

TERMS AND CONDITIONS

Welcome to Smile Orbit! We are DHMR Australia Pty Ltd trading as Smile Orbit, an Australian business with ABN 36 660 679 327 (**'we', 'our' or 'us'**) and we provide a Dental SMS automation platform to assist with tasks such as campaign management, customising templates for your patients, SMS messaging and revenue tracking known as Smile Orbit as described on our Website (**Software**).

These terms and conditions (**Terms**) govern your access to the Software and us providing you any other goods and services as set out in these Terms (**Subscription**). You can view the most updated version of our Terms at <https://smileorbit.com/> (**Website**). Please read these terms and conditions carefully before agreeing to proceed with your Subscription.

Your Subscription is for the tiered package as selected by you and agreed between us by means of the Website (**Subscription Tier**). You acknowledge and agree that the Subscription Tier is subject to automatic adjustment by us in accordance with your usage of the Services, including (without limitation) the number of patients imported into the software. Where your usage exceeds the limits applicable to your current Subscription Tier, we may, without prior notice, upgrade your Subscription Tier to the level appropriate for such usage. Upon such upgrade, the applicable fees for the upgraded Subscription Tier will become immediately payable and will be automatically charged to the payment method you have provided.

Please note that your Subscription will continue to renew indefinitely, and you will continue to incur Subscription Fees, unless you notify us that you want to cancel your Subscription in accordance with clause 15. To cancel, you must log into your account and select "Cancel Subscription" before the next renewal date.

1 READING AND ACCEPTING THESE TERMS

- (a) In these Terms, capitalised words and phrases have the meanings given to them where they are followed by bolded brackets, or as set out in the Definitions table at the end of these Terms.
- (b) By clicking the **"I accept these Terms"** button on our Website, paying for your Subscription or otherwise accepting the benefit of any part of your Subscription, you agree to be bound by these Terms which form a binding contractual agreement between you the person acquiring a Subscription or the company you represent and are acquiring the Subscription on behalf of (**'you' or 'your'**) and us.
- (c) We may change these Terms at any time by notifying you, and your continued use of the Solution following such an update will represent an agreement by you to be bound by the Terms as amended.

2 ELIGIBILITY

- (a) By accepting these Terms, you represent and warrant that:
 - (i) you have the legal capacity and authority to enter into a binding contract with us; and
 - (ii) you are authorised to use the payment you provided when purchasing a Subscription.
- (b) The Software is not intended for unsupervised use by any person under the age of 18 years old or any person who has previously been suspended or prohibited from using the Software. By using the Software, you represent and warrant that you are either:
 - (i) over the age of 18 years and accessing the Software for personal and commercial use; or
 - (ii) accessing the Software on behalf of someone under the age of 18 years old and consent to that person's use of the Software.
- (c) Please do not access the Software if you are under the age of 18 years old and do not have your parent or guardian's consent, if you are under 16 or if you have previously been suspended or prohibited from using the Software.

- (d) If you are signing up not as an individual but on behalf of your company, your employer, an organisation, government or other legal entity (**Represented Entity**), then “you” or “your” means the Represented Entity and you are binding the Represented Entity to this agreement. If you are accepting this agreement and using our Solution on behalf of a Represented Entity, you represent and warrant that you are authorised to do so.

3 DURATION OF YOUR SUBSCRIPTION

- (a) Your Subscription and these Terms commence on the date you agree to be bound by these Terms (as set out at the beginning of these Terms) and continues for the Subscription Period and any Renewal Periods applicable, unless terminated earlier in accordance with clause 15.
- (b) Subject to clause 3(c), upon expiration of the Subscription Period, this agreement will automatically and indefinitely renew on an ongoing basis for a period equal to the Subscription Period (**Renewal Period**).
- (c) This agreement will not automatically renew on expiry of the Subscription or Renewal Period (**Renewal Date**), if we provide a written cancellation notice to you, OR you cancel your subscription via our website at least 30 Days prior to the Renewal Date.

4 THE SOLUTION

4.1 SCOPE OF YOUR SUBSCRIPTION AND THE SOLUTION

- (a) We will provide you, to the extent described in your Subscription Tier, the Software and the Documentation (**Solution**).
- (b) Your Subscription includes the benefits and limitations of your Subscription Tier as set out on our Website, or as otherwise communicated to you when you subscribe for your Subscription (and as amended from time to time by notice to you).

4.2 ACCOUNTS

- (a) (**Accounts**) To use the Solution, you may be required to sign-up, register and receive an account through the Website (an **Account**).
- (b) (**Provide Information**) As part of the Account registration process and as part of your continued use of the Website, you may be required to provide personal information and details, such as your email address, first and last name, preferred username, a secure password, billing, postal and physical addresses, mobile phone number, photos and video, audio files, profile information, payment details, ratings and reviews, verified identifications, verified certifications and authentication, and other information as determined by us from time to time.
- (c) (**Warranty**) You warrant that any information you give to us in the course of completing the Account registration process is accurate, honest, correct and up-to-date.
- (d) (**Acceptance**) Once you complete the Account registration process, we may, in our absolute discretion, choose to accept you as a registered user within the Website and provide you with an Account.

4.3 DISCLAIMER

You acknowledge and agree that:

- (a) any information provided to you as part of or in connection with the Solution or the Services is general in nature, may not be suitable for your circumstances and does not constitute financial, legal or any other kind of professional advice;
- (b) it is your responsibility to comply with applicable Laws relevant to your business, including industrial relations Laws and privacy Laws which includes (but is not limited to) obtaining all necessary consents from individuals for the collection, use, and disclosure of their personal information, and for them receiving any communications or information from you; and

- (c) the Services do not store, record, or retain any clinical notes, medical records, or diagnoses, and are not intended to be used as a substitute for clinical record-keeping or medical advice.
- (d) you are solely responsible for maintaining the security and confidentiality of your account credentials, including passwords. We are not liable for any unauthorised access or use of your account resulting from poor password management or other security lapses on your part.

4.4 SOFTWARE

- (a) While your Subscription is maintained, we grant to you a non-exclusive, non-transferable licence to use the Software and Documentation for the Number of Solution Users. If your Subscription Tier on the Website does not specify a Number of Solution Users, your licence to use the Solution under this clause will be limited to one User (i.e., the Number of Solution Users will be one).
- (b) We may from time to time, in our absolute discretion, release enhancements to the Software, meaning an upgraded, improved, modified or new versions of the Software (**Enhancements**). Any Enhancements to the Software will not limit or otherwise affect these Terms. Enhancements may cause downtime or delays from time to time, and credits will not be provided for such downtime.
- (c) We may change any features of the Solution at any time on notice to you.

4.5 SUPPORT SERVICES

We will provide general support where reasonably necessary to resolve technical issues with the Software (**Support Services**). Unless otherwise agreed in writing:

- (a) we will take reasonable steps to provide Support Services where necessary (you must first endeavour to resolve any issues with the Software internally and we will not assist with issues that are beyond our reasonable control);
- (b) we will use our best endeavours to respond to requests for Support Services and you acknowledge that we may not be available 24/7 or respond within a particular time frame;
- (c) you are responsible for all internal administration and managing access, including storing back-up passwords and assisting your Users to access and use the Software; and
- (d) you will not have any claim for delay to your access to the Software due to any failure or delay in Support Services.

5 DATA HOSTING

We will store User Data you upload to the Software using a third-party hosting service selected by us (**Hosting Services**), subject to the following terms:

- (a) (**hosting location**) You acknowledge and agree that we may use storage servers to host the Software through cloud-based services, and potentially other locations outside Australia.
- (b) (**service quality**) While we will use our best efforts to select an appropriate hosting provider, we do not guarantee that the Hosting Services will be free from errors or defects or that User Data will be accessible or available at all times.
- (c) (**security**) We will use our best efforts to ensure that User Data is stored securely. However, we do not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to User Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) (**backups & disaster recovery**) In the event that User Data is lost due to a system failure (e.g. a database or webserver crash), we cannot guarantee that any backup will be available, or if available that such a backup will be free from errors or defects.

6 CLIENT OBLIGATIONS

You agree to:

- (a) provide us with all documentation, information and assistance reasonably required by us to perform the Services; and
- (b) provide us with access to any third party or other accounts used by you (including log-in details and passwords), as is reasonably required by us to perform the Services;
- (c) comply with all applicable laws, including without limitation the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth), which includes (but is not limited to) obtaining all necessary consents, authorities and permissions from individuals in connection with your use of the Services and Software;
- (d) acknowledge that you are solely responsible for the content of any communications, messages, or materials sent or published using the Services or Software, including ensuring that such content complies with all applicable advertising standards, consumer protection laws, and any other relevant legal requirements.
- (e) and acknowledge that we may monitor, review, and audit your use of the Services and Software to ensure compliance with these Terms, any applicable laws, and our Fair Use Policy. This may include access to usage data, account activity, or other relevant records. You must provide reasonable assistance and access to facilitate such audits upon our request. If we identify any misuse, breach, or non-compliance, we may, in our sole discretion, suspend, restrict, or terminate your access to the Services or Software without liability. All monitoring and enforcement will be carried out reasonably and in accordance with applicable privacy and data protection laws.
- (f) during the term of your Subscription and for a period of 12 months following its termination or expiration, you must not, directly or indirectly, solicit, entice, or employ any of our employees, contractors, or agents who were involved in providing the Services, without our prior written consent.

6.2 CLIENT MATERIAL

- (a) You warrant that all information, documentation and other Material you provide to us for the purpose of receiving the Solution is complete, accurate and up-to-date.
- (b) You release us from all liability in relation to any loss or damage arising out of or in connection with the Solution, to the extent such loss or damage is caused or contributed to by information, documentation or any other Material provided by you being incomplete, inaccurate or out-of-date.

6.3 YOUR OBLIGATIONS

- (a) **You must, and must ensure that all Users, comply with these Terms at all times.** You acknowledge and agree that we will have no liability in respect of any damage, loss or expense which arises in connection with your, your Personnel's, or any User's, breach of these Terms, and you indemnify us in respect of any such damage, loss or expense.
- (b) You must not, and must not encourage or permit any User, Personnel or any third party to, without our prior written approval:
 - (i) upload sensitive information or commercial secrets using the Software;
 - (ii) upload any inappropriate, offensive, illicit, illegal, pornographic, sexist, homophobic or racist material using the Software;
 - (iii) use the Software for any purpose other than for the purpose for which it was designed, including you must not use the Solution in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes);
 - (iv) upload any material that is owned or copyrighted by a third party;
 - (v) make copies of the Documentation or the Software;
 - (vi) adapt, modify or tamper in any way with the Software;
 - (vii) remove or alter any copyright, trade mark or other notice on or forming part of the Software or Documentation;
 - (viii) act in any way that may harm our reputation or that of associated or interested parties or do anything at all contrary to the interests of us or the Software;

- (ix) use the Software in a way which infringes the Intellectual Property Rights of any third party;
 - (x) create derivative works from or translate the Software or Documentation;
 - (xi) publish or otherwise communicate the Software or Documentation to the public, including by making it available online or sharing it with third parties;
 - (xii) integrate the Software with third party data or Software, or make additions or changes to the Software, (including by incorporating APIs into the Software) other than integrating in accordance with any Documentation or instructions provided by us in writing;
 - (xiii) intimidate, harass, impersonate, stalk, threaten, bully or endanger any other User or distribute unsolicited commercial content, junk mail, spam, bulk content or harassment in connection with the Software;
 - (xiv) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Software or Documentation to any third party, other than granting a User access as permitted under these Terms;
 - (xv) decompile or reverse engineer the Software or any part of it, or otherwise attempt to derive its source code;
 - (xvi) share your Account or Account information, including log in details or passwords, with any other person and that any use of your Account by any person who is not the account holder is strictly prohibited. You must immediately notify us of any unauthorised use of your Account, password or email, or any other breach or potential breach of the Solution's security;
 - (xvii) use the Solution for any purpose other than for the purpose for which it was designed, including you must not use the Solution in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes);
 - (xviii) make any automated use of the Solution and you must not copy, reproduce, translate, adapt, vary or modify the Solution without our express written consent;
 - (xix) attempt to circumvent any technological protection mechanism or other security feature of the Software; or
 - (xx) permit any use of the Solution in addition to the Number of Solution Users.
- (c) If you become aware of misuse of your Subscription by any person, any errors in the material on your Subscription or any difficulty in accessing or using your Subscription, please contact us immediately using the contact details or form provided on our Website.
- (d) You agree, and you must ensure that all Users agree:
- (i) to comply with each of your obligations in these Terms;
 - (ii) to sign up for an Account in order to use the Solution;
 - (iii) that information given to you through the Software, by us or another User, is general in nature and we take no responsibility for anything caused by any actions you take in reliance on that information; and
 - (iv) that we may cancel your, or any User's, Account at any time if we consider, in our absolute discretion, that you or they are in breach of, or are likely to breach, this clause 6.

7 FEES AND PAYMENT

7.1 TRIAL PERIOD

We may from time to time offer a free trial period of the Solution (**Free Trial Period**). No payments will be due during any Free Trial Period, and your first payment will be due immediately after the expiry of the Free Trial Period. The Free Trial Period will be subject to any terms and conditions we specify, and you may be required to pay fees if you do not comply with those terms or if your usage, including but not limited to SMS usage, exceeds any thresholds or limits we set during the Free Trial Period.

7.2 SUBSCRIPTION FEES

- (a) You must pay subscription fees to us in the amounts specified on the Website for your Subscription Tier, or as otherwise agreed in writing (**Subscription Fees**).
- (b) All Subscription Fees must be paid in advance and are non-refundable for change of mind.
- (c) Unless otherwise agreed in writing, the Subscription Fees are due and payable on a recurring basis for the duration of your Subscription, with the first payment being due on the first day of the Subscription Period (or immediately after the expiry of any applicable Free Trial Period) and at the beginning of every Renewal Period thereafter.
- (d) Unless otherwise agreed in writing, the Subscription Fees are due and payable at the times specified in the Website (**Billing Cycle**) on a recurring basis for the duration of your Subscription, with the first payment being due on the first day of the Subscription Period (or immediately after the expiry of any applicable Free Trial Period) and at the beginning of every Billing Cycle thereafter.

7.3 AUTOMATIC RECURRING BILLING

Subject to clauses 7.4 and 7.5:

- (a) Your Subscription will continue to renew on an automatic indefinite basis unless you notify us that you wish to cancel in accordance with this clause 7. For the avoidance of doubt, to cancel your subscription, you must log into your account and select "Cancel Subscription" at least 30 Days before the next Renewal Date.
- (b) While your Subscription is maintained, your Subscription Fees will continue to be debited at the beginning of each Renewal Period from the payment method you nominated when you registered for an Account.
- (c) By signing up for a recurring Subscription, you acknowledge and agree that your Subscription has an initial and recurring payment feature, and you accept responsibility for all recurring charges prior to your cancellation of your Subscription.

7.4 GRACE PERIOD

If you fail to cancel your Subscription prior to a Renewal Period and you are charged recurring charges, you have up to 10 Business Days from the date of that renewal to cancel your Subscription by contacting us through our Website located here: <https://smileorbit.com/support/> (**Grace Period**). If you cancel your Subscription within the Grace Period, you may request a refund for any recurring fees charged to you during that period. Any refund will be at the sole discretion of us and may be subject to deductions for: (a) any services used by you during the Grace Period (including, without limitation, SMS charges); and (b) any fees or charges incurred by us from third-party payment providers in processing your payment or refund.

7.5 CHANGES TO SUBSCRIPTION FEES

We may, from time to time, change our Subscription Fees and provide you with 10 Business Days' notice prior to the changes. During this time, you have the opportunity to cancel your Subscription with us. If you do not cancel your Subscription before the new Subscription Fees take effect, the Grace Period in clause 7.4 will apply.

7.6 LATE PAYMENTS

We reserve the right to suspend all or part of the Solution indefinitely if you fail to pay any Fees in accordance with this clause 7.

7.7 SMS USAGE AND REFUNDS

Each Subscription includes a set number of SMS messages per billing cycle. Once your included SMS allowance is used, any additional SMS will be billed at the prevailing per-SMS rate.

Unused included SMS in your subscription do not roll over to subsequent billing cycles and are non-refundable. No refunds or credits are provided for any mid-cycle downgrades, cancellations, or unused portions of your Subscription.

7.8 GST

Unless otherwise indicated, the Fees do not include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.

7.9 CARD SURCHARGES

We reserve the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

7.10 ONLINE PAYMENT PARTNER

- (a) We may engage a third-party online payment partner (**Online Payment Partner**) to collect Subscription Fees on our behalf.
- (b) You acknowledge and agree that:
 - (i) payments processed by the Online Payment Partner are subject to the Online Payment Partner's own terms, conditions, and privacy policies, in addition to these Terms;
 - (ii) we have notified you of the relevant third-party terms and will provide you with a copy upon request;
 - (iii) to the maximum extent permitted by law, you release us and our Personnel in respect of all liability for loss, damage or injury which may be suffered by any person arising from any act or omission of the Online Payment Partner, including any issue with security or performance of the Online Payment Partner's platform or any error or mistake in processing your payment; and
 - (iv) We reserve the right to correct, or to instruct our Online Payment Partner to correct, any errors or mistakes in processing your payments.
- (c) If you do not agree to the Online Payment Partner's terms and conditions, you will not be able to access the Subscription Services, and clause 15 (Termination) will apply.

8 POSTED MATERIAL

8.1 WARRANTIES

By providing or posting any information, Material or other content in connection with the Software (**Posted Material**), you represent and warrant that, and must ensure that all Users make equivalent representations and warranties:

- (a) you are authorised to provide the Posted Material (including by being authorised to provide any services that you represent you provide);
- (b) the Posted Material is accurate and true at the time it is provided;
- (c) any Posted Material which is in the form of a review or feedback is honest, accurate and presents a fair view of the relevant person and/or your experience;
- (d) the Posted Material is free from any harmful, discriminatory, defamatory or maliciously false implications and does not contain any offensive or explicit material;
- (e) the Posted Material is free from any material that may harm our reputation or that of associated or interested parties;
- (f) the Posted Material is not "passing off" of any product or service and does not constitute unfair competition;
- (g) the Posted Material does not infringe any Intellectual Property Rights, including copyright, trademarks, business names, patents, Confidential Information or any other similar proprietary rights, whether registered or unregistered, anywhere in the world;
- (h) the Posted Material does not contain any viruses or other harmful code, or otherwise compromise the security or integrity of the Solution or any network or system; and
- (i) the Posted Material does not breach or infringe any applicable Laws.

8.2 LICENCE

- (a) You grant, and must ensure that all Users grant, to us a perpetual, irrevocable, transferable, worldwide and royalty-free licence (including the right to sublicense) to use, copy, modify, reproduce and adapt any Intellectual Property Rights in any Posted Material in order for us to use, exploit or otherwise enjoy the benefit of such Posted Material.
- (b) If it is determined that you retain moral rights (including rights of attribution or integrity) in any Posted Material, you release us from any and all claims that you could assert against us by virtue of any such moral rights, and you must ensure that all Users grant an equivalent release.
- (c) You indemnify us against all damages, losses, costs and expenses incurred by us arising in connection with any third-party claim that Posted Material infringes any third party's Intellectual Property Rights.

8.3 REMOVAL

- (a) The Software acts as a passive conduit for the online distribution of Posted Material and has no obligation to screen Posted Material. However, we may, in our absolute discretion, review and remove any Posted Material from the Solution at any time without giving any explanation or justification for removing the Posted Material, including if we determine that the Posted Material infringes a third party's Intellectual Property Rights, or is reasonably likely to.
- (b) You agree that you are responsible for keeping and maintaining records of Posted Material.

8.4 INFRINGING CONTENT ON THE SOFTWARE

- (a) If you become aware of Posted Material, or other Material, on the Software that infringes the Intellectual Property Rights of any person, or is reasonably likely to, please contact us immediately via our Website, accessible here: <https://smileorbit.com/support/>
- (b) If you submit a complaint on our Website under clause 8.4(a):
 - (i) you warrant that the substance of the complaint is accurate, true and involves infringement of copyright;
 - (ii) you acknowledge and agree that groundless threats of legal proceedings in relation to copyright infringement may be prohibited under applicable law (for example, Australia's *Copyright Act 1968*, or equivalent laws wherever you are located); and
 - (iii) you agree to indemnify DHMR Australia Pty Ltd in relation to any loss or damage that may arise in relation to your complaint, including in relation to any third-party claim that the complaint contains a groundless threat.

9 INTELLECTUAL PROPERTY AND DATA

9.1 SOFTWARE CONTENT INTELLECTUAL PROPERTY

- (a) **(Our ownership)** We retain ownership of all Materials provided to you throughout the course of your Subscription in connection with the Software (including text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software) **(Software Content)** and reserve all rights in any Intellectual Property Rights owned or licensed by us in the Software Content not expressly granted to you.
- (b) **(Licence to you)** You are granted a licence to the Software Content, for the Number of Solution Uses, and you may make a temporary electronic copy of all or part of any materials provided to you for the sole purpose of viewing them and using them for the purposes of the Software. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish those materials or any Software Content without prior written consent from us or as otherwise permitted by law.

9.2 USER DATA

Our Rights and Obligations

- (a) You grant to us (and our Personnel) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use User Data to the extent reasonably required to provide the Solution, and for our internal business purposes, including to improve the Solution and our other products and services, and including to apply machine learning and other analytics processes to the User Data, to gain commercial insights and other associated learnings, and to improve the Solution, our business and our other products and services.
- (b) We reserve the right to remove any User Data at any time, for any reason, including where we deem User Data to be inappropriate, offensive, illicit, illegal, pornographic, sexist, homophobic or racist.

Your Obligations and Grant of Licence to Us

- (c) You are responsible for ensuring that:
 - (i) you share User Data only with intended recipients; and
 - (ii) all User Data is appropriate and not in contravention of these Terms.
- (d) You:
 - (i) warrant that our use of User Data will not infringe any third-party Intellectual Property Rights; and
 - (ii) indemnify us from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

10 THIRD PARTY SOFTWARE & TERMS

10.1 THIRD PARTY TERMS

- (a) If we are required to acquire goods or services supplied by a third party, you may be subject to the terms and conditions of that third party (**'Third Party Terms'**).
- (b) Provided that we have notified you of such Third Party Terms and provided you with a copy of those terms, you agree to any Third Party Terms applicable to any goods or services supplied by a third party that we acquire as part of providing the Solution to you and we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms.
- (c) You have the right to reject any Third-Party Terms. If you reject the Third-Party Terms, we cannot provide the Solution to you and clause 15 will apply.

10.2 THIRD PARTY SOFTWARE INTEGRATIONS

- (a) You acknowledge and agree that issues can arise when data is uploaded to software, when data is transferred between different software programs, and when different software programs are integrated together. We cannot guarantee that integration processes between the Software and other software programs will be free from errors, defects or delay.
- (b) You agree that we will not be liable for the functionality of any third party goods or services, including any third party software, or for the functionality of the Software if you integrate it with third party software, or change or augment the Software, including by making additions or changes to the Software code, and including by incorporating APIs into the Software.
- (c) If you add third party software or software code to the Software, integrate the Software with third party software, or make any other changes to the Software, including the Software code (**User Software Changes**), then:
 - (i) you acknowledge and agree that User Software Changes can have adverse effects on the Solution, including the Software;
 - (ii) you will indemnify us in relation to any loss or damage that arises in connection with the User Software Changes;

- (iii) we will not be liable for any failure in the Solution, to the extent such failure is caused or contributed to by a User Software Change;
- (iv) we may require you to change or remove User Software Changes, at our discretion, and if we do so, you must act promptly;
- (v) we may suspend your access to the Solution until you have changed or removed User Software Change; and/or
- (vi) we may change or remove any User Software Change, in our absolute discretion. We will not be liable for loss of data or any other loss or damage you may suffer in relation to our amendment to, or removal of, any User Software Change.

11 CONFIDENTIALITY

- (a) Except as contemplated by these Terms, a party must not, and must not permit any of its Personnel, use or disclose to any person any Confidential Information disclosed to it by the other party without the disclosing party's prior written consent.
- (b) Each party must promptly notify the other party if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information.
- (c) The notifying party will investigate each potential, actual or suspected breach of confidentiality and assist the other party in connection with any related investigation.

12 PRIVACY

- (a) We collect personal information about you in the course of providing you with the Solution, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy which can be found at <https://smileorbit.com/privacy-policy/>.
- (b) Our Privacy Policy contains more information about how we use, disclose and store your personal information and details how you can access and correct your personal information.
- (c) By agreeing to these Terms, you agree to our handling of personal information in accordance with our Privacy Policy.

13 LIABILITY

13.1 WARRANTIES AND LIMITATIONS

- (a) **(Warranties)** We warrant that:
 - (i) during the Subscription Period, the Software will perform substantially in accordance with the Documentation;
 - (ii) during the Subscription Period, the Solution will be provided as described to you in, and subject to, these Terms; and
 - (iii) to our knowledge, the use of the Software in accordance with these Terms will not infringe the Intellectual Property Rights of any third party.
- (b) **(Errors)** We will correct any errors, bugs or defects in the Software which arise during your Subscription and which are notified to us by you, unless the errors, bugs or defects:
 - (i) result from the interaction of the Software with any other solution or computer hardware, software or services not approved in writing by us;
 - (ii) result from any misuse of the Software; or
 - (iii) result from the use of the Software by you other than in accordance with these Terms or the Documentation.
- (c) **(Service Limitations)** While we will use our best endeavours to ensure the Solution is working for its intended purpose, you acknowledge and agree that from time to time, you may encounter the following issues:

- (i) the Solution may have errors or defects;
 - (ii) the Solution may not be accessible at times;
 - (iii) messages sent through the Solution may not be delivered promptly, or delivered at all;
 - (iv) information you receive or supply through the Solution may not be secure or confidential; or
 - (v) any information provided through the Solution may not be accurate or true.
- (d) **(Exclusion)** To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in these Terms are excluded.
- (e) **(Consumer law)** Nothing in these Terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

13.2 LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 13.2(b), the total liability of each party in respect of loss or damage sustained by the other party in connection with these Terms or the Solution is limited to the total Fees paid to us by you in the six (6) months preceding the date of the event giving rise to the relevant liability.
- (b) Clause 13.2(a) does not apply to your liability in respect of loss or damage sustained by us arising from your breach of:
- (i) Intellectual Property Rights;
 - (ii) Confidentiality; or
 - (iii) Data Protection and Privacy.

13.3 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with these Terms or any goods or services provided by us, except:

- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

14 UPGRADE AND DOWNGRADES

- (a) You may notify us that you would like to upgrade your Subscription Tier or the Number of Solution Users at any time. Downgrades to your Subscription Tier are only permitted where the number of Active Patients (being patients imported into the software and counted as active in our system) has reduced to a level that falls within the limits of a lower Subscription Tier. Any request for downgrade must be supported by evidence, to our satisfaction, of such reduction in Active Patients.
- (b) Where you are permitted to downgrade, we will:
- (i) take reasonable steps to promptly provide you with access to the new Subscription Tier or the additional Number of Solution Users; and
 - (ii) upon providing such access, apply the new, relevant Subscription Fees to the Renewal Period immediately following the period in which your access to the new Subscription Tier or reduced Number of Solution Users was provided, and you will be charged at the new Subscription Fee in every subsequent Renewal Period.
- (c) If you choose to downgrade your Subscription or Number of Solution Users in accordance with clause 14(a), access to the new Subscription Tier or Number of Solution Users and the new Subscription Fees will take effect at the start of the next Renewal Period, unless

we notify you otherwise. We generally do not pro-rate downgrades in between Renewal Periods, however we reserve the right to do so from time to time.

- (d) If you choose to downgrade your Subscription in accordance with clause 14(a), you acknowledge and agree that we are not liable, and you release us from all claims, in relation to any loss of content, features, or capacity, including any User Data.

15 CANCELLATION

15.1 CANCELLATION AT ANY TIME

- (a) We may cancel or terminate your Subscription for convenience by providing 10 Business Days' notice to you.
- (b) You may cancel your Subscription by providing at least 30 days' notice prior to the Renewal Date via our website. To cancel, you must log into your account and select "Cancel Subscription" before the next renewal date.

15.2 CANCELLATION FOR BREACH

- (a) Either party may cancel your Subscription immediately by written notice if there has been a Breach of these Terms.
- (b) A "**Breach**" of these Terms means:
 - (i) a party (**Notifying Party**) considers the other party (or any of its Personnel or Users) is in breach of these Terms and notifies the other party;
 - (ii) the other party is given 10 Business Days to rectify the breach; and
 - (iii) the breach has not been rectified within 10 Business Days or another period agreed between the parties in writing.

15.3 EFFECT OF TERMINATION

Upon termination of this agreement:

- (a) you will no longer have access to the Software, your Account or your User Data and we will have no responsibility to store or otherwise retain any User Data (and you release us in respect of any loss or damage which may arise out of us not retaining any User Data beyond that point);
- (b) unless agreed in writing, any Subscription Fees that would otherwise have been payable after termination for the remainder of the relevant Renewal Period will remain payable and, to the maximum extent permitted by law, no Subscription Fees already paid will be refundable; and
- (c) each party must comply with all obligations that are by their nature intended to survive the end of this agreement, including without limitation the provisions relating to confidentiality, intellectual property rights, liability limitations and exclusions, indemnities, and any payment obligations accrued by unpaid as at the date of termination.

16 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

- (d) Notwithstanding the existence of a dispute, all payments due under this agreement must continue to be made in full and must not be withheld, set off, or deferred for any reason during the dispute resolution process.

17 FORCE MAJEURE

- (a) We will not be liable for any delay or failure to perform its obligations under this agreement if such delay or failure arises out of a Force Majeure Event.
- (b) If a Force Majeure Event occurs, we must use reasonable endeavours to notify you of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which We will be unable to perform or be delayed in performing its obligations under this agreement.
- (c) Subject to compliance with clause 17(b), our relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of us;
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of us, to the extent it affects our ability to perform our obligations.

18 NOTICES

- (a) A notice or other communication to a party under these Terms must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in the Order, or if no email address is specified in the Order, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
 - (ii) when replied to by the other party,whichever is earlier.

19 GENERAL

19.1 PUBLICITY AND ADVERTISING

You grant us the right to use your company name, logo, and other identifying information for marketing, advertising, promotional, and publicity purposes, including on our website, social media, and other media, provided that such use complies with applicable laws and regulations. You acknowledge that we have obtained your consent to such use, and you waive any claim against us in relation to the exercise of these rights.

19.2 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in the State of Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of State of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

19.3 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

19.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

19.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

19.6 ASSIGNMENT

The Client may not assign, novate, or otherwise transfer any of its rights or obligations under this agreement without our prior written consent. We may, however, assign or transfer this agreement, in whole or in part, in connection with a sale, merger, acquisition, or other transfer of our business or assets, without requiring the Client's consent.

19.7 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

19.8 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or "dollar" is to Australian currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and

- (k) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

DEFINITIONS

Term	Definition
Confidential Information	means information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information, which is or becomes, without a breach of confidentiality, public knowledge.
Documentation	means all manuals, help files and other documents supplied by us to you relating to the Software, whether in electronic or hardcopy form.
Hosting Services	has the meaning given in clause 5.
Intellectual Property Rights	means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of this agreement.
Material	means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.
Number of Solution Users	means the number of Users that you may make the Solution available to, in accordance with your Subscription Tier.
Personnel	means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents.
Software	has the meaning given in the first paragraph of these Terms.
Software Content	has the meaning set out in clause 9.1(a).
Solution	has the meaning set out in clause 4.1.
Subscription	has meaning given in the first paragraph of these Terms.
Subscription Fees	has the meaning set out in clause 7 of these Terms.
Subscription Period	means the period of your Subscription to the Solution as agreed on the Website.
Subscription Tier	has the meaning given in the first paragraph of these Terms.
Support Services	has the meaning given in clause 4.5.
User	means you and any third party end user of the Software who you make the Software available to.
User Data	means any files, data, document, information or any other Materials, which is uploaded to the Software by you or any other User or which you, your Personnel or Users otherwise provide to us under or in connection with these Terms, including any Intellectual Property Rights attaching to those materials.
Website	means the website at the URL set out in the first paragraph of these Terms, and any other website operated by us in connection with the Solution.