



## TERMS AND CONDITIONS

### Welcome!

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

### DISCLAIMER

Our platform does not offer any medical advice, treatments or diagnoses to your patients. 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.

You are responsible for seeking independent advice on your responsibilities under Australian Privacy Principles in the *Privacy Act 1988* (Cth) and we have no obligations to you regarding your implementation or application of such advice.

### 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 [virtuaden.com](https://virtuaden.com), 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 your Account and these Terms are terminated in accordance with the terms (**Term**).
- 1.3 You accept these Terms by clicking a box indicating your acceptance.

### 2 Set-up and Accounts

- 2.1 After receiving your request for an Account, We will communicate with you via Whatsapp and Zoom to set up your Account. We may choose to accept or reject your request for an Account at any time.
- 2.2 The Account we create for you will enable you to access and use the Services. You will be required to sign up to Third Party Inputs (which we will recommend to you on the Site, but which you are under no obligation to use) and you are responsible for using these Third Party Inputs in accordance with clause 4.
- 2.3 We will create a customised landing page for you which integrates with Third Party Inputs, separate to your main web page (if any), which your patients can use to book an appointment with you (**Landing Page**). We will prompt you to provide information specific to you and/or your dental practice which we will then add to your Landing Page.
- 2.4 Once your Landing Page is set up, we will provide you with an email template that links to your Landing Page, and you must then send an email to your existing patients announcing that you now offer video consultations. Patients can then use the calendar tool on your Landing Page to book an appointment with you. Patients will be emailed instructions about the information they will need to provide to you prior to their appointment. We will send reminders to your patients on your behalf leading up to their appointment. If you or any of your Personnel choose to communicate with patients prior to their appointment, including to triage the patient, you acknowledge that we take no responsibility for such communication or triage.
- 2.5 The Services do not facilitate payment between you and your patients and you are responsible for arranging any payment for appointments externally to the Services and the Site. The cancellation of any appointments is strictly a matter between you and your patients.
- 2.6 You must ensure that any information you provide to us, or we request from you, for your Account and Landing Page, is complete and accurate and you are authorised to provide this information to us.
- 2.7 It is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account.
- 2.8 We are not responsible for the management or administration of your Account or your patients, and we are not responsible for your patient management system.

### 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) downloading;
  - (b) reviewing the terms and conditions of;
  - (c) meeting the requirements of; and
  - (d) meeting 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 You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Customer Data.
- 5.2 You must, and must ensure that your Personnel, comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any privacy or anti-spam Laws applicable to you in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with these Terms.
- 5.3 We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under these Terms.

### 6 Confidential Information

- 6.1 Each Receiving Party agrees:

- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
  - (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
  - (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
- 6.2 The obligations in clause 6.1 do not apply to Confidential Information that:
- (a) is required to be disclosed in order for the Parties to comply with their obligations under these Terms;
  - (b) is authorised to be disclosed by the Disclosing Party;
  - (c) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms; or
  - (d) must be disclosed by Law or by a regulatory authority, including under subpoena.
- 6.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 6. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 6.
- 6.4 This clause 6 will survive the termination of these Terms.

## 7 Intellectual Property Rights

- 7.1 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);
- 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.
- 7.2 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials, solely for the purposes for which they were developed and for the performance of our obligations under these Terms, as contemplated by these Terms.
- 7.3 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.
- 7.4 This clause 7 will survive the termination or expiry of these Terms.

## 8 Customer Data

- 8.1 You grant us a limited licence to copy, transmit, store or otherwise access the Customer Data during the Term and for a reasonable period after the Term to supply the Services to you.
- 8.2 You must, at all times, ensure the integrity of the Customer Data and that your provision of, and use of the Customer Data is compliant with all Laws.
- 8.3 You represent and warrant that:
- (1) you have obtained all necessary rights to provide all your Customer Data to us and to grant the rights granted to us in these Terms;

- (2) the Customer Data is accurate and complete;
  - (3) the Customer 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.
- 8.4 We assume no responsibility or Liability for the Customer Data. You are solely responsible for the Customer Data and the consequences of using, disclosing, storing or transmitting it. It is your responsibility to back up the Customer Data.
- 8.5 You acknowledge and agree that the operation of the Services is reliant on the accuracy of the Customer Data, and the provision of inaccurate or incomplete Customer Data by you may affect the operation of the Services.

## 9 Warranties

### 9.1 You warrant and agree that:

- (a) there are no legal restrictions preventing you from entering into these Terms;
- (b) you are not insolvent;
- (c) you will cooperate with us and provide us with all assistance, information and access that is reasonably necessary to enable us to provide the Services and that all information you provide to us is true, accurate and complete;
- (d) 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;
- (e) 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;
- (f) you will be responsible for the use of any part of the Services, and you must ensure that no person uses any part of the Services to break any Law or infringe any person's rights (including Intellectual Property Rights) or in any way that damages, interferes with or interrupts the supply of the Services;
- (g) you have reviewed these Terms, including our Privacy Policy, and you understand them and will use the Services in accordance with them; and
- (h) you have all the hardware, software (including telemedicine software) and services which are necessary to access and use the Services.

## 10 Australian Consumer Law

- 10.1 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**).
- 10.2 Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL.
- 10.3 This clause 10 will survive termination or expiry of these Terms.

## 11 Indemnities

- 11.1 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 or your Personnel's breach of these Terms;
  - (b) your or your Personnel's negligent, unlawful or wilful acts or omissions in connection with these Terms.

## 12 Limitations on Liability

- 12.1 Despite anything to the contrary (except for clause 11) 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 the acts or omissions of you (or any of your Personnel); 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.

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

### 13 Exclusions to Liability

13.1 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 or your Personnel's acts or omissions, or those of your patients;
- (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.

13.2 You acknowledge and agree that:

- (a) you are responsible for all users using the Services, including your Personnel;
- (b) you use the Services and any associated programs and files at your own risk;
- (c) 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;
- (d) 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;
- (e) we do not guarantee that any file or program available for download from the Services is free from viruses; and
- (f) we may pursue any available equitable or other remedy against you if you breach any provision of these Terms.

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

### 14 Termination

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

14.2 These Terms will terminate immediately upon written notice by:

- (a) us, if:
  - (1) you (or any of your Personnel) breach any provision of these Terms and that breach has not been remedied within 10 Business Days of being notified by us;
  - (2) you fail to provide us with clear or timely instructions or information to enable us to provide the Services; or
  - (3) for any other reason outside our control which has the effect of compromising our ability to provide the Services; and
- (b) you, if we are in breach of a material term of these Terms, and that breach has not been remedied within 10 Business Days of being notified by you.

14.3 Upon expiry or termination of these Terms:

- (a) we will immediately cease providing the Services;
- (b) we will remove your Landing Page;

- (c) we will be entitled to permanently delete all Customer Data within 1 month from expiry or termination of these Terms;
- (d) pursuant to clauses 14.2(a)(1), (2) or **Error! Reference source not found.**, you also agree to pay us additional costs arising from, or in connection with, such termination; and
- (e) immediately return (where possible) or delete or destroy (where not possible to return), any of our property (including any of our Confidential Information and Intellectual Property).

14.4 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

14.5 This clause 14 will survive the termination or expiry of these Terms.

## 15 General

15.1 **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.

15.2 **Amendment:** We may update these Terms at any time. Where we update these Terms we will notify you via an in-Account notification or via email. If you do not agree with any amendment you may terminate these Terms in accordance with clause 14.1.

15.3 **Assignment:** A Party must not assign or deal with the whole or any of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

15.4 **Dispute:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

15.5 **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.

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

15.7 **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.

## 16 Definitions

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

**Account** means an account accessible to you to use the Services;

**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;

**Business Day** means a day on which banks are open for general bank business in Victoria, excluding Saturdays, Sundays and public holidays;

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

**Confidential Information** includes information which:

- (a) is disclosed to the Receiving Party in connection with these Terms at any time;
- (b) is prepared or produced under or in connection with these Terms at any time;
- (c) relates to the Disclosing Party's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information;

**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;

**Customer Data** means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel or your patients into the Services or stored by the Services or generated by the Services as a result of your use of the Services;

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party;

**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, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents;

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

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party;

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

**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; and

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Effective Date and/or developed by or on behalf of you or your Personnel independently of these Terms.

**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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