

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is effective upon execution, by and between Patterson Dental Supply, Inc. (the “Business Associate”) and _____ (the “Covered Entity”).

WHEREAS, Business Associate is a dental supply company and Covered Entity is a dental healthcare provider;

WHEREAS, the Business Associate will use and/or disclose Protected Health Information in its performance of the Services described below;

WHEREAS, both parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Regulation”) and other regulations issued under 45 CFR parts 142 and 160-164 pursuant to the Health Insurance Portability and Accountability Act of 1996 (collectively, “HIPAA”).

The parties hereby agree as follows:

1. Permitted Uses and Disclosures.

- 1.1. Services. Business Associate is permitted to use and disclose Protected Health Information it creates or receives for or from Covered Entity that would normally be used to provide the functions, activities, and services necessary in the business relationship on the Covered Entity’s behalf. All other uses not authorized by this Agreement are prohibited.
- 1.2. Business Activities of Business Associate. Unless otherwise limited herein, Business Associate may disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that Business Associate represents to Covered Entity, in writing, that the disclosures are in compliance with HIPAA and any applicable state laws or regulations governing health information.
- 1.3. Additional Activities of Business Associate. Business Associate may:
 - a. Aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that Business Associate has in its possession through its capacity as a business associate with other covered entities provided that the purpose of such aggregation is to provide Covered Entity with data analyses relating to the Health Care Operations of Covered Entity. Under no circumstances may Business Associate disclose Protected Health Information of one Covered Entity to another Covered Entity absent the explicit authorization of Covered Entity.

- b. De-identify any and all Protected Health Information provided that the deidentification conforms to the requirements of HIPAA and further provided that Covered Entity maintains the documentation required by HIPAA.

2. Use and Disclosure of Protected Health Information.

2.1. Responsibilities of Business Associate. With regard to its use and/or disclosure of Protected Health Information, Business Associate hereby agrees to do the following:

- a. Use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law.
- b. Report to the designated Privacy Officer of Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware within a reasonable time of Business Associate's discovery of such unauthorized use and/or disclosure.
- c. Establish procedures for mitigating, to the greatest extent possible, any effects from any improper use and/or disclosure of Protected Health Information that Business Associate reports to Covered Entity.
- d. Use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information.
- e. Require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to Business Associate pursuant to this Agreement.
- f. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
- g. Within 45 days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with HIPAA.
- h. Subject to Section 4.4 below, return to Covered Entity or destroy, within a reasonable time of the termination of this Agreement, the Protected Health

Information in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).

- i. Disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

2.2. Responsibilities of Covered Entity. With regard to the use and/or disclosure of Protected Health Information by Business Associate, Covered Entity hereby agrees to do the following:

- a. Inform Business Associate of any changes in the form of notice of privacy practices (the "Notice") that Covered Entity provides to individuals pursuant to HIPAA, and provide Business Associate a copy of the Notice currently in use.
- b. Inform Business Associate of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals pursuant to HIPAA.
- c. Inform Business Associate of any opt-outs exercised by any individual from marketing and/or fundraising activities of Covered Entity pursuant to HIPAA
- d. Notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under HIPAA that may impact in any manner the use and/or disclosure of Protected Health Information by Business Associate under this Agreement.
- e. Allow Business Associate to make any use and/or disclosure of Protected Health Information permitted under HIPAA.

3. Handling of Designated Record Sets.

3.1. Responsibilities of Business Associate. In the event that the parties mutually agree in writing that the Protected Health Information constitutes a Designated Record Set (as defined under HIPAA), Business Associate hereby agrees to do the following:

- a. At the request of, and in the time and manner designated by Covered Entity, provide access to the Protected Health Information by Covered Entity in order to meet a request by an individual under HIPAA.
- b. At the request of, and in the time and manner designated by Covered Entity, make any amendment(s) to the Protected Health Information that Covered Entity directs pursuant to HIPAA. Provided, however, that Covered Entity makes the determination that the amendment(s) are

necessary because the Protected Health Information that is the subject of the amendment(s) has been, or could foreseeably be, relied upon by Business Associate or others to the detriment of the individual who is the subject of the Protected Health Information to be amended.

- 3.2. Responsibilities of Covered Entity with Respect to the Handling of the Designated Record Set. In the event that the parties mutually agree in writing that the Protected Health Information constitutes a Designated Record Set, Covered Entity hereby agrees to do the following:
- a. Notify Business Associate, in writing, of any Protected Health Information that Covered Entity seeks to make available to an individual pursuant to HIPAA and the time, manner and form in which Business Associate shall provide such access.
 - b. Notify Business Associate, in writing, of any amendment(s) to the Protected Health Information in the possession of Business Associate that Business Associate shall make and inform Business Associate of the time, form and manner in which such amendment(s) shall be made.

4. Term and Termination.

- 4.1. Term. This Agreement shall become effective on the date set forth above and shall continue in effect until all obligations of the parties have been met, unless terminated as provided in Sections 4.2 and 4.3. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 4.4 herein.
- 4.2. Termination by Covered Entity. As provided under HIPAA, Covered Entity may immediately terminate this Agreement if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may choose to: (i) provide Business Associate with written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved, Business Associate must cure said breach to the satisfaction of Covered Entity. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement.
- 4.3. Termination Without Cause. Either party may provide thirty (30) days notice of its intention to terminate this Agreement without cause. In the event that Business Associate makes the determination that Covered Entity has breached a material term of this Agreement, Business Associate has the option to agree to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating this Agreement.
- 4.4. Effect of Termination. Upon the event of termination pursuant to this Section 4, Business Associate agrees to return or destroy all Protected Health Information

pursuant to HIPAA, if it is feasible to do so. Prior to doing so, Business Associate further agrees to recover any Protected Health Information in the possession of its subcontractors or agents.

If it is not feasible for Business Associate to return or destroy said Protected Health Information, Business Associate will notify Covered Entity in writing. Said notification shall include: (i) a statement that Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

If it is not feasible for Business Associate to obtain, from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

5. **Business Associate Determination.** If Patterson Dental Supply is not a Business Associate as defined in the Privacy Rule, 45 CFR Section 160.103, none of the foregoing provisions apply. Such determination may be made by an advisory letter issued by the Department of Health and Human Services or by an opinion of counsel. Patterson Dental Supply will, however, continue to comply with Sections 6, 7, and 8 in order to protect the confidentiality of any and all information provided to Patterson Dental Supply in the course of providing Services to Covered Entity.
6. **Confidentiality.** As used in this Agreement, the term "Confidential Information" shall mean any and all information of either party in any media, tangible or intangible, that is not generally known or readily ascertainable, including but not limited to: (i) any and all technical information, know-how, formulae, processes, inventions, and product or service protocols; (ii) any and all business information, such as accounting, financial, sales, and marketing information; (iii) any and all employee and client information. Notwithstanding the above, Confidential Information shall not include information that (a) was generally known or available to the public at the time of disclosure, or which may later become generally known or available to the public, except where such knowledge or availability is the result of an unauthorized disclosure by either party; (b) has been rightfully received by either party from a third party without confidential limitations; (c) has been independently developed by either party or any agents having no access to the Confidential Information of the other party; (d) was available to either party prior to

disclosure by the other party, as evidenced by the receiving party's files and records in existence prior to such disclosure.

Both parties shall take all steps reasonably necessary to maintain the other party's Confidential Information in confidence and shall not use, publish, disclose or otherwise make available, directly or indirectly, such Confidential Information to any third party without the prior written consent of the other party. Each party's obligations with respect to the other party's Confidential Information also extends to any third party's proprietary or Confidential Information disclosed in the course of providing services hereunder.

Each party acknowledges and agrees that the other party would be irreparably harmed if any Confidential Information were to be disclosed to third parties in violation of this Agreement, or if any use were to be made of the Confidential Information other than that specified in this Agreement, and further agrees that the other party shall have the right to seek and obtain injunctive relief upon any violation or threatened violation of the terms of this Agreement, in addition to all other rights and remedies available to the other party at law or in equity.

7. **Indemnification.** The Parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any negligent or willful material breach of this Agreement, including failure to perform its obligations under the Privacy Regulation, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's negligent or willful material breach hereunder. The parties' obligation to indemnify any indemnified party shall survive the expiration or termination of this Agreement for any reason.

8. **Miscellaneous.**

- 8.1. Covered Entity. For purposes of this Agreement, Covered Entity shall include all entities covered by the joint notice of information practices (or privacy notice), which includes affiliated covered entities if applicable.
- 8.2. Business Associate. For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that Business Associate is otherwise a covered entity under the Privacy Regulation, that entity may appropriately designate a health care component of the entity, pursuant to HIPAA, as Business Associate for purposes of this Agreement.

- 8.3. Amendments; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 8.4. Notices. All notices shall be in writing and sent by registered mail, overnight mail, courier or transmitted by facsimile (if confirmed by such mailing) to the addresses indicated on the signature page of this Agreement or such other addresses as either party may indicate by at least ten (10) days prior written notice.
- 8.5. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.
- 8.6. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
9. **Definitions.** Each of the terms “Designated Record Set,” “Health Care Operations,” “Privacy Officer,” and “Protected Health Information” shall have the meaning set out in its definition under HIPAA, as such provision is currently drafted and as it is subsequently updated, amended, or revised.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of the last date written below.

COVERED ENTITY

PATTERSON DENTAL SUPPLY, INC.

By: _____

By: *Scott R. Kabbes*

Print Name: _____

Print Name: Scott R. Kabbes

Print Title: _____

Title: President, Patterson Technology Center, Inc.

Address: _____

Address: 2202 Althoff Drive, Effingham, IL 62401

Date: _____

Date: March 19, 2003