

Terms and Conditions for supply of Software, Hardware and/or Maintenance

Software of Excellence UK Ltd offers the following terms and conditions.

Definitions:

“Conditions” means these terms and conditions;

“Contract” means the Customer’s purchase order and SOE’s acceptance of it; or the Customer’s acceptance of a quotation for the supply of Software and/or Hardware by SOE and in both cases incorporating these Conditions;

“Customer” means a customer of SOE who is purchasing Software and/or Hardware as the case may be and such term shall include Licensee as relevant;

“Elements” means hardware, software or other information provided by the Customer or third parties;

“Hardware” means digital imaging technologies including but not limited to intra-oral digital sensors, digital phosphor plate, panoramic and cephalometric systems plus cameras and other related hardware;

“Licence” means the authorisation given to the Licensee by SOE which permits the Licensee to use the Software;

“Licensee” means a Customer who has been provided with a Licence to use the Software;

“Manufacturers” means all of the manufacturers of the Hardware (and Manufacturer means any one of them);

“Premises” means the Customer’s lawful dental practice trading address and any other suitable premises for the provision of training services, to be provided at the cost of the Customer;

“SOE” means Software of Excellence UK Limited;

“Software” means software including but not limited to practice management software solutions, digital imaging software and other cosmetic imaging software;

“UDA” means Units of Dental Activity

“UOA” means Units of Orthodontic Activity; and

“Workstation” means a personal computer or terminal used by a single user.

1. These Conditions shall apply to and be incorporated into the Contract and shall prevail over any inconsistent terms or conditions contained or referred to in the Customer’s purchase order or implied by trade custom, practice or course of dealing.

2. These Conditions entitle the Licensee to use the Software to assist in the operation of their dental business. The license of the Software and the associated database files are not transferable to any third party without the express prior written permission of SOE. For purposes of this provision third party shall also mean any purchaser, successor or transferee to whom the Licensee transfers the Premises or his dental business irrespective of the legal form in which the transfer takes place.

3. SOE warrants that all Software covered under these Conditions is owned exclusively by SOE or, SOE holds a license for such components that confers on the Licensee a clear legal right to use the Software on the number of workstations indicated, provided that you comply with your obligations under these Conditions.

4. SOE undertakes to provide Software that is ready to use for the Licensee’s dental business. In the event of a material defect being discovered in the Software, SOE undertakes to remedy such defect as expeditiously as practical, provided that the software version has not been superseded for a period exceeding six months and provided that the Software is operating on hardware that meets the specifications as set out in the SOE document entitled “System Requirements”. (Copies available on request).

4.1 The Customer shall indemnify SoE against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against SoE as a result of the Customer’s breach of the Contract or these Conditions howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

5. The Licensee shall be solely responsible for the protection of its system and associated data by:
 - 5.1 Performing regular back-ups of its data and software including off site storage of same.
 - 5.2 Validating the fidelity and recoverability of back-up.
 - 5.3 Installing and maintaining of up-to-date anti-virus protection for its data and software.
 - 5.4 Ensuring personnel using the Software are trained in accordance with the training programme provided by SOE.
 - 5.5 The Licensee shall be solely responsible for the suitability of its hardware system.
6. The Customer should always refer to the UDA/ UOA statements provided by the National Health Service (NHS) to obtain accurate reports. The UDA and UOA reports in **EXACT** should not, under any circumstances, be used or relied upon for management purposes. SOE makes no representation as to the accuracy of the content in the UDA and UOA reports provided within the Software.
7. Except in case of (i) death or personal injury, or (ii) any other liability which cannot be excluded by law, SOE will not be liable for any claims of compensation, consequential loss or damage, even though it arises using the Software or Hardware, and in any case, the maximum aggregate liability of SOE shall be limited to the total amount paid for the Software.
8. Where diagnostic assistance is requested from SOE and it becomes evident that the fault is caused by third party hardware and not the Software; SOE reserves the right to charge for the time and costs involved. Such charges will be made at the rate current on the day that assistance is provided.
9. In the course of assisting with the installation of the Licensee's system and or training of the Licensee's personnel:
 - 9.1 SOE may receive confidential data of the Customer. SOE shall instruct all of its employees that are party to this data to treat it as strictly confidential and SOE will take reasonable instructions from the Customer as to what can or cannot be discussed with different members of the Customer's employees; and
 - 9.2 The Customer may be given confidential details by SOE of the Software which it agrees to keep in strict confidence and not to disclose to third parties. The Customer will restrict disclosure of this confidential material so such of its employees as need to know the same and shall ensure that such employees are subject to confidentiality corresponding to those that bind the Customer.
10. All payments due to SOE under the terms of the Contract must be settled by the due date, failure to comply with such requirements will suspend the Customer's rights under the Contract until such payments are received. In the event of cancellation of the order SOE will retain 10% of the purchase price to cover its administrative costs.
11. The Licensee shall use its best endeavours to secure and prevent the unlawful copying of the Software.
12. Training services shall be provided by a SOE representative at the Customer's Premises.
13. The Customer assumes all duties relating to the health, safety and welfare of any SOE representative on its Premises during the course of its training. Such duties are to include but not be limited to ensuring that the Premises are free from hazard, excessive noise and dust, are heated and have adequate toilet facilities.
14. Training services will be scheduled at a time mutually suitable to both parties. In the event of a change being required, for whatever reason, the following cancellation charge will be made by SOE:
 - 4 weeks prior 10% of training fees unless full time slot can be re utilised by SOE
 - 3 weeks prior 40% of training fees unless full time slot can be re utilised by SOE
 - 2 weeks prior 70% of training fees unless full time slot can be re utilised by SOE
 - 1 week prior 100% of training fees unless full time slot can be re utilised by SOE
15. The Customer undertakes to only apply software updates at Premises which have paid the support fee. In the event that a Customer is found to have installed a software update at Premises which have not paid the support fee, SOE reserves the right to refuse the issue of a re-registration code to the Customer until such

time as a standard support re-joining fee has been paid, together with 12 months support charges to be paid in advance.

15.1 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract or these Conditions without SoE's prior written consent.

16. The Licensee shall register the Software on an annual basis in order to obtain a new Licence, or as often as is deemed necessary by SOE. The Licensee shall be notified by the software when the Software is required to be registered. The number of Licences issued to the Licensee will not exceed the number of Licences which have been purchased by the Licensee.

17. The software or system provided by SOE may incorporate, or interact with Elements, including without limitation, default codes provided by the NHS. Depending on your existing practice management system and its setup, the utilization and integration of Elements in or by the Software may cause the Software to operate incorrectly or inaccurately. The Customer assumes all risk of the integration and interoperability of Elements into their system. SOE is making no representation as to any of the Elements being correct, complete, up-to date, integrated and otherwise utilizable. SOE by disclaims all warranties, express or implied, including – without limitation the implied warranties of satisfactory quality and fitness for a particular purpose with respect to any Element as far as is permitted by law.

18. The Customer warrants that he shall not permit any software, other than software supplied by SOE, to read or write directly to/from the SOE database. Other third party software must be approved before use by SOE in writing. Failure to comply with this requirement shall render the Customers perpetual right to use the License invalid.

19. The Customer warrants that he has a valid and enforceable right to use the Premises where the Software is applied as his dental practice or for the provision of training services.

20. SOE reserve the right to claim statutory interest at 8% above the Bank of England base rate at the time the debt becomes overdue in accordance with the late Payment of Commercial Debts (Interest) Act 1998.

21. These Conditions and the Contract are governed by and construed in accordance with the law of England and Wales.

Additional Rental Terms and Conditions applicable to purchasers of the Software

1. The license period will commence upon execution of the Contract by SOE and continue in perpetuity unless terminated sooner as provided in the Contract. The minimum rental period is 1 month.

2. The Licensee undertakes to give SOE ninety (90) days' notice of its intention to terminate the Contract or pay 3 months rental in lieu of notice.

3. SOE have the right to termination of this Contract without further obligation or liability by written notice to the licensee in the event that the Licensee is in default regarding any material term hereof, including payment terms, and such default is not cured within thirty (30) days of receipt by the Licensee of written notice of such default.

4. Within ten (10) days of termination, the Licensee will return to SOE, the licences, software, all copies of other materials and documentation supplied to licensee by SOE, and copies of licensed software or any part of it made by the Licensee.

5. SOE undertakes to provide to the Licensee a download of the practice data in CSV format on termination of the Contract.

Additional Maintenance Terms and Conditions applicable to purchasers of the Software

1. If selected in the Contract a maintenance period to cover the Hardware and Software will commence upon execution of the Contract by both parties and continue in perpetuity unless terminated sooner as provided in the Contract.

2. The Customer undertakes to give SOE thirty (30) days' notice of its intention to terminate the maintenance contract or pay 1 month rental in lieu of notice.
3. SOE has the right to termination of this maintenance contract without further obligation or liability by written notice to the Customer in the event that the Customer is in default regarding any material term hereof, including payment terms, and such default is not cured within thirty (30) days of receipt by the Customer of written notice of such default.

Additional Maintenance Terms and Conditions applicable to purchasers of Thrive

Thrive Business Services Standard programme

1. Thrive consultations will be scheduled at a time mutually suitable to both parties. In the event of a change of date being required, for whatever reason, the following cancellation charge will be made by SOE:
 - 2 weeks prior £200
 - 1 week prior £350
 - Less than 48 hours' notice £500
2. Cancelling the Thrive program prior to commencement of data collection will result in a 10% administration fee being retained.
3. Cancelling Thrive after Data collection but before consultations commence will result in a £400 cancellation fee, plus the 10% administration fee.
4. Cancelling Thrive after commencement of consultations will result in the following charges;
 - 1 Consultation completed = 30% of full Thrive cost
 - 2 Consultations completed = 50% of full Thrive cost
 - 3 Consultations completed = 75% of full Thrive cost
 - 4 or more Consultations completed = 100% of full Thrive cost

Thrive continuation consultancy services

Thrive continuation consultations will be scheduled at a time mutually suitable to both parties. In the event of a change of date being required, for whatever reason, the following cancellation charge will be made by SOE:

- 2 weeks prior 10% of consultation cost
- 1 week prior 50% of consultation cost
- Less than 48 hours' notice 100% of consultation cost

Thrive Programme Deliverables

1. The Thrive Programme deliverables are only offered on the basis that the dental practice engage with the Daily Revenue Tracker and implement a routine Daily Team Huddle as set out by the Thrive Consultant.
2. Thrive programme deliverables are set based on a comparison of revenue generated for the 6 months of the Thrive engagement to the same 6 month of the previous year. Should the Thrive engagement be extended for any reason, the Programme deliverables will be amended to reflect the extension.
3. SOE makes no warranty or representation as to the accuracy of the data used during the Thrive consultation service, to the extent that such data has been input into Software by the customer. The quality of your Thrive consultancy is important to us; you need to inform us immediately on program completion if you are not satisfied. If for any reason you feel the program did not achieve the agreed objectives, you need to contact the customer services department within 7 working days of completion and refer to the Thrive programme deliverables.