

DENTAL WIZARD®

END USER AGREEMENT – TERMS AND CONDITIONS OF USE

The Dental Wizard® is a multimedia software application that provides general information for dental patients for use solely in conjunction with a licensed dental or medical care professional. The Dental Wizard® does not constitute dental or medical advice. The software and any associated documentation is owned by DigiDentist® and is protected under the trademark, copyright, trade secret laws, unfair competition and other intellectual property laws of the United States, the State of California, International Treaties, and the laws of other jurisdictions throughout the world.

Access to, and use of, the Dental Wizard® shall be governed by this Terms and Conditions of Use Agreement ("Agreement"). BY VIEWING ANY OF THE DENTAL WIZARD TUTORIALS, YOU (HEREINAFTER, "USER") ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT IS AN ELECTRONIC AGREEMENT GOVERNED BY THE CALIFORNIA UNIFORM ELECTRONIC TRANSACTIONS ACT.

1. LICENSE

(a) Grant. Subject to terms and conditions of this Agreement, DigiDentist® grants User a nonexclusive, nontransferable, revocable license to execute the Dental Wizard®'s object code, and other executable code, solely for its intended purpose and function.

(b) Restrictions.

(1) The Dental Wizard® shall only be used by dental patients in conjunction with a licensed dental or medical care professional. User represents and warrants that he or she is a licensed dental or medical care professional, and is using the Dental Wizard® in conjunction with such professional services.

(2) User shall not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code, operational flow, data structures, or object structures of the Dental Wizard® or any of its components, data files, or modules. User may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, offer to sell, or sell any software, graphics, text, data files, or other information obtained from the Dental Wizard®.

(3) Except for the authorized execution of the Dental Wizard® from the storage media provided by DigiDentist®, User shall not copy, reproduce or otherwise load the contents of the storage media containing the Dental Wizard® on to any other storage device including, without limitation, hard drives, servers, web pages, CD-ROMs, DVDs, RAM, and flash memory.

(4) User shall only use the Dental Wizard® for the benefit of User. User shall not rent, lease, or sublicense the Dental Wizard®. The Dental Wizard®, and any portion thereof, shall not be used to provide, or as part of, any publicly available service or application.

(c) Persons With Access. User shall ensure that each person who has access to the Dental Wizard®, is notified of, and complies with, the terms, conditions, and restrictions of this Agreement.

2. PROPRIETARY PROPERTY RIGHTS

(a) Except for the limited rights to the Dental Wizard® granted in Section 1(a), DigiDentist® shall retain all right, title, and interest in the Proprietary Rights and no provision of this Agreement shall be interpreted or construed as a transfer of any such right to User or any third person. "Proprietary Rights" means all intellectual property and proprietary rights incorporated into, arising out of, or related to the Dental Wizard® including, without limitation, formulas, processes, devices, compilations of information, system requirements, design information, source code structure and implementation, and all upgrades, revisions, modifications, and enhancements thereto. Proprietary Rights shall include, without limitation, the documentation of such rights.

(b) DIGIDENTIST, DENTAL WIZARD, the wire frame tooth logo, and every other designation used in connection with the Dental Wizard® are the trademarks of DigiDentist®. Other product, service and company names mentioned on or in connection with the Dental Wizard® may be the trademarks, service marks, or trade names of their respective owners.

(c) User shall not directly or through his or her affiliates attack, undermine, or challenge the validity of, or DigiDentist®'s title to the Proprietary Rights.

3. TECHNICAL SUPPORT

DigiDentist® will provide technical support and other support services in connection with the Dental Wizard® as provided in DigiDentist®'s then current technical support program including, without limitation, fee-based support services. DigiDentist®, in its sole discretion, shall have the right to expand, reduce, modify, or eliminate such services, if any at all.

4. LIMITATION AND DISCLAIMER OF WARRANTY

(a) THE DENTAL WIZARD PROVIDES GENERAL INFORMATION FOR DENTAL PATIENTS. THE ACCURACY AND PRECISION OF THE INFORMATION IS DEPENDENT ON NUMEROUS FACTORS, SOME OF WHICH MAY NOT BE KNOWN. DIGIDENTIST, ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, AGENTS AND EMPLOYEES DO NOT MAKE ANY WARRANTY AS TO THE ACCURACY AND/OR PRECISION OF THE INFORMATION. USER ACKNOWLEDGES AND AGREES THAT THE DENTAL WIZARD DOES NOT CONSTITUTE DENTAL OR MEDICAL ADVICE AND SHALL ONLY BE USED IN CONJUNCTION WITH A LICENSED DENTAL OR MEDICAL CARE PROFESSIONAL.

(b) DIGIDENTIST, ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, AGENTS AND EMPLOYEES DO NOT MAKE ANY WARRANTY (I) THAT ACCESS TO THE DENTAL WIZARD, REGARDLESS OF DELIVERY MEDIUM (E.G. CD-ROM, DVD, INTERNET SERVICE) WILL BE UNINTERRUPTED, SECURE, COMPLETE, ACCURATE OR ERROR FREE OR (II) THAT ANY DOMAIN NAME, LINK, OR OTHER INFORMATION GENERATED OR PUBLISHED IS ACCURATE OR AVAILABLE.

(c) THE DENTAL WIZARD MAY CONTAIN MATERIAL, DATA, AND INFORMATION FROM, AND MAY PROVIDE LINKS TO, INTERNET WEB SITES OPERATED BY PARTIES OTHER THAN DIGIDENTIST. SUCH MATERIAL, DATA, INFORMATION, AND LINKS ARE PROVIDED SOLELY FOR THE CONVENIENCE AND REFERENCE OF THE USER OF THE DENTAL WIZARD. DIGIDENTIST DOES NOT CONTROL AND IS NOT RESPONSIBLE FOR THE CONTENTS OF SUCH MATERIAL, DATA, INFORMATION, AND WEB SITES. THE INCLUSION OF SUCH MATERIAL, DATA, INFORMATION, AND LINKS TO WEB SITES DOES NOT IMPLY ANY ENDORSEMENT BY DIGIDENTIST OR ANY ASSOCIATION BETWEEN DIGIDENTIST AND THOSE PERSONS WHO OWN AND/OR ARE RESPONSIBLE FOR SUCH MATERIAL DATA, INFORMATION, AND WEB SITES.

(d) DIGIDENTIST WARRANTS THAT (I) THE DENTAL WIZARD WILL EXECUTE ON COMPUTERS THAT MEET ALL MINIMUM REQUIREMENTS ESTABLISHED BY DIGIDENTIST, AND (II) THE STORAGE MEDIA PROVIDED BY DIGIDENTIST CONTAINING THE DENTAL WIZARD IS FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP. DIGIDENTIST SHALL NOT BE RESPONSIBLE FOR ANY DEFECTS ARISING FROM THE ABUSE, MISUSE, OR ANY OTHER UNINTENDED USE OF THE STORAGE MEDIA.

(e) THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AND, TO THE FULL EXTENT PERMITTED BY LAW, ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THOSE OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.

5. LIMITATION OF LIABILITY

DIGIDENTIST'S SOLE LIABILITY FOR A BREACH OF THIS WARRANTY SHALL BE, IN DIGIDENTIST'S SOLE DISCRETION, ONE OR MORE OF THE FOLLOWING: (a) REPLACE THE DEFECTIVE MEDIA AFTER USER RETURNS SUCH DEFECTIVE MEDIA TO DIGIDENTIST; (b) ADVISE HOW TO ACHIEVE SUBSTANTIALLY THE SAME FUNCTIONALITY WITH THE DENTAL WIZARD THROUGH A DIFFERENT PROCEDURE; OR (c) REFUND THE FEES, IF ANY, PAID FOR THE DENTAL WIZARD. REPAIRED, CORRECTED OR REPLACED STORAGE MEDIA SHALL BE COVERED BY THIS LIMITED WARRANTY. DIGIDENTIST'S OBLIGATION UNDER THIS LIMITED WARRANTY IS CONDITIONED ON USER PROMPTLY NOTIFYING DIGIDENTIST OF THE PROBLEM WITH THE DENTAL WIZARD AND PROVIDING EVIDENCE OF THE DATE THE DENTAL WIZARD WAS ACQUIRED. IN NO EVENT WILL DIGIDENTIST BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR ANY OTHER TYPE OF DAMAGES ARISING OUT OF OR RELATED TO (a) THE ACCESS TO, OPERATION OF, OR OTHER USE OF THE DENTAL WIZARD OR (b) ENTERING INTO THIS AGREEMENT.

6. INDEMNIFICATION

User agrees to indemnify, defend, and hold harmless DigiDentist®, its officers, directors, members, managers, agents and employees from and against any claims, demands, damages, and costs (including attorneys' fees and costs) arising out of or relating to one or more of the following:

- (a) the access to, operation of and/or other use of the Dental Wizard® by User or any third party to whom User has permitted or provided access to the Dental Wizard®;
- (b) the unauthorized access to, operation of, or other use of the Dental Wizard® by User, or a third party to whom User has provided or permitted access to the Dental Wizard®, that results in the (i) the actual or alleged infringement of the intellectual or other proprietary rights of a third party and/or (ii) the violation of a law, statute, or regulation;
- (c) breach of any term of this Agreement.

7. TERM; TERMINATION

- (a) Without prejudice to any of its other rights and remedies, DigiDentist® shall have the right to immediately terminate this Agreement if User fails to comply with any term hereof including, without limitation, (i) any unauthorized use of the of the Dental Wizard®, (ii) the professional license of User's dental or medical professional is terminated and/or suspended; (iii) User, directly or through his or her affiliates, attacks, undermines, or challenges the validity of, or DigiDentist®'s title to, the Proprietary Rights, or (iv) User's non-payment of the compensation to DigiDentist® set forth herein. DigiDentist® shall cause such immediate termination by providing written notice to User.
- (b) On any termination of this Agreement, User shall immediately cease all use of the Dental Wizard® and shall certify destruction of or return to DigiDentist® all copies of the Dental Wizard®.
- (c) All terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such expiration or termination and shall continue thereafter in full force and effect.

8. GENERAL PROVISIONS

- (a) **Governing Law.** This Agreement shall be governed by the laws of the State of California as applied to transactions taking place wholly within California between California residents. User hereby submits to the exclusive jurisdiction of any state or federal court sitting in Sonoma County, California, in any action or proceeding brought to enforce this Agreement or otherwise arising out of or relating to the terms hereof. User consents to the exclusive personal jurisdiction and venue of these courts and waives, to the maximum extent permitted by law, any and all rights, either substantive or procedural, arising under a foreign jurisdiction, which in any way limit or prevent enforcement of the terms of this Agreement.
- (b) **Attorneys' Fees.** In any action, proceeding, or arbitration arising from or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.
- (c) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as best to effect the intent of the parties hereto. The parties further agree to replace any such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provision.
- (d) **Restrictions on Assignments and Sublicensing; Binding Effect.** User shall not directly or indirectly assign, transfer or encumber any of its rights under this Agreement, whether involuntary, by operation of law or otherwise, and any unauthorized assignment, transfer or encumbrance shall be void. This Agreement shall not be sublicensed by User without the prior written consent of DigiDentist®. Notwithstanding the foregoing, this Agreement shall be binding on, and inure to the benefit of, the parties hereto, their successors, personal representatives and assigns.
- (e) **Entire Understanding.** This Agreement constitutes the complete and exclusive statement of the agreement among the parties about the described subject matter. It supersedes all prior written and oral statements, including any prior representation or statement. No waiver or modification of any of the terms of this Agreement shall be valid unless in writing, signed by the party to be bound.