

## XFlow

### Software as a Service Agreement

This Software as a Service Agreement (“**Agreement**”) is entered into between Dental Axess Management AG, a Swiss company with its principal place of business at Talacker 35, 8001 Zurich, Switzerland (“**Dental Axess**”) and you (hereinafter “**Customer**”, Dental Axess and Customer together hereinafter “**the Parties**”).

WHEREAS, Dental Axess are specialists in digital dentistry, providing a large range of components to complete digital workflow. Dental Axess provides a cloud-based digital data management platform called “XFlow” and services connected to the platform (“**XFlow Services**”). Customer wishes to obtain access to the platform and receives the services under the terms of this Agreement, effective as of the date of signing or accepting this Agreement.

NOW, THEREFORE, the Parties agree to the terms of this Agreement as follows:

#### 1. Definitions

In addition to the terms already defined above and directly in the Agreement, the following terms shall be defined as follows:

“**Customer Data**” means all information (including Personal Information or Personal Data, as defined in the DPA) that Customer or a User provides or makes available to Dental Axess in connection with the XFlow Services or this Agreement.

“**Documentation**” means the product guide, online help and other documentation provided or made available to Customer regarding the XFlow Services.

“**DPA**” means the Data Processing Agreement as entered into between the Parties;

“**User**” means an employee or independent contractor of Customer that Customer authorizes to use the XFlow Services on Customer’s behalf.

#### 2. XFlow Services

2.1 Provision of Services. During the Term, Dental Axess grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, access to the XFlow Services, solely for Customer’s internal business operations.

2.2 Users. All Users will be required to abide by the terms of this Agreement and any additional terms and conditions that may be required by Dental Axess. Any breach by a User will be deemed to be a breach by Customer. Dental Axess may terminate or suspend any User’s access to the XFlow Services for any breach without notice. The amount of Users per Customer depends on the package that Customers purchase.

2.3 Support Services. Dental Axess will provide Customer with support services (e.g live chat or support e-mail) regarding the XFlow platform during usual business hours.

#### 3. Information Security and Data Protection

3.1 Data Ownership. Dental Axess acknowledges that all Customer Data provided in connection with this Agreement shall at all times remain the property of Customer.

3.2 Data Security. Dental Axess shall use appropriate technical and organizational measures in accordance with industry practices to secure Customer Data.

- 3.3 Notice of Security Incidents. Dental Axess shall notify Customer immediately of actual or suspected data breaches or any unauthorized access to Customer Data.
- 3.4 Data Subject Requests. Dental Axess shall cooperate with and notify Customer if a person makes a lawful request for access to his or her personal information or any other right the person has regarding his or her personal information under applicable Privacy Laws.
- 3.5 Data Processing and Data Processing Agreement. Dental Axess shall only process Personal Information of Customer within the scope of this Agreement and according to the instructions of the Controller, unless Processor is legally obliged to process Personal Data in a specific manner.
- 3.6 Subcontractor and Third Party Access. Customer authorizes Dental Axess to subcontract data processing operations under this Agreement or otherwise provide a third party with access to Customer Data without prior written consent.
- 3.7 Record Retention. Dental Axess shall retain Customer Data only for as long as required to perform its obligations under this Agreement, except where another retention period is strictly required by applicable law or if Customer asks Dental Axess in writing to retain certain Customer Data. At the termination of this Agreement, Dental Axess shall return to Customer or securely destroy all Customer Data. If Customer does not exercise this option within 90 days of the termination or expiry of this Agreement, Dental Axess will proceed to permanently dispose or destroy the Customer Data in a manner that prevents content recovery.
- 3.8 Only for Customers based in a EU Member State, Switzerland, Iceland, Lichtenstein, and Norway. Whenever Customer is located in a EU Member State, Switzerland, Iceland, Lichtenstein, and Norway, the Parties agree to enter into a separate Data Processing Agreement (DPA), as per Exhibit to this Agreement, which forms an integral part of this contract. **For Customers based in a EU Member State, Switzerland, Iceland, Lichtenstein and Norway, this Agreement shall become effective only upon the signing of the DPA between the Parties.**

#### 4. Customer Responsibilities and Restrictions

- 4.1 Customer Responsibilities. Customer is responsible for all activities conducted by it or through the accounts of its Users in connection with the XFlow Services. Except for Dental Axess' responsibilities described in Section 3 (Data Protection), Customer shall (i) have sole responsibility for the accuracy, quality, and legality of the Customer Data and the right to provide the Customer Data for the purposes of this Agreement (including ensuring the receipt of consent or other permissions from individuals and other third parties; (ii) be solely responsible for the security and confidentiality of Customer's and its User's account information; (iii) be solely responsible for maintaining a back-up of all Customer Data; and (iv) prevent unauthorized access to, or use of, the XFlow Services, and notify Dental Axess promptly of any such unauthorized access or use.
- 4.2 Compliance with Laws. Customer shall comply with all applicable local, state, national and foreign laws, rules and regulations ("laws) in connection with the use of the XFlow Services, the collection and other processing of all Customer Data, and performance under this Agreement, including those laws related to employment, data privacy and protection. Customer acknowledges that Dental Axess exercises no control over the Customer Data transmitted by Customer or Users to or through the XFlow Services, and that Customer is solely responsible for ensuring that such Customer Data does not violate applicable laws.
- 4.3 Restrictions. Customer and its Users shall not, and shall not permit any third party to: (i) copy or republish the XFlow Services; (ii) make the XFlow Services available to any person other than Users; (iii) rent, lend, sell, sublicense or use the XFlow Services to provide other services to third parties, unless such services are part of the XFlow Services; (iv) send or store viruses, spyware, ransomware, or other harmful or malicious code or files or any communication to or in connection with the XFlow Services; (v) send or store infringing, offensive,

harassing or otherwise unlawful material in connection with the XFlow Services; (iv) access or use the XFlow Services in order to build a similar or competitive product. Dental Axess reserves the right to prevent any data transfer, to delete any data or block any communication in its sole discretion if for the reasons as just described above.

## 5. Intellectual Property

- 5.1 Ownership of Intellectual Property. Dental Axess owns and, except for the limited rights expressly granted to Customer in this Agreement, retains all right, title and interest in and to the XFlow Services and any other materials provided by Dental Axess under this Agreement. No rights are granted to Customer under this Agreement other than expressly set forth in this Agreement.
- 5.2 Rights in Customer Data. As between Dental Axess and Customer, Customer owns the Customer Data. Customer hereby grants and instructs Dental Axess to process the Customer Data to provide the services as agreed under this Agreement.

## 6. Orders and Payment

- 6.1 Orders. Customer is granted access to the XFlow Services and its services according to the purchased package and the paid fee, as offered on Dental Axess' webpage.
- 6.2 Fees/Payment. All fees for the XFlow Services are set forth in the applicable order. All fees are exclusive of value added taxes (VAT) or similar charges. Payment by Customer is only possible through the offered payment solution Stripe via credit card). All fees shall be stated in and paid by the Customer in the currency as stated on Dental Axess' webpage. With entering into this Agreement, the Customer agrees that the monthly or yearly fee, depending on the purchase made by the Customer, will be deducted monthly respectively annually, subject to the termination of the Agreement (see section 7 hereinafter). If any fees remain unpaid by their due date, in addition to any other rights or remedies Dental Axess may have under this Agreement or by matter of law, (i) Dental Axess reserves the right to suspend its provision of the XFlow Services, after Dental Axess notifies Customer of such failure and such failure continues for thirty (30) days or more after the payment due date, until such amounts are paid in full, and (ii) any such unpaid fees may accrue, at Dental Axess's discretion, late charges up to the maximum rate permitted by law from the date such fees were due until the paid date. Dental Axess shall not be liable to Customer or any third party for any liabilities, claims, or expenses arising from or relating to any suspension in accordance with this section 6.2.

## 7. Term and Termination

- 7.1 Term. The term of this Agreement shall begin on the day the Customer accepts this Agreement and pays the fee as per section 6.2 above. Depending on the package and payment plant that Customer selects (monthly/yearly) the Agreement remains in force until Customer terminates the Agreement with a notice period of 30 days, at the end of each month.
- 7.2 Termination for Material Breach. Either party may terminate this Agreement if the other party fails to cure any material breach within thirty (30) days after receipt of written notice of breach. Such material breach is also given if the payment cannot be deducted from the credit card provided by the Customer.
- 7.3 Effect of Termination. Upon expiration or termination of this Agreement, all licenses for the XFlow Services granted to Customer under this Agreement shall immediately terminate and Customer will cease using the XFlow Services.

## 8. Warranties and Remedies, Disclaimers

- 8.1 General. Each party represent and warrants that it has the legal power and authority to enter into and perform under this Agreement.
- 8.2 XFlow Services: Dental Axess warrants that during the Term Dental Axess will perform the XFlow Services in accordance with the documentation and in a professional manner consistent with applicable industry standards.
- 8.3 Disclaimer. Except as expressly provided in this section 8 and to the maximum permitted by applicable law, Dental Axess makes no warranties of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all warranties of fitness for a particular purpose, merchantability, accuracy of informational content, systems integration, non-infringement, non-interference with enjoyment or otherwise. Dental Axess does not warrant that the XFlow Services will be error-free, virus-free, or uninterrupted. Dental Axess makes no warranty regarding its XFlow Services.

## 9. Limitations of Liability

- 9.1 Limitation Liability. To the maximum extent permitted by law and with except to either party's indemnification obligations set forth in section 10, in no event shall each party's aggregate liability arising out of or relating to this agreement exceed the amount of fees paid or payable by Customer under this Agreement for the twenty-four (24) months preceding the event giving rise to the claim. The foregoing limitation shall apply whether an action is in contract, tort, or otherwise. Dental Axess's aggregate liability, in combination with all other liabilities of Dental Axess under this agreement, for damages resulting from Dental Axess's breach of Section 3 (Data Security and Data Protection) resulting in an authorized third party access to Customer personal Information shall in no event exceed two (2) times the amount of fees paid or payable by customer under this Agreement for the twenty-four (24) months preceding the event giving rise to the claim.
- 9.2 In no event shall either party be liable to anyone for any indirect, punitive, special, exemplary, incidental or consequential damages, including loss of profits, loss of data, business interruption, loss of use, or other commercial damages or losses arising out of or in any way connected with this agreement, however caused and whether in contract, tort, or otherwise and whether or not the party has been advised of the possibility of such damages or losses.

## 10. Indemnification

- 10.1 Indemnification by Dental Axess. Dental Axess will defend Customer from any and all claims, demands, suits or proceedings brought against Customer by a third party alleging that the XFlow Services, as applicable, infringe any patent, copyright or trademark of that third party. Dental Axess will indemnify Customer for all damages and costs finally awarded by a court of competent jurisdiction or paid to a third party in accordance with a written settlement agreement signed by Dental Axess.
- 10.2 Indemnification by Customer. Customer will defend Dental Axess from any and all claims, demands, suits or proceedings brought against Dental Axess by a third party alleging a violation of a third party's rights arising from or related to: (a) the customer Data, including the Customer's provision of the Customer Data to Dental Axess; (b) Customer's failure to comply with section 4 (Customer's obligations); (c) use of the XFlow Services other than in accordance with the documentation or this Agreement. Customer will indemnify Dental Axess for all damages and costs (including reasonable attorneys' fees).

## 11. General provisions

- 11.1 Force Majeure Event. Neither party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including acts of government, computer related attaches, hacking, or acts of terror, service disruptions involving hardware, software or power systems not within such party's possession or reasonable control.
- 11.2 Invalid Provisions. Should any provision of this Agreement prove to be unlawful, invalid, voidable, contestable or unenforceable, this shall not affect the validity of the remaining provisions. The Parties undertake to replace the invalid provision with another provision which comes as close as possible to the economic effects of the provision to be replaced.
- 11.3 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by authorized representatives of the Parties.
- 11.4 Applicable Law and Jurisdiction. This Agreement and all contractual or other obligations arising out of or in connection with it shall be governed by the law of Switzerland. The United Nations Convention on Contracts for the International Sale of Goods (*Wiener Kaufrecht*) does not apply. Exclusive place of jurisdiction shall be Zurich, Switzerland.

## Exhibit: Data Processing Agreement

For Customers based in a EU Member State, Switzerland, Iceland, Lichtenstein and Norway

This Data Processing Agreement ("**DPA**") forms part of the XFlow Service Agreement, concluded between Dental Axess (the "Data Processor" or "Processor") and Customer (the "Data Controller" or "Controller").

WHEREAS

- (A) The Customer acts as a Data Controller.
- (B) The Customer wishes to obtain the XFlow Services and to subcontract certain services, which imply the processing of personal data, to the Data Processor.
- (C) The Parties seek to implement a data processing agreement that complies with the requirement of the current legal framework in relation to data processing and with the GDPR (as defined below).
- (D) The Parties wish to stipulate their data protection obligations.

### 1. Definitions

In this DPA, the terms "**Processing**", "**Controller**" and "**Processor**", "**Personal Data Breach**" shall have the meanings as defined by the GDPR (General Data Protection Regulation, EU Regulation 2016/679). In addition, the following terms shall be interpreted as follows:

"**Personal Data**" or "**Personal Information**" means any information relating to an identified or identifiable natural person (hereinafter referred to as "**data subject**"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

"**Data Processing**" means the Processing of Personal Data relating to the Controller by Processor;

"**Data Protection Laws**" means EU Data Protection Laws and, to the extent applicable, the data protection laws of any other country;

"**Data Transfer**" means a transfer of Personal Data from the Customer to a Subprocessor; or an onward transfer of Personal Data from Processor to a Subprocessor; in each case, where such transfer would be prohibited by Data Protection Laws.

"**Subprocessor**" means any person (other than employees of Processor or its subcontractors), who is entrusted by Processor with the Processing of Personal Data relating to the Controller in connection with the XFlow Service Agreement;

### 2. Scope of Data Processing

The subject, duration, nature and purpose of the Processing, the type of Personal Data and the categories of data subjects shall be determined primarily in accordance with the XFlow Service Agreement. Furthermore, Annex 1 to this DPA provides more details in relation to the scope of the Data Processing.

### **3. Obligations of the Processor**

#### **3.1 Bound by instructions**

3.1.1 The Controller shall give Processor instructions for the Data Processing as necessary for the execution of the XFlow Service Agreement. Processor shall only process Personal Data of the Controller within the scope of the XFlow Service Agreement, unless Processor is legally obliged to process Personal Data in a specific manner.

3.1.2 Processor shall immediately inform the Controller if, in its opinion, compliance with an instruction issued by the Controller violates any Data Protection Laws and reserves the right not to comply with such unlawful instruction.

#### **3.2 Technical and organisational measures**

Processor shall implement appropriate technical and organizational measures to ensure an adequate level of protection for the rights and freedoms of natural persons, taking into account the state of the art, the implementation costs and the nature, extent, circumstances and purposes of the Processing, as well as the varying probability and severity of the risk to the rights and freedoms of natural persons, including, as appropriate, the measures referred to in art. 32 para. 1 GDPR.

#### **3.3 Support regarding security of Personal Data**

3.3.1 Processor shall support the Controller in complying with the obligations regarding the security of Personal Data specified in Articles 32 to 36 GDPR, considering the nature of Processing and the information available to Processor.

3.3.2 In particular, Processor shall immediately notify the Controller if Processor or its Subprocessor (if relevant) becomes aware of a Personal Data Breach relating to Personal Data of the Controller. In that case, Processor shall provide the Controller, if possible, with sufficient information to enable the Controller to fulfil any reporting or information obligations towards the supervisory authorities and persons concerned with regard to the violation of the protection of Personal Data in accordance with the Data Protection Laws.

#### **3.4 Assistance concerning the rights of data subjects**

3.4.1 Processor shall support the Controller by implementing appropriate measures, if possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR.

3.4.2 Processor shall inform the Controller as soon as a data subject asserts his or her right pursuant to this clause 3.4 and ensure that Processor responds to such a request exclusively on the instructions of the Controller or as prescribed by the applicable laws to which he or she is subject.

#### **3.5 Processor Personnel**

Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any who may have access to Personal Data, ensuring in each case that access is limited to those individuals who need to know / access the relevant Personal Data, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

### **4. Rights and duties of the Controller**

#### **4.1 Compliance with Data Protection Laws**

The Controller is solely responsible for compliance with the Data Protection Laws applicable to Controller and / or the XFlow Service Agreement, in particular for the legality of the transfer of the Controller's Personal Data to Processor and for the legality of the Processing of Personal Data.

## **4.2 Audit right**

- 4.2.1 The Controller shall be entitled to check whether Processor complies with the provisions of art. 28 GDPR and the provisions of this DPA.
- 4.2.2 Processor shall make available to Controller on request all information necessary to demonstrate compliance with this Agreement. The Controller shall inform Processor in due time, at least 20 calendar days in advance, of any inspection to be carried out. The Controller has to compensate Processor for costs related to an audit. If the Controller intends to carry out an on-site inspection, it must make every effort to avoid damage, injury or disruption to Processor's premises, equipment, personnel and business.

## **5. Subcontracting**

The Controller authorizes Processor to subcontract or continue to subcontract under this clause 5 and permits any Subcontractor appointed under this clause to do so.

## **6. Deletion or return of Personal Data of the Controller**

- 6.1 Upon termination of this DPA, Processor shall, subject to this clause 6, delete all Personal Data of the Controller. Alternatively, the Controller may request Processor to return all Personal Data of the Controller. In this case, the Controller must inform Processor at least 30 calendar days prior to the termination of this DPA.
- 6.2 Personal Data which Processor is required to retain due to legal obligations shall be excluded from deletion or return. Processor guarantees the confidentiality and security of such Personal Data even after the termination of this DPA.
- 6.3 The Controller hereby confirms and acknowledges that the deletion or restriction of Personal Data instructed by the Controller may make it impossible for Processor to provide the services in accordance with the XFlow Service Agreement. Such impossibility shall not constitute a breach of the XFlow Service Agreement by Processor. In such a case, Processor shall inform the Controller in writing before carrying out such instructions.

## **7. Data Transfer**

The Controller authorizes Processor to transfer Personal Data to countries outside the EU and/or the European Economic Area (EEA). If personal data processed under this DPA is transferred from a country within the EEA to a country outside the EEA, which does not provide a sufficient level of data protection, the Processor shall rely on EU approved standard contractual clauses for the transfer of personal data.

## **8. Final provisions**

- 8.1 Any amendments and supplements to this DPA shall be in writing; this also applies to the waiver of the written form requirement.
- 8.2 While the Processor will not refuse a legally compliant instruction from the Controller, the Controller acknowledges and accepts that certain instructions, such as requests for assistance in cases of Personal Data Breaches, data protection impact assessments, rights of data subjects or provision or deletion of the Controller's Personal Data, etc., may lead to additional remuneration by the Processor. The Processor shall inform the Controller accordingly before complying with such an instruction.



- 8.3 Should any provision of this DPA prove to be unlawful, invalid, voidable, contestable or unenforceable, this shall not affect the validity of the remaining provisions. The Parties undertake to replace the invalid provision with another provision which comes as close as possible to the economic effects of the provision to be replaced.
- 8.4 This DPA and all contractual or other obligations arising out of or in connection with it shall be governed by the law applicable to the XFlow Service Agreement.
- 8.5 The Parties hereby submit to the jurisdiction stipulated in the XFlow Service Agreement for all disputes or claims arising from this DPA, including disputes about its existence, validity or termination or the consequences of its invalidity.

## ANNEX 1: DETAILS OF THE DATA PROCESSING

### 1. Subject and duration of Data Processing

The subject and duration of Data Processing are set out in the XFlow Service Agreement and in this DPA.

### 2. The nature and purpose of the Data Processing

The nature and purpose of the Data Processing is determined by the XFlow Service Agreement.

### 3. Categories of Personal Data concerned

- Personal Data and contact information:** For example, first and last name, single name, home address, telephone number, e-mail address, age, date of birth, gender, marriage status, photo, etc.;
- Data related to orders and purchases:** For example, payment details and other payment details, billing and delivery address, products and services ordered and purchased, etc.;
- Data in connection with the use of products and services provided:** e.g. IP address, activities of an user, bandwidth used, memory space used, or CPU capacity used, logon and logoff times, etc.;
- Information on employees and contacts of the responsible person, his dealers, suppliers, customers and other business partners:** e.g. contact details, function, business transactions, enquiries, offers, quotations, conditions, contracts, payment details, etc.;
- Data in connection with communication:** e.g. correspondence in e-mails, instant messaging, IP telephony, video conferencing including data that is necessarily embedded in the content of the conversations (documents, images, URL);
- Data in connection with marketing:** e.g. information such as newsletter opt-ins and opt-outs, received subsets, invitations and participation in events and special activities etc.;
- Special categories of data:** in particular racial or ethnic origin, health data (including genetic data), biometric data, etc.;
- Other Personal Data:**

### 4. The categories of Data Subject to whom the Data Processing relates to

- Customers;
- Interested parties;
- Employees and other personnel (sales representative etc.);
- Suppliers;
- Contact person;
- Patients;
- Other: