

## 1. DEFINITIONS

- 1.1 "Advanced Dental Artistry" means Elsper Pty Ltd ACN 081 627 849 as trustee for the Dental Services Trust trading as Advanced Dental Artistry Perth ABN 24 082 438 589 its successors and assigns or any person acting on behalf of it and with its authority.
- 1.2 "Agreement" means the agreement between the Parties for the supply of the Treatment which incorporates the terms of Advanced Dental Artistry's treatment plan and these terms and conditions.
- 1.3 "Confidential Information" means all information acquired or created by Advanced Dental Artistry that is not in the public domain (or, if in the public domain, that is in the public domain by reason of a breach of this Agreement), including but not limited to:
- (a) any information regarding Advanced Dental Artistry's services, products, materials processes, systems, equipment, policies, finances, employees, Patients or anyone associated with Advanced Dental Artistry;
  - (b) Advanced Dental Artistry's Intellectual Property; and
  - (c) information relating to any and all of the Parties' involvement with each other under the Agreement.
- 1.4 "GST Act" means *A New Tax System (Materials and Services Tax) Act 1999* (Cth) as amended from time to time.
- 1.5 "GST" has the meaning given to this term by the GST Act;
- 1.6 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Patient on a principal debtor basis.
- 1.7 "Intellectual Property" includes but is not limited to all trademarks, patents, copyrights, processes, source codes, know-how, registered designs, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings and data or other like property or rights owned or held by Advanced Dental Artistry. These rights include:
- (a) marks, logos, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
  - (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, the look and feel, layouts, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.
- 1.8 "Materials" means materials required for the Treatment supplied by Advanced Dental Artistry to the Patient and are as described verbally, on the treatment plan, invoices or any other forms provided by Advanced Dental Artistry to the Patient.
- 1.9 "Parties" means Advanced Dental Artistry, the Patient and the Guarantor.
- 1.10 "Patient" means the Patient (or any person acting on behalf of and with the authority of the Patient) as described on any treatment plan, credit application or

other form as provided by Advanced Dental Artistry to the Patient.

- 1.11 "Payment Plan" means an agreement between Advanced Dental Artistry and the Patient for the Patient to pay the Price in the instalments on the dates set out in the payment plan.
- 1.12 "Price" means the price payable for the Treatment as agreed between Advanced Dental Artistry and the Patient in accordance with clause 3 of this contract.
- 1.13 "Services" means all services supplied by Advanced Dental Artistry to the Patient in performance of the Treatment.
- 1.14 "Surgery" means the preparing or fitting of cosmetics, including any implant surgeries and all-on-4.
- 1.15 "Treatment" means the treatment to be carried out under the Agreement and includes Materials and/or Services supplied as specified verbally or on any treatment plan, invoices or any other documentation provided by Advanced Dental Artistry to the Patient in connection with this Agreement.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Advanced Dental Artistry from the Patient to undertake the Treatment or the Patient's acceptance of the Treatment shall constitute acceptance of these terms and conditions.
- 2.2 Upon acceptance of these terms and conditions by the Patient the terms and conditions are binding and can only be amended with the written consent of Advanced Dental Artistry.

## 3. DUTIES OF ADVANCED DENTAL ARTISTRY

- 3.1 Advanced Dental Artistry will carry out the Treatment in accordance with good practice, in a competent manner and in compliance with these terms and conditions.

## 4. DUTIES OF THE PATIENT

- 4.1 The Patient shall pay the Price in accordance with clause 5.
- 4.2 The Patient will:
- (a) expeditiously provide Advanced Dental Artistry with instructions, information and documentation that are reasonably necessary to allow Advanced Dental Artistry to supply any Materials and carry out the Treatment.
  - (b) be open and honest with Advanced Dental Artistry during Treatment, especially during reviews, and bring any issues with the aesthetics, functionality and phonetics of the Treatment to the attention of Advanced Dental Artistry.
  - (c) inform Advanced Dental Artistry about any changes in the Patient's finances or personal circumstances that may affect the Patient's ability to pay for the Treatment at all times before, during and after the Treatment until the Price is paid in full.

## 5. PRICE AND PAYMENT

- 5.1 At Advanced Dental Artistry's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Advanced Dental Artistry to the Patient in respect of the Treatment; or
  - (b) Advanced Dental Artistry's quoted Price (subject to clause 5.2) which shall be binding upon Advanced Dental Artistry provided that the

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	Patient accepts Advanced Dental Artistry's treatment plan within ninety (90) days.	appointment, whichever is the greater amount; and
5.2	Advanced Dental Artistry reserves the right to change the Price in the event of a variation to Advanced Dental Artistry's treatment plan.	(b) reserves the right to take payment for the cost of the appointment upfront before allowing the Patient to make another appointment.
5.3	At Advanced Dental Artistry's sole discretion:	6.3 If the Patients cancels or reschedules an appointment for a new patient exam, check-up or hygiene appointment twice, Advanced Dental Artistry reserves the right to refuse booking the Patient for a third appointment.
	(a) where the Price is less than \$19,000, the Patient must a pay a deposit of at least 50% of the Price prior to Advanced Dental Artistry undertaking diagnostics and preparation;	6.4 The Patient must give Advanced Dental Artistry no less than 15 days' notice to cancel or reschedule a scheduled Surgery.
	(b) where the Price is greater than \$19,000, the Patient must a pay a deposit of at least 40% of the Price prior to Advanced Dental Artistry undertaking diagnostics and preparation.	6.5 If the Patient cancels a Surgery between 7 and 14 days before the Surgery is scheduled, the Patient must pay Advanced Dental Artistry a cancellation fee of 20% of the total Price, in addition to any deposit the Patient has already paid.
5.4	The Patient must:	6.6 If the Patient cancels a Surgery less than 7 days before the Surgery is scheduled, the Patient must pay Advanced Dental Artistry a cancellation fee of 30% of the total Price, in addition to any deposit the Patient has already paid.
	(a) pay the Price in full prior to the fitting or final cosmetics; or	6.7 If the Patient reschedules a Surgery less than 15 days before the Surgery is scheduled, Advanced Dental Artistry reserves the right to charge the Patient a fee of \$1,000 per hour for the estimated time of the Surgery, plus 50% of the anaesthetist's fee if required.
	(b) pay at least 60% of the Price prior to the fitting or final cosmetics, and pay the balance of the Price strictly in accordance with the Payment Plan, if the Patient qualifies for a Payment Plan, and the Patient and Advanced Dental Artistry agree to enter a Payment Plan.	6.8 The Patient must not cancel or vary the Treatment without the written consent of Advanced Dental Artistry.
5.5	The Patient acknowledges that, notwithstanding clauses 5.3 and 5.4, the Patient may not be able to make a health insurance claim until the Treatment is completed and the Price is paid in full.	6.9 Advanced Dental Artistry may cancel the Agreement or cancel the Treatment at any time before the Treatment is commenced by giving written notice to the Patient. On giving such notice Advanced Dental Artistry shall repay to the Patient any sums paid in respect of the Price. Advanced Dental Artistry shall not be liable for any loss or damage arising from such cancellation.
5.6	Payment will be made by credit/debit card, cash, direct deposit or by any other method as agreed to between the Patient and Advanced Dental Artistry.	6.10 In the event that the Patient cancels the Treatment without the consent of Advanced Dental Artistry, the Patient shall be liable for the full Price together with any losses or costs incurred by Advanced Dental Artistry up to the time of cancellation. Any deposit paid by the Patient will not be refundable upon cancellation by the Patient.
5.7	Advanced Dental Artistry reserves the absolute right to vary the payment terms set out in this clause 5:	6.11 Subject to clause 18.8, Advanced Dental Artistry reserves the right to waive any cancellation fees payable under this clause 6 in its absolute discretion.
	(a) to take in to account the individual circumstances of the Patient;	<b>7. PATIENT'S DISCLAIMER</b>
	(b) to apply any special conditions agreed between the Patient and Advanced Dental Artistry; or	7.1 The Patient hereby disclaims any right to rescind, or cancel any contract with Advanced Dental Artistry or to sue for damages or to claim restitution arising out of any misrepresentation made to the Patient by Advanced Dental Artistry.
	(c) for a special promotional offering.	7.2 The Patient acknowledges that:
5.8	Advanced Dental Artistry reserves the absolute right to vary, withdraw or put on hold the Patient's credit facilities immediately in the event that the Patient is in breach of the Agreement or these terms and conditions, and at any time upon 30 days' notice. Advanced Dental Artistry shall have no liability for any losses or damage that the Patient incurs as a result of credit being withheld.	(a) a number of factors affect the longevity of your Treatment and may void any warranty given under clause 9, including but not limited to: diet, decay, clenching, grinding, medication, changes in medical history, neglecting oral hygiene and maintenance and not following guidance as set out by Advanced Dental Artistry;
5.9	The Patient must ensure that all details provided in the credit facility application are up to date at all times and notify Advanced Dental Artistry of any changes.	(b) Advanced Dental Artistry can only advise on the average success rates of the Treatment and cannot guarantee your results; and
5.10	GST and other taxes, duties and charges that may be applicable shall be added to the Price except when they are expressly included in the Price.	
<b>6. CANCELLATION</b>		
6.1	The Patient must give Advanced Dental Artistry at least 48 hours' notice to reschedule or cancel an appointment for a new patient exam, check-up or hygiene appointment.	
6.2	If the Patient does not give Advanced Dental Artistry 48 hours' notice to reschedule or cancel an appointment for a new patient exam, check-up or hygiene appointment, Advanced Dental Artistry:	
	(a) will charge a cancellation fee of \$100 or 50% of the cost of the treatment to be provided at the	

- (c) it is relying on its own skill and judgement when requesting Advanced Dental Artistry undertake the Treatment.
- 8. DAMAGED MATERIALS USED IN TREATMENT**
- 8.1 The Parties acknowledge the fragile nature of the Materials. If the Patient discovers damage to the Materials they must immediately inform Advanced Dental Artistry. Advanced Dental Artistry's liability to the Patient will be limited in accordance with clause 10.
- 8.2 If the Patient fails to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Advanced Dental Artistry has agreed in writing that the Patient is entitled to reject, Advanced Dental Artistry's liability is limited to either replacing the Materials or where the Patient is a consumer as defined in the Australian Consumer Law they shall be entitled to a refund. Nothing in these terms and conditions shall limit or reduce any obligation of Advanced Dental Artistry under such law.
- 8.3 Replacement for Materials which are damaged post-Treatment due to the actions of the Patient will be at the sole discretion of Advanced Dental Artistry.
- 8.4 An allegation of defective Materials by the Patient shall not entitle the Patient to withhold payment of any sum payable to Advanced Dental Artistry and shall not give rise to any right of set-off without the written consent of Advanced Dental Artistry.
- 9. WARRANTY**
- 9.1 Advanced Dental Artistry gives no warranty as to the fitness, quality or suitability of the Treatment except:
- (a) a 2-year warranty on All-on-4 bridge from the technician covering any faults in the bridge or unexplained failures;
- (b) a 5-year warranty for faults and unexplained failures of porcelain units;
- (c) a 10-year manufacturer's warranty on dental implants (Nobel Biocare) <https://www.nobelbiocare.com/au/en/footer/warranty.html>); and
- (d) such other warranties imposed and required to be binding by statute (including the Australian Consumer Law).
- 9.2 The Patient acknowledges that:
- (a) no other warranty, condition or representation has been given or made by Advanced Dental Artistry; and
- (b) damage caused by accidents or misuse (eg. being struck and subjected to any excessive force), poor dental hygiene and failure to adhere to Advanced Dental Artistry's aftercare instructions, including attending check-ups and hygiene appointments, will void the warranties provided under clause 9.1.
- 10. LIMITATION OF LIABILITY**
- 10.1 To the extent permitted by statute, the liability, if any, of Advanced Dental Artistry arising from the breach of the conditions or warranties referred to in clause 9 is, at the option of Advanced Dental Artistry, limited and completely discharged by either:
- (a) the refund of the Price; or
- (b) the rectification of the Treatment including where necessary replacement of the Materials.
- 10.2 The Patient releases Advanced Dental Artistry from any liability for consequential loss, including but not limited to loss of profits, arising from any claim under this Agreement, negligence or any other basis.
- 11. CONFIDENTIAL INFORMATION**
- 11.1 The Patient will not disclose the Confidential Information without the prior written approval of Advanced Dental Artistry.
- 11.2 The Patient will on demand return to Advanced Dental Artistry any Confidential Information supplied by Advanced Dental Artistry to the Patient in connection with this Agreement.
- 12. INTELLECTUAL PROPERTY**
- 12.1 The Patient expressly agrees and acknowledges that:
- (a) any Intellectual Property in the Treatment (whether unregistered, registered or registrable) is the property of Advanced Dental Artistry; and
- (b) nothing in this Agreement is intended to provide the Patient with any interest in the Intellectual Property in the Treatment.
- 13. DEFAULT & CONSEQUENCES OF DEFAULT**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at ten percent (10%) per calendar year and such interest shall compound daily at such a rate after as well as before any judgement.
- 13.2 If the Patient defaults in payment of any invoice when due, the Patient shall indemnify Advanced Dental Artistry from and against all costs and disbursements incurred by Advanced Dental Artistry in pursuing the debt, including legal costs on a solicitor and own client basis, and Advanced Dental Artistry's collection agency costs.
- 13.3 Without prejudice to any other remedies Advanced Dental Artistry may have, if at any time the Patient is in breach of any obligation (including those relating to payment), Advanced Dental Artistry may suspend or terminate the Treatment and any of its other obligations under the terms and conditions. Advanced Dental Artistry will not be liable to the Patient for any loss or damage the Patient suffers because Advanced Dental Artistry has exercised its rights under this clause.
- 13.4 Without prejudice to Advanced Dental Artistry's other remedies at law Advanced Dental Artistry shall be entitled to cancel all or any remaining part of the Treatment and all amounts owing to Advanced Dental Artistry shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Advanced Dental Artistry becomes overdue, or in Advanced Dental Artistry's opinion the Patient will be unable to meet their payments as they fall due; or
- (b) the Patient becomes bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, bankruptcy trustee or similar person is appointed in respect of the Patient or any asset of the Patient.
- 14. SECURITY AND GUARANTEE**
- 14.1 Despite anything to the contrary contained herein or any other rights which Advanced Dental Artistry may have howsoever:

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- (a) where the Patient and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Patient and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Advanced Dental Artistry or Advanced Dental Artistry's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Patient and/or the Guarantor acknowledge and agree that Advanced Dental Artistry (or Advanced Dental Artistry's nominee) shall be entitled to lodge where appropriate an absolute caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should Advanced Dental Artistry elect to proceed in any manner in accordance with this clause 14.1, the Patient and/or Guarantor shall indemnify Advanced Dental Artistry from and against all Advanced Dental Artistry's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Patient and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Advanced Dental Artistry or Advanced Dental Artistry's nominee as the Patient's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
- 14.2 The Guarantor guarantees to Advanced Dental Artistry the due and punctual payment of all moneys and performance by the Patient of all of its obligations under the Agreement. This guarantee shall be continuing and shall not be discharged by the winding up of the Patient and shall bind the successors and legal personal representatives of the Guarantor.
- 15. THE PERSONAL PROPERTY SECURITIES ACT**
- 15.1 Defined terms in the *Personal Property Securities Act 2009* (Cth) have the same meaning as the equivalent defined terms in this clause.
- 15.2 The Patient acknowledges that these terms and conditions constitute a registrable Security Agreement which creates a Security Interest in favour of Advanced Dental Artistry in All of the Patient's Present and After-Acquired Property for the purpose of securing payments due to Advanced Dental Artistry under this Agreement.
- 15.3 The Patient accepts, acknowledges and agrees that:
- (a) the Patient waives its rights to receive notification of a Registration by Advanced Dental Artistry;
  - (b) Pursuant to section 275(6) of the PPSA, the Patient agrees Advanced Dental Artistry is not required to disclose to an interested person information pertaining to Advanced Dental Artistry's Security Interest unless required to do so pursuant to the PPSA or at law generally.
- 15.4 The Patient will:
- (a) sign any documents and/or provide any further information (which information the Patient warrants to be complete, accurate and up-to-date in all respects) and/or assistance which Advanced Dental Artistry may reasonably require to register or amend its Security Interest on the PPSR;
  - (b) indemnify Advanced Dental Artistry against any costs Advanced Dental Artistry incurs in perfecting, maintaining and enforcing its Security Interests, its rights under this Agreement or at law generally;
  - (c) procure from any persons considered by Advanced Dental Artistry to be relevant to its security position, such agreement and waivers as Advanced Dental Artistry may at any time reasonably require; and
  - (d) not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement in its own favour or in favour of a third party without Advanced Dental Artistry's prior written consent.
- 15.5 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Patient agrees, to the extent that s 115(1) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
- (a) s 95 (notice of removal of accession), to the extent that it requires Advanced Dental Artistry to give a notice to the Patient;
  - (b) s 96 (when a person with an interest in the whole may retain an accession);
  - (c) s 121(4) (enforcement of liquid assets – notice to grantor);
  - (d) s 125 (obligation to dispose of or retain collateral);
  - (e) s 130 (notice of disposal of collateral), to the extent that it requires Advanced Dental Artistry to give a notice to the Patient;
  - (f) s 132(3)(d) (contents of statement of account after disposal);
  - (g) s 132(4) (statement of account if no disposal);
  - (h) s 135 (notice of retention of collateral);
  - (i) s 142 (redemption of collateral); and
  - (j) s 143 (reinstatement of security agreement).
- 15.6 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Patient agrees, to the extent that s 115(7) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
- (a) s 127 (seizure by higher priority parties – notice);
  - (b) s 129(2) and (3) (disposal by purchase);
  - (c) s 132 (secured party to give statement of account);
  - (d) s 134(2) (proposal of secured party to retain collateral);
  - (e) s 135 (notice of retention of collateral);
  - (f) s 136(3), (4) and (5) (retaining collateral free of interest); and
  - (g) s 137 (persons entitled to notice may object to proposal).
- 16. PRIVACY ACT 1988**
- 16.1 Advanced Dental Artistry will provide a copy of its privacy policy free of charge upon the request of the

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Patient and on its website at <http://advanceddentalartistry.com.au/>.

16.2 The Patient and the Guarantor agree to Advanced Dental Artistry using Patient information for the purpose of obtaining from a credit reporting agency a credit report containing personal credit information about the Patient and Guarantor/s in relation to credit provided by Advanced Dental Artistry.

16.3 The Patient and the Guarantor agree that Advanced Dental Artistry may exchange information about the Patient and the Guarantor with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by Patient;
- (b) to notify other credit providers of a default by the Patient;
- (c) to exchange information with other credit providers as to the status of this credit account, where the Patient is in default with other credit providers; and
- (d) to assess the credit worthiness of Patient and/or Guarantor.

16.4 The Patient expressly consents to Advanced Dental Artistry being given a consumer credit report for a commercial credit related purpose and/or for a credit guarantee purpose (Section 20F(1)(Items 2 and 3 Privacy Act 1988 (Cth))).

**17. DISPUTE RESOLUTION**

17.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms (“**Dispute**”), a Party cannot commence any court proceedings relating to a dispute unless this clause has first been complied with, except where that Party seeks urgent interlocutory relief.

17.2 A Party claiming that a Dispute has arisen under or in relation to the Agreement must give notice in writing to the other party specifying the nature of the Dispute.

17.3 On receipt of that notice by the other Party, all of the Parties must use all reasonable efforts to expeditiously resolve the Dispute.

17.4 If the Parties have not resolved the dispute within thirty (30) days of receipt of the notice referred to in clause 17.2, or further period as is agreed in writing by them, the Dispute must (at the instigation of any Party) go to arbitration in accordance with clauses 17.5 and 17.5(b).

17.5 The arbitrator appointed to resolve the dispute will be:

- (a) either as agreed in writing by the Parties or failing agreement within seven (7) days of a request by any Party to do so, then;
- (b) as appointed by the President for the time being of the Law Society of Western Australia or his or her nominee.

17.6 The costs of the arbitrator will be borne equally by the parties to the Dispute and each Party must bear its own legal costs.

17.7 Any legal action between the Parties must be commenced in the jurisdiction of Western Australian.

17.8 Despite any other provisions in this Agreement, the Patient agrees that if it disputes the amount in Advanced Dental Artistry’s invoice(s) the dispute may be referred a court of competent jurisdiction for determination without further demand or notice to the Patient. If the court finds in Advanced Dental Artistry’s favour, the Patient agrees to pay Advanced Dental Artistry interest up to the date of judgement. The Patient also agrees to pay Advanced Dental Artistry’s legal costs (on a solicitor and own client basis) and debt recovery costs (if applicable).

**18. GENERAL**

18.1 If any provision of these terms and conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

18.2 This Agreement shall be governed by the laws of Western Australia and is subject to the jurisdiction of the courts of Western Australia.

18.3 Advanced Dental Artistry shall be under no liability whatever to the Patient for any indirect loss and/or expense (including loss of profit) suffered by the Patient arising out of a breach by Advanced Dental Artistry of these terms and conditions.

18.4 In the event of any breach of this Agreement by Advanced Dental Artistry the remedies of the Patient shall be limited to damages which under no circumstances shall exceed the Price.

18.5 The Patient shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Patient by Advanced Dental Artistry.

18.6 Advanced Dental Artistry reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Advanced Dental Artistry notifies the Patient of such change.

18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, hurricane or other event beyond the reasonable control of either party.

18.8 The failure by Advanced Dental Artistry to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Advanced Dental Artistry’s right to subsequently enforce that provision.

Signed by, or on behalf of, the Patient

	Date ___/___/___
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PRINT NAME: \_\_\_\_\_

Accepted, without alteration to the terms, by Elsper Pty Ltd ACN 081 627 849 as trustee for the Dental Services Trust trading as Advanced Dental Artistry Perth ABN 24 082 438 589

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