either Party pursuant to the provisions of the Agreement will terminate each Party's obligations under the Agreement except for the provisions of Sections 1, 7, 8, 9, 10, 11, 12 and 15, all of which survive termination of the Agreement, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

## **9 CONFIDENTIALITY; PROTECTED HEALTH INFORMATION**

### **9.1 CONFIDENTIAL INFORMATION DISCLOSURE LIMITATIONS.**

The Receiving Party agrees:

(a) to keep the Confidential Information in strictest confidence and not to disclose or otherwise make available Confidential Information of the Disclosing Party to any

third party without the prior written consent of the Disclosing Party; *provided, however,* that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its and its Affiliates, and their officers, employees, consultants, and legal advisors who have a "need to know", who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section;

(b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of SureSmile, to make use of the Services and Deliverables; and

(c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

## 9.2 RECEIVING PARTY

If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy. If the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

## 9.3 DUTY OF CONFIDENTIALITY

The duty of confidentiality shall continue for three years after the termination of the Agreement and these Terms, or for so long as the Confidential Information or trade secrets are entitled to legal protection under applicable laws.

## 9.4 PROTECTED HEALTH INFORMATION.

### 9.4.1 AGREEMENT

The parties understand that in connection with the performance of the Agreement, SureSmile and its employees may acquire from Customer and make use of information, which includes Protected Health Information. The business associate agreements are hereby incorporated by reference into this Agreement as if set forth in this Agreement in their entirety, effective on the later of the effective date of this Agreement or such subsequent date as may be specified by HIPAA. [\[LINK TO BUSINESS ASSOCIATE AGREEMENT\]](#)

### 9.4.2 DATA AGGREGATION.

Customer acknowledges that SureSmile may aggregate and disclose data provided to SureSmile through the use of the Software and SureSmile services, and that such data aggregation will comply with the provisions of HIPAA.

## 9.5 Data Privacy and Protection.

Customer shall establish, implement, and maintain information security policies and a program of technical and organizational security measures appropriate to prevent access to SureSmile's or patients' data and confidential information and meet all

applicable information security best practices, standards, and guidelines. If applicable, Customer represents and warrants that its collection, access use, storage, disposal, transmission, and disclosure of information that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers), does and will comply with all applicable privacy and data protections laws, as well as all other applicable regulations and directives, which may include as applicable the California Online Privacy Protection Act (“**CalOPPA**”), and the California Consumer Privacy Act of 2018 (Title 1.81.5, §1798.100 et. seq., as it may be amended by statute or regulation over time) (“**CCPA**”). In the event of data collection from persons in the United States and, specifically, the state of California, unless separately and specifically agreed to in writing signed by the parties, each Party hereto acknowledges that it has given no consideration for any transfer of personal information and that any such personal information is provided for the sole purpose of facilitating provision of the Services. Customer will enter into any supplemental data privacy or other such agreements with SureSmile as required. If you are not satisfied with the answer you get from SureSmile and wish to complain you may contact your relevant supervisory authority.

## 10 WARRANTY

OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT, SURESMILE DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, WITH RESPECT TO THE SURESMILE SOFTWARE, SURESMILE SERVICES OR SURESMILE PRODUCTS, THE DOCUMENTATION, OR ANY OTHER PRODUCT OR SERVICE PROVIDED HEREUNDER OR OTHERWISE REGARDING THE AGREEMENT. WITHOUT LIMITING THE FOREGOING, THE SURESMILE PRODUCTS ARE SOLD “AS IS”, AND SURESMILE MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AND THE PARTIES EXPRESSLY EXCLUDE ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND PRODUCT QUALITY.

## 11 INSURANCE

At all times during the Term of this Agreement, Customer shall procure and maintain, at its sole cost and expense, Commercial General Liability with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which policy will include contractual liability coverage insuring the activities of Customer under this Agreement. Customer shall also procure and maintain insurance coverage for privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches; response and crisis management activity related to Data Security Incidents, and legal claims for Data Security Incidents, privacy violations and notification costs) of at least \$2,000,000 per occurrence, and professional liability and errors and omissions insurance of at least \$2,000,000 per

occurrence. Customer shall provide a Certificate of Insurance to SureSmile for such coverages.

## **12 LIMITATION OF LIABILITY**

### **12.1 LIMITATION OF REMEDY**

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR INDEMNIFICATION OR OTHERWISE, SHALL SURESMILE BE LIABLE TO CUSTOMER OR ANY PATIENT OF CUSTOMER FOR ANY, DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, SPECULATIVE, LOSS OF GOODWILL, PUNITIVE DAMAGES OR DAMAGE OF ANY KIND ARISING OUT THE SALE, FUNCTIONING OR THE USE OF OR INABILITY TO USE ANY PRODUCT OR SOFTWARE, OR ANY PRODUCT PROVIDED AS A PART OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, DATA OR USE INCURRED BY CUSTOMER OR ANY THIRD PARTY, EVEN IF SURESMILE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SURESMILE SHALL HAVE NO LIABILITY TO CUSTOMER (EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS) OR TO ANY PATIENT OF CUSTOMER HEREUNDER, AND CUSTOMER AGREES TO HOLD HARMLESS AND INDEMNIFY SURESMILE FOR ANY SUCH CLAIMS.

### **12.2 MAXIMUM LIABILITY**

IN NO EVENT WILL SURESMILE'S LIABILITY FOR ANY COSTS, EXPENSES, OR DAMAGES TO CUSTOMER OR ANY THIRD PARTY, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED FOR ANY CLAIM, THE AMOUNT ACTUALLY RECEIVED BY SURESMILE UNDER THE AGREEMENT FOR THE PRODUCT OR SERVICE THAT IS THE BASIS FOR SUCH CLAIM.

### **12.3 PROFESSIONAL RESPONSIBILITY**

SureSmile does not practice dentistry, orthodontia or any other practice of medicine. Customer is solely responsible for the selection and use of SureSmile Products or SureSmile Software regardless of any input from SureSmile and regardless of the qualifications of the SureSmile employee assisting with the selection. The final medical/dental/orthodontic decision remains at all times with Customer. Notwithstanding anything to the contrary contained in the Agreement, the Parties agree and understand that SureSmile is merely providing the SureSmile Software and SureSmile Products and SureSmile Services for use by Customer and that Customer is fully responsible for all professional obligations and decisions related to all patients, including, without limitation, the responsibility to obtain informed consent, diagnose the patient's orthodontic needs and condition and to determine, prescribe and administer the appropriate treatments required for the patient using Customer's professional judgment, skills and training.

### **12.4 ALLOCATION OF RISK**

Customer is a sophisticated purchaser and acknowledges and agrees that the allocation of risks in the Agreement are reflected in the amounts due from



Customer and other charges provided under the Agreement, that SureSmile cannot control the manner in which Customer uses the Software or SureSmile Products or Services, and that the allocation of risks under the Agreement are reasonable and appropriate under the circumstances.

### **13 COMPLIANCE WITH LAWS**

Customer shall comply with all applicable laws, statutes, ordinances, rules, regulations, orders, or other standards pertaining to its practice of orthodontia, the use of Protected Health Information, and to the SureSmile Products and Software provided hereunder (collectively, “**Laws**”), as such Laws may be updated and superseded from time to time.

### **14 INTELLECTUAL PROPERTY**

All rights in Intellectual Property, the SureSmile Software or SureSmile Products (including all patents, trademarks, service marks, registered designs, utility models, design right, database rights, copyright, trade secrets) and other Confidential Information, know-how, and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world in or relating to the SureSmile Products, Software, systems and Website, or items that SureSmile prepares or produces for Customer or patient or makes available to Customer, belong to SureSmile absolutely and exclusively. SureSmile expressly reserves all the intellectual property rights to the SureSmile Software and SureSmile Products, including all copyrights, patents, operation and business secrets, know-how, trademarks and any other intellectual property rights. Customer shall inform SureSmile promptly if Customer becomes aware of any infringement of our trademarks or other Intellectual Property rights by any person.

### **15 MISCELLANEOUS**

#### **15.1 BINDING EFFECT**

As of the Effective Date hereof, the Agreement will be binding upon and inure to the benefit of the Parties, their legal representatives, permitted transferees, successors, and assigns as permitted by the Agreement.

#### **15.2 ASSIGNMENT**

Customer may not assign, transfer, or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of SureSmile, which consent shall not be unreasonably withheld or delayed; provided, that, upon prior written notice to SureSmile, Customer may assign the Agreement to an Affiliate of Customer or to a successor of all or substantially all of the assets of Customer through merger, reorganization, consolidation, or acquisition. No assignment shall relieve Customer of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void.

#### **15.3 NO WAIVER**

No delay or failure in exercising any right under the Agreement and no partial or single exercise of such right will be deemed to constitute a waiver of such right or

any other rights hereunder. No consent to a breach of any express or implied term of the Agreement will constitute consent to any prior or subsequent breach.

#### 15.4 FORCE MAJEURE

No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, pandemics (such as the Covid-19 pandemic) or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; or (g) other similar events beyond the control of the Party affected by the Force Majeure Event. The affected Party shall give notice to the other Party, stating the period of time the occurrence is expected to continue. The affected Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause.

#### 15.5 GOVERNING LAW

The Agreement will be governed by, and construed in accordance with, the laws of the State of New York without regard to conflicts of law principles.

#### 15.6 JURISDICTION AND VENUE; WAIVER OF JURY TRIAL

The Parties will make diligent efforts through negotiation to settle any disputes arising out of or related to the Agreement. The Parties hereby consent to the exclusive jurisdiction of the State of New York and each Party agrees that any legal suit, action, or proceeding arising out of or related to this Agreement or the Services provided hereunder will be brought exclusively in the United States federal courts in the Southern District of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties hereby waive any objections that jurisdiction or venue in such court is not proper and each irrevocably submits to the jurisdiction of those courts for matters that may be litigated under the Agreement. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

#### 15.7 REMEDIES

Each party acknowledges that a breach by a party of Section 14 (Intellectual Property), Section 9 (Confidentiality) and Section 9.5 (Data and Protection), may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. In addition, the Parties may apply to any court of competent jurisdiction to seek a temporary

restraining order, preliminary injunction, or other interim or conservatory relief, as necessary.

### **15.8 RELATIONSHIP OF PARTIES**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever

### **15.9 AMENDMENTS; SEVERABILITY**

This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

### **15.10 NOTICE**

Any notice required or permitted to be given hereunder shall, except where specifically provided otherwise, be given in one of the following ways: (i) for notices to Customer, by e-mail to the e-mail address specified by the Customer towards SureSmile with regard to business communication, or (ii) for notices to either Party in writing by personal delivery, certified mail, or overnight delivery to the address set forth herein for such Party. The date upon which any given notice is received shall be deemed to be the date of such notice, irrespective of the date appearing thereon. A Party's e-mail or physical address for receipt of notice hereunder may be changed at any time upon notice to the other Party.

### **15.11 VERIFICATION**

SureSmile reserves the right to audit Customer's use of the Software and SureSmile Services no more than once per year, after reasonable notice and during normal business hours, to verify compliance with the terms of the Agreement.

### **15.12 PARTIAL INVALIDITY**

Should any provision of the Agreement be held to be void, invalid or inoperative, the remaining provisions of the Agreement shall not be affected and shall continue in effect and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity.

### **15.13 ENTIRE AGREEMENT.**

The Agreement, Terms and Conditions and any exhibits attached hereto constitute the entire Agreement between the Parties and supersede all prior or contemporaneous Agreements, representations and proposals, written or oral. In the event of any conflict among the Agreement, these Terms and Conditions, and

## SureSmile® General Terms & Conditions

the applicable order, or in the event no written or formal order is issued, these Terms and Conditions shall control unless otherwise expressly agreed to in writing by SureSmile and Customer. Customer's acceptance of SureSmile Products or SureSmile Software license shall be deemed Customer's assent to all Terms and Conditions even if no written or formal order is issued by Customer. For the avoidance of doubt, SureSmile shall not be bound by the provisions of other documents, including any terms and conditions set forth in the order or other purchase order, order confirmations, acceptance, or other instruments from Customer, unless signed by an officer of SureSmile.