



## BUSINESS ASSOCIATE AGREEMENT

This **Business Associate Agreement** ("the Agreement") is made effective \_\_\_\_\_, \_\_\_\_\_, by and between **Darby Dental Supply, LLC**, a New York general business corporation (referred to herein as the "Business Associate"), with offices at 300 Jericho Quadrangle, Jericho, NY 11753, and \_\_\_\_\_ of \_\_\_\_\_ (referred to herein as "The Practice"), a New York corporation providing health care services with offices at \_\_\_\_\_, and with the Business Associate and the Practice collectively referred to herein as "the Parties".

### WITNESSETH:

**WHEREAS**, pursuant to the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E (referred to herein as the "HIPAA Privacy Rule" or "the Rule"), The Practice is a Covered Entity as defined in the Rule and, therefore, is required to comply with it; and

**WHEREAS**, the Parties wish to enter into or have entered into a Services Agreement, dated \_\_\_\_\_ (Referred to herein as "the Services Agreement"), under which Business Associate will provide certain services to, or perform certain functions on behalf of, The Practice; and

**WHEREAS**, pursuant to such Services Agreement, Business Associate will have access to Protected Health Information ("PHI") (as defined in this Agreement) of The Practice; and

**WHEREAS**, The Practice is required to obtain satisfactory assurances that Business Associate, in performing services for The Practice, will appropriately safeguard The Practice's PHI which Business Associate receives from, creates for or discloses on behalf of The Practice;

**NOW, THEREFORE**, in consideration of the Parties' obligations under the Services Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties enter into this Agreement, as an addendum to the Services Agreement, as required by the HIPAA Privacy Rule, and to protect the interest of both Parties.

### **I. DEFINITIONS**

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy Rule. (These definitions are attached hereto as Appendix A and made a part hereof.) In the event of an inconsistency between the provisions of this Agreement and the mandatory provision of the HIPAA Privacy Rule, as amended, the Rule shall control. Where provisions of this Agreement differ from those in the HIPAA Privacy Rule, but are nonetheless permitted by the Rule, the provisions of this Agreement shall control.

"Protected Health Information," or "PHI," means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

### **II. ACKNOWLEDGEMENT OF BUSINESS ASSOCIATE**

Business Associate acknowledges that all Protected Health Information that is created or received by The Practice and disclosed or made available in any form, including paper record, oral communication, and electronic display, by The Practice to Business Associate, or which is created, received or maintained by Business Associate on The Practice's behalf, shall be subject to this Agreement.

### **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

Business Associate agrees:

- A. To not use or disclose PHI other than as permitted or required by the Services Agreement, this Agreement or as permitted by law;
- B. To use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted or required by the Services Agreement, this Agreement, or as permitted by law;
- C. To report to The Practice any security incident and any use or disclosure of PHI not permitted by the Services Agreement, this Agreement or by law, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, of which Business Associate becomes aware;
- D. To mitigate, to the extent practicable, any known harmful effects of security incidents;
- E. To ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such information;
- F. To the extent that by mutual agreement of the Parties, Business Associate maintains any PHI in a Designated Record Set, which is not a duplication of the information held by The Practice, Business Associate will provide The Practice access to its PHI at its request or, as directed by The Practice, will provide such access to an Individual, to satisfy the requirements of Section 164.524 of the HIPAA Privacy Rule;
- G. To the extent that by mutual agreement of the Parties, Business Associate maintains any PHI in a Designated Record Set, to make any amendment(s) to PHI in such a Designated Record Set, to the extent and in the manner permitted by Section 164.526 of the HIPAA Privacy Rule, upon request by The Practice or an individual;
- H. To make its internal practices, books, and records relating to the use and disclosure of PHI received from The Practice, or created or received by Business Associate on behalf of The Practice, available to the Secretary of Health and Human Services, at a reasonable time and in a reasonable manner or as designated by the Secretary, for purposes of the Secretary determining The Practice's compliance with the HIPAA Privacy Rule;
- I. To document disclosures of PHI, and information related to such disclosures, and to provide such documentation to The Practice to permit it to respond to a request by an Individual for an accounting of PHI disclosures, as required by Section 164.528 of the HIPAA Privacy Rule; and
- J. To the extent Business Associate carries out one or more of The Practice's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of HIPAA that apply to The Practice in the performance of such obligation(s).

#### **IV. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

- A. General Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform the functions, activities or services for, or on behalf of, The Practice as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Privacy Rule if performed by The Practice.
- B. Specific Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate:
  - 1. May use PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities;
  - 2. May disclose PHI for the proper management and administration of Business Associate, provided that such disclosures are required by law or Business Associate obtains reasonable assurances from the third person, to whom the PHI is disclosed, that it will remain confidential and will be used or further disclosed only as permitted by law, or only for the lawful purpose for which it was disclosed to this third person, and that this third person will promptly notify Business Associate if he/she becomes aware of any instances when the confidentiality of the PHI is breached;
  - 3. May use PHI to provide Data Aggregation services to The Practice, as permitted by the HIPAA Privacy Rule; and
  - 4. May use PHI to report violations of the law to appropriate government authorities, consistent with the HIPAA Privacy Rule.

**V. OBLIGATIONS OF THE PRACTICE**

- A. The Practice agrees:
1. To notify Business Associate of any limitations(s) in its Notice of Privacy Practices, to the extent that such limitation(s) may affect Business Associate's use of disclosure of PHI;
  2. To provide a copy of its current Notice of Privacy Practices, and any revisions to it, upon request by Business Associate;
  3. To notify Business Associate of any changes in or revocation by an Individual of permission to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI;
  4. To notify Business Associate of any restrictions on the use or disclosure of PHI to which The Practice has agreed, to the extent that such restrictions may affect Business Associate's use or disclosure; and
  5. When disclosing PHI to Business Associate, to limit PHI to the minimum necessary to accomplish the intended purpose of the disclosure.
- B. The Practice shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if performed by The Practice, except for such uses or disclosures by Business Associate that are otherwise permitted by this Agreement.

**VI. TERM AND TERMINATION**

- A. Term. The Term of this Agreement shall be effective as of \_\_\_\_\_ and shall be coterminous with the term of the Services Agreement.
- B. Termination. Upon The Practice becoming aware of a breach or violation of this Agreement by Business Associate, The Practice shall:
1. Provide a reasonable opportunity (not to exceed twenty (20) days) for Business Associate to cure the breach or end the violation, or terminate this Agreement and the Services Agreement if Business Associate does not cure within the time specified by The Practice; or
  2. Immediately terminate this Agreement and the Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
- C. Effect of Termination.
1. Except as provided in paragraph 2, below, upon termination of this Agreement for any reason, if feasible, Business Associate shall return or destroy all PHI received from The Practice, or created or received by Business Associate on behalf of The Practice that Business Associate still maintains in any form and retain no copies of such information.
  2. Should Business Associate conclude that returning or destroying any PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI, and shall limit its further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

**VII. MISCELLANEOUS**

- A. Except as expressly stated herein or in the HIPAA Privacy Rule, the Parties do not intend to create any rights in any third parties.
- B. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent Parties contracting with each other solely for the purposes of implementing the provisions of this Agreement and the Services Agreement.
- C. This Agreement may be amended or modified only in writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. The

Parties agree to take such action to amend this Agreement from time to time as is necessary for The Practice to comply with the requirements of the HIPAA Privacy Rule and any amendments or revisions thereto.

- D. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of any continuing or other liabilities or obligations, nor shall they prohibit enforcement of any liabilities or obligations on any other occasions.
- E. This Agreement shall be governed by the laws of the state of New Jersey and the New Jersey Superior Court, Morris County, shall have exclusive jurisdiction over any legal disputes between the Parties arising under this Agreement.
- F. Should a provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.
- G. Should a Party believe in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, that Party shall notify the other Party in writing, specifying the purported non-compliance and proposed revision(s) for compliance. For a period of up to twenty (20) days, the Parties shall negotiate in good faith over amending the terms of this Agreement, if necessary, to comply with the HIPAA Privacy Rule. If, after such 20-day period, the Parties cannot agree to such amendment(s), then either Party can terminate the Agreement upon written notice to the other Party, with such termination being effective immediately upon receipt.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first written above.

**[The Practice]**

**Darby Dental Supply, LLC**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

### **Appendix A**

#### **Definitions:**

**Designated Record Set** - A designated record set is basically a group of records which a health care provider that is a "covered entity" uses to make health care treatment and related decisions about patients. It includes a health care provider's medical and billing records, and a health plan's enrollment, payment, claims adjudication, and case or medical management record systems. A *record*, for purposes of a designated record set, means any item, collection or grouping of information that includes protected health information which is maintained, collected, used or disseminated by or for a covered entity.

**Individual** - The person who is the subject of protected health information.

**Data Aggregation** - Data aggregation means, with respect to protected health information created or received by a business associate, in its capacity as such an associate of a covered entity, the combining of such information by the business associate with similar information it has received as an associate of another covered entity, to permit data analyses which relates to the health care operations of the respective covered entities.

**Notice of Privacy Practices** - A written notice intended to explain how the covered entity will use and disclose a patient's protected health information, and to state the patient's rights and the covered entity's legal duties with respect to such information.