

**INTRODUCTION**

These terms and conditions relate to:

- The grant of a licence to you to use the Practice Software (“Practice Software”); and/or
- The grant of a licence to you to use the My Practice Cloud Software and to receive the associated My Practice Cloud Online Services (“MPC Software and Services”); and/or
- The provision of certain support and maintenance services (“Support Services”) to you; and/or
- The provision of certain patient communication systems and facilities (“SMS and EasyPost Services”) to you; and/or
- The provision of certain reputation monitoring and management services (“RMS Services”); and/or
- The provision of certain call tracking and marketing analytics services (“CTM Services”); and/or
- The provision of certain marketing management services (“MM Services”).

The provision of the above licences and/or services are governed by the terms and conditions comprised in this document.

**DEFINITIONS**

“**CTM Services**” means the tracking and marketing analytics services;

“**EasyPost Service**” means the service facilitated by us which enables you to send letters directly from Practice Software through third party mailing carriers;

“**Hardware**” means, computer equipment, operating systems, digital imaging equipment and other third party software products;

“**Intellectual Property**” means all intellectual property rights anywhere in the world (including present and future intellectual property rights) relating to any confidential information, business names, copyright, database rights, patents, know-how, trade or service marks, trademarks, designs, software, software programmes and source code and all variations, modifications or enhancements associated with the Practice Software, the MPC Software, and any of the services provided under these Terms;

“**MM Services**” means marketing management services, including the provision of infrastructure and templates for direct mail, email, SMS, and other types of communications between you and your patients;

“**MPC Licence**” means the licence granted by us to you to enable you to utilise the MPC Software and MPC Services;

“**MPC Maintenance Releases**” means a release of an application which corrects faults, adds functionality or otherwise amends or upgrades the MPC Software.

“**MPC Services**” means the services provided via the MPC Software such as financial and performance reports, the ability to view practice calendars, share documents and where applicable, company practice performance;

“**MPC Software**” means My Practice Cloud Software;

“**Patient Communication Services**” means MM Services, SMS and EasyPost Services, and the SMS Service;

“**Practice**” means your dental practice delineated in the Sales Agreement;

“**Practice Software Licence**” means the licence granted by us to you to enable you to utilise the EXACT Software or the OASIS Software (as the case may be);

“**Practice Software**” means:

- (a) if you have elected to acquire our EXACT Software application pursuant to a Sales Agreement, our EXACT Software; or
- (b) if you have elected to acquire our OASIS software application pursuant to a Sales Agreement, our OASIS Software;

“**RMS Services**” means reputation monitoring and management services;

“**SMS and EasyPost Services**” means the SMS and EasyPost Services to be provided to you by us;

“**SMS Service**” means the service facilitated by us which enables you to send and receive Standard Rate Messages through third party Telecommunication Carriers.

“**Sales Agreement**” means our standard form sales agreement, together with any other documentation evidencing the subscription for the various licenses and services under these Terms, including any online subscriptions, which prescribes the details of the licences and services being subscribed for, the details of the license fees, service fees, and certain other information relating to the provision of the licences and services to you, which is to be read subject to these Terms;

“**Support Services**” means the support and maintenance services to be provided by us to you in accordance with the provisions of these Terms;

“**Terms**” means these terms and conditions;

“**you**” and “**your**” means you, the customer who is purchasing the software licences, and/or the services referred to in these Terms;

“**we**”, “**us**” and “**our**” means Software of Excellence International;

“**Workstation**” means a single PC, terminal or remote connection, where one instance of the Practice Software is either installed or accessed.

**PART I PRACTICE SOFTWARE LICENCE – SPECIFIC TERMS AND CONDITIONS**

**1 Practice Software Licence**

1.1 The provisions of this Part I of these Terms will apply if you have elected to subscribe for a Practice Software Licence in the Sales Agreement, or subsequently via an online subscription, or other subscription documented in writing.

1.2 We grant to you a non-exclusive license to use the Practice Software solely for your intended purpose, for the number of Workstations purchased, and subject to these Terms. Title and all ownership and proprietary rights to the Practice Software remains our property at all times.

**2 Permitted Uses**

2.1 You may make one backup copy of the Practice Software for your own business use. If the original working Practice Software on the computer hard disk will no longer work properly, you may use the backup copy to restore the Practice Software onto the computer hard disk. The database license may only be used for one set of data at any one time and only on the number of Workstations for which the Practice Software Licence has been purchased.

**3 Practice Software Fees**

3.1 In consideration for the grant of the Practice Software Licence, you will pay to us the licence fees and charge prescribed in the Sales Agreement.

**PART II MPC SOFTWARE LICENCE AND PROVISION OF MPC SERVICES – SPECIFIC TERMS & CONDITIONS**

**4 MPC Licence and Services**

4.1 The provisions of this Part II of these Terms will apply if you have elected to subscribe for an MPC Licence and to receive the MPC Services in a Sales Agreement.

4.2 We grant to you:

- (a) a non-exclusive, non-transferable licence to use the MPC Software (“MPC Licence”) in accordance with these Terms in order to access the MPC Associated Services; and
- (b) a non-exclusive, non-transferable right to permit you to receive the MPC Services for your internal dental business operations.

4.3 Subject to you paying any installation fee prescribed by us in respect of the installation of the MPC Software, we (or a third party nominated by us) will install the MPC Software for you at your Practice or at another location agreed between us.

**5 Maintenance of MPC Software**

5.1 We shall from time to time make MPC Maintenance Releases available to you.

**6 Provision of MPC Services**

6.1 We shall provide the MPC Services to you.

6.2 The MPC Services may be updated or enhanced by us during the duration of these Terms.

6.3 We shall use commercially reasonable endeavours to make the MPC Services available 24 hours a day, 7 days a week, except for:

- (a) planned maintenance carried out at such hours as we may notify to you from time to time;
- and (b) necessary unscheduled maintenance.

6.4 We will, as part of the provision of the MPC Services and at no additional cost to you, provide you during our normal business hours with such customer support services as are necessary to enable you to use the MPC Services.

**7 Fees**

7.1 In consideration for us licencing you to use the MPC Software, and to provide you with the MPC Services, you shall pay to us the fees detailed in the Purchaser Order or as otherwise agreed between us via an online subscription or other electronic or written communication.

**8 Our obligations**

8.1 We will provide the MPC Services with reasonable skill and care.

8.2 We have the right to make any changes to the MPC Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the MPC Services, and we shall notify you in any such event.

**9 Your obligations**

9.1 You shall:

- (a) provide us with:
  - (i) all necessary co-operation in relation to these Terms; and
  - (ii) all necessary access to your Practice and such information as we may require, in order to install the MPC Software and provide the MPC Services, including but not limited to customer data, security access information and configuration services;
- (b) obtain and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform their respective obligations under these Terms, including without limitation the provision of the MPC Services; and
- (c) be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

9.2 You acknowledge that we are expressly permitted to utilise the data captured by the MPC Software for our own benchmarking purposes, whilst maintaining client confidentiality at all times.

**PART III SUPPORT AND MAINTENANCE SERVICES – SPECIFIC TERMS AND CONDITIONS**

**10 Support provisions and obligations**

10.1 The provisions of this Part III of these Terms will apply if you have elected to subscribe for the support and maintenance services in respect of your Practice Software in a Sales Agreement.

10.2 We agree to support the Practice Software installed at your Practice from the date of the installation of the Practice Software at your Practice.

**Our fees for the provision of the Support Services**

10.3 In consideration for the provision of the Support Services to you, we will charge you the monthly support fee (“Support Fee”) delineated in the Sales Agreement.

10.4 The Support Fee may increase if you purchase additional modules or licences. SOE reserves the right to adjust or modify the Support Fee, at any time upon not less than 30 days’ notice in writing, and such changes or modifications may be provided by an email message to You, or in the form of an announcement on the Service. Any such Support Fee increase will not exceed 5% of the Support Fees for the period immediately preceding the term of this Agreement, unless the pricing in the prior term was designated in the relevant Sales Agreement as a promotional or one-time offer, in which case the increase in Your Fee will not exceed 5% of our standard market rate for the provision of the same Support Services to You.

**Our Support and Maintenance obligations**

10.5 Within the contracted support hours as defined on our website <http://softwareofexcellence.com/nz/support>, we will:

- (a) Use reasonable endeavours to respond to reported faults within the target response times specified in clause 10.6. 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 the Practice Software (you must not however use this support as a replacement for user training);
- (c) Make available updates to fix defects or enhance the stability of the Practice Software;
- (d) Make available upgrades to the Practice Software as and when we release them;
- (e) Consult with you prior to installing any update or upgrade if we believe installation will affect your use of the Practice Software or cause compatibility issues;
- (f) Co-operate with the supplier of third party software/hardware to achieve resolution, where the problem is diagnosed and involves the operating system software, software other than the EXACT or OASIS application, or hardware. Our time for this work may be charged to you

**Support Exclusions**

10.6 The Support Fee does not include:

- (a) Support for hardware systems including 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. It is your responsibility to maintain and operate current and comprehensive anti-virus protection;
- (d) Rectifying data corruption problems caused by hardware failure or third party software;
- (e) Configuration changes, moves, add or changes after installation setup may incur additional charges;
- (f) Responsibility for backups;
- (g) Rectifying problems as a result of deficient or non-current back-up;
- (h) On-site support;

- (i) Re-configuration, de-installation or re-installation of the Practice Software as a result of modifications to your local area network, changes to the operating system or hardware platform or your moving the Site or due to any malfunction in hardware;
  - (j) 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;
  - (k) Enhancements are not considered defects and will go through our product development processes to determine viability for new version or upgrade inclusion;
  - (l) Out of contracted hours work.
- 10.7 If we agree to provide support for any of the items stated above in clause 10.6, we may charge for that support at our standard rates and charges applicable from time to time, plus travel and accommodation if applicable.
- Your obligations and responsibilities**
- 10.8 We will need you to make personnel available and to provide information, facilities, services and equipment as and when needed so that we can perform our obligations.
- 10.9 You agree to provide us with an internet connection to your practice computers, so we can remotely access your Practice Software using our Bomgar™ remote connection tool. We may use this access to install updates and upgrades, to check the performance of the Practice Software and remedy any faults found, or to audit your use of the Practice Software.
- 10.10 We do not accept any liability for damage to data, the Practice Software 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.
- 10.11 You give us 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.
- Support Reinstatement**
- 10.12 If the provision of the Support Services is terminated or otherwise lapses, a recommencement fee will be charged to commence or reinstate our Support Services, in order to bring the Practice Software up to the latest specifications and releases. The reinstatement charge will be based on the current rate charged by us at the time.
- Subcontracting Support Services**
- 10.13 We may, without your prior written consent, sub-contract any of the Support Services to a third party. Unless otherwise notified by us, such third party costs and charges are included as part of our monthly support fee
- Automatic Renewal of Support Services.**
- 10.14 We shall provide you with the Support Services for a period of 12 months from the date of these Terms ("Term"). At the end of the Term, the contract between us for the provision of the Support Services shall automatically renew for successive monthly periods, unless you notify us in writing giving 30 days' notice of your intention to terminate our contract for the provision of the Support Services.

**PART IV PATIENT COMMUNICATION SERVICES – SPECIFIC TERMS AND CONDITIONS**

- 11 Provision of Patient Communication Services**
- 11.1 The provisions of this Part IV of these Terms will apply if you have elected to subscribe for the Marketing Manager (MM) Services, the SMS Service, and the SMS and EasyPost Services (together referred to as the "Patient Communication Services") in the Sales Agreement.
- 11.2 We agree to provide email, SMS and EasyPost Services to you through the Practice Software in partnership with our network of Telecommunication Service Providers ("Telecommunication Carriers") and Mailing Service Providers ("Mailing Carriers").
- 11.3 For the purposes of these Terms, the terms "SMS Service" and "EasyPost Service" are collectively referred to as "Communication Services"; and "Telecommunication Carriers" and "Mailing Carriers" are collectively referred to as "Carriers"
- 11.4 We agree to provide the MM Services to you in accordance with the deliverables and specifications contained in the Sales Agreement.
- Pricing & Invoicing**
- 11.5 The fees that you will pay us for the provision of the SMS Messaging service will be delineated in the Sales Agreement.
- 11.6 The fees that you will pay us for the provision of the EasyPost service will be delineated in the Sales Agreement.
- 11.7 Charges for the SMS top up and EasyPost will be invoiced by us to you on a monthly basis on or around the 5<sup>th</sup> day of each month. Invoices are due and payable by Direct Debit 10 days from the date of issue.
- 11.8 The fees that you will pay us for the provision of the MM Services will be delineated in the Sales Agreement.
- 11.9 We reserve the right to adjust the pricing contained within the Sales Agreement with 30 days' notice in writing to you.
- Content of Communication**
- 11.10 You agree not to use the Patient Communication Services to transmit any information or material that violates any law, or transmit any material that is in contravention of any privacy or copyright rules or any other proprietary interest.
- 11.11 You agree not to use or seek to use the Patient Communication Services for publishing, reproducing or advertising any message, information, symbol or other communication which is offensive or abusive or of an indecent, obscene or menacing character or for the purpose of causing annoyance, inconvenience or needless anxiety to any person, or for any unlawful purpose. You acknowledge that Carriers and we may audit content of services from time to time and that a breach of this condition may result in termination of your SOE SMS account.
- 11.12 In accordance with anti-SPAM legislation, guidelines and codes of practice, you agree not to use the Patient Communication Services to circulate or send any unsolicited or unauthorised marketing, publicity or advertising material message to any person (including a message that is designed to promote goods or services ("Marketing Message")) to any person unless:
- (a) The recipient has first consented to receiving the Marketing Message;
  - (b) The recipient has been provided with a means to opt-out of receiving any further Marketing Messages, such a statement in the message of 'Reply Stop to opt-out';
  - (c) The recipient can clearly identify that you are the sender of the Marketing Message; and
  - (d) Upon receipt of an Opt-Out request, you will remove the recipient from the relevant marketing list as soon as practicable and in any case within 30 days;
  - (e) You acknowledge that we may request explicit confirmation of compliance with this clause from time to time.
- 11.13 You agree to comply with any reasonable instructions concerning access to and/or use of the Patient Communication Services that we may give to you from time to time and agree not to do

- anything that may jeopardise the security or integrity of any part of our or any of the Carrier's systems or platforms.
- 11.14 You accept responsibility for all aspects of its account, including the actions of all persons in possession of your username and password.
- 11.15 You agree that the Patient Communication Services are to be used solely for the provision of general information to your customers and the provision of Restricted Content is specifically prohibited. You acknowledge that we and/or the Carriers may audit the content of services from time to time and that a breach of this clause may result in a breach of your obligations under these Terms, or potentially the termination of these Terms.
- 11.16 You agree not to use the Patient Communication Services, connections, or facilities to:
- (a) transmit computer worms or viruses;
  - (b) access, any other of our and/or Telecommunications Carrier's computer systems or networks without our consent or disrupt or damage any of ours, or the Carrier's computer systems or network;
  - (c) forge any messages; or
  - (d) send any obscene, sexually explicit, abusive or defamatory;
  - (e) material or material that violates or is contrary to any law or regulation or guidelines
  - (f) Distribute any Restricted Content.
- 11.17 For the purposes of these Terms, the term "Restricted Content" means content that: (a) is likely to be, having regard to the contemporary attitudes of New Zealand society, offensive to reasonable adults; (b) is likely to be, having regard to the contemporary attitudes of New Zealand society, unsuitable for minors; (c) promotes, incites or instructs in matters of crime; (d) describes, incites or promotes unlawful sexual activity; (e) promotes or incites violence against any person or group, or incites racial hatred; (f) causes unnecessary alarm, distress or panic; (g) breaches a code of practice that applies to the Service; (h) is false, misleading or deceptive, or likely to mislead or deceive; (i) provides financial advice to any person; (j) is out of date, having regard to information generally available, subsequently published, or released, or made available; or (k) is for the purpose of providing any warning or notification about a serious risk to the safety of persons or property (for example, emergency services).
- 12 Information Security**
- 12.1 You accept responsibility for all aspects of your SOE SMS Account, including the actions of all persons in possession of your username and password.
- 12.2 You acknowledge that the internet is not an inherently secure system and undertakes responsibility for the protection of your information and data. You will be responsible at all times for maintaining the security of yours and your end user's data.
- 12.3 You acknowledge that the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within your system and agree to provide your own mechanism for checking your system for viruses.
- 12.4 You agree to comply with any instructions concerning access to and/or use of the Patient Communications Services that we may give to you from time to time and agree not to do anything that may jeopardise the security or integrity of any part of our systems or platforms.
- 13 Disclaimer**
- 13.1 You acknowledge that we are in part reliant on Carriers and other third party suppliers and therefore we do not warrant that the Patient Communication Services will be error-free or uninterrupted, or that transmission will be instantaneous.
- 13.2 You accept that we are reliant on Carriers and other third party suppliers (collectively referred to as "Providers") and that you will not hold us liable in any way whatsoever for our inability to provide the Patient Communication Service as a result of faults that are the responsibility of the Providers.
- 13.3 You accept that letters may sometimes be delayed in the post for reasons beyond our control, and as such we do not accept any responsibility for delayed letters caused by the postage and mail system.
- 13.4 You will be responsible at all times for maintaining the security of yours and your customer's data, and we bear no liability for the loss or damage in part or whole, of such data, to the extent that such loss or damage has been caused or contributed to by you or us.
- 13.5 You acknowledge that you have not relied on our skill or judgement or written or oral representations in deciding whether our Patient Communication Services are fit for a particular purpose or meets particular criteria.
- 13.6 You acknowledge that the internet is not an inherently secure system and undertakes responsibility for the protection of your information and data. You acknowledge that the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within your system, and that we have no control over these viruses and does not provide any filtering or checking of data to eliminate these viruses.
- 14 Confidentiality**
- 14.1 Notwithstanding any other provision of this Agreement, we have the unconditional and irrevocable right to disclose your identity and address and any end user in the event of any complaint received from any regulatory or Government body or Telecommunications Carrier, in connection with the content made available by you.
- 15 Indemnities**
- 15.1 You indemnify us from all costs (including legal costs on a full indemnity basis), expenses, loss, liabilities, suits, actions, damages or claims arising or in any other way connected with your use of your SOE SMS Account or the Patient Communication Service, or any other person using your username and password. You explicitly and unconditionally indemnify us from all acts and omissions of your end users.
- PART V PROVISION OF REPUTATION MONITORING AND MANAGEMENT SERVICES**
- 16 Provision of Services**
- 16.1 The provisions of this Part V of these Terms will apply if you have elected to subscribe for the Reputation Monitoring and Management Services ("RMS Services") in the Sales Agreement.
- 16.2 We agree to provide RMS Services to you in conjunction with Reputation.com, Inc.
- Pricing & Invoicing**
- 16.3 You will pay us the fees associated with the RMS Services delineated in the Sales Agreement. We reserve the right to adjust the pricing contained within the Sales Agreement with 30 days' notice in writing to you.
- Application of standard terms and conditions to the provision of the RMS Services**
- 16.4 The RMS Services are provided to you subject to the then current standard terms and conditions promulgated by Reputation.com, Inc. The standard terms and conditions can be found at [www.reputation.com/legal/local\\_business\\_terms](http://www.reputation.com/legal/local_business_terms).
- Your specific acknowledgements, obligations and warranties**
- 16.5 During the term of this Agreement, you unconditionally and irrevocably acknowledge that:

- (a) You shall have no editorial or other control over the content, use or placement of any review promulgated through the RMS Services ("Review");
- (b) You must post all reviews on the Reputation website, whether favourable or not;
- (c) We may disclose your patients personal information to our service providers, including but not limited to Reputation.com, Inc for the purpose of providing the RMS Services, and other services under these terms to your dental practice;
- (d) You warrant that you have in place, and continue to maintain, a privacy policy which complies with the Privacy Act;
- (e) You have obtained the consent of your patients to you passing on their email addresses and other personal information to us, and to Reputation.com, Inc, for the purposes of enabling us to provide you with the RMS Services;
- (f) You warrant that our, and Reputation.com, Inc's use of your patients information referred to in this clause 16.7 will not breach the Privacy Act, such that both us and Reputation.com, Inc are able to use your patients email addresses and names for the purposes of providing the RMS Service;
- (g) You indemnify us, and Reputation.com, Inc from any loss or liability that either of us may suffer or incur as a result of our respective use of your patients personal information in accordance with this clause 16;
- (h) We and/or Reputation.com, Inc have the right to remove any Review which may contain any information which may contravene, infringe or potentially breach any law or regulation in New Zealand;
- (i) You are not permitted to remove a Review, or request that a Review be removed, from the Reputation.com, Inc website.

**Termination of RMS Services**

- 16.6 If our Independent Reseller Agreement with Reputation.com, Inc is terminated for any reason then we may cease to provide you with the RMS Services with effect from the date of the termination of that Independent Reseller Agreement

**PART VI PROVISION OF CALL TRACKING AND MARKETING ANALYTICS SERVICES**

**17 Provision of Services**

- 17.1 The provisions of this Part VI of these Terms will apply if you have elected to subscribe for the call tracking and marketing and analytics services ("CTM Services") in the Sales Agreement.
- 17.2 We agree to provide CTM Services to you in accordance with the provisions of these Terms and the Sales Agreement.
- Pricing & Invoicing**
- 17.3 The fees that you will pay us for the provision of the CTM Services will be delineated in the Sales Agreement. We reserve the right to adjust the pricing contained within the Sales Agreement with 30 days' notice in writing to you.

**PART VII GENERAL TERMS AND CONDITIONS**

**18 CONTEXT**

The provision of this Part VII is applicable to the application of Parts I, II, III, IV, V and VI of these Terms having regard to the context of each of the provisions within this Part VII.

**19 PROHIBITED USES**

- 19.1 For the duration of these Terms you may not:
  - (a) Modify, merge, translate, decode or otherwise alter the Practice Software or the MPC Software;
  - (b) Transfer the Practice Software or the MPC Software, or sublicenses, leases or other rights to the Practice Software or the MPC Software to others or permit or allow others to use the Practice Software or the MPC Software;
  - (c) Use, copy or transfer the Practice Software or the MPC Software, in whole or in part, except as expressly provided for by these Terms;
  - (d) Alter, adapt, translate, reverse engineer, disassemble or de-compile the Practice Software or the MPC Software;
  - (e) Remove any proprietary notice or labels on or in the Practice Software or the MPC Software;
  - (f) Have additional workstations installed above the number purchased without prior written authorisation from us;
  - (g) Permit any software, other than software supplied by us, to read or write directly to/from our database;
  - (h) Permit any third party software to be utilised in conjunction with our Software, unless the use of such third party software has been previously approved by us in writing.

**20 TERM AND TERMINATION**

**Practice Software Licence and MPC Licence**

- 20.1 The Practice Software Licence is effective until terminated. You may terminate the Practice Software Licence at any time by destroying the Practice Software, together with all copies in any form.
- 20.2 The MPC Licence is effective until terminated. You may terminate the MPC Licence by giving us not less than 30 days' notice in writing of your intention to terminate the MPC Licence.
- 20.3 We may also terminate the Practice Software Licence and/or the MPC Licence immediately if you:
  - (a) fail to comply with any of these Terms that are not capable of remedy; or
  - (b) go into liquidation or have a receiver or statutory manager appointed or any of your assets or becomes insolvent, or makes any arrangement with your creditors; or
  - (c) fail to comply strictly with these Terms, and where such failure is capable of rectification, you fail to rectify such breach within 14 days of receiving written notice to do so;
- 20.4 You agree upon termination of the Practice Software Licence and/or the MPC Licence by either party to immediately cease using the Practice Software and/or the MPC Software, permanently remove the Practice Software and/or the MPC Software from your Workstations, return all related manuals and documentation to us and destroy the Practice Software and/or the MPC Software together with all copies in any form.
- 20.5 On termination of the Practice Software Licence and/or the MPC Licence you will remain liable for any accrued charges and amounts that become due for payment before or after termination.
- 20.6 If the Practice Software Licence is terminated, our obligation to provide the Support Services shall immediately terminate.
- Termination of the provision of the Support Services**
- 20.7 The minimum term for the provision of the Support Services is one year from the date of the installation of the Practice Software at your Practice, subject to any specific term delineated in the Sales Agreement, which shall prevail.
- 20.8 Subject to clause 20.6, either party may terminate the provision of the Support Services on 30 days prior written notice to the other after the expiry of any delineated minimum term specified in

these Terms, or the Sales Agreement (as the case may be). For the avoidance of any doubt, the termination of the provision of the Support Services does not constitute a termination of the Practice Software Licence and/or the MPC Licence.

- 20.9 If the Support Services are terminated in accordance with clause 20.8, you must pay all fees up to, and including the date of termination.
- 20.10 If you call our support centre after the date of the termination of the provision of the Support Services, you will be charged our then current casual support fees per call.
- 20.11 If the provision of Support Services arrangement is terminated, you will not be entitled to new releases of Practice Software, or upgrades, or updates, free of charge. If for any reason, the Practice Software Licence is terminated by us, the provision of the Support Services will also be deemed to have been terminated as well.
- Termination of the provision of the Patient Communication Services**
- 20.12 Either of us may terminate the provision of the Patient Communication Services on the provision of thirty (30) days written notice. We may also terminate the provision of the Patient Communication Services immediately if you breach a material provision of these Terms.
- Termination of the provision of the RMS Services**
- 20.13 Either of us may terminate the provision of the RMS Services on the provision of thirty (30) days written notice. We may also terminate the provision of the RMS Services immediately if:
  - (a) you breach a material provision of these Terms; or
  - (b) the Independent Reseller Agreement between us and Reputation.com, Inc is terminated.
- Termination of the provision of the CTM Services**
- 20.14 Either of us may terminate the provision of the CTM Services on the provision of thirty (30) days written notice. We may also terminate the provision of the CTM Services immediately if you breach a material provision of these Terms.

**Consequences of termination**

- 20.15 Upon termination of any one or more of the Practice Software Licence, the MPC Licence, the provision of the Support Services, the provision of the Patient Communication Services, the provision of the CTM Services, or the provision of the RMS Services, the following provisions shall apply in respect of that particular licence or service terminated:
  - (a) all rights granted to you in respect of the terminated licence or service (as the case may be) shall cease;
  - (b) you must cease all activities authorised by these terms that relate to the terminated licence or service arrangements (as the case may be);
  - (c) you must immediately return upon request, delete or remove the Practice Software and/or the MPC Software (as the case may be) from all computer equipment in your possession and immediately destroy, or return to us (at its option) all copies of the Practice Software and/or the MPC Software (as the case may be) in your possession, custody or control and, in the case of destruction, certify to us that it has done so.

**21 YOUR RESPONSIBILITIES**

- 21.1 You shall be solely responsible for the protection of your system and associated data by:
  - (a) Performing regular back-ups of your data and software and store same off site;
  - (b) Validating the fidelity and recoverability of your back-ups;
  - (c) Installing and maintaining up-to-date Anti-Virus protection of your data and software;
  - (d) Use trained personnel to operate the Practice Software and/or the MPC Software in accordance with our training recommendations;
  - (e) Promptly notifying us of any error messages or problems with the Practice Software and MPC Software (as the case may be).
- 21.2 You must:
  - (a) Use best endeavours to secure and prevent the unlawful copying of the Practice Software and the MPC Software (as the case may be);
  - (b) Ensure that your premises are properly prepared prior to the implementation of the Practice Software and/or the MPC Software (as the case may be), to a level where the Practice Software and/or the MPC Software can be installed in a manner which ensures performance to specification;
  - (c) Ensure that designated equipment upon which the Practice Software and/or the MPC Software (as the case may be) is to be installed meets or exceeds specifications advised by us;
  - (d) Ensure your employees, subcontractors, or agents who have access to the Practice Software and/or the MPC Software (as the case may be) comply with these terms and conditions and to maintain safe custody of that software;
  - (e) Not access, store, distribute or transmit any viruses to us or any third party during the course of its use of the Practice Software and/or the MPC Software, and whilst you receive any services provided by us under these Terms;
  - (f) not rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Practice Software and/or the MPC Software (as the case may be);
  - (g) not to make alterations to, or modifications of, the whole or any part of the Practice Software and/or the MPC Software (as the case may be);
  - (h) not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Practice Software and/or the MPC Software (as the case may be), nor attempt to do any such things except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Practice Software and/or the MPC Software (as the case may be) with another software program, and provided that the information obtained by you during such activities:
    - (i) is used only for the purpose of achieving inter-operability of the Practice Software and/or the MPC Software (as the case may be) with another software program;
    - (ii) is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
    - (iii) is not used to create any software which is substantially similar to the Practice Software and/or the MPC Software (as the case may be);
  - (iv) to supervise and control use of the Practice Software and/or the MPC Software (as the case may be) (as applicable), the MPC Services and the Support Services and ensure that those software applications and services are used by your employees and representatives in accordance with these Terms;
  - (v) not to provide, or otherwise make available, the Practice Software and/or the MPC Software (as the case may be) in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person other than your employees without our prior written consent;
  - (vi) to notify us as soon as you become aware of any unauthorised use of the Practice Software and/or the MPC Software (as the case may be) by any person;
  - (i) not to deal in any other manner with any or all of its rights and obligations under these Terms without our prior written consent; and

- (j) not to connect, or permit to be connected, any third party software to any part of the Practice Software and/or the MPC Software (as the case may be) without our express prior written consent. This clause shall survive the termination of these Terms.
- 21.3 If our performance of our obligations under these Terms is prevented or delayed by any act or omission of yours or your agents, sub-contractors or employees, you shall in all circumstances be liable to pay to us on demand all reasonable direct costs, charges or losses sustained or incurred by us, subject to us confirming such costs, charges or losses to you in writing.
- 22 PAYMENT**
- 22.1 All payments due to us under these Terms must be settled by the due date. Failure to comply with such requirements will suspend your rights under these Terms until such payments are received.
- 22.2 All sums are to be paid in full without set-off or counterclaim and, except as required by law, free and clear of any deduction for tax or otherwise. All amounts exclude GST or other sales taxes, unless stated otherwise.
- 22.3 If you default in payment of any amounts due to us under these Terms, we may, without prejudice to any other rights or remedies we may have and without liability to you or any other person:
- suspend the provision of the MPC Services, the Support Services, the CTM Services, and the RMS Services;
  - suspend the operation of the Practice Software and/or the MPC Software (as the Case may be);
  - charge interest on any unpaid amount from the due date until the date of actual payment at 5% per annum over the base overdraft facility charged by our bankers from time to time, until the payment is made in full.
- 22.4 All fees and other payments and other payments due to us under these Terms and the Sales Agreement shall be payable by you to us by the manner prescribed in the Sales Agreement. All payments under these Terms and the Sales Agreement shall be due and payable on the date(s) detailed on the Sales Agreement Form (unless the payment date falls on a bank holiday, in which case the payment date may vary), time being of the essence.
- 22.5 All payments payable to us shall become due immediately on termination of these Terms, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under these Terms. We may, without prejudice to any other rights we may have, set off any liability of you to us against any liability of us to you.
- 23 CONFIDENTIALITY**
- 23.1 We will treat all customer data provided by you to us in accordance with these Terms in accordance with:
- the requirements of the Privacy Act 1988 (Cth) and
  - our Privacy Policy found on our Privacy Policy can be found on our website and will be amended from time-to-time.
- 23.2 In the course of fulfilling our obligations under these Terms, we may see your confidential data and/or information. We instruct all of our employees, contractors, officers and other related persons to use their best endeavours to treat such confidential data and/or information as strictly confidential to your practice.
- 23.3 Neither of us may disclose to any third party information regarding the other party's internal relations which a party has become aware of because of these Terms except where the disclosure is required by law. The confidentiality undertakings by us shall survive after the expiration or termination of these Terms.
- 23.4 You must keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us or your agents, and any other confidential information concerning our business or our products which you may obtain. You shall restrict disclosure of such confidential material to such of your employees, agents or sub-contractors as need to know it for the purpose of discharging your obligations to us, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind you.
- 23.5 All materials, equipment and tools, drawings, specifications and data supplied by us to you shall at all times be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good condition by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.
- 23.6 This clause 23 shall survive termination of these Terms.
- 24 RETURNS OF PRACTICE SOFTWARE AND/ OR MPC SOFTWARE**
- 24.1 If you wish to return any Practice Software and/or MPC Software and receive a (partial) credit on the purchase price for that software, then you must first contact our Accounts team. If any hardware is associated with the software, this must be returned before a (partial) credit is authorised.
- 24.2 All returns of Practice Software and MPC Software are granted at our sole discretion.
- 24.3 If any (partial or full) credit is granted by us then we may deduct from that credit a charge in the sum of up to 20% of the original invoiced value of the software being credited.
- 24.4 If you purchased the software in conjunction with a promotion or discounts on other software or services, then the credit may be reduced by the value of the promotion or discounts applied to the total purchase made by you.
- 25 INTELLECTUAL PROPERTY**
- 25.1 You acknowledge that all intellectual property rights in the Practice Software and/or MPC Software (as the case may be) is our sole property and you will not dispute our ownership of such intellectual property rights in any way.
- 25.2 If during the duration of these Terms any new intellectual property is created or invented by either party, such intellectual property shall be our property and the parties each agree to give such reasonable assistance to enable ownership of any new intellectual property to vest in us.
- 25.3 You acknowledge that you have no right to have access to the Practice Software and/or MPC Software in source code form or in unlocked coding or with comments.
- 26 WARRANTIES**
- 26.1 We warrant that:
- The Practice Software and MPC Software is owned exclusively by us or, that we hold a licence for such components that confers on you a clear legal right to use the Practice Software and MPC Software on the number of Workstations indicated in the Sales Agreement, provided that you comply with your obligations under these Terms;
  - We will provide operational software that is ready to use for your dental business. In the event of a material defect being discovered in the software, we will undertake 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 our document entitled "Client's Hardware";
  - Once installed the Practice Software and/or the MPC Software (as the case may be) will, when properly used on an operating system for which it was designed, perform substantially in accordance with the functions described in any supporting documentation supplied by us to you.
- 26.2 Any warranty given by us in respect of the Practice Software and the MPC Software is expressly conditional upon your observance of the operating, security and data control procedures required by the terms of the respective software application. We shall not be responsible for obsolescence of the software or any part thereof that may result from changes in your requirements. We assume no responsibility for the use or superseded, outdated, or uncorrected versions of the software or any part thereof.
- 26.3 To the maximum extent permitted at law, and subject to clauses 24.1 to 24.3 (inclusive), we disclaim all other warranties, either express or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose, non-infringement or title, with regard to the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services. Without limiting the generality of the foregoing, we will have no responsibility for damage or destruction to any computer system, data, information property or equipment.
- 26.4 We shall not in any circumstances be liable to you:
- for failure to provide the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services (as the case may be) in accordance with any timetable detailed in the Sales Agreement, or otherwise;
  - for a failure or delay in providing the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services caused by any act or omission of yours or your customer's agents, sub-contractors or employees; or
  - for a failure or delay in providing the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services caused by any act or omission of a third party;
  - if any defect or fault in the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services (as the case may be) results from you having altered or modified the Practice Software or the MPC Software; or
  - if any defect or fault in the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services (as the case may be) results from you having used the Practice Software or the MPC Software in breach of these Terms.
- 26.5 We:
- do not warrant that your use of the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services will be uninterrupted or error-free; or that the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services and/or the information obtained by you through the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services will meet your requirements;
  - are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the the MPC Services, the Patient Communication Services, the CTM Services and the RMS Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
  - are not responsible for the legality, reliability, integrity, accuracy and/or quality of any data (including, but not limited to, any reports) generated in connection with the Practice Software and the MPC Software, the MPC Services, the Support Services, the Patient Communication Services, the CTM Services and the RMS Services. For the avoidance of doubt, we shall have no liability to you in the event that you suffer loss as a result of its reliance on such data.
- 27 LIMITATION OF LIABILITY**
- 27.1 Neither of us will be liable to the other for any general, special, indirect, or consequential damages, including but not limited to, loss of profits or loss or corruption of data.
- 27.2 Our liability under these terms and conditions shall be limited as follows:
- for claims relating to the Practice Software and the MPC Software, to the software licence fees paid to us;
  - for claims relating to the Support Services, the MPC Services, the Patient Communication Services, the CTM Services and the RMS Services, the fees paid in the month period relating to that particular service prior to the claim first arising;
- 27.3 Where diagnostic assistance is requested from us and it becomes evident that the fault is caused by third party hardware or software and not our software, we reserves the rights to charge for time and costs involved. Such charges will be made at the rate current on the day that assistance is provided.
- 27.4 Notwithstanding any provision of this Contract, the maximum aggregate liability to you under the Contract, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract, shall be limited to an amount equal to the amount of fees that you have paid to us over the immediately preceding 12 month period giving rise to the event causing your claim against us.
- 28 INDEMNITY**
- 28.1 You will pay to us each cost, loss and expense (including legal expenses) incurred or sustained by us as a result of any default by you under these Terms or as a result of us exercising, protecting or otherwise enforcing its rights under these terms and conditions, in each case on demand on a full indemnity basis.
- 29 AUDITS**
- 29.1 We shall be entitled to enter your premises in order to inspect the Practice Software and/or the MPC Software in any reasonable manner during regular business hours to verify your compliance with these terms and conditions.
- 30 ASSIGNMENT**
- 30.1 You shall not have any right to assign any right, title or interest under these Terms without our prior approval in writing.
- 30.2 We may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of our rights and obligations under these Terms. This will not affect your rights or obligations under these Terms.
- 31 EXCLUSION OF STATUTORILY IMPLIED GUARANTEES AND WARRANTIES**
- 31.1 For avoidance of doubt, you confirm and agree that:
- you are acquiring the goods and/or services under these Terms for a business purpose; and

(b) insofar as is permitted by law, all statutorily implied warranties in respect of the provision of goods and services (including but not limited to those statutory guarantees imposed by the Consumer Guarantees Act) are excluded from the arrangements contemplated within these Terms.

**32 FORCE MAJEURE**

32.1 Neither party will be liable under these Terms for a failure to perform their respective obligations under these Terms or at law (excluding any obligation to pay money) if the failure arises from or is in connection with any of the following force majeure events (whether happening in New Zealand or elsewhere), namely any acts of God, refusal of licence or other government act, fire, explosion, accident, industrial dispute, impossibility of obtaining materials, or anything beyond the relevant party's control. You acknowledge and agree that we will not be liable for a failure arising from or in connection with any failure by a network or service provider, or a force majeure event applicable to its employees, suppliers, agents, subcontractors outside of our control.

**33 DISPUTES**

33.1 Either party may require any dispute between the parties arising out of or in connection with these terms and conditions which has not been resolved within 10 working days to be referred to arbitration. The arbitrator will be mutually appointed by the parties. In the event that the parties cannot agree on an arbitrator, the Arbitrator will be appointed by the by the President of the Auckland District Law Society.

33.2 The arbitrator will conduct the arbitration in accordance with those guidelines agreed between the parties or, if the parties cannot agree on those guidelines within 14 days following appointment of the arbitrator, in accordance with the guidelines set by the arbitrator.

33.3 In the event of an arbitration carried out in accordance with clause 31.2:

- (a) The arbitration shall be conducted pursuant to the then current Arbitration Act; and
- (b) The parties' respective responsibilities for the costs of the arbitration shall be determined by the arbitrator.

33.4 The decision of the Arbitrator shall be final and binding on the parties. The provisions of clauses 33.2 to 33.4 will not limit or affect the right of either party to apply to a court at any time for any interim or preliminary relief in respect of the Dispute.

**34 DATA PROTECTION AND SECURITY**

34.1 You acknowledge that we may transfer data about your customers ("Customer Data") to such third parties as are necessary in order for you to use the various software applications and services that we are providing to you.

34.2 You shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

34.3 In the event of any loss or damage to Customer Data, your sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by us or the third parties that it works with in order to provide the various services under these Terms to you. We shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

34.4 If we process any personal data on your behalf when performing our obligations under these Terms, we both record our intention that you shall be the data controller and we shall be a data processor and in any such case:

- (a) you shall ensure that you are entitled to transfer the relevant personal data to us (and third parties that we work with to provide the various services under these Terms) so that we may lawfully use, process and transfer the personal data in accordance with these Terms on your behalf;
- (b) you shall ensure that all relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (c) we and the third parties that we work with to provide the various services under these Terms shall process the personal data only in accordance with these Terms and any lawful instructions reasonably given by you from time to time; and
- (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

34.5 We will not be liable for any claim brought by a data subject arising from any action or omission of ours, to the extent that such action or omission resulted directly from your instructions to us concerning the processing.

**35 DATA USAGE**

35.1 We shall use the Customer Data:

- (a) to offer best practice recommendations to you if applicable;
- (b) for benchmarking exercises; and
- (c) for sales and marketing activity.

**36 COMMUNICATIONS BETWEEN US**

36.1 If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide in the Sales Agreement. You are responsible for notify us of any changes to your address.

36.2 Any notice given by you to us, or by us to you, will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or 3 days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

36.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

**37 NO WAIVER**

37.1 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

**38 INVALIDITY**

38.1 Each paragraph of these Terms operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

38.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.