

# Application Terms Of Service

This Application Terms of Service ("TOS") is between Orasphere Limited ("Orasphere"), a company registered in the Canadian Province of Alberta whose principal place of business is located at Suite 303, 1109 - 17th Avenue SW, Calgary, Alberta, Canada T2T - 5R9, and the individual or entity ("Client") named on one or more Order Forms, Electronic Web Order or Subscription and Services Agreements between the Client and Orasphere. The Order Form(s) and/or Subscription and Services Agreements together with the TOS constitute the Agreement between the Parties and apply to each Hosted Program and to all Services provided by Orasphere under the Agreement. When executed by the Parties, an Order Form shall evidence the Hosted Program Subscription Rights Granted and the Services to be provided.

## 1. DEFINITIONS

1.1. "Activation Date" shall be the date on which the Client is delivered the Code Snippet to use the Hosted Programs.

1.2. "Host Server" shall mean the server provided by Orasphere or its agent through which Client accesses the Hosted Programs, identified by a sample code or URL and any accounts or passwords as provided.

1.3. "Hosted Programs" shall mean the computer software in object code form and all associated videos, pictures, and media owned or provided by Orasphere for which Client has Subscription Rights Granted pursuant to the Agreement, updates and upgrades to the Hosted Programs, and online documentation.

1.4. "Order Form(s)" shall mean the document(s) in paper or electronic form, by which Client orders Hosted Program subscriptions and Services, and which are agreed to by the Parties.

1.5. "Services" shall mean Hosting Services, Electronic Services, Support Services or other services specifically identified in an Order Form.

1.6. "Parties" shall mean "Orasphere" and the "Client"

1.7. "Code Snippet" shall mean such code, delivered to Client, which allows the Hosted Programs to be integrated into the Client's website thereby allowing the Orasphere Hosted Programs to operate on the domain name provided by Client.

## 2. USE OF HOSTED PROGRAMS

### 2.1. Subscription Rights Granted

A. In consideration of monthly subscription fees set forth in any valid Order Form(s), Orasphere grants to Client a non-exclusive, non-transferable right ("Subscription") for the specific website defined in the Order Form(s). Client shall be entitled to use the Hosted Programs as follows: (i) to assign access rights to the Hosted Programs on the Host Server solely through a single instance of the Client's dental office web site. (ii) to use the Documentation provided with the Hosted Programs (online or otherwise) in support of Client's authorized use of the Hosted Programs. The Hosted Programs are solely for the use of the Client in providing education to his/her/its patients. The Client is not entitled to provide the Hosted Program for the benefit of any other websites or non-subscribing dental offices except for that defined within the Order Form(s). Doing so constitutes material breach of contract.

B. Client agrees not to download the Hosted Programs or cause or permit the Hosted Program to be subject to reverse engineering, assembly and/or compilation.

C. As between the Parties, Orasphere retains all title, copyright, and other proprietary rights in the Hosted Programs. Client does not acquire any rights, express or implied, in the Hosted Programs, other than those specified in the Agreement.

2.2. Verification. Orasphere or its agents shall have the right to monitor use of the Hosted Programs by Client: (i) electronically at any time; or (ii) by on-site audit of Client's use of the Hosted Programs not more than once per year upon reasonable notice to Client and to charge for additional Providers as appropriate under the Agreement.

2.3. Hosting Services. Orasphere will provide Client with access to the online Hosted Programs selected in the Order Form(s) and will provide for the storage and retrieval of Hosted Programs in connection with use of the Hosted Programs. Client is responsible for obtaining access to the Internet using software and hardware that meet the minimum requirements set forth in Orasphere's published System Requirements document available at [www.orasphere.com/terms/system-requirements](http://www.orasphere.com/terms/system-requirements). Client is also responsible for the management and development of its designated website and for any costs associated with the website's maintenance. The Client is also responsible for any costs incurred to integrate the Code Snippet into the Client's designated website.

### 3. TERM AND TERMINATION

3.1. Term. Client's rights to use the Hosted Programs and Services shall remain in effect for the Initial Term set forth in the Order Form(s) or Subscription and Services Agreement. The term commences upon the Activation Date. Thereafter, unless otherwise provided in the Order Form(s) or Subscription Services Agreement, the term shall automatically renew for additional terms as set forth in the Agreement at then-current prices unless either party gives ten (10) days advance written notice prior to the end of the then-current term of its intention to terminate the Agreement, or until otherwise terminated as provided herein.

3.2. Termination for Cause. Either party may terminate the Agreement at any time upon thirty (30) days prior written notice if the other party commits a material breach that remains uncured after thirty (30) days written notice specifying the nature of the breach and identifying the measures required to correct the breach. Notwithstanding the foregoing, Orasphere may terminate the Agreement and access to the Hosted Programs for non-payment of fees upon ten (10) days prior notice, at which time fees for the current term shall be due and payable in full.

3.3. Effect of Termination. Termination of the Agreement shall not limit either Party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Client's obligation to pay all fees that have accrued or are otherwise owed by Client under any Order Form or under the Agreement. Upon termination of the Agreement, access to the Hosted Programs and all Services shall be terminated. Upon termination, other than for breach on the part of Orasphere under Section 3.2 or 3.3 above, all unpaid fees related to the initial term or any renewal term shall be due and payable in full immediately.

### 4. INDEMNITY, WARRANTIES, REMEDIES

4.1. Infringement Indemnity. Orasphere will defend and indemnify Client against a claim that the Hosted Programs infringe a copyright or patent, provided that: (a) Client notifies Orasphere in writing within 30 days of the claim; (b) Orasphere has sole control of the defense and all related settlement negotiations; and (c) Client provides Orasphere with the assistance, information and authority necessary to perform Orasphere's obligations under this Section. Reasonable out-of-pocket expenses incurred by Client in providing such assistance will be reimbursed by Orasphere.

In the event the Hosted Programs are held or are believed by Orasphere to infringe on a third party's intellectual property rights, Orasphere shall have the option, at its expense, to (a) modify the Hosted Programs to be non-infringing; (b) obtain for Client a subscription to continue using the Hosted Programs; or (c) terminate the subscription for the infringing Hosted Programs. This Section 4.1 states Orasphere's entire liability and Client's exclusive remedy for infringement.

#### 4.2. Warranties and Disclaimers

A. Hosted Program Warranty. Orasphere warrants that the Hosted Programs will materially perform in accordance with the documentation so long as the Client has a current and paid-up right to use the Hosted Programs.

B. Services Warranty. Orasphere warrants that its Hosted Program Services, Support Services, and other Services described in an applicable Order Form will be performed consistent with generally accepted industry standards.

C. Disclaimers. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY ORAL REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF ADVANCEDMD AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Orasphere does not warrant that the Hosted Programs will operate in the combinations that Client may select for use, that the operation of the Hosted Programs will be uninterrupted or error-free or fit for its intended purpose or that all Hosted Program errors will be corrected.

4.3. Exclusive Remedies. For any breach of the warranties contained in Section 4.2, Client's exclusive remedy, and Orasphere's entire liability, shall be the correction of Hosted Program errors that cause breach of the warranty. Any error not reported to Orasphere by Client within thirty (30) days of its discovery will be deemed waived and accepted by Client.

## 5. PAYMENT PROVISIONS

5.1. Invoicing and Payment. Invoices for payment of Monthly or Annual Application Subscription and all Service Fees shall be in accordance with the applicable Order Form(s). In the absence of specific provisions in the applicable Order Form(s), fees for one-time Services are due upon acceptance of any Order Form and prior to delivery of the Service. Fees that are fixed, such as Monthly Application Subscription Fees, shall be payable monthly in advance and due in full upon the monthly anniversary of the Activation Date; An administrative late charge of \$35.00 per invoice per month will be charged for any invoice not paid by the due date and which remains unpaid each 30 days thereafter, including any electronic transaction that is declined and any returned checks. Additionally, any amounts payable by Client hereunder which remain unpaid after the due date shall be subject to a finance charge equal to the lesser of 1.5% per month or the maximum amount permitted under applicable law, from the due date until such amount is paid. Client shall have ninety (90) days from receipt of an invoice to dispute any portion of the invoice and any issue not raised by Client in writing within ninety (90) days from receipt of the invoice is hereby irrevocably waived by Client.

5.2. Taxes. The fees listed in the Agreement do not include taxes; if Orasphere is required to pay sales, use, property, value-added, withholding, excise or other taxes, duties, or governmental charges based on the Subscription Rights Granted or Services provided under the Agreement or on Client's use of Hosted Programs or Services, then such taxes, duties, or governmental charges shall be billed to and paid by Client. If Orasphere is found to be responsible for the withholding and payment of taxes on behalf of Client, Client agrees to indemnify Orasphere with respect to the full amount of taxes due together with applicable interest and penalties. If Client is required to withhold any tax from any payment, then the amount of the payment will be automatically increased to totally offset such tax so that the amount remitted to Orasphere, net of all taxes, equals the amount invoiced or otherwise due. This Section shall not apply to taxes based on Orasphere's net income.

## 6. GENERAL TERMS

6.1. Nondisclosure. By virtue of the Agreement, the Parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to the Programs, the terms and pricing under the Agreement, and all information clearly identified as confidential.

A Party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other Party; (b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other Party by a third party without restriction on disclosure; or (d) is independently developed by the other Party.

The Parties agree to hold each other's Confidential Information in confidence during the term of the Agreement and for a period of two years after termination of the Agreement. In the event that either Party is requested or required for the purposes of legal, administrative, or arbitration to disclose any Confidential Information, the Party receiving such disclosure request will provide the other Party with immediate written notice of any such request or requirement so that such Party may seek an appropriate protective order or other relief.

6.2. Trademarks. Except for linking to Orasphere web sites, Client may not use any Orasphere logo or trademark, whether or not such mark(s) are registered, without prior written approval from Orasphere. This includes use on printed materials of any kind as well as electronic mediums such as internet web pages or email. Furthermore, the use of the Orasphere name (or any derivative thereof) in Client's URL, Business Name, or the names of any add-on products or services Client may be offering independent of Orasphere is strictly prohibited. Additionally, using the Orasphere name in paid targeted keyword advertising campaigns on search engines is also prohibited.

6.3. Governing Law and Dispute Resolution. The Agreement, and all matters arising out of or relating to the Agreement, shall be governed by the laws of the Province of Alberta, Canada, without giving effect to principles regarding conflicts of laws. Any controversy or claim arising out of or relating to the Agreement, or

breach thereof, shall be submitted to the following procedure: (a) direct negotiation in a settlement conference to be scheduled as soon as possible after the dispute arises; (b) if no resolution is reached within sixty (60) days of the settlement conference, the Parties will submit the dispute to non-binding mediation in Alberta Canada under the mediation rules commonly employed within the Province of Alberta; (c) if no settlement is reached within sixty (60) days of the start of mediation, either Party may seek legal redress in a forum of competent jurisdiction.

6.4. Notice. Client agrees to notify Orasphere of any changes to Client's business address, business contact, and support contact within ten (10) days of any change thereto. All notices required or permitted hereunder shall be given in writing or as specifically set forth in the applicable section of the Agreement. To expedite order processing, Client agrees that Orasphere may treat documents emailed or faxed by Client to Orasphere as original documents; nevertheless, either party may require the other to exchange original signed documents to evidence an order for Hosted Programs or for Services.

6.5. Limitation of Liability. In no event shall either party be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages. Orasphere's total liability for damages under the Agreement shall in no event exceed the amount of fees paid by Client under the Agreement for the most recent three (3) month period. The provisions of the Agreement allocate the risks between Orasphere and Client. The parties agree that Orasphere's pricing and other terms and conditions of the Agreement reflect the allocation of risk and the limitation of liability specified herein.

6.6. U.S. Government and HIPAA. The Hosted Programs and accompanying documentation are commercial computer software and documentation developed exclusively at private expense and in all respects are proprietary data belonging to Orasphere. If the Hosted Programs and accompanying documentation are used under the terms of a DoD or civilian agency contract, use, reproduction and disclosure of such software and documentation by the Government is subject to the restrictions set forth in the Agreement in accordance with 48 C.F.R. 227.7202 or 48 C.F.R. 12.212, respectively.

6.7. Nonsolicitation. During the term of the Agreement and for six (6) months after any termination or expiration of the Agreement, neither Party shall, alone or in association with others, solicit any employee or contractor of the other Party (or its subsidiaries) to terminate its employment or contracting relationship with the other Party or its subsidiaries. Nothing herein shall preclude either Party from hiring employees or contractors of the other Party (or its subsidiaries) to the extent such employees or contractors respond, without any solicitation by or on behalf of the hiring Party, to advertisements or job openings published or otherwise made generally available by the hiring Party.

6.8. Other Terms. In the event any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in full force. The waiver by either Party of any default or breach of the Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment, breach of Orasphere's proprietary rights in the Hosted Programs or invoice disputes (which are governed by Section 6.1), no action, regardless of form, arising out of the Agreement may be brought by either Party more than one year after the cause of action has accrued. The Agreement constitutes the complete agreement between the Parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of the Agreement. Orasphere may assign this Agreement or any rights or obligations under this Agreement to a third party. Client may not assign the Agreement or any rights or obligations hereunder without prior written consent of Orasphere, which consent shall not be unreasonably withheld or delayed; any such assignment without prior consent shall be void. Orasphere may modify the terms of the Agreement between the Parties, including these Terms of Service and any incorporated Order Form(s) or Subscription and Services Agreements upon written notice, e-mail or otherwise, to Client. Client may notify Orasphere in writing within thirty (30) days of receipt of a modification notification that Client does not wish to accept the new terms. In the absence of such written non-acceptance notification with the thirty (30) day period, Client confirms acceptance of the new terms by continuing to use the Hosted Programs and/or Services. If Client does not accept the new terms by notifying Orasphere within the thirty (30) day period, then Client may continue to use Orasphere under Client's existing terms until the end of Client's then current term, at which time Client's Agreement will not automatically renew, but will instead terminate. It is expressly agreed that the terms of the Agreement and any Order Form shall supersede the terms in any Client purchase order or other ordering document.