



## END USER TERMS

### Welcome!

We are so glad you are using virtuaden. We are proud to offer an all-in-one system that allows patients to book in video consultations with their dentist.

### DISCLAIMER

Our platform does not offer any medical advice, treatments or diagnoses. You acknowledge and agree that nothing on the Site or in the Services we provide may be taken to be medical advice, treatment or a diagnosis by us or our Personnel.

### 1 Acceptance

- 1.1 DF Marketing Pty Ltd ABN 84 619 879 097 (**we, us or our**) operates the all-in-one system that allows patients to book in video consultations with their dentist (**Services**). The Services are accessible at the address your dentist provided to you, and may be available through other addresses and channels (**Site**). We will provide the Services in accordance with these Terms.
- 1.2 These terms and conditions (**Terms**):
  - (a) set out the terms and conditions upon which we agree to grant you a right to use the Services; and
  - (b) are binding on you from the date on which you accept these Terms (**Effective Date**) until the date on which these Terms are terminated in accordance with the terms (**Term**).
- 1.3 You accept these Terms by clicking a box indicating your acceptance.
- 1.4 By accepting these Terms, you warrant to us that you have the legal capacity to enter into a legally binding agreement or (if you are under 18 years of age (a **Minor**)) you have your parent's or legal guardian's permission to access and use the Services and they have agreed to these Terms on your behalf. If you are a parent or legal guardian allowing a Minor to access and/or use the Services, you agree to: (1) supervise the Minor's use of the Services, (2) assume all risks associated with, and liabilities resulting from, the Minor's use of the Services, (3) ensure that the content on the Site is suitable for the Minor, (4) ensure all information submitted to us by the Minor is accurate and (5) provide the consents, representations and warranties contained in these Terms on the Minor's behalf.

### 2 Set-up

- 2.1 After you have booked an appointment, you will receive an email at the address you provided when booking the appointment, confirming the appointment time and instructions on what you will need to do or provide to your dentist prior to your appointment. You will receive reminders leading up to your appointment at the contact details you provided when booking the appointment.
- 2.2 If you are a Minor, your parent or legal guardian must be present at your appointment with you.
- 2.3 For your appointment, you will be required to use Third Party Inputs and you are responsible for using these Third Party Inputs in accordance with clause 4.
- 2.4 The Services do not facilitate payment between you and your dentist, and your dentist is solely responsible for arranging any payment externally to the Services and the Site. The cancellation of any appointments is strictly a matter between you and your dentist.
- 2.5 We do not guarantee that a video consultation is the best course of treatment for your particular dental concern. Your dentist has the sole discretion of deciding whether or not a video consultation is appropriate, whether or not to provide a video consultation, and to determine any ongoing treatments that may be required. Certain treatments cannot be provided via video consultations and your dentist may advise you if an alternative method of delivering their services is required.
- 2.6 You must ensure that any information you provide to us, or we request from you, is complete and accurate and you are authorised to provide this information to us. You warrant that when booking an appointment, you have checked the date and time, and that you can attend your appointment at your selected date and time.

### 3 Licence and restrictions on use

- 3.1 Subject to your compliance with these Terms, we grant you a non-exclusive, non-transferable, non-sublicensable and revocable licence to access and use the Services for the Term, for your use of the Services, as contemplated by these Terms (**Licence**).
- 3.2 You must not access or use the Services except as permitted by the Licence and you must not (and must not permit any other person to) use the Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property Rights, including to;
- (a) use the Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (b) use the Services in any way that damages, interferes with or interrupts the supply of the Services;
  - (c) introduce malicious programs into our software or Systems, including viruses, ransomware, malware, trojan horses and e-mail bombs;
  - (d) carry out security breaches or disruptions of a network, including accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
  - (e) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Services;
  - (f) if applicable, send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages, or use the Services in breach of any person's privacy (such as by way of identity theft or "phishing"); or
  - (g) circumvent user authentication or security of any of our Services, networks, accounts or hosts or those of our other users.

### 4 Third Party Inputs

- 4.1 You agree that the provision of the Services may be contingent on, or impacted by, Third Party Inputs.
- 4.2 You agree that the Services may include Third Party Inputs that may interface, or interoperate with, the Services, including third party software or services.
- 4.3 To the extent that you use such Third Party Inputs, you are responsible for:
- (a) reviewing the terms and conditions;
  - (b) meeting the requirements; and
  - (c) adhering to the licensing obligations,
- of the applicable Third Party Input, including third party software and services.
- 4.4 You agree that the benefit of the Third Party Input's interface, or interoperation with, the Services, is subject to your compliance with clause 4.3.

### 5 Privacy and Communication

- 5.1 We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under these Terms.
- 5.2 You agree that we may use any contact details you provide to us, such as your phone number or email address, to send you alerts about the Services and reminders of upcoming appointments. It is solely your responsibility to ensure your contact details are correct and up-to-date.
- 5.3 You warrant that you have obtained the consent of any third person whose Personal Information you provide to us.

### 6 Intellectual Property Rights

- 6.1 You agree that all Intellectual Property Rights:
- (a) in the Services; and

- (b) in the Intellectual Property developed, adapted, modified or created by us, or our Personnel (including in connection with these Terms or the Services); and
  - (c) in any Feedback,
- will at all times vest, or remain vested, in us. To the extent that ownership of the Intellectual Property Rights does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.
- 6.2 You agree that we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any Feedback.
- 6.3 You must not, whether directly or indirectly, without our prior written consent:
- (a) copy or use, in whole or in part, any of our Intellectual Property;
  - (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
  - (c) breach any Intellectual Property Rights connected with the Services, including altering or modifying any of our Intellectual Property;
  - (d) cause any of our Intellectual Property to be framed or embedded in another website; or create derivative works from any of our Intellectual Property;
  - (e) sub-license or make available the Services to third parties; and
  - (f) “frame”, “mirror” or serve any of the Services on any web server or other computer server over the Internet or any other network.
- 6.4 This clause 6 will survive the termination or expiry of these Terms.

## 7 Data

- 7.1 You grant us a limited licence to copy, transmit, store or otherwise access the Data during the Term and for a reasonable period after the Term to supply the Services to you.
- 7.2 You must, at all times, ensure the integrity of the Data and that your provision of, and use of the Data is compliant with all Laws.
- 7.3 You represent and warrant that:
- (1) you have obtained all necessary rights to provide all your Data to us and to grant the rights granted to us in these Terms;
  - (2) the Data is accurate and complete;
  - (3) the Data (and its transfer to and use by us as authorised by you) under these Terms does not violate any Laws or rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity; and
  - (4) any use, collection and disclosure authorised in these Terms is not inconsistent with the terms of any applicable privacy policies.
- 7.4 We assume no responsibility or Liability for the Data. You are solely responsible for the Data and the consequences of using, disclosing, storing or transmitting it.
- 7.5 You acknowledge and agree that the operation of the Services is reliant on the accuracy of the Data, and the provision of inaccurate or incomplete Data by you may affect the operation of the Services.

## 8 Warranties

- 8.1 You warrant and agree that:
- (a) there are no legal restrictions preventing you from entering into these Terms;
  - (b) all information you provide to us is true, accurate and complete;
  - (c) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;
  - (d) the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without prior written consent;

- (e) you will not use the Services for any illegal purpose;
- (f) you have reviewed these Terms, including our Privacy Policy, and you understand them and will use the Services in accordance with them; and
- (g) you have all the hardware, software and services which are necessary to access and use the Services.

## 9 Australian Consumer Law

- 9.1 Certain legislation, including the ACL, and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**).
- 9.2 Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL.
- 9.3 This clause 9 will survive termination or expiry of these Terms.

## 10 Indemnities

- 10.1 Except to the extent that the Liability arose from our negligent acts or omissions or any of our Personnel, you indemnify us and our Personnel against all Liability that we or any of our Personnel may sustain or incur as a result, whether directly or indirectly, of:
- (a) your breach of these Terms;
  - (b) your negligent, unlawful or wilful acts or omissions in connection with these Terms.

## 11 Limitations on Liability

- 11.1 Despite anything to the contrary (except for clause 10) and to the maximum extent permitted by law:
- (a) we will not be liable for any Consequential Loss;
  - (b) our liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by your acts or omissions; and
  - (c) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Services to you or, in our sole discretion, to us paying you \$10.
- 11.2 This clause 11 will survive termination or expiry of these Terms.

## 12 Exclusions to Liability

- 12.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability, caused or contributed to by, arising from or connected with:
- (a) your acts or omissions;
  - (b) loss of, or damage to, any property or any injury to or loss to any person;
  - (c) your Computing Environment;
  - (d) any use or application of the Services by a person other than you, or other than as reasonably contemplated by these Terms;
  - (e) any work, services, goods, materials or items which do not form part of the Services, or which have not been provided by us;
  - (f) any Third Party Inputs;
  - (g) the Services being unavailable, or any delay in us providing the Services to you, for whatever reason; and/or
  - (h) any event outside of our reasonable control.
- 12.2 You acknowledge and agree that:
- (a) you use the Services and any associated programs and files at your own risk;
  - (b) we may use third party service providers to integrate with the Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without Liability;

- (c) the Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third party products, facilities or services;
- (d) we do not guarantee that any file or program available for download from the Services is free from viruses; and
- (e) we may pursue any available equitable or other remedy against you if you breach any provision of these Terms.

12.3 This clause 12 will survive termination or expiry of these Terms.

### 13 Termination

13.1 Either Party may terminate these Terms at any time by giving 14 days' notice in writing to the other Party.

13.2 Upon expiry or termination of these Terms:

- (a) we will immediately cease providing the Services; and
- (b) any appointments booked through the Services may be cancelled.

13.3 This clause 13 will survive the termination or expiry of these Terms.

### 14 General

14.1 **Access:** The Services may be accessed in Australia and overseas. We make no representation that the Services comply with the Laws (including Intellectual Property Laws) of any country outside of Australia. If you access the Services from outside Australia, you do so at your own risk and you are responsible for complying with the Laws in the place you access the Services.

14.2 **Amendment:** We may update these Terms at any time. Where we update these Terms we will notify you via email. If you do not agree with any amendment you may terminate these Terms in accordance with clause 13.1.

14.3 **Dispute:** If a dispute arises, the Parties will agree to meet in good faith to seek to resolve the issue, before proceeding to any dispute resolution process. This will not prevent a Party from seeking urgent equitable relief.

14.4 **Governing law:** These Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

14.5 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

14.6 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.

### 15 Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in these Terms, and:

**ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, as amended, from time to time;

**Computing Environment** means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise;

**Data** means the information and other Intellectual Property or data inputted by you into the Services, stored by the Services, or generated by the Services as a result of your use of the Services;

**Feedback** means any idea, suggestion, recommendation or request by you, whether made verbally, in writing, directly or indirectly, in connection with the Services;

**Intellectual Property** means any copyright, registered and unregistered trade marks, designs (whether or not registered or registrable), domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts,

software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing;

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property;

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with these Terms or the provision of the Services, and includes the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth);

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise;

**Personal Information** is defined in the *Privacy Act 1988* (Cth) and also includes any similar term as defined in any other privacy law applicable to you;

**Personnel** means any of our employees, consultants, suppliers, subcontractors or agents;

**Privacy Policy** means any privacy policy set out on our Site;

**System** means all hardware, software, networks and other IT systems used by a Party from time to time, including a network; and

**Third Party Inputs** means third parties or any services provided by third parties, including customers, end users, suppliers, or other subcontractors which the provision of the Services may be contingent on, or impacted by.

**For any questions and notices, please contact us at:**

DF Marketing Pty Ltd (ABN 84 619 879 097)

Email: [privacy@dentalfocus.com](mailto:privacy@dentalfocus.com)

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