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SureSmile® General Terms & Conditions

1. INTRODUCTION

- 1.1 These Terms and Conditions ("Terms") apply to the purchase by you ("Customer") and the supply by Dentsply Sirona Pty Ltd ACN 111 950 602 ("Dentsply Sirona") of the SureSmile® Services.
- 1.2 The ability to purchase SureSmile® Services is conditional upon the Customer agreeing to the Terms. The SureSmile® Services are offered to the Customer on the condition that the Customer reads and accepts all the Terms.
- 1.3 By clicking "Accept & Submit", or by entering into a separate SureSmile Advanced Agreement that incorporates these Terms ("Separate Agreement") the Customer will be deemed to have accepted the Terms. Acceptance will bind the Customer and its officers, employees and agents to the Terms.
- 1.4 If the Customer does not wish to accept these Terms, it must not click "Accept & Submit" or enter into a Separate Agreement and must not use the SureSmile® Services, the Software or the Documentation.
- 1.5 These Terms relate specifically to the SureSmile® Services and do not reduce any other obligations that the Customer may have with Dentsply Sirona under any other separate agreement.
- 1.6 Dentsply Sirona may amend or update these Terms and will take reasonable steps to bring any material changes to your attention. As the Customer is bound by any amendment to these Terms, the Customer should review these Terms from time to time. By continuing to access or use and buy or otherwise obtain (as applicable) the SureSmile® Services after any amendments to these Terms, the Customer is deemed to agree to be bound by such changes. If the Customer does not agree to any amendment or update of these Terms, the Customer may terminate these Terms (without charge) in accordance with clause 2.

2. COMMENCEMENT AND TERM

Unless stated otherwise in a Separate Agreement, these Terms start on the Acceptance Date and continue on a month-to-month basis until either Party gives to the other Party, at the end of a calendar month, 30 days' written notice to terminate, unless terminated earlier in accordance with clause 9 ("**Term**").

3. CUSTOMER WARRANTY, ACKNOWLEDGEMENT AND INDEMNITY

3.1 The Customer represents and warrants that:

- (a) it is registered under the *Health Practitioner Competence Assurance Act 2003 (HPCAA)* and the Dental Council of New Zealand and has an annual practising certificate to practise as a dental practitioner, other than as a student, or it is a dental technician registered under the HPCAA and the Dental Council of New Zealand and has an annual practising certificate and will only use the SureSmile® Services, the Software and the Documentation in the ordinary course of carrying on its business as such ("**Business**");
- (b) it will only treat patients using the SureSmile® Services if it is legally permitted to do so;
- (c) it will successfully complete all training made available by Dentsply Sirona prior to using the SureSmile® Services, the Software and the Documentation;
- (d) it has the power and authority to perform its obligations under these Terms;
- (e) its acceptance of and performance under these Terms will not conflict with or violate any provision of its organisational or governance documents or conflict with or violate any law applicable to it or any of its assets or Business (as applicable).

3.2 The Customer acknowledges and agrees that:

- (a) Dentsply Sirona provides the SureSmile® Services, the Software and the Documentation for use by the Customer and that the Customer is fully responsible for all professional obligations and decisions related to all patients, including the responsibility to obtain informed consent, diagnose the patient's orthodontic needs and condition, and determine, prescribe and administer the appropriate treatments required for the patient using the Customer's professional judgment, skills and training; and
- (b) during the Term, it will ensure that its internet, its power and, to the extent Dentsply Sirona provides Software for installation on the Customer's Device, each Device meets the requirements to provide a reliable internet service to its Business.

3.3 The Customer indemnifies and holds harmless and keeps Dentsply Sirona and its Personnel indemnified and held harmless from and against any and all third party Claims, including reasonable legal fees and disbursements, whether or not covered by insurance, caused or asserted to have been caused, directly or

indirectly, by or as a result of the Customer's or its Personnel's practice of orthodontia or use of the SureSmile® Services in breach of these Terms.

4. PLACING AN ORDER AND ITS ACCEPTANCE

- 4.1 Each order submitted using the Software ("**Order**") is an offer by the Customer to purchase the SureSmile® Services subject to these Terms and, if applicable, the terms of a Separate Agreement.
- 4.2 Before making a decision to purchase the SureSmile® Services, the Customer should consult all relevant Documentation. The Customer is responsible for ensuring that each Order is complete and accurate.
- 4.3 Dentsply Sirona's acceptance of the Order takes place when Dentsply Sirona confirms to accept it, at which point and on which date an agreement between the Customer and Dentsply Sirona for the supply of the Order will come into existence.

5. LICENCE

- 5.1 In consideration of the Fee, Dentsply Sirona grants to the Customer a non-exclusive, royalty-free, non-transferrable licence during the Term to use the Software and the Documentation.
- 5.2 In relation to scope of use:
 - (a) For the purposes of clause 5.1, use of the Software will be restricted to use of the Software in object code form for the purpose of processing the Customer's data in the ordinary course of the Customer's business (which will not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).
 - (b) The Customer may not use the Software other than as specified in clause 5.1 and clause 5.2(a) without the prior written consent of Dentsply Sirona, and the Customer acknowledges that additional fees may be payable on any change of use approved by Dentsply Sirona.
 - (c) To the extent Dentsply Sirona provides Software for installation on the Customer's Device, the Customer may make as many backup copies of the Software as may be necessary for its lawful use. The Customer will record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
 - (d) Except as expressly stated in this clause 5, the Customer has no right (and will not permit any third party) to reproduce, copy, translate, adapt, vary, modify, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.
 - (e) The Customer has no right (and will not permit any third party) to remove, obliterate, alter or obscure any copyright, trademark or other notices on the Software.

5.3 The Customer must:

- (a) ensure that the Software is only used and interpreted by a person who is qualified and trained in using and interpreting such information displayed or otherwise produced by the Software;
- (b) keep a complete and accurate record of users of the Software, and produce such record to Dentsply Sirona on request from time to time;
- (c) protect the Software at all times from unauthorised access, use or damage including utilising and maintaining suitable anti-virus programs, firewalls and similar security measures;
- (d) notify Dentsply Sirona as soon as it becomes aware of any unauthorised use of the Software by any person; and
- (e) pay for broadening the scope of the licence granted under these Terms to cover the unauthorised use, an amount equal to the fees which Dentsply Sirona would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

6. MAINTENANCE RELEASES

6.1 During the Term:

- (a) Dentsply Sirona will provide the Customer with all Maintenance Releases generally made available to its customers; and
- (b) the Customer must install all Maintenance Releases as soon as reasonably practicable after receipt.

7. SUPPORT

7.1 During the Term, Dentsply Sirona will provide telephone and email support for the SureSmile® Services during Business Hours ("**Support Services**").

7.2 Dentsply Sirona will use commercially reasonable efforts to resolve any issue notified as part of the Support Services.

7.3 The Customer will authorise, in writing:

- (a) one of its employees to make all, and serve as the primary point of contact regarding, requests for Support Services on behalf of the Customer; and
- (b) one of its employees to act in the absence of the employee authorised under clause 7.3(a),
- (c) (each an "Authorised Contact")

- 7.4 The Customer may change its Authorised Contacts by giving Notice of that change to Dentsply Sirona.
- 7.5 The Customer acknowledges and agrees that:
- (a) Dentsply Sirona will only accept requests for Support Services made by Authorised Contacts;
 - (b) if the Customer escalates a request for Support Services to Dentsply Sirona Personnel of appropriate qualification or experience and Support Services are provided outside of Business Hours, Dentsply Sirona will be entitled to charge the Customer pursuant to hourly fee-schedules set forth by Dentsply Sirona;
 - (c) the training made available by Dentsply Sirona which the Customer is required to successfully complete prior to using the SureSmile® Services, the Software and the Documentation under clause 3.1(c) is included in the Fees, and any additional training will be quoted at Dentsply Sirona's then current rates and will be billed separately;
 - (d) Dentsply Sirona will not be responsible for providing Support Services in connection with any apparent problem regarding the SureSmile® Services reasonably determined by Dentsply Sirona to have been caused by:
 - (i) any improper use, misuse or unauthorised alteration of the SureSmile® Services or the Software by the Customer;
 - (ii) any use of the SureSmile® Services or the Software by the Customer in a manner inconsistent with the then Documentation;
 - (iii) the use of a non-current version or release of the Software; or
 - (iv) a Force Majeure Event.

8. FEES AND PAYMENT

- 8.1 In consideration of Dentsply Sirona supplying the SureSmile® Services, the Customer must pay Dentsply Sirona's fees ("**Fees**") in accordance with this clause 8.
- 8.2 Unless stated otherwise in the Agreement, the Fees are the prices quoted at the time the Customer submits its Order.
- 8.3 All Fees are quoted in New Zealand dollars on a GST exclusive basis. Where GST is payable in respect of some or all of the SureSmile® Services, the Customer must pay Dentsply Sirona such additional amounts in respect of GST, at the applicable rate, at the same time as it pays the Fees.
- 8.4 If the Customer fails to make any payment due to Dentsply Sirona under these Terms by the due date for payment, then, without limiting Dentsply Sirona's remedies under clause 9, the Customer will pay interest on the overdue

amount at the Interest Rate. Such interest will accrue on a daily basis from the due date up to and including the date of actual payment, whether before or after judgment. The Customer will pay the interest together with the overdue amount.

- 8.5 Unless otherwise agreed by Dentsply Sirona in writing, all amounts owing to Dentsply Sirona on account of SureSmile® Services supplied on credit are due and payable by the last working day of the following month following dispatch of the relevant tax invoice (as that term is defined in section 2 of the *Goods and Services Tax Act 1985*) to the Customer.
- 8.6 Payment is accepted via EFT, debit card or credit card.
- 8.7 The Customer will provide credit card information to Dentsply Sirona and/or its authorised credit card processor and authorises Dentsply Sirona and/or its authorised credit card processor to charge such credit card(s) (and any replacements or substitutes) for any and all Fees and charges as they become due under these Terms. The Customer must keep all credit card information up to date and must 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 may result in the delay of delivery of the SureSmile® Services and will constitute a material breach of these Terms.
- 8.8 The cost of hotel, subsistence and travelling expenses will only be payable by the Customer if they have been pre-approved in writing by the Customer.

9. TERMINATION

- 9.1 Without affecting any other right or remedy available to it, either Party ("**Terminating Party**") may terminate these Terms with immediate effect by giving written notice to the other party if:
 - (a) the other Party commits a material breach of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so by the Terminating Party; or
 - (b) an Insolvency Event occurs in relation to the other Party.
- 9.2 Without affecting any other right or remedy available to it, Dentsply Sirona may terminate these Terms with immediate effect by giving written notice to the Customer if:
 - (a) the Customer fails to pay any amount due under these Terms on the due date for payment and remains in default not less than seven days after being notified to make such payment; or
 - (b) there is a change of Control in the Customer.

9.3 On termination of these Terms:

- (a) all rights granted to the Customer under these Terms will cease;
- (b) the Customer will cease all activities authorised by these Terms;
- (c) all Orders will terminate unless the Customer has paid Dentsply Sirona in advance for the SureSmile® Services the subject of the Order;
- (d) the Customer must immediately pay to Dentsply Sirona all of Dentsply Sirona's outstanding unpaid invoices and interest and, in respect of the SureSmile® Services supplied but for which no invoice has been submitted, Dentsply Sirona may submit an invoice, which will be payable immediately on receipt;
- (e) at the request of a Party acting reasonably, the other Party must:
 - (i) immediately return all documents and other media which contain Confidential Information, to the other Party and permanently delete all Confidential Information stored electronically; and
 - (ii) at the same time as it returns the documents and other media referred to in this clause, permanently delete all such documents and other media stored electronically, unless the recipient Party is required to retain a copy under applicable law, in which case the recipient Party may retain such a copy subject maintaining the confidentiality of the retained materials; and
- (f) Dentsply Sirona will either provide continuing storage and access to patient data or, when available, provide Customer with a copy of the patient data for storage according to Dentsply Sirona's then-current terms, conditions and fees for such service;
- (g) the following clauses will continue in force: clause 3.3 (Indemnity), this clause 9 (Termination), clause 10 (Confidentiality), clause 12 (Non-excludable rights and limitation of liability), clause 13.1 (Intellectual property rights), clause 16 (Dispute resolution), clause 18.7(a) (Governing law) and clause 19 (Definitions and interpretation).

9.4 The return and deletion of the Confidential Information under clause 9.3(e) does not release a Party from its obligations under these Terms.

9.5 Termination of these Terms will 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 agreement which existed at or before the date of termination or expiry.

10. CONFIDENTIALITY

10.1 Confidentiality obligation

Subject to clause 10.2, each Party must treat as confidential, and keep confidential and not disclose, any Confidential Information of the other Party and must:

- (a) use its best endeavours to protect the confidentiality of the Confidential Information;
- (b) not make any press or other announcements relating to the Confidential Information; and
- (c) procure that each of its associated entities complies with this clause 10 as if the associate was a party to these Terms and bound by this clause 10.

10.2 Permitted disclosures

A Party may disclose Confidential Information of the other Party:

- (a) subject to clause 10.3, to its officers, employees, and advisers, auditors, financiers and to legal advisers to assist in the transactions contemplated by these Terms;
- (b) subject to clause 10.3, with the prior written consent of the other Party with at least 2 Business Days' notice; or
- (c) to the extent required by law or by the rules of a stock exchange,

having, to the extent practicable, consulted with the other parties with a view to agreeing the form, content, timing and manner of disclosure, and to the maximum extent possible claimed any rights of confidentiality that it might be afforded under such laws or rules.

10.3 Confidentiality following disclosure to other persons

If a Party discloses Confidential Information as permitted by clause 10.2 it must ensure to the extent it is able that the person to whom it disclosed the Confidentiality Information does not disclose it to any other person.

10.4 Acknowledgements

Each Party acknowledges and agrees that:

- (a) a breach of this clause 10 by it would be harmful to the other Party;
- (b) monetary damages alone would not be a sufficient remedy for a breach of this clause 10 by it; and
- (c) in addition to any other remedy which may be available in law or equity, the other Party is entitled to any injunctive relief to prevent breach of this clause 10 and to compel specific performance of it.

11. PRIVACY

11.1 The Parties acknowledge and agree that:

- (a) in connection with the performance of these Terms, Dentsply Sirona and its employees may acquire from the Customer and make use of Health Information. In New Zealand, health information has the meaning defined in Section 4(1) of the *Health Information Privacy Code 2020*.
- (b) Health Information disclosed to Dentsply Sirona by the Customer may be used or disclosed by Dentsply Sirona as necessary to perform Dentsply Sirona's obligations pursuant to these Terms and for the proper management and administration of Dentsply Sirona. Dentsply Sirona will use and disclose this Health Information in accordance with its [Privacy Policy](#); and
- (c) Dentsply Sirona may de-identify the disclosed Health Information for Dentsply Sirona's research and marketing purposes.

11.2 Dentsply Sirona agrees to:

- (a) use or further disclose Health Information only as permitted or required to perform its obligations under these Terms or as otherwise required by law;
- (b) use appropriate safeguards to prevent use or disclosure of Health Information other than as allowed or provided for by these Terms;
- (c) notify the Customer of unauthorised use or disclosure of its Health Information that is known to Dentsply Sirona and not permitted or required under these Terms;
- (d) require its agents and subcontractors to whom Dentsply Sirona provides Health Information in performing its obligations under these Terms to agree to:
 - (i) adhere to the same restrictions and conditions on the use and disclosure of Health Information that apply to Dentsply Sirona pursuant to these Terms; and
 - (ii) comply with the same standards and requirements that apply to Dentsply Sirona in respect of Health Information;
- (e) at the written request of the Customer, provide to the Customer the necessary information in Dentsply Sirona's possession to respond to a request by an individual for an individual's Health Information in accordance with the *Health Information Privacy Code 2020* and the *Privacy Act 2020*;
- (f) upon termination of these Terms, to the extent practicable and at its option, return to the Customer or destroy, all Health Information in Dentsply Sirona's possession;

- (g) make available Health Information in accordance with the *Health Information Privacy Code 2020* and the *Privacy Act 2020*;
- (h) make available Health Information for amendment and incorporate any amendments to Health Information in accordance with the *Health Information Privacy Code 2020* and the *Privacy Act 2020*; and
- (i) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Health Information that it creates, receives, maintains, or transmits on behalf of the Customer.

11.3 The Customer acknowledges and agrees that Dentsply Sirona may aggregate and disclose data provided to Dentsply Sirona through the use of the SureSmile® Services and/or the Software, and that such data aggregation will comply with the provisions of the *Health Information Privacy Code 2020* and the *Privacy Act 2020*.

12. NON-EXCLUDABLE RIGHTS AND LIMITATION OF LIABILITY

12.1 Nothing in these Terms excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited, to the SureSmile® Services that the Customer purchases or otherwise obtains from Dentsply Sirona (**Non-Excludable Rights**).

12.2 Without limiting any other provisions of these Terms, and to the extent permitted by law, Dentsply Sirona will not in any way be liable to the Customer for any loss or damage suffered, paid or incurred by the Customer as a result of its use of the SureSmile® Services, the Software and/or the Documentation, including any viruses or other malicious software that may affect the Customer while using the Software, or for any faults, failures or interruptions or the accuracy, timeliness, completeness, security or reliability of any representations and communications (including any transactions) made while using the SureSmile® Services, the Software and/or the Documentation.

12.3 Subject to clause 12.1, the Parties acknowledge and agree that:

- (a) the SureSmile® Services, the Software and the Documentation are being supplied by Dentsply Sirona and acquired by Customer in trade;
- (b) the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply to or in relation to the supply of the products and services under these Terms, or any other matter relating to or concerned with these Terms or its subject matter; and
- (c) agree that it is fair and reasonable that it is bound by the provisions of this clause.

- 12.4 Except for liability in relation to breach of any Non-Excludable Rights, the non-payment of Fees or under the indemnity in clause 3.3, a party's maximum aggregate liability to the other party in respect of Claims arising out of or in connection with these Terms or any collateral contract, whether in contract, tort (including negligence), restitution, equity, under statute or otherwise, is limited to the total Fees paid by the Customer to Dentsply Sirona under these Terms in the 12 month period prior to the first Claim arising.
- 12.5 Dentsply Sirona will not be liable for any Claim under or in relation to or arising out of these Terms unless:
- (a) the Customer has first made a claim under any insurance policy held by the Customer that may cover that claim; and
 - (b) that Claim has been denied in whole or partly by the relevant insurer.
- 12.6 If the Customer recovers any amount under an insurance policy in respect of a Claim under or in relation to or arising out of these Terms and that amount is less than the loss or damage incurred by the Customer, the amount of the shortfall will be the amount of the Customer's loss for the purposes of these Terms.
- 12.7 To the maximum extent permitted by law, under no circumstances will a Party be responsible to the other Party or any third party whether in contract, tort (including negligence), restitution, equity, under statute or otherwise for any special, indirect, consequential, incidental or punitive damages, or for any damages for loss of opportunity, data, profits, revenue or goodwill, regardless of whether or not such loss or damage was foreseeable and even if advised of the possibility of such loss or damage.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Customer acknowledges that all Intellectual Property Rights in the SureSmile® Services, the Software and the Documentation belong and will belong to Dentsply Sirona or relevant third-party owners (as the case may be), and the Customer will have no rights in or to the Software other than the right to use it in accordance with these Terms.
- 13.2 Dentsply Sirona undertakes at its own expense to defend the Customer or, at its option, settle any Claim brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with these Terms infringes the New Zealand Intellectual Property Rights of a third party ("Intellectual Property Claim") and will be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Intellectual Property Claim. For the avoidance of doubt, this clause 13.2 will not apply where the Intellectual Property Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other

than in accordance with these Terms, use of the Software in combination with any hardware or software not supplied or specified by Dentsply Sirona if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

- 13.3 If any third party makes an Intellectual Property Claim, or notifies an intention to make an Intellectual Property Claim against the Customer, Dentsply Sirona's obligations under clause 13.2 are conditional on the Customer:
- (a) as soon as reasonably practicable, giving written notice of the Intellectual Property Claim to Dentsply Sirona, specifying the nature of the Intellectual Property Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Intellectual Property Claim without the prior written consent of Dentsply Sirona (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving the Dentsply Sirona and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Dentsply Sirona and its professional advisers to examine them and to take copies (at Dentsply Sirona's expense) for the purpose of assessing the Intellectual Property Claim; and
 - (d) subject to Dentsply Sirona providing security to the Customer to the Customer's reasonable satisfaction against any Claim which may be incurred, taking such action as Dentsply Sirona may reasonably request to avoid, dispute, compromise or defend the Intellectual Property Claim.
- 13.4 If any Intellectual Property Claim is made, or in Dentsply Sirona's reasonable opinion is likely to be made, against the Customer, Dentsply Sirona may at its option and expense do one or more of the following:
- (a) procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with these Terms;
 - (b) modify the Software so that it ceases to be infringing;
 - (c) replace the Software with non-infringing software; or
 - (d) terminate these Terms immediately by notice in writing to the Customer on return of the Software and all copies thereof.

- 13.5 This clause 13 constitutes the Customer's exclusive remedy and Dentsply Sirona's only liability in respect of Intellectual Property Claims and, for the avoidance of doubt, is subject to clause 12.3.

14. INSURANCE

- 14.1 The Customer must:

- (a) at its own expense, obtain and maintain the insurance policies with a reputable insurer with coverage limits as set out below:
 - (i) general liability insurance with a minimum cover of \$1 million per claim; and
 - (ii) insurance required pursuant to applicable law;
- (b) provide current evidence a certificate of currency as may reasonably be requested by Dentsply Sirona that it complies with this clause 14; and
- (c) obtain and maintain the insurance policies referred to in clause 14.1(a) for the following periods:
 - (i) for the Term, for insurance provided on an occurrence basis; and
 - (ii) for the Term and for a period of seven years after the termination of these Terms, for insurance provided on a claims made basis.

15. FORCE MAJEURE

- 15.1 Neither Party is in breach of these Terms or is liable to the other Party for any loss incurred by that other Party as a direct result of a Party (Affected Party) failing or being prevented, hindered or delayed in the performance of its obligations under these Terms, other than payment of fees, where such prevention, hindrance or delay results from a Force Majeure Event.
- 15.2 If a Force Majeure Event occurs, the Affected Party must notify the other Party (Non-affected Party) in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.
- 15.3 On providing the notice in clause 15.2, the Affected Party will be entitled to a reasonable extension of time for performing its obligations under these Terms, however, the Affected Party must continue to use all reasonable endeavours to perform those obligations.
- 15.4 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.
- 15.5 If the delay due to the Force Majeure Event continues for three months, the Non-affected Party may terminate these Terms immediately on providing notice to the Affected Party.

16. DISPUTE RESOLUTION

- 16.1 A Party claiming that a dispute has arisen from or in connection with these Terms ("**Dispute**") must not commence court or arbitration proceedings arising from or relating to the Dispute, other than a claim for urgent interlocutory relief, unless that Party has attempted to resolve the Dispute in accordance with this clause 16.
- 16.2 Compliance with this clause is a condition precedent to the right of any Party to commence litigation or arbitration arising from, or in connection with, the Dispute.
- 16.3 A Party claiming that the Dispute has arisen must give a written notice to the other Party in accordance with clause 17, specifying the nature of the Dispute ("**Dispute Notice**") together with relevant supporting documents.
- 16.4 Following service of the Dispute Notice, the Parties must meet promptly and attempt in good faith to resolve the Dispute.
- 16.5 If the Dispute is not resolved within 30 days of service of the Dispute Notice, either Party may commence litigation or arbitration arising from, or in connection with, the Dispute. Any arbitration will be in accordance with the Arbitration Act 1996. If a party has filed legal proceedings in respect of the Dispute or submitted the Dispute to arbitration, the other party must not subsequently submit the same Dispute to arbitration or file legal proceedings in respect of the same Dispute.
- 16.6 Nothing in this clause 16 prevents any Party from seeking urgent interlocutory relief.

17. NOTICE

- 17.1 Notices to be in writing

A communication in connection with these Terms (including a notice, consent, request, waiver or demand) ("**Notice**") has no legal effect unless it is in writing.

- 17.2 Delivery

In addition to any other method of service provided by law, a Notice may be:

- (a) sent by prepaid ordinary post to the address for notices of the addressee, if the address is in the country of posting;
- (b) sent by prepaid airmail to the address for notices of the addressee, if the address is overseas;
- (c) sent by email to the email address of the addressee; or
- (d) delivered at the address for service of the addressee.

17.3 Timing of delivery

If the Notice is sent or delivered in a manner provided by clause 17.2, it must be treated as given to and received by the Party to which it is addressed:

- (a) if sent by post to an address in the country of posting, on the second Business Day (at the address to which it is posted) after posting;
- (b) if sent by post to an address overseas, on the fifth Business Day (at the address to which it is posted) after posting;
- (c) if sent by email before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (d) if otherwise delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

17.4 Emails

Despite clause 17.3, an email is not treated as given or received if the sender's computer reports that the message has not been delivered.

17.5 Time and days

If a Notice is served by a method which is provided by law but is not provided by clause 17.2, and the service takes place after 5.00pm on a Business Day, or on a day which is not a Business Day, it must be treated as having been received on the next Business Day.

17.6 Addresses

Addresses for notices for the parties are:

- (a) Dentsply Sirona:

Address: 11-21 Gilby Road, Mount Waverley, Victoria, 3149

Email address: clientservices@dentsplysirona.com

Attention: SureSmile Manager

- (b) The Customer:

As set out in the Customer's account.

17.7 Change of address

A Party may change its address for notices by giving Notice of that change to the other Party.

18. GENERAL

18.1 Approvals and consent

A Party may give its approval or consent conditionally or unconditionally or withhold its approval or consent under these Terms unless these Terms expressly provide otherwise.

18.2 Assignment

- (a) The Customer may not assign or encumber or attempt to assign or encumber any of its rights or interests under these Terms without the prior written consent of Dentsply Sirona (such consent not to be unreasonably withheld).
- (b) A breach of clause 18.2 by the Customer entitles Dentsply Sirona to terminate these Terms.

18.3 Entire understanding

Without prejudicing any Non-Excludable Rights, these Terms contain and otherwise record the entire agreement and understanding of the Parties as to the Software and the SureSmile® Services and supersedes all prior agreements, understandings, negotiations or representations between the Parties and there are no warranties, conditions or other terms, or agreements whether implied, oral or written, extending, defining or otherwise relating to the provisions of these Terms or its subject matter.

18.4 Remedies cumulative

The rights, powers and remedies provided in these Terms are cumulative with and not exclusive of the rights, powers or remedies provided by law.

18.5 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- (b) No party is liable for any loss or expense of another party caused or partly caused by the waiver, exercise or failure to exercise a right.
- (c) Waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under these Terms must be in writing and signed by the party granting the waiver.
- (d) This clause 18.4 may not itself be waived except in writing.

18.6 Prohibition or enforceability

- (a) Any provision of, or the application of any provision of these Terms which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

- (b) Any provision of, or the application of any provision of these Terms, which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of these Terms in that or any other jurisdiction.
- (c) The application of this clause 18.6 is not limited by any other provision of these Terms in relation to severability, prohibition or enforceability.

18.7 Relationship of the Parties

- (a) No person other than the Parties has or is intended to have any right, power or remedy or derives or is intended to derive any benefit under these Terms.
- (b) Nothing in these Terms gives a Party authority to bind the other Party in any way.
- (c) Nothing in these Terms imposes any fiduciary duties on a Party in relation to the other Party.
- (d) These Terms do not create a relationship of employment, agency or partnership between the Parties or their respective Personnel.
- (e) Neither Party grants the other the right to use its trade marks, trade names, or other designations in any promotion or publication without prior written consent of the other Party.

18.8 Governing law

These Terms are governed by and construed in accordance with the laws for the time being in force in New Zealand. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

19. DEFINITIONS AND INTERPRETATION

19.1 Definitions

In these Terms, unless the contrary intention appears:

- (a) **3D Printed Model** means a 3D printed model of a single arch of a patient designed using the Software and printed by Dentsply Sirona;
- (b) **Acceptance Date** means the date on which the Customer is deemed to have accepted these Terms under clause 1.3;
- (c) **Advanced Diagnostics Package** means one Therapeutic Model and access to advanced diagnostics tools available in the Software;
- (d) **Aligner** means an aligner tray for a patient designed using the Software and produced by Dentsply Sirona;

- (e) **Authorised Contacts** has the meaning given to that term in clause 7.2;
- (f) **Business** has the meaning given to that term in clause 3.1;
- (g) **Business Day** means a day on which banks generally are open for business in Auckland, New Zealand excluding a Saturday, Sunday or statutory public holiday;
- (h) **Business Hours** means the hours between 9.00am and 5.00pm on a Business Day;
- (i) **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising and whether present or future, fixed or unascertained, actual or contingent and whether at law, in equity, under statute or otherwise and whether involving a Party or a third party;
- (j) **Confidential Information** means information relating to the Parties, the Terms, the negotiations relating to the Terms and any information disclosed by a Party to another party that is confidential in nature, but does not include information that:
 - (i) at the Acceptance Date, was generally and publicly available, or subsequently becomes so available other than by breach of any duty or obligation;
 - (ii) at the time it was disclosed to a Party, was in the possession of that Party lawfully and without breach of any duty or obligation; or
 - (iii) has been disclosed to a Party and was not generally and publicly available at that date of disclosure, but subsequently, through no act or omission of that Party (or any person to whom it disclosed that information), becomes available from another source and is not subject to any duty or obligation as to confidence;
- (k) **Control** means a person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) having the power:
 - (i) to appoint and/or remove the majority of the members of the governing body of another person;
 - (ii) to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of that person; or
 - (iii) to control, by any other means, the affairs and policies of that person,;
- (l) **Customer** has the meaning given to that term in clause 1.1;

- (m) **Dentsply Sirona** has the meaning given to that term in clause 1.1;
- (n) **Device** means a single user computing device, telemetry device or special purpose sensor that requests the execution of or receives the execution of set commands, procedures, or applications from, or provides data to another computer system that is typically referred to a server or is otherwise managed by a server, and includes desktop computers, notebook computers and digital tablets;
- (o) **Diagnostic or Final Model** means a 3D digital model having individual tooth models created from an in-vivo scan or a scan of a plaster model;
- (p) **Do-It-Yourself Aligner Package** means one Diagnostic Model and access to the Software tools to plan treatment and design aligner staging for a patient.
- (q) **Documentation** means the release notes, implementation guides, or other published technical documentation that relates to SureSmile® Services acquired by the Customer;
- (r) **Fees** has the meaning given to that term in clause 8.1;
- (s) **Force Majeure Event** means any event or circumstance that:
 - (i) is not within a Party's reasonable control;
 - (ii) cannot reasonably be prevented by a Party by taking reasonable precautions and cannot reasonably be circumvented by that Party; and
 - (iii) prevents, hinders or delays a Party from performing any of its obligations under these Terms,

including, without limitation:
 - (iv) any act of God, flood, bush fire, drought, earthquake, landslide, storm, lightning strike, cyclone or other natural disaster;
 - (v) epidemic as characterised by the New Zealand Ministry of Health, pandemic as characterised by the New Zealand Ministry of Health;
 - (vi) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, blockade or breaking off of diplomatic relations;
 - (vii) terrorist attack, civil war, civil commotion or riots;
 - (viii) sabotage, malicious damage or vandalism;
 - (ix) nuclear, chemical or biological contamination;
 - (x) maritime, aviation, or space industry or space object disaster;

- (xi) any relevant law coming into force after the Acceptance Date, or any action taken by the New Zealand government or semi-government bodies or agencies or political subdivisions of them, including without limitation, imposing an export or import restriction, quota or prohibition, or failure to obtain or delay in obtaining a necessary approval, permit, licence or consent, where the relevant Party has taken all reasonable steps to obtain that approval, permit, licence or consent;
- (xii) collapse of buildings, fire, explosion or accident (other than in the case of a Party's fraud, negligence or wilful misconduct);
- (xiii) any labour or trade dispute, strikes, industrial action or lockouts (other than any such action by employees or contractors of the Party seeking to rely on this clause 19.1(l), or a Related Company of that Party, that does not form part of any national, state or industry-wide activity;
- (xiv) non-performance by suppliers or subcontractors;
- (xv) interruption, material reduction in the rate of, or failure of any utility service (other than where the interruption, reduction or failure of that utility service is caused by an act or omission of the Party seeking to rely on this clause 19.1(l); and
- (xvi) any breakage, failure or malfunction of, or accident involving, any plant, equipment, machinery or other facility owned or operated by a Party or its Related Companies that occurs notwithstanding that the Party or Related Company has taken all reasonable steps to avoid or guard against such an event;
- (t) **Full-service Aligner Package** means one Therapeutic Model, one Setup Model and design of staging for each Aligner for the treatment of a patient using Aligners;
- (u) **GST** means goods and services tax in terms of the *Goods and Services Tax Act 1985* and including any tax levied in New Zealand in substitution of that tax;
- (v) **Health Information** has the meaning given to that term in the *Health Information Privacy Code 2020*;
- (w) **IDB Export** means the export, in STL format, of the 3D design data for all IDB Trays designed using the Software for a patient;
- (x) **Indirect Bonding ("IDB") Tray** means a 3D printed IDB tray for a patient designed using the Software and printed by Dentsply Sirona;
- (y) **Insolvency Event** in relation to a person means:

- (i) a receiver, receiver and manager, trustee, administrator, liquidator, provisional liquidator or similar official is appointed in respect of the person;
 - (ii) an application is presented against it (that is not discharged or withdrawn within 14 days of its presentation), or an order made, or a resolution is passed by its members or creditors for its winding up;
 - (iii) any execution or other process of any court or authority for an amount in excess of \$50,000 is issued against or levied upon any of its assets and that execution or process is not discharged or withdrawn within 60 days of the date of issue;
 - (iv) the person suspends payment of its debts generally or enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (v) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent or unable to pay its debts within the meaning of section 287 of the *Companies Act 1993*;
 - (vi) the person ceases to carry on business or threatens to cease to carry on business;
 - (vii) a meeting of its creditors approves a composition, compromise or arrangement under the *Companies Act 1993*; or
 - (viii) an event happens analogous to an event specified above to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had under any one or more of the above clauses if the laws of New Zealand had applied;
- (z) **Intellectual Property Rights** means all present and future rights intellectual property rights of any kind including but not limited to, those conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;
- (aa) **Interest Rate** means the Bank Bill Rate plus 2%, where the Bank Bill Rate will be measured as the average bid rate displayed at or about 10.30am (New Zealand time) on the first day of the relevant period on the Reuters screen BKBM page for a term equivalent to the relevant period;
- (bb) **Maintenance Release** means release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

- (cc) **New Version** means any new version of the Software which from time to time is publicly marketed and offered by Dentsply Sirona in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;
- (dd) **Notice** has the meaning given to that term in clause 17.1;
- (ee) **Order** has the meaning given to that term in clause 4.1;
- (ff) **Party** means each of the Customer and Dentsply Sirona;
- (gg) **Personnel** of a Party are the employees, officers, consultants, contractors, representatives and agents of the Party;
- (hh) **Refinement** means an updated Therapeutic Model, based on a mid-treatment scan, an updated Setup Model, and updated staging of Aligners for a patient;
- (ii) **Related Company** has the meaning given to it in the Companies Act 1993, provided that a reference to **company** in that section will refer to any company or body corporate, notwithstanding the jurisdiction of incorporation or establishment of the relevant company or body corporate;
- (jj) **Setup Model** means a 3D digital model of a patient's planned tooth positions per the treatment plan;
- (kk) **Software** means:
 - (i) the Dentsply Sirona SureSmile® software accessible by the Customer via the internet at <https://login.suresmile.com>; and
 - (ii) any other software provided by Dentsply Sirona to the Customer under these Terms, and any Maintenance Release which is acquired by the Customer during the subsistence of these Terms;
- (ll) **Support Services** has the meaning given to that term in clause 7.1;
- (mm) **SureSmile® Services** means the provision of the SureSmile products and services offered by Dentsply Sirona to the Customer from time to time;
- (nn) **Term** has the meaning given to that term in clause 2;
- (oo) **Terminating Party** has the meaning given to that term in clause 9.1;
- (pp) **Terms** has the meaning given to that term in clause 1.1; and
- (qq) **Therapeutic Model** means a 3D digital model having individual tooth models, possibly including brackets, created from an in-vivo optical scan, including a linked frontal smile photograph and lateral ceph, if provided, and anatomical feature points set by technician.

19.2 Interpretation

In these Terms, unless the contrary intention appears:

- (a) headings to clauses are for convenience only and do not affect interpretation;
- (b) any reference to a clause is a reference to a clause of these Terms;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the words **“include”**, **“including”**, **“for example”**, **“such as”** or cognate expressions are to be construed without limitation;
- (e) the word **“person”** includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any government or semi-government bodies or agencies or political subdivisions of them;
- (f) a party enters into this document in its own right and as trustee of any trust of which it is trustee;
- (g) a reference to a document (including these Terms) or to a statute, ordinance, code or other law includes a regulation, rule or other statutory instrument issued under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) an agreement, representation or warranty by two or more persons, binds them jointly and each of them individually;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) the singular includes the plural and vice versa
- (k) a reference to a gender includes all genders;
- (l) a reference to a person includes a reference to the person's executors, administrators, substitutes (including, but not limited to, persons taking by novation), successors and permitted assigns;
- (m) where any obligation of these Terms is to be performed on a day other than a Business Day, that obligation is to be performed on the next Business Day;
- (n) no provision of these Terms is to be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms or that provision.