

## SOFTWARE OF EXCELLENCE UK LIMITED

### GENERAL TERMS AND CONDITIONS

#### SUPPLY OF PRODUCTS AND SERVICES

These are the terms and conditions on which Software of Excellence UK Limited provides its products and/or services to its customers.

The Customer (as defined below) must ensure that it reads these terms and conditions carefully. By submitting the Order (as defined below) or using all or any part of the Application and/or Associated Services (as defined below), the Customer confirms that they understand and agree to be bound by these terms and conditions.

#### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

**"Application"** means the software application(s), database(s), website(s), standard link button(s) or other interface(s) developed, owned or operated by SOE or other third parties to interact with the Software and/or where applicable, the Platform, in order for the Customer to use the Associated Services.

**"Associated Services"** means the services provided via an Application.

**"Authorised Users"** means the maximum number of employees, agents and independent contractors of the Customer specified in the Order or as otherwise agreed in writing, who are authorised to use the Products and/or Services.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**"Confidential Information"** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information including (but not limited to) all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and any other confidential information concerning either party's business, its products or services.

**"Contract"** means the contract between SOE and the Customer for the supply of Products and/or Services in accordance with the Order, these Conditions and any applicable Supplementary Terms together with the Quotation, any proposal, specification and any variations which have been agreed between SOE and the Customer in writing, SOE's charge out rates and other documents as agreed between SOE and the Customer.

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| <b>"Conditions"</b>                   | means these terms and conditions as amended from time to time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Customer"</b>                     | means the person, firm or company who purchases Products and/or Services from SOE and where the context so requires, reference to the 'Customer' shall include its Authorised Users.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>"Customer Data"</b>                | means any and all data inputted by the Customer, Authorised Users or the Customer's employees or third parties (such as dental laboratories) into software used in conjunction with or in connection with the Software, Application and/or the provision of Services (which may include personal information relating to the Customer's patients).                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Data Protection Legislation"</b>  | means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) (" <b>GDPR</b> "); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). |
| <b>"Deliverables"</b>                 | means all products and materials developed by SOE in relation to the Products and/or Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"Effective Date"</b>               | means the date SOE confirms acceptance of the Order or installs the Software and/or Application (as the case may be) or commences supply of the Products and/or Services in accordance with clause 2.5 when a binding contract is entered into between SOE and the Customer.                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"Fee"</b>                          | means the fee to be paid by the Customer for the Products and/or Services, as detailed on the Order or as otherwise agreed between SOE and the Customer in writing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Installation Fee"</b>             | means the fee payable by the Customer to SOE for the installation of the Software and/or Application (as the case may be) as detailed in the Order or as otherwise agreed between SOE and the Customer in writing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Intellectual Property Rights"</b> | <b>Property</b> means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or                                                                                                                                                                                                          |

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|                                | unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world either now or in the future.                                            |
| <b>"Maintenance Release"</b>   | a release of the Software and/or Application which corrects faults, adds functionality or otherwise amends or upgrades the Software and/or Application (as the case may be).                                                                                                  |
| <b>"Marketing Services"</b>    | means the search engine optimisation, keyword advertising, pay per click and other digital marketing services to be provided by SOE to the Customer as detailed in the Order or as otherwise agreed between SOE and the Customer in writing.                                  |
| <b>"Normal Business Hours"</b> | means 8 am to 6 pm, Monday to Friday (excluding bank holidays).                                                                                                                                                                                                               |
| <b>"Order"</b>                 | means the Customer's written acceptance of the Quotation.                                                                                                                                                                                                                     |
| <b>"Platform"</b>              | means where applicable, the cloud based online portal and platform through which it is possible to benefit from the Associated Services.                                                                                                                                      |
| <b>"Privacy Policy"</b>        | means SOE's privacy policy as amended from time to time, the current version of which is located at <a href="http://softwareofexcellence.com/uk">http://softwareofexcellence.com/uk</a> .                                                                                     |
| <b>"Products"</b>              | means the Software, Application and/or other products to be provided by SOE under the Contract as more particularly detailed in the Order or as otherwise agreed between SOE and the Customer in writing.                                                                     |
| <b>"Quotation"</b>             | the written quotation, proposal or project plan (as varied and agreed between SOE and the Customer) detailing the Products and/or Services to be supplied by SOE to the Customer.                                                                                             |
| <b>"Services"</b>              | means the services to be provided by SOE under the Contract which may include Associated Services, Support Services, Marketing Services and/or any other services, as more particularly detailed in the Order or as otherwise agreed between SOE and the Customer in writing. |
| <b>"SOE"</b>                   | means Software of Excellence UK Limited (a company incorporated in England and Wales with company number 02940919 whose registered office address is at Medcare South Bailey Drive, Gillingham Business Park, Gillingham, Kent, ME8 0PZ).                                     |
| <b>"Software"</b>              | means SOE's software as detailed in the Order or as otherwise agreed between SOE and the Customer in writing.                                                                                                                                                                 |
| <b>"Subscription Term"</b>     | has the meaning given in clause 16.1.                                                                                                                                                                                                                                         |
| <b>"Supplementary Terms"</b>   | means the supplementary terms and conditions (where applicable) relating to specific Products and/or Services.                                                                                                                                                                |

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| <b>"Support Services"</b> | means the support and maintenance services provided by SOE to the Customer in accordance with the Support Services Supplementary Terms as detailed in the Order or as otherwise agreed between SOE and the Customer in writing. |
| <b>"VAT"</b>              | means value added tax chargeable under English law for the time being and any similar additional tax.                                                                                                                           |
| <b>"Website"</b>          | means <a href="https://softwareofexcellence.co.uk">https://softwareofexcellence.co.uk</a>                                                                                                                                       |

- 1.2 Clause and paragraph headings shall not affect the interpretation of these Conditions or the Supplementary Terms where applicable.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes e-mail.
- 1.9 References to clauses are to the clauses of these Conditions.

## **2. Application of Conditions**

- 2.1 These Conditions together with the Privacy Policy and any other policies available on the Website, the Order and where applicable, the Supplementary Terms shall:
- 2.1.1 apply to and be incorporated in the Contract; and
- 2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on SOE unless in writing and signed by a duly authorised representative of SOE.
- 2.3 A Quotation shall not constitute an offer, and is only valid for a period of sixty (60) Business Days from the date of issue.

- 2.4 The Order constitutes an offer by the Customer to purchase the Products and/or Services in accordance with these Conditions, the Quotation and any Supplementary Terms (where applicable).
- 2.5 An Order shall only be deemed to be accepted when SOE issues written acceptance of the Order or SOE commences the supply of the Products and/or Services (whichever is the earlier), at which point and on which date the Contract shall come into existence.
- 2.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of SOE which is not set out in the Contract.
- 2.7 If there is any inconsistency between any of the provisions of these Conditions, the Order and the Supplementary Terms (if applicable), the provisions of the Order shall prevail in preference to these Conditions and the Supplementary Terms and the provisions of the Supplementary Terms (where applicable) shall prevail over these Conditions.

### **3. Grant and scope of licence**

- 3.1 Where SOE has agreed to supply Software and/or an Application (as the case may be), in consideration of the Customer agreeing to abide by the terms of the Contract and of the payment of the Fee, SOE shall for the Subscription Term, grant to the Customer a non-exclusive, non-transferable right to permit the Customer and its Authorised Users to use the Software and/or Application, without the right to grant sublicenses, and where applicable, to receive the Associated Services during the Subscription Term solely for the Customer's internal dental business operations.
- 3.2 Where applicable, subject to the payment of the Installation Fee, SOE (or a third party nominated by SOE) will install the Software and/or Application for the Customer at its premises or at another location agreed between the parties.

### **4. Restrictions**

- 4.1 Except as expressly set out in the Contract, the Customer undertakes:
  - 4.1.1 that the maximum number of Authorised Users shall not exceed the number specified in the Order or as otherwise agreed by SOE in writing;
  - 4.1.2 not to allow any other party other than its Authorised Users to use the Software and/or Application;
  - 4.1.3 not to permit any software, other than software supplied by or authorised by SOE to read or write directly to or from the SOE database(s), without SOE's prior written approval;
  - 4.1.4 not to access, store, distribute or transmit any viruses to SOE or any third party during the course of its use of the Software and the Application;
  - 4.1.5 not to and not to permit any third party to copy the Software and/or the Application except where such copying is incidental to the normal use of

the Software and/or the Application or where it is necessary for the purpose of back-up or operational security;

- 4.1.6 not to and not to permit any third party to rent, lease, sub-licence, loan, translate, merge, adapt, vary or modify the Software and/or the Application;
- 4.1.7 not to and not to permit any third party to make alterations to, or modifications of, the whole or any part of the Software and/or the Application;
- 4.1.8 not to and not to permit any third party to connect, or permit to be connected, any third party software to any part of the Software and/or the Application without the express prior written consent of SOE;
- 4.1.9 to supervise and control use of the Software, Application and/or the Associated Services and ensure that the Software, Application and/or the Associated Services are used by the Customer's employees and representatives in accordance with the Contract;
- 4.1.10 not to and not to permit any third party to provide, or otherwise make available, the Software and/or the Application 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 its Authorised Users without the prior written consent of SOE;
- 4.1.11 to notify SOE as soon as it becomes aware of any unauthorised use of the Software and/or Application by any person;
- 4.1.12 not to and not to permit any third party to deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of SOE; and
- 4.1.13 not to and not to permit any third party to exploit, disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software and/or the Application nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software and/or the Application with another software program, and provided that the information obtained by the Customer during such activities:
  - (a) is used only for the purpose of achieving inter-operability of the Software and/or the Application with another software program;
  - (b) is not disclosed or communicated without SOE's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
  - (c) is not used to create any software which is substantially similar or competitive to the Software, the Application and/or Associated Services or a product which uses similar ideas, features, functions or graphics.

- 4.2 The Software and/or Application may incorporate or interact with elements which have been provided by the Customer or a third party, including without limitation, default codes provided by the NHS. Depending on the Customer's existing practice management system and its setup, the utilisation and integration of such elements in or by the Software and/or Application may cause the Software and/or Application to operate incorrectly or inaccurately. The Customer assumes all risk of the integration and interoperability of such elements into its system. SOE makes no representation as to any of the elements being correct, complete, up to date, integrated or otherwise utilisable and excludes all liability including all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law.
- 4.3 The Customer should always refer to the Units of Dental Activity ("UDA") or Units of Orthodontic Activity ("UOA") statements provided by the National Health Services to obtain accurate reports. The UDA and UOA reports in the Software and/or Application 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 and/or Application.

## **5. Access**

- 5.1 The Customer may choose or be provided with, a user identification code, password or any other piece of information as part of SOE's security procedures. The Customer and its Authorised Users must treat such information as confidential and must not disclose it to any third party.
- 5.2 SOE has the right to disable any user identification code or password, whether chosen by the Customer or allocated by SOE, at any time, if in SOE's reasonable opinion the Customer or its Authorised Users have failed to comply with any of the provisions of these Conditions.
- 5.3 If the Customer knows or suspect that anyone other than the Customer or its Authorised Users (as the case may be) know its user identification code or password, it must promptly notify SOE at [Support@soeuk.com](mailto:Support@soeuk.com).
- 5.4 The Customer is solely responsible for all activity occurring under its and its Authorised Users' accounts.

## **6. Associated Services**

- 6.1 This clause 6 applies where SOE has agreed to provide the Associated Services to the Customer.
- 6.2 SOE shall during the Subscription Term, provide the Associated Services to the Customer.
- 6.3 The Associated Services may be updated or enhanced by SOE during the Subscription Term.
- 6.4 SOE shall use commercially reasonable endeavours to make the Associated Services available twenty four (24) hours a day, seven (7) days a week, except for:

6.4.1 planned maintenance carried out at such hours as SOE may notify to the Customer from time to time; and

6.4.2 necessary unscheduled maintenance.

6.5 Subject to the payment of a support fee, SOE will provide the Customer during Normal Business Hours with Support Services in accordance with the Support Services Supplementary Terms.

## **7. SOE's obligations**

7.1 SOE undertakes that the Products will be provided and/or the Services will be performed with reasonable skill and care and in accordance with all applicable laws and regulations in force from time to time.

7.2 Where applicable and subject to the payment of the appropriate fee ("**training fee**"), training services shall be provided by a SOE representative at the Customer's premises. Training services will be scheduled at a time mutually suitable to both parties. In the event of a change or cancellation at the request of the Customer (for whatever reason), the following cancellation charge will be payable by the Customer:

7.2.1 four (4) weeks prior to the agreed date, ten percent (10%) of the training fee unless the full time slot can be re-utilised by SOE;

7.2.2 three (3) weeks prior to the agreed date, forty percent (40%) of the training fee unless the full time slot can be re-utilised by SOE;

7.2.3 two (2) weeks prior to the agreed date, seventy percent (70%) of the training fee unless the full time slot can be re-utilised by SOE; and

7.2.4 one (1) week prior to the agreed date, one hundred percent (100%) of the training fee unless the full time slot can be re-utilised by SOE.

7.3 SOE shall have the right, in its sole discretion, to make any changes to the Products, Services and/or functionality of the Software, Application and/or Associated 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 Products and/or Services, and SOE shall notify the Customer in any such event.

7.4 SOE shall use all reasonable endeavours to meet any performance dates for the Products and/or Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the provision of the Products and/or performance of the Services.

7.5 If the Customer postpones the performance date for the provision of the Products and/or Services or SOE's performance of its obligations under the Contract is otherwise prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, then except where such failure or delay is caused by a Force Majeure Event (as defined in clause 18) or by SOE's failure to comply with its obligations under the Contract, the Customer shall in all circumstances be liable to pay to SOE on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, and loss of opportunity to deploy resources elsewhere), subject to SOE confirming such costs, charges and losses to the Customer in writing.

- 7.6 SOE shall not in any circumstances be liable to the Customer:
- 7.6.1 for failure to provide the Products and/or Services in accordance with any timetable detailed in the Order or otherwise;
  - 7.6.2 for a failure or delay in providing the Products and/or Services caused by any act or omission of the Customer or the Customer's agents, sub-contractors or employees;
  - 7.6.3 for a failure or delay in providing the Products and/or Services caused by any act or omission of a third party;
  - 7.6.4 if any defect or fault in the Software and/or the Application (as applicable) results from the Customer having altered or modified the Software and/or Application;
  - 7.6.5 if any defect or fault in the Software and/or the Application (as applicable) is caused by the Customer's hardware; or
  - 7.6.6 if any defect or fault in the Software and/or Application results from the Customer having used the Software and/or Application in breach of the Contract.
- 7.7 Except as expressly set out in the Contract, SOE:
- 7.7.1 does not warrant that the Customer's use of the Products and/or Services will be uninterrupted or error-free; or that the Products and/or Services and/or the information obtained by the Customer through the Products and/or Services will meet the Customer's requirements;
  - 7.7.2 is 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 the Customer acknowledges that the Products and/or Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
  - 7.7.3 is not responsible for and gives no warranties and makes no representations in relation to the legality, reliability, integrity, accuracy and/or quality of any data (including, but not limited to, any reports) generated in connection with the Products and/or Services which for the avoidance of doubt, includes any data that has been through a conversion process. For the avoidance of doubt, SOE shall have no liability to the Customer in the event that the Customer suffers loss as a result of its reliance on such data.
- 8. Customer's obligations**
- 8.1 The Customer shall provide SOE with:
- 8.1.1 all necessary co-operation in relation to the Products and/or Services; and

8.1.2 in a timely manner, all necessary access to the Customer's premises and such information, office accommodation and other facilities as may be required by SOE in order to install the Software and/or Application or otherwise provide the Products and/or Services and provide security access information and configuration services and inform SOE of all health and safety and security requirements that apply at the Customer's premises.

8.2 The Customer shall:

8.2.1 use all reasonable endeavours to prevent any unauthorised access to or use of the Products and/or Services and in the event of any such unauthorised access or use, promptly notify SOE;

8.2.2 not use the Products and/or Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Conditions, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the Products and/or Services or any operating system;

8.2.3 ensure that it and its agents, sub-contractors and employees do not infringe SOE's Intellectual Property Rights or those of any third party in relation to the Customer's use of the Products and/or Services, including by the submission of any material (to the extent that such use is not licensed by these Conditions);

8.2.4 not transmit any material that is defamatory, offensive or otherwise objectionable in relation to the Customer's use of the Products and/or Services;

8.2.5 implement virus-checking on its system and, unless SOE is hosting the data, back-up its data and have appropriate procedures in place to ensure that its data is backed up regularly in accordance with prudent industry practice and any instructions that SOE may provide;

8.2.6 ensure that its network and system comply with any relevant specifications provided by SOE from time to time;

8.2.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to SOE's data centres and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;

8.2.8 not use the Products and/or Services in a way that could damage, disable, overburden, impair or compromise SOE's systems or security or interfere with other users;

8.2.9 not collect or harvest any information or data from any Products and/or Services or SOE's systems or attempt to decipher any transmissions to or from the servers running any service;

8.2.10 ensure that the terms of the Quotation, Order, scope of work and/or any information provided to SOE in the specification are complete and accurate;

- 8.2.11 ensure that its Authorised Users have been appropriately trained and use the Products and/or Services in accordance with the terms and conditions of the Contract and shall be solely responsible for any Authorised User's breach of the Contract;
  - 8.2.12 ensure that appropriate environmental conditions are maintained for the Software and/or Application;
  - 8.2.13 obtain and maintain all necessary licences, consents and permissions necessary for SOE, its contractors and agents to perform their obligation under the Contract, including without limitation the provision of the Products and/or Services;
  - 8.2.14 comply with all relevant laws and regulations as required to enable SOE to provide the Products and/or Services, the use of the Products and/or Services and the use of the Customer Data;
  - 8.2.15 solely responsible for determining the suitability of the Products and/or Services and of its hardware system;
  - 8.2.16 provide in a timely manner such information as SOE may request, and ensure that such information is accurate in all material respects; and
  - 8.2.17 be responsible (at its own cost) for preparing the relevant premises for the supply of the Products and/or Services.
- 8.3 The Customer shall not, without the prior written consent of SOE, at any time from the date of the Contract to the expiry of twelve (12) months after the termination of the Contract, solicit or entice away from SOE or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of SOE and who has had contact with the Customer during the Contract.
- 8.4 The Customer shall defend, indemnify and hold harmless SOE against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Products and/or Services.
- 9. Charges and payment**
- 9.1 The Customer shall pay to SOE the Fee detailed on the Order or as otherwise agreed between SOE and the Customer in writing. If no price is quoted, the Fee shall be calculated in accordance with SOE's current price list or in accordance with its daily fee rates as amended from time to time (as the case may be).
- 9.2 Where a price has been quoted, this is a best estimate based on the information given to SOE by the Customer and/or which is available at that time and may be based on a number of assumptions. If it materialises that in SOE's reasonable opinion, the information provided and/or assumptions made are incorrect, inaccurate or have changed and/or that the proposed Product and/or scope of Services is not feasible, SOE shall be entitled to charge the Customer for any additional Products and/or Services provided and/or additional Authorised Users to those detailed in the Order together with all related costs and expenses incurred by SOE.

- 9.3 SOE may increase the Fees as from each anniversary of the date of the Contract. Any increase shall be notified to the Customer in writing before such anniversary.
- 9.4 The total Fee shall be paid to SOE in instalments as set out in the Order or as otherwise agreed between the parties.
- 9.5 Unless otherwise agreed, the Fee shall be payable from the Customer to SOE by direct debit or credit card payment. Direct debit and credit card payments will be collected on the date(s) detailed on the Order or otherwise agreed in writing (unless the collection date falls on a bank holiday, in which case the collection date may vary).
- 9.6 On or before the Effective Date the Customer shall provide SOE with valid, up-to-date and complete bank details relating to the bank account from which direct debit payments should be withdrawn or credit card details from which credit card payments should be made. It is the Customer's responsibility to notify SOE of any changes to such bank or credit card details.
- 9.7 SOE shall invoice the Customer for the Fee that is payable together with expenses and costs of materials (and VAT where appropriate) calculated as provided in clause 9.11.
- 9.8 If payment is denied for any reason or the Customer fails to make any payment due to SOE under the Contract by the due date for payment, then, without limiting SOE's remedies under these Conditions, SOE may:
- 9.8.1 charge interest on the overdue amount at the rate of four percent (4%) per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and/or
- 9.8.2 suspend the provision of the Products and/or access to the Services until payment has been made in full.
- 9.9 All payments payable to SOE under the Contract shall become due immediately on termination of the Contract, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 9.10 All amounts due under the Contract shall be paid by the Customer to SOE in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). SOE may, without prejudice to any other rights it may have, set off any liability of the Customer to SOE against any liability of SOE to the Customer.
- 9.11 The Fee contained in the Order excludes:
- 9.11.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by SOE in connection with the Products and/or Services, and the cost of any materials or services reasonably and properly provided by third parties required by SOE for the supply of the Products and/or Services. Such expenses, materials and third party services shall be invoiced by SOE; and

9.11.2 VAT, which SOE shall add to its invoices at the appropriate rate.

9.12 Unless otherwise specified, the Customer shall pay each invoice submitted to it by SOE in full, and in cleared funds, within thirty (30) days of receipt.

9.13 Time for payment shall be of the essence of the Contract.

## **10. Intellectual Property Rights**

10.1 All Intellectual Property Rights and all other rights in the Products, Services and Deliverables shall be owned by SOE or other third party owners unless otherwise agreed in writing by SOE. SOE hereby licenses all such rights to the Customer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Products and/or Services as is envisaged by the parties in accordance with the Contract but the Customer shall have no rights in or to the Products, Services and Deliverables, other than the right to use the Products and/or Services and the Deliverables in accordance with the Contract. Upon termination of the Contract, this licence will automatically terminate.

10.2 Any material or content provided by the Customer to SOE to enable it to perform the Products and/or Services shall remain the sole property of the Customer. The Customer hereby grants to SOE a licence to use such material or content to enable SOE to provide the Products and/or Services in accordance with the Contract.

10.3 The Customer shall indemnify SOE against all damages, losses and expenses arising as a result of any action or claim that the Customer's materials or content infringe the Intellectual Property Rights of a third party.

10.4 The Customer acknowledges that it has no right to have access to the Application, the Software or Associated Services in source code form or in unlocked coding or with comments.

## **11. Data Protection and security**

11.1 This clause 11 and clause 12 together with SOE's Privacy Policy explains how SOE will treat and protect the Customer's and its patients' personal data when it uses SOE's Products and/or Services.

11.2 The following definitions apply:

11.2.1 the terms "data subject", "data controller", "data processor", "processing", "personal data" and "special categories of personal data" bear the respective meanings given them in the Data Protection Legislation;

11.2.2 Customer Data includes personal data and special categories of personal data.

11.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation ("**the General Obligations**").

- 11.4 Without prejudice to the General Obligations, if SOE processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and SOE shall be a data processor.
- 11.5 Without prejudice to the General Obligations:
- 11.5.1 the Customer will ensure that it has all necessary appropriate consents and notices in place as required by the Data Protection Legislation to enable the lawful transfer of personal data (including special categories of personal data) to SOE and third parties that SOE works with to provide the Services and the Associated Services for the duration and purposes of the Contract, so that SOE and the third parties SOE works with may lawfully use, process, store and transfer the personal data and special categories of personal data in accordance with the Contract on the Customer's behalf; and
  - 11.5.2 the Customer acknowledges that the processing, transferring and storage of its and its patients' personal data is necessary to enable SOE to provide and the Customer to use the Products and/or Services in accordance with the Contract.
- 11.6 Without prejudice to the General Obligations, SOE shall in relation to any personal data processed in connection with the performance by SOE of its obligations under the Contract:
- 11.6.1 process that personal data only on the written instructions of the Customer, unless SOE is required by the laws of any member of the European Union or by the laws of the European Union applicable to SOE to process personal data ("**Applicable Laws**"). Where SOE is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, SOE shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit SOE from so notifying the Customer;
  - 11.6.2 only transfer any personal data outside of the European Economic Area in accordance with clause 11.9;
  - 11.6.3 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 11.6.4 ensure that access to the Customer Data to meet SOE's obligations under the Contract is limited to those personnel or authorised

subcontractors who need access to and/or process personal data to meet SOE's obligations under the Contract and that such personnel or authorised subcontractors are obliged to keep the personal data confidential;

- 11.6.5 ensure that all personnel or authorised sub-contractors who have access to and/or process personal data do so only in accordance with the instructions from the Customer for such processing;
- 11.6.6 assist the Customer in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 11.6.7 allow for and contribute to audits, including, inspections, conducted by the Customer or another auditor mandated by the Customer regarding compliance with the Data Protection Legislation;
- 11.6.8 notify the Customer without undue delay on becoming aware of a personal data breach;
- 11.6.9 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- 11.6.10 inform the Customer immediately if, in SOE's opinion, any instruction given to it by the Customer infringes Data Protection Legislation,

(collectively "**SOE's Commitments**").

- 11.7 SOE shall maintain complete and accurate records and information to demonstrate its compliance with SOE's Commitments and shall make them available to the Customer on demand.
- 11.8 SOE shall keep such records as necessary to comply with Articles 30(2) and 30(3) (ignoring Article 30(5)) of the GDPR.
- 11.9 The Customer acknowledges and agrees that personal data may be transferred or stored outside the European Economic Area as is necessary in order for the Customer to use the Products and/or Services in accordance with the Contract and/or to enable SOE to discharge its obligations under the Contract. SOE shall not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled:
  - 11.9.1 an adequacy decision has been made by the European Commission in relation to that third country; or
  - 11.9.2 in the absence of an adequacy decision referred to in clause 11.9.1, SOE shall ensure that:
    - (a) the Customer or SOE have provided appropriate safeguards in relation to the transfer;

- (b) the data subject has enforceable rights and effective legal remedies;
  - (c) in relation to any third party to whom personal data may be transferred (where applicable):
    - (i) the third party complies with its obligation under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferring;
    - (ii) the third party complies with reasonable instructions notified to it in advance by SOE and/or the Customer with respect to processing personal data.
    - (iii) SOE has entered or (as the case may be) will enter with the third-party processor (where applicable) into a written agreement incorporating terms which are substantially similar to those set out in this clause 11;
    - (iv) SOE informs the Customer of any intended changes concerning the additional or replacement of such third parties; and
    - (v) as between the Customer and SOE, SOE shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.
- 11.10 To the extent that it is necessary to enter into EU Standard Contractual Clauses (“**SCCs**”) which relate to the transfer of personal data to processors established in third countries in order to comply with the GDPR, the Customer hereby authorises SOE to enter into SCCs with SOE’s business partners, suppliers or sub-contractors in the Customer’s name and on its behalf. SOE will make the executed SCC available to the Customer on request.
- 11.11 The scope, nature and purpose of processing, the duration of the processing and the types of personal data and categories of data subject as applicable to the Contract are set out in the Privacy Policy.
- 11.12 SOE may, at any time on not less than thirty (30) days’ notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme which shall apply when replaced by attachment to the Contract.
- 12. Customer Data**
- 12.1 SOE may use the Customer Data:
- 12.1.1 to discharge its obligations in accordance with the Contract;
  - 12.1.2 to offer best practice recommendations to the Customer if applicable;
  - 12.1.3 for benchmarking exercises; and

- 12.1.4 for sales and marketing activity, specifically Product updates, educational material (whitepapers/seminars/webinars) or annual business reviews. The Customer has a right at any time to stop SOE contacting it for sales and marketing purposes. If the Customer does not wish to receive sales and marketing material, it can contact SOE at [contactus@soeuk.com](mailto:contactus@soeuk.com).
- 12.2 The Customer or its licensors 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.
- 12.3 If SOE on its own or through any third party has notice that Customer Data stored by the Customer or its Authorised Users is in breach of a law or infringes third party rights, SOE may in its discretion without liability to the Customer or its Authorised Users and without prior notice, immediately suspend the Customer's access to the Software, the Application and the Customer Data. SOE shall notify the Customer of such action as soon as reasonably practicable.
- 12.4 Except to the extent otherwise provided in these Conditions, SOE shall not have any liability for any loss or damage of Customer Data nor for the unreliability or any inaccuracies of such Customer Data occurring during any conversion process and in the event of any loss, damage, unreliability or inaccuracy to Customer Data, the Customer's sole and exclusive remedy shall be for SOE to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by SOE or the third parties that it works with in order to provide the Services. SOE shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 13. Confidentiality and SOE's property**
- 13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
- 13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 13.1.2 was in the other party's lawful possession before the disclosure;
- 13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 13.2 Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- 13.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

- 13.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.6 The Customer acknowledges that details of the Products and/or Services, and the results of any performance tests of the Products and/or Services, constitute SOE's Confidential Information.
- 13.7 SOE acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.8 All materials, equipment and tools, drawings, specifications and data supplied by SOE to the Customer shall at all times be and remain the exclusive property of SOE, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to SOE, and shall not be disposed of or used other than in accordance with SOE's written instructions or authorisation.
- 13.9 This clause 13 shall survive termination of the Contract, however arising.

**14. Third party providers**

The Customer acknowledges that the Products and/or Services may enable or assist it to access the website content of and correspond with third parties via third-party websites and/or application programming interfaces (API) and that it does so solely at its own risk. SOE makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website.

**15. Limitation of liability**

- 15.1 This clause 15 sets out the entire financial liability of SOE (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 15.1.1 arising under or in connection with the Contract;
  - 15.1.2 in respect of any use made by the Customer of the Products and/or Services; and
  - 15.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 15.2 Except as expressly and specifically provided in these Conditions:

Software of Excellence UK Ltd  
GENERAL TERMS AND CONDITIONS

- 15.2.1 the Customer assumes sole responsibility for results obtained from the use of the Products and/or Services by the Customer, and for conclusions drawn from such use. SOE shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to SOE by the Customer in connection with the Products and/or Services, or any actions taken by SOE at the Customer's direction;
  - 15.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
  - 15.2.3 the Products and/or Services are provided to the Customer on an "as is" basis.
- 15.3 Nothing in the Contract excludes the liability of SOE:
- 15.3.1 for death or personal injury caused by SOE's negligence;
  - 15.3.2 for fraud or fraudulent misrepresentation; or
  - 15.3.3 any other liability which cannot be excluded by law.
- 15.4 Subject to clause 15.2 and clause 15.3:
- 15.4.1 SOE shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
    - (a) loss of profits; or
    - (b) loss of business; or
    - (c) depletion of goodwill or similar losses; or
    - (d) loss of anticipated savings; or
    - (e) loss of goods; or
    - (f) loss of contract; or
    - (g) loss of use; or
    - (h) loss or corruption of data or information; or
    - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,
  - 15.4.2 SOE's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance

of the Contract shall be limited to total Fee paid for the Products and/or Services during the six (6) months immediately preceding the date on which the claim arose.

**16. Duration and Termination**

- 16.1 Unless otherwise specified in the Order or otherwise agreed in writing by SOE, the Contract shall commence on the Effective Date and shall continue until either party terminates the Contract in accordance with clause 16.2 or SOE terminates the Contract in accordance with clause 16.3 ("**Subscription Term**").
- 16.2 Either party may terminate the Contract at any time by serving at least thirty (30) days' notice to terminate on the other party.
- 16.3 SOE may terminate the Contract immediately by written notice to the Customer if the Customer commits a material or persistent breach of the Contract which it fails to remedy (if remediable) within fourteen (14) days after the service of written notice requiring it to do so.
- 16.4 Upon termination for any reason:
- 16.4.1 all rights granted to the Customer under the Contract shall cease;
  - 16.4.2 the Customer must cease all activities authorised by the Contract; and
  - 16.4.3 the Customer must immediately return upon request, delete or remove the Software and/or Application (as the case may be) from all computer equipment in its possession and immediately destroy or return to SOE (at its option) all copies of the Software and/or Application then in the Customer's possession, custody or control and, in the case of destruction, certify to SOE that it has done so.
- 16.5 To the extent permitted by law, where the Fees have been pre-paid or for a fixed term, the Fees are non-refundable and unless SOE otherwise agrees in writing, SOE does not provide refunds or credits for any partial months of use of the Products and/or Services.

**17. Notices**

- 17.1 Any notice given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office.
- 17.2 Any notice shall be deemed to have been received:
- 17.2.1 in the case of a notice given by SOE to the Customer, immediately when posted on the Website;
  - 17.2.2 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

17.2.3 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

17.3 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. Notwithstanding this, the parties may communicate in respect of any other matter referred to in the Contract (other than notices) by e-mail (unless specified otherwise).

## **18. Force majeure**

SOE shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of SOE or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors ("**Force Majeure Event**"), provided that the Customer is notified of such an event and its expected duration. In such circumstances, SOE may in its discretion determine whether the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed and/or terminate the Contract by giving ten (10) days' written notice to the Customer.

## **19. Changes to these Conditions**

19.1 SOE may need to change these Conditions to reflect changes in law or best practice or to deal with additional features which SOE introduces.

19.2 From time to time, SOE may automatically update or change the Products and/or Services to improve performance, enhance functionality, changes to the operating system, platform support or hardware specification or to address security issues or make Maintenance Releases available to the Customer. Alternatively SOE may ask the Customer to update the Products and/or Services (as the case may be) for these reasons.

19.3 Except in the case of emergency, SOE will give the Customer at least thirty (30) days' notice of any material change with details of the change or notify the Customer of a change when it next starts the Software and/or Application (as the case may be).

19.4 If the Customer does not accept the notified changes or chooses not to install such updates or Maintenance Release, the Customer may continue to use the Software and/or where applicable, the Application, in accordance with the existing terms but certain new features may not be available to the Customer including fee updates that may get issued.

**20. Other important terms**

- 20.1 SOE may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract. This will not affect the Customer's rights or obligations under the Contract.
- 20.2 The Customer shall not, without the prior written consent of SOE, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.3 If SOE fails to insist that the Customer performs any of its obligations under the Contract, or if SOE does not enforce its rights against the Customer, or if SOE delays in doing so, that will not mean that SOE has waived its rights against the Customer and will not mean that the Customer does not have to comply with those obligations. If SOE does waive a default by the Customer, it will only do so in writing, and that will not mean that SOE will automatically waive any later default by the Customer.
- 20.4 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 20.5 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 20.6 Any provision of these Conditions or the Supplementary Terms (where applicable) that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract, shall remain in full force and effect.
- 20.7 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 20.8 No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 20.9 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 20.10 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 20.11 The Contract, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. The Customer and SOE agree to submit to the exclusive jurisdiction of the courts of England and Wales.