

## **Smart SOP Mobile Application Terms of Use Agreement**

**Effective Date: January 30, 2017**

PLEASE READ THIS TERMS OF USE AGREEMENT CAREFULLY BEFORE DOWNLOADING THE Smart SOP APPLICATION. By downloading, accessing and/or using this mobile application (the "Application") owned by DKF Solutions Group, LLC. ("DKF") you signify that you have read, understand and agree to be bound by all of the terms and conditions as set forth in this Terms of Use Agreement ("Agreement"). If you are agreeing to be bound by this Agreement on behalf of your employer or other entity, you represent and warrant that you have full legal authority to bind your employer or such entity to this Agreement. If you do not have the requisite authority, you may not accept the Agreement or use the Application on behalf of your employer or other entity. DKF may change the terms of the Agreement at any time and without notice, effective upon the posting of the revised Agreement. Your continued use of the Application shall be considered your acceptance of the revised Agreement. You must have the most current version of the Application to ensure that it is working properly. It is your responsibility to periodically check the Application and/or our website at [www.dkfsolutions.com/smartprocedures](http://www.dkfsolutions.com/smartprocedures), to determine if you have the most current version of the Application. If you do not agree to this Agreement, please do not download the Application.

### **Disclaimer of Warranties.**

BY DOWNLOADING, INSTALLING AND/OR USING THE APPLICATION, YOU ACKNOWLEDGE AND AGREE THAT THE APPLICATION IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND THAT YOUR USE OF OR RELIANCE UPON THE APPLICATION AND ANY THIRD PARTY CONTENT AND SERVICES ACCESSED THEREBY IS AT YOUR SOLE RISK AND DISCRETION. DKF AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND GUARANTIES REGARDING THE APPLICATION AND THIRD PARTY CONTENT AND SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHERMORE, DKF AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT (I) THE APPLICATION OR THIRD PARTY CONTENT AND SERVICES WILL MEET YOUR REQUIREMENTS; (II) THE APPLICATION OR THIRD PARTY CONTENT AND SERVICES WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, TIMELY, SECURE OR ERROR-FREE; (III) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL ACCESSED OR OBTAINED BY YOU THROUGH THE APPLICATION WILL BE AS REPRESENTED OR MEET YOUR EXPECTATIONS; OR (IV) ANY ERRORS IN THE APPLICATION OR THIRD PARTY CONTENT AND SERVICES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM DKF OR FROM THE APPLICATION SHALL CREATE ANY REPRESENTATION, WARRANTY OR GUARANTY. FURTHERMORE, YOU ACKNOWLEDGE THAT DKF HAS NO OBLIGATION TO CORRECT ANY ERRORS OR OTHERWISE SUPPORT OR MAINTAIN THE APPLICATION.

**Limitation of Liability.**

UNDER NO CIRCUMSTANCES SHALL DKF OR ITS AFFILIATES, PARTNERS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF OR INABILITY TO ACCESS OR USE THE APPLICATION AND ANY THIRD PARTY CONTENT AND SERVICES, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DKF WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DKF'S AGGREGATE LIABILITY TO YOU (WHETHER UNDER CONTRACT, TORT, STATUTE OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**Indemnification.**

You shall indemnify, defend and hold harmless DKF and its affiliates, partners, suppliers and licensors, and each of their respective officers, directors, agents and employees (the "Indemnified Parties") from and against any claim, proceeding, loss, damage, fine, penalty, interest and expense (including, without limitation, fees for attorneys and other professional advisors) arising out of or in connection with the following: (i) your access to or use of the Application or Third Party Content and Services; (ii) your breach of this License; (iii) your violation of law; (iv) your negligence or willful misconduct; or (v) your violation of the rights of a third party, including the infringement by you of any intellectual property or misappropriation of any proprietary right or trade secret of any person or entity. These obligations will survive any termination of the use of the Application.

**Compatibility.**

DKF does not warrant that the Application will be compatible or interoperable with the device or devices on which you download and use the Application including, but not limited to, mobile devices, tablets, laptop computers, desktop computers or any other piece of hardware, software, equipment or device installed on or used in connection with your device(s). Furthermore, you acknowledge that compatibility and interoperability problems can cause the performance of your device(s) to diminish or fail completely, and may result in permanent damage to your device(s), loss of the data located on your device(s), and corruption of the software and files located on your device(s). You acknowledge and agree that DKF and its affiliates, partners, suppliers and licensors shall have no liability to you for any losses suffered resulting from or arising in connection with compatibility or interoperability problems.

**Product Claims.**

You acknowledge that you (not DKF) are responsible for addressing any third party claims relating to your use or possession of the Application, and agree to notify DKF of any third party claims relating to the Application of which you become aware. Furthermore, you hereby release DKF from any liability resulting from your use or possession of the Application, including, without limitation, the following: (i) any product liability claims; (ii) any claim that the Application fails to conform to any applicable legal or regulatory requirement; and (iii) any claim arising under consumer protection or similar legislation.

The Smart SOP application is designed and intended for use only by persons with the required training, licenses, certifications, or other qualifications that are necessary or required for the safe and legal use of this application. While every effort is made to ensure that Smart SOP facilitates the collection of information necessary to comply with local, State and Federal safety laws, DKF offers no guarantee that users will be in compliance with any laws or regulations.

**Unenforceable Provisions.**

If any provision of this Agreement is, or is found to be, unenforceable under applicable law, that will not affect the enforceability of the other provisions of this Agreement.

**Ownership of Intellectual Property and Limited License.**

All intellectual property to this Application, including all Application material, is protected by copyright, trademark, or patent laws, and is owned exclusively by DKF. Intellectual property, includes, but is not limited to, computer or software code, scripts, design elements, graphics, interactive features, artwork, text communication, and any other content that may be found on or in the Application. All trademarks, service marks and trade names are owned, registered and/or licensed by DKF. DKF grants to you a worldwide, non-exclusive, royalty-free, revocable license to: download this Application to a device; use this Application as herein set forth; copy and store this Application and the material on this Application in your device's cache memory; and print pages from this Application for your own non-commercial use. DKF does not grant you any other rights whatsoever in relation to this Application or the material on this Application. All other rights are expressly reserved by DKF.

**Use and Prohibited Use Restrictions.**

You may use the Application only for non-commercial use for a single entity. You are strictly prohibited from using the Application for more than one entity, agency, employer, organization or other business. You are strictly prohibited from, and agree that you will not, adapt, edit, change, modify, transform, publish, republish, distribute, or redistribute this Application or the material on this Application (in any form or media) without DKF's prior written consent. You agree not to use any automated data collection methods, data mining, robots, or scraping or any data gathering methods of any kind on this Application.

**Enforcement of Copyright and Protection of Intellectual Property.**

If DKF discovers that you have used its copyrighted or other protected materials in contravention of the terms of the license above, DKF may bring legal proceedings against you, seeking monetary damages and an injunction against you. You could also be ordered to pay legal fees and costs. If you become aware of any use of DKF's copyright or protected materials that contravenes or may contravene the terms of the license above, immediately report this by email to [privacy@dkfsolutions.com](mailto:privacy@dkfsolutions.com) or by first-class mail to DKF Solutions Group, LLC, 170 Dogwood Lane, Vallejo, CA 94591.

**Governing Law and Dispute Resolution.**

This Agreement shall be governed by and shall be construed in accordance with the laws of

the State of California, excluding its choice of law rules. All disputes relating to this Agreement shall be settled in the courts located within the county of Solano, in California. The parties submit to personal jurisdiction within the State of California.

**Contact Information.**

DKF may be contacted by mail at DKF Solutions Group, LLC, 170 Dogwood Lane, Vallejo, CA 94591 or by email at [dkf@dkfsolutions.com](mailto:dkf@dkfsolutions.com).