

BUSINESS ASSOCIATE AGREEMENT

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

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

WHEREAS, Patterson may use and/or disclose Protected Health Information (“PHI”) and may transmit or maintain PHI through Electronic Media (“e-PHI”) on behalf of Covered Entity 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, 45 CFR parts 142 and 160-164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (the “Privacy Rule”) and the Security Standards for the Protection of Electronic PHI, 45 C.F.R. Part 164, Subparts A and C, promulgated pursuant to HIPAA (the “Security Rule”); and

WHEREAS, the Privacy Rule and Security Rule require the Covered Entity to obtain certain promises from a Patterson to protect the confidentiality of PHI and the security of e-PHI.

The parties hereby agree as follows:

A. Privacy

1. Permitted Uses and Disclosures.

- 1.1. Services. Patterson is permitted to use and disclose PHI 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 Patterson. Unless otherwise limited herein, Patterson may disclose the PHI 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 Patterson, provided that Patterson 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 Patterson. Patterson may:
 - a. Aggregate the PHI in its possession with the PHI of other covered entities that Patterson has in its possession through its capacity as a Patterson 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 Patterson

disclose PHI of one Covered Entity to another Covered Entity absent the explicit authorization of Covered Entity.

- b. De-identify any and all PHI provided that the de-identification 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 Patterson. With regard to its use and/or disclosure of PHI, Patterson hereby agrees to do the following:

- a. Use and/or disclose the PHI 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 PHI that is not permitted or required by this Agreement of which Patterson becomes aware within a reasonable time of Patterson'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 PHI that Patterson reports to Covered Entity.
- d. Use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of such PHI.
- e. Require all of its subcontractors and agents that receive or use, or have access to, PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Patterson pursuant to this Agreement.
- f. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy Rule, 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 PHI 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 PHI 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 PHI 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 PHI by Patterson, Covered Entity hereby agrees to do the following:
- a. Inform Patterson of any changes in the form of notice of privacy practices (the “Notice”) that Covered Entity provides to individuals pursuant to HIPAA, and provide Patterson a copy of the Notice currently in use.
 - b. Inform Patterson of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals pursuant to HIPAA.
 - c. Inform Patterson of any opt-outs exercised by any individual from marketing and/or fundraising activities of Covered Entity pursuant to HIPAA
 - d. Notify Patterson, 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 PHI by Patterson under this Agreement.
 - e. Allow Patterson to make any use and/or disclosure of PHI permitted under HIPAA.

3. Handling of Designated Record Sets.

- 3.1. Responsibilities of Patterson. In the event that the parties mutually agree in writing that the PHI constitutes a Designated Record Set (as defined under HIPAA), Patterson 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 PHI 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 PHI that Covered Entity directs pursuant to HIPAA. Provided, however, that Covered Entity makes the determination that the amendment(s) are necessary because the PHI that is the subject of the amendment(s) has been, or could foreseeably be, relied upon by Patterson or others to the detriment of the individual who is the subject of the PHI 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 PHI constitutes a Designated Record Set, Covered Entity hereby agrees to do the following:

- a. Notify Patterson, in writing, of any PHI that Covered Entity seeks to make available to an individual pursuant to HIPAA and the time, manner and form in which Patterson shall provide such access.
- b. Notify Patterson, in writing, of any amendment(s) to the PHI in the possession of Patterson that Patterson shall make and inform Patterson of the time, form and manner in which such amendment(s) shall be made.

B. Security

1. Safeguards. Patterson will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.
2. Agents and Subcontractors. Patterson will ensure that any agent, including a subcontractor, to whom Patterson provides such information, agrees to implement reasonable and appropriate safeguards to protect such information.
3. Security Incidents. Patterson will promptly report to Covered Entity any Security Incident of which it becomes aware.

C. Term and Termination.

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 C (2) and C (3). In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section C (4) herein.
2. Termination by Covered Entity. As provided under HIPAA, Covered Entity may immediately terminate this Agreement if Covered Entity makes the determination that Patterson has breached a material term of this Agreement. Alternatively, Covered Entity may choose to: (i) provide Patterson with written notice of the existence of an alleged material breach; and (ii) afford Patterson an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved, Patterson 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.
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 Patterson makes the determination that Covered Entity has breached a material term of this Agreement, Patterson 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. Effect of Termination. Upon the event of termination pursuant to this Section 4, Patterson agrees to return or destroy all PHI pursuant to HIPAA, if it is feasible to do so. Prior to doing so, Patterson further agrees to recover any PHI in the possession of its subcontractors or agents.

If it is not feasible for Patterson to return or destroy said PHI, Patterson will notify Covered Entity in writing. Said notification shall include: (i) a statement that Patterson has determined that it is not feasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Patterson further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Patterson's use and/or disclosure of any PHI 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 PHI infeasible.

If it is not feasible for Patterson to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Patterson 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 PHI 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 PHI infeasible.

- D. **Business Associate Determination.** If Patterson 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 will, however, continue to comply with Section E (Confidentiality) to protect the PHI and e-PHI provided to Patterson in the course of providing Services to Covered Entity.
- E. **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.

F. **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 Rule, 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.

G. **Miscellaneous.**

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.
2. Patterson. For purposes of this Agreement, Patterson shall be as named above. However, in the event that Patterson is otherwise a covered entity under the Privacy Rule, that entity may appropriately designate a health care component of the entity, pursuant to HIPAA, as Patterson for purposes of this Agreement.
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.
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.

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.

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, Patterson and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

7. Definitions. Each of the terms “Designated Record Set,” “Health Care Operations,” “Privacy Officer,” “Protected Health Information,” “Electronic Media” and “Security Incident” shall have the meaning set out in its definition under the Privacy Rule or Security Rule, as such provision is currently drafted and as it is subsequently updated, amended, or revised. Terms that are defined for purposes of the Privacy Rule or Security Rule may or may not be capitalized in this Agreement. Privacy and Security Rule definitions will apply, unless otherwise specifically defined in this Agreement.

8. Interpretation. The parties agree that any ambiguity in this Agreement will be resolved in favor of a meaning that complies and is consistent with HIPAA, the Privacy Rule and the Security Rule. The provisions of this Agreement will prevail over any provision in any other agreement under which Patterson provides services to Covered Entity that may conflict or appear inconsistent with this Agreement. All other terms of such other agreement will remain in force and effect.

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:



Print Name: _____

Print Name: Craig Kabbes

Print Title: _____

Title: Director, Patterson Technology Center

Address: _____

Address: 2202 Althoff Dr, Effingham, IL 62401

Date: _____

Date: April 15, 2005