

## DENTRIX ASCEND SERVICE – TERMS AND CONDITIONS

*These Terms and Conditions were updated and effective as of October 2014.*

This Agreement consists of Your registration form ("Registration Form") these terms and conditions and the privacy policy of Software of Excellence Australia Limited ARBN 91 413 599 ("SOE"), available at [www.softwareofexcellence.com.au/1410\\_AU\\_Privacy](http://www.softwareofexcellence.com.au/1410_AU_Privacy). This Agreement is between SOE and you or the entity you represent ("You") and applies to:

- (a) the Dentrix Ascend service and websites at [www.dentrixascend.com](http://www.dentrixascend.com), [www.softwareofexcellence.com.au](http://www.softwareofexcellence.com.au) and other related websites ("Websites") including, without limitation, all content such as text, information, images, applications, templates, software, features, updates, and other information, SMS and EasyPost services, and other services and materials (collectively, "Ascend");
- (b) support services for Ascend ("Support"),

together, the "Service".

By accessing or using all or any portion of the Service, you acknowledge your acceptance of this Agreement, as amended from time to time, and represent that You are authorised to enter into this Agreement. Please read the terms of this Agreement carefully. If you do not agree to the terms of this Agreement, SOE does not grant you the right to use the services, and you must cease use of and access to the Services immediately.

### 1. Service and Support

The Service is available as a paid service with a limited number of licensed users ("Users") as specified on Your Registration Form. Support is included as part of the paid service.

### 2. Payment

2.1 In consideration of the license granted hereunder, payment for Services shall be at prices and under terms stated on the Registration Form, or as otherwise stated or quoted by SOE from time to time, and You must pay such prices to SOE as they become due. All prices are in Australian dollars and exclusive of taxes including without limitation GST, which will be added to the price in accordance with applicable law. You shall be responsible for any and all taxes related to this Agreement.

2.2 SOE may, in its sole discretion, adjust the prices, functionality and number of Users for the Service from time to time. All such adjustments shall take effect upon 30 days written notification to You of the adjustment.

2.3 You hereby agree to provide SOE with a direct debit form or credit card details and authorise SOE to automatically collect all fees hereunder as they become due via that direct debit or credit authorisation. All monthly fees and set-up fees shall be due monthly in advance and all additional charges shall be due at the end of the month in which such charges are incurred.

2.4 If payment is denied for any reason, or if You otherwise fail to make any payments owing to SOE, SOE may, at SOE's sole discretion, suspend or terminate Your access to the Service and/or terminate this Agreement. Interest charges of 1% per month will accrue daily on any

unpaid balance which is more than thirty (30) days overdue. SOE reserves the right to impose a reconnection fee in the event You request to resume access to the Service after a previous termination of access.

2.5 It is Your responsibility to keep Your contact and payment information current. If SOE is unable to collect fees as they become due for any reason, You remain responsible for any uncollected amounts due under this Agreement and You will be responsible for all SOE costs incurred in recovering such amounts.

### 3. Right of Use

You and Your Users are hereby granted a non-exclusive, non-transferable, revocable license to use the Service, solely for Your own internal business purposes, subject to this Agreement. All rights not expressly granted to You are reserved by SOE. Your right of use is at all times conditioned on compliance with the terms of this Agreement and Your prompt and timely payment for the Service.

### 4. Access

Access to the Service is available via a unique URL given at the time of registration. The Service supports both full and mobile webpage formats. SOE will provide You and Your User(s) with a username and password for accessing the Service. Usernames and passwords are personal, and are to be considered part of Confidential Information.

### 5. Restrictions

5.1 The Service must not be used in any way that is illegal or promotes illegal activities or in a manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age or is otherwise indecent.

5.2 You shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet "links" to the Service or "frame" or "mirror" any content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service (other than as permitted by the *Copyright Act 1968* (Cth)) in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

5.3 You may use the Service only for Your internal business purposes and shall not: (i) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity, bandwidth or performance of the Service or the data contained therein; or (iii) attempt to gain unauthorized access to the Service or its related systems or networks.

5.4 You must not allow the Service to be used by more Users than You have paid for.

### 6. Your Responsibilities

You are responsible for all activity occurring under Your and Your Users' account(s) and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Your use of the Service, including without limitation the *Privacy Act 1988* (Cth)

("Privacy Act"), Payment Card Industry Data Security Standards ("PCI DSS"), international communications and the transmission of technical data or personal information. In addition, You are responsible for abiding by any and all internal policies, procedures and regulations, which are required, by Your employer and/or the applicable administrators of Your account. You must: (i) notify SOE immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to SOE immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by You or others to violate this Agreement or the intellectual property rights of third parties; and (iii) not impersonate another user or provide false identity information to gain access to or use the Service. By accessing the Service, You represent and warrant that You have not falsely identified Yourself nor provided any false information to gain access to the Service and that Your billing information is correct.

## 7. Data

7.1 SOE does not own or control any data, information or material that You or others submit to the Service in the course of using the Service ("Uploaded Data"). You have sole responsibility for, and agree to assume all liability related to, the collection, accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of or right to use any and all Uploaded Data. SOE shall have no responsibility for the Uploaded Data, including, without limitation, the deletion, correction, destruction, damage, loss or failure to store any Uploaded Data.

7.2 If SOE on its own or through any third party has notice that Uploaded Data stored by You and/or Users is in violation of any law or infringes third party rights, SOE has the right to, without liability to You or Your Users and without prior notice, immediately suspend Your access to the Service and the Uploaded Data. You and/or User(s) may be notified by SOE of any such action under this Section, when reasonable and possible.

7.3 You or the administrator(s) designated by You ("Administrator") shall have control over all applicable Uploaded Data submitted to the Service, and all Uploaded Data will be deemed to be owned by You. You or the Administrator may, in writing, request that SOE remove, modify, edit or otherwise alter any Uploaded Data.

7.4 With respect to Uploaded Data that contains health information (as that meaning is defined in the Privacy Act), the parties must comply with their respective obligations under the Privacy Act.

## 8. Support

8.1 Within the contracted support hours between 8:30am – 5:30pm AEST weekdays excluding National public holidays, SOE will:

- (a) use best endeavours to respond to reported faults within the target response times specified in Section 8.1(e). Hours and days outside the contracted support hours will not be counted when measuring response times;
- (b) provide telephone support to assist You in using Ascend (You must not however use this support as a replacement for user training);
- (c) make available upgrades to Ascend as and when we release them, including without limitation to fix defects or enhance stability;
- (d) co-operate with the supplier of third party software/hardware as reasonable to achieve resolution, where the problem is diagnosed and involves Ascend. Our time for this work may be charged to You at a time and materials rate; and
- (e) have a targeted response time that 90% of all calls are responded to within four hours to confirm and clarify problems.

8.2 Support does not include:

- (a) support for hardware systems including without limitation printers and scanners, networks and operating systems;
- (b) support for malfunction systems caused by theft, fire, natural disaster, intentional / unintentional damage/deletion of files. It is strongly recommended that the client has adequate business insurance to cover such events and subsequent costs;
- (c) supporting systems damaged by a virus regardless of source;
- (d) rectifying data corruption problems caused by hardware failure or third party software;
- (e) configuration changes, moves, add or changes after installation setup which may incur additional charges;
- (f) on-site support;
- (g) on-going training of Your staff other than initial training at the time of installation. Where requests from customers indicate the need for tuition, tuition will be offered at a mutually agreed time and billed at the prevailing charge rate;
- (h) enhancements are not considered defects and will go through our product development processes to determine viability for new version or upgrade inclusion; or
- (i) out of contracted hours work.

8.3 If SOE agrees to provide support for any of the items stated above, SOE may charge for that support at its standard rates and charges applicable from time to time, plus travel and accommodation if applicable.

8.4 You must:

- (a) make personnel available to SOE and provide information, facilities, services and equipment as and when needed so SOE can perform its obligations;
- (b) install and maintain up-to-date anti virus protection of Your Uploaded Data, any other data and software;
- (c) use trained personnel to operate the relevant part(s) of Ascend in accordance with the SOE training recommendations;
- (d) promptly notify us of any error messages or problems with Ascend;
- (e) use best endeavours to secure and prevent the unlawful copying of Ascend;
- (f) ensure that Your site is properly prepared prior to the implementation of Ascend, to a level where Ascend can be implemented in a manner which ensures performance to specification;
- (g) ensure that designated equipment upon which Ascend is to be used meets or exceeds specifications advised by SOE; and
- (h) provide us with an internet connection to Your practice computers, so we can remotely access our diagnostic tools. We may use this access to check the performance of Ascend and remedy any faults found, or to audit Your use of Ascend.

8.5 SOE does not accept any liability for damage to data or other systems as a result of remote access. You agree to implement security, backup and disaster recovery procedures to protect against damage as an unlikely result of remote access.

8.6 You give SOE the authority to deal directly with Your relevant service or network providers and/or any sub-contractors, on Your behalf, in order to provide the services set out in this Agreement.

## 9. Service Level

9.1 Subject to any Non-excludable Rights, SOE makes no warranties of any kind, regarding any specific availability or time of access to Ascend.

9.2 If You experience loss of Uploaded Data, SOE may use reasonable efforts to attempt to restore such data from the most recent working backup. Subject to any Non-excludable Right, **SOE gives no warranties with respect to recovering or restoring any Uploaded Data.**

## 10. Intellectual Property Rights

10.1 SOE (and its successor or assigns, or its licensors, where applicable) own all right, title and interest, including all related intellectual property rights, in and to the Service, including all related technology and content (other than Uploaded Data), and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating thereto. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Service. The Dentrix Ascend name, the Dentrix Ascend logo, and the product names associated with the Service are trademarks of SOE or its affiliated companies, and no right or license is granted to use them.

10.2 All copyrights and/or other intellectual property rights, title and interests in a) software on which the Service is based and made available to You and/or User, b) source codes or other software components of the Service, c) content of the Websites and the Service including text and graphics, excluding Uploaded Data, d) trademarks, names, etc. are the sole property of SOE and its affiliated companies, and/or third parties having granted SOE license for its use, and You and Your User(s) shall gain no rights therein other than the limited right of use for Your internal business purposes as stipulated in this Agreement.

10.3 You and Your User(s) shall not reproduce or redistribute any software, content or trademarks, intellectual property in any form, except as allowed in this Agreement.

10.4 You and Your User(s) retain all intellectual property rights to Uploaded Data stored by You and Your User(s) on the Service.

## 11. Indemnification

11.1 You agree to defend, indemnify and hold SOE, Henry Schein, Inc., their licensors, subsidiaries, affiliates, stockholders, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Service, whether by You or Users or Your end users, or any Uploaded Data, whether provided by You or Users, infringes the rights of, or has caused harm to, a third party or is otherwise in breach of any applicable law (including without limitation the Privacy Act); (ii) a claim, which if true, would constitute a violation by You of Your representations and warranties made herein; (iii) a claim arising from the breach by You or Users of this Agreement (iv) Your, a User's or Your end users' use of the Services; or (v) any act or omission of, or reliance by, Your end users on any material provided by You or services provided by SOE at your direction.

11.2 Any indemnity in this Agreement is a continuing obligation, independent of other obligations under this Agreement and continues after this Agreement ends. It is not necessary for SOE to incur expense or make payment before enforcing a right of indemnity under this Agreement.

## 12. Disclaimer of Warranties

Other than in relation to a Non-excludable Right set out below, SOE and its licensors make no representation, warranty, or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Services or any content; and SOE and its licensors do not represent or warrant that (a) the use of the Services will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) the Services will meet Your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality or timeliness of any products, services, information, or other material purchased or obtained by You through the Services will meet Your requirements or

expectations, (e) errors or defects will be corrected, or (f) the Services or the server(s) that make the Services available are free of viruses or other harmful components. Subject to any Non-Excludable right, the Service and all content is provided to you strictly on an "as is" basis. Other than in relation to a Non-excludable Right set out below all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by SOE and its licensors. Further, no advice or information given by an SOE representative shall create a warranty or serve as an amendment to this agreement. SOE is not responsible for any delays, delivery failures, or other damage resulting from limitations, delays, and other problems inherent in the use of the internet and electronic communications.

## 13. Limitation of Liability

13.1 A "Non-excludable Right" means an implied condition, warranty or guarantee the exclusion of which from a contract would contravene any statute (including without limitation the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) or cause part or all of this Agreement to be void. Our total liability to You for a breach of any Non-excludable Right (other than a breach of a Non-excludable Right that by law cannot be limited) is limited, at our option to any one of resupplying, replacing or repairing, or paying the cost of resupplying, replacing or repairing goods in respect of which the breach occurred, or supplying again or paying the cost of supplying again, services in respect of which the breach occurred.

13.2 In no event shall SOE be liable for any indirect, special, consequential or incidental loss, exemplary or other damages related to this agreement or whether direct or indirect, including but not limited to: (i) loss of data, (ii) loss of income, (iii) loss of opportunity, (iv) lost profits, and (v) costs of recovery or any other damages, however caused and based on any theory of liability, and including, but not limited to, breach of contract, tort (including negligence), statute, or otherwise, and whether or not SOE has been advised of the possibility of such damages. To the extent permitted by applicable law, and except for liability in relation to breach of any Non-excludable Right, SOE's liability hereunder is limited to \$500.00.

13.3 Where Non-excludable Rights apply under the Australian Consumer Law, our goods come with guarantees that cannot be excluded by Australian Consumer Law. You are entitled to a replacement or refund for a major failure, and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to a major failure.

## 14. Force Majeure

SOE will not be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, pest damage, floods); power surges or failures, wars, acts of military authorities, riots, terrorist activities, and civil commotions; activities of local exchange carriers, inability to secure raw materials, transportation facilities, fuel or energy shortages, unauthorized use of this Service, telephone carriers, wireless carriers, Internet service providers, and other third parties; explosions and fires; embargoes, strikes, and labour disputes; governmental decrees; and any other cause beyond the reasonable control of SOE whether similar to the foregoing or not.

## 15. Personal Information.

15.1 You are solely responsible for the collection, use, disclosure, control and management of, and access to, any personal information (as that term is defined in the Privacy Act) included in the Uploaded Data or Content (defined below). SOE will only deal with such personal information for the limited purpose of providing the Services to You and Your Users, and will require any subcontractors to deal with such personal information for the same limited purpose.

15.2 SOE shall abide by the terms of its Privacy Policy, the Privacy Act, and the PCI DSS.

## 16. Responsibility for Content, Transmitting Messages, and Accounts

16.1 You are solely responsible for the information or content submitted, posted, transmitted or made available through Your use of the Services ("Content"). You may use the Services to transmit Content or direct SOE to make contacts via any channel (in either case "Messages") to, or with, recipients (the "Recipients"). You are responsible for maintaining the confidentiality of Your accounts and owner numbers and necessary codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with Your accounts whether or not authorized by You including unintended usage due to holidays, daylight savings, computer clock errors or similar circumstances. You acknowledge and agree that SOE does not control nor monitor Your Content nor guarantee the accuracy, integrity, security or quality of such Content. Use of recording or taping any use of the Services by You may subject You to laws or regulations and You are solely responsible for and obligated to provide any required notification to those being recorded or taped.

16.2 You represent and warrant that: (a) You have the legal right to use all Content and send all Messages to the Recipients (including obtaining any required consents from the Recipients) and the content, timing and purpose of all Messages, campaigns and programs are in compliance with all applicable laws, rules and regulations; (b) You are the transmitter of all Content and Messages and SOE is merely acting at Your direction as a technology conduit for the transmission of the Content and the Messages; (c) SOE's use of the Content shall not violate the rights of any third party or any law, rule or regulation and (d) You will not transmit or allow to be transmitted any Content or Messages that: (i) You do not have a right to make available under any law or under contractual or fiduciary relationship; (ii) are false, inaccurate, misleading, out of date, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, offensive, obscene, libelous, invasive of another's privacy, hateful, racially, ethnically, or otherwise objectionable, or harmful to minors in any way; (iii) infringe any patent, trademark, trade secret, copyright, or other proprietary rights or rights of publicity or privacy of any party; (iv) utilise any unsolicited or unauthorized advertising, promotional materials, "junk mail", "spam", or any other forms of solicitation; (v) interfere with or disrupt the Services or servers or network operator networks; (vi) promote, instruct, describe or incite violence, criminal conduct or unlawful sexual activity; (vii) provide advice for which You do not have the appropriate authorisations including without limitation financial advice; (d) You have read this Agreement in its entirety and You understand and accept it. .

16.3 You represent and warrant that: (a) You have obtained prior consent to contact each phone number or electronic address delivered by You to SOE in connection with the provision of any Services delivering a pre-recorded message or electronic communication, and

that the intended contact recipient is the current subscriber to the phone number or electronic address ("Notification Services"); (b) You have incorporated a simple and prominent opt-out mechanism as part of any program relating to any Notification Services; (c) any direct marketing (as defined in the Privacy Act) or commercial electronic message (as defined in the *Spam Act 2003* (Cth) ("Spam Act")) that You cause to be sent via the Services complies with the requirements for direct marketing and/or commercial electronic messages, as set out in the Privacy Act and/or the Spam Act; and (d) any contact with any phone number complies with the Do Not Call Register Act 2006.

16.4 You acknowledge and agree that SOE may audit your compliance with the obligations set out in this Section 16. Where SOE reasonably believes that You may not have complied with all laws, rules and regulations applicable to the performance of Notification Services, SOE may, at its option and without notice to You: (i) at Your cost scrub all personal information or electronic addresses against any appropriate data base deemed necessary to remove all of that information; (ii) at Your cost insert simple and prominent opt-out mechanism and pass the resulting data to client, (iii) not provide any Notification Services with no further liability to You, or (iv) immediately terminate this Agreement with no further no liability to You in accordance with Section 17.3(b).

16.5 You must comply with SOE's reasonable instructions from time to time in relation to any Content, Message or Notification Services.

16.6 You shall indemnify, defend and hold SOE, its affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from SOE following Your instructions in sending the Messages or Your breach of any applicable law, and any representation and warranty set forth in this Section 16.

## 17. Term and Termination

17.1 This Agreement shall commence on the date the Services are made available to You and will remain in effect for 12 months (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive monthly periods unless terminated in accordance with its terms.

17.2 The Service is pre-paid and all fees associated with the Service are non-refundable, subject to any Non-excludable Rights. SOE does not provide refunds or credits for any partial months of use of the service. After the Initial Term You may terminate this Agreement on 30 days written notice to SOE. Notwithstanding anything to the contrary contained herein, SOE may terminate this Agreement and the Service at any time and for any reason.

17.3 SOE may terminate this Agreement immediately if You:

- (a) breach any term of this Agreement that is capable of remedy and fail to remedy such breach within 30 days of being notified of the breach;
- (b) breach any term of this Agreement that is not capable of remedy, including without limitation a breach of Sections 16.1 to 16.3;
- (c) suspend payment of Your debts;
- (d) become an externally administered body corporate under the *Corporations Act 2001* ("**Corporations Act**");
- (e) have a controller (as defined in section 9 of the Corporations Act) appointed in respect of any property You own;
- (f) fail to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
- (g) You enter liquidation, become insolvent, or if You are a natural person, commit an act of bankruptcy.

17.4 If SOE is in material breach of this Agreement, You are entitled to terminate this Agreement for cause after having given SOE a written

notice of no less than thirty (30) days, if SOE has not remedied the breach within that notice period. You may also have termination rights under the Australia Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* if we breach a Non-excludable Right and the breach amounts to a major failure.

17.5 The rights and obligations in this paragraph and Sections 2, 5-7, 9-13, 16, 20 and 21 shall survive termination of this Agreement.

17.6 Upon termination of this Agreement for any reason, You must immediately cease using the Service. Termination does not affect Your obligation to pay any applicable fees owing by You to SOE under this Agreement.

17.7 You agree and acknowledge that SOE has no obligation to retain the Uploaded Data, and may delete such Uploaded Data within 90 days of termination of this Agreement in accordance with its terms without prior notice, or at any other time without notice if You have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within thirty (30) days' notice of such breach. If You and/or User request SOE to assist in restoring Uploaded Data that has been deleted in accordance with this paragraph, SOE will determine whether such recovery is possible and You must pay to SOE any fees applicable to such work at SOE's standard rates.

## 18. Notice

SOE may give notice by means of a general notice on the Service, electronic mail to Your e-mail address on record, or by written communication sent by registered mail to Your address on record. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing (if sent by registered mail) or 12 hours after sending (if sent by email).

## 19. Modification to Terms

SOE reserves the right to modify this Agreement, its privacy policy or other policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Websites. You are responsible for regularly reviewing this Agreement and any relevant policies. Continued use of the Service after any such changes shall constitute Your consent to such changes.

## 20. Confidentiality

20.1 Unless expressly authorised in writing by the other Party, neither Party shall disclose to any third party any Confidential Information of the other Party, nor use such Confidential Information in any manner other than to perform its obligations under this Agreement. Confidential Information means any non-public information and/or materials provided by a Party under this Agreement to the other Party and reasonably understood to be confidential.

20.2 The foregoing restrictions do not apply to any information that (i) is publicly disclosed through no fault of the receiving Party, (ii) is already lawfully in the receiving Party's possession and not subject to a confidentiality obligation to the disclosing Party, (iii) becomes known to the receiving Party from a third party having an apparent bona fide right to disclose the information, or (iv) is Confidential Information that

the receiving Party is obligated to produce pursuant to an order of a court of competent jurisdiction, provided receiving Party supplies disclosing Party with timely notice of such court order. You acknowledge, on behalf of You and Your Users, that SOE and its licensors retain all intellectual property rights and title, in and to, all of their Confidential Information and/or other proprietary information. This shall include, but not be limited to: products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Services provided by SOE hereunder.

## 21. General.

- (a) Entire Agreement. You agree that this Agreement constitutes the entire agreement between You and SOE and shall supersede any prior agreement or any other communications relating to the use of the Services or any portion thereof.
- (b) Severability. If any provision herein is otherwise held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- (c) Governing Law. This Agreement is governed by the laws of Victoria, Australia. The courts of Victoria, Australia shall have non-exclusive jurisdiction to adjudicate any dispute arising under or out of this Agreement.
- (d) Assignment. You shall not have the right to assign (by operation of law or otherwise), transfer, or sublicense any obligations or benefit under this Agreement without the prior written consent of SOE. Any purported assignment in violation of this section shall be void. Except as otherwise provided herein, this Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties. SOE may assign and/or subcontract any part of this Agreement without Your consent.
- (e) Export Restrictions. You acknowledge that the Services, or any portion thereof, may be subject to U.S. export restrictions. You agree to comply with all applicable international and national laws that apply to the Services, or any portion thereof, including the U.S. Export Administration Regulations, as well as destination and all other restrictions issued by U.S. and other governments.
- (f) No Waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
- (g) Independent Contractor. Notwithstanding any provision hereof, for all purposes of this Agreement each party shall be and act as an independent contractor and not as partner, joint venture or agent of the other party and shall not bind nor attempt to bind the other party to any contract.
- (h) Headings; Sections. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement