

DOLPHIN SOFTWARE END USER LICENSE AGREEMENT

1. **Acceptance of Terms.** This Software End User License Agreement together with the “Customer Order” form any documents references herein (collectively this “Agreement”) is between you (“Customer”) and Patterson Dental Supply, Inc., a Minnesota corporation, and its affiliates, including Dolphin Imaging Software, LLC, and Dolphin Practice Management, LLC, who do business as Dolphin Imaging & Management Solutions (collectively “Dolphin”). CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE INSTALLING OR USING THIS SOFTWARE PRODUCT (THE “DOLPHIN SOFTWARE”). THE TERM “DOLPHIN SOFTWARE” SHALL INCLUDE, WITHOUT LIMITATION, ANY TEXT, IMAGES, INFORMATION, SOFTWARE, FEATURES, OR OTHER INFORMATION. BY CLICKING “Yes” BELOW AND INSTALLING OR USING THE DOLPHIN SOFTWARE, CUSTOMER AGREES TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHETHER OR NOT YOU HAVE READ THEM. IF YOU DO NOT AGREE TO THESE TERMS, CLICK “No” BELOW AND DO NOT INSTALL OR USE THE DOLPHIN SOFTWARE. IF YOU ARE EMPLOYED BY A LEGAL ENTITY ON WHOSE BEHALF YOU ARE ENTERING THIS AGREEMENT, AND HAVE ACTUAL OR APPARENT SIGNATURE AUTHORITY FOR SUCH ENTITY, YOU AGREE THAT THE ENTITY WILL ALSO BE LEGALLY BOUND BY HERETO. IF YOU DO NOT HAVE SIGNATURE AUTHORITY FOR SUCH ENTITY THAN YOU AGREE TO OBTAIN SUCH ENTITIES CONSENT TO THE FORGOING CONDITIONS. IF APPLICABLE YOU MAY CONTACT DOLPHIN TO ARRANGE THE RETURN OF THE DOLPHIN SOFTWARE AND A REFUND OF APPLICABLE LICENSE FEES PAID.

2. **Software License.** Subject to the terms and conditions of this Agreement, Dolphin grants Customer a limited, revocable, nonexclusive, non-transferable, non-sublicensable, license to use the Dolphin Software for Customer’s internal business purposes only. Customer is purchasing a license to use the Dolphin Software. Customer is not purchasing the Dolphin Software. The Dolphin Software licensed under this Agreement is Dolphin Imaging Software (including Aquarium™), Dolphin Management Software, or Dolphin Update Service (“DUS”). Dolphin Software includes any applicable Content and data contained therein, user manuals, specifications, network guidelines, hardware requirements, and other related documentation. The Dolphin Software interacts with certain third party software to which Dolphin has obtained licenses for Customer’s use (“Third Party Service(s)”). For any Third Party Services that Customer is accessing or using through the Dolphin Software, Customer also agrees to accept and be bound by the terms, conditions and use restrictions related to that Third Party Service. The terms, conditions and use restrictions related to Third Party Services are posted in third party end user license agreements (“EULAs”) that are accessible directly from such Third Party Services, online, or at any time through Customer’s Dolphin Software account. Dolphin will not be responsible and shall have no liability for any damage, claim, loss or act arising from Customer’s enrollment in or use of Third Party Services. Dolphin, in its sole discretion, shall manage all Third Party Services approved to connect with the Dolphin Software, and may discontinue, replace, or terminate any Third Party Service connection at any time. In the event of a discontinuance or termination of Dolphin’s connection to any Third Party Services, Dolphin, may in its sole discretion, replace any such Third Party Services with a commercially reasonable alternative for use in conjunction with the Dolphin Software, or may choose not to replace said Third Party Service. Any breach by Customer of any Third Party Services EULAs is also a breach of this Agreement.

3. **Fees.** While this Agreement is in effect, Customer agrees to pay Dolphin the stated fees for access to, and use of, the Dolphin Software as provided in the Customer Order between Customer and Dolphin. Further, Customer grants to Patterson the right to collect fees on behalf of Third Party Services who provide software or services related to the Patterson Software. Fees are non-cancelable and non-refundable. Customer is responsible for paying all fees, whether or not licenses are actively used. Fees for each license are payable monthly, due each calendar month by the due date set forth in the invoice, and charged in full for each month, even if Customer increases licenses in the middle of a billing period. Unless otherwise set forth on the Customer Order, Patterson reserves the right to modify its fees for the Patterson Software or introduce new charges, from time to time, upon not less than thirty (30) days prior notice. Notice shall be posted to the Patterson Software or another method in a location generally accessible for customers to reasonably view.

Notice shall be posted to the Dolphin Software in a location generally accessible for Customers to reasonably view. All fees are stated in U.S. dollars. Any incorrect or disputed charges must be reported to Dolphin within sixty (60) days of the invoice date containing the amount in question to be eligible to receive an adjustment or credit. Any undisputed payment not received by the due date shall accrue interest, at the lower of one and a half percent (1.5%) of the outstanding balance per month (being 18% per annum), or the maximum rate permitted by law, from the date such payment is due until the date paid. Customer shall also pay all sums expended (including, without limitation, reasonable attorney fees and legal costs) in collecting overdue payments. Fees do not include any taxes, levies, duties, or other governmental assessments of any kind. Customer shall be responsible for, and shall pay in full, all sales, use, excise or similar governmental taxes imposed by any federal, state, or local governmental entity upon the fees charged to Customer under this Agreement or the Customer Order, exclusive, however, of taxes based on Dolphin's income, which taxes shall be paid by Dolphin. If any taxes for which Customer is responsible hereunder are paid by Dolphin, Customer will promptly reimburse Dolphin upon Customer's receipt of proof of payment.

4. **Restrictions on Use of the Dolphin Software.**

(a) Customer may not, directly or indirectly, nor permit any authorized user or third party to: (i) copy, distribute, adapt or prepare derivative works from, reverse engineer, disassemble, decompile, modify, manipulate (including, without limitation, by integrating unauthorized software not provided by Dolphin with the Dolphin Software), or otherwise attempt to discover or derive the source code or underlying algorithms from the Dolphin Software, including but not limited to, for the purposes of building a competitive product or service, developing similar ideas, features, functions, graphics, or user experience of the Dolphin Software; (ii) rent, lend, lease, license, sublicense, assign, distribute, reproduce, sell, resell or otherwise transfer, exploit or disclose the Dolphin Software or make the Dolphin Software or Customer's access credentials, or any part thereof, available to any third party, except as provided in Section 5, below; (iii) access or use the Dolphin Software without a user license or remove, disable, circumvent, or otherwise create or implement any workaround to, any copy protection or security features; (iv) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material to or within the Dolphin Software; (v) send or store any material containing any or exposing the Dolphin Software to any: (a) virus, Trojan horse, worm, backdoor, shutdown mechanism, malicious code, sniffer, bot, drop dead mechanism, or spyware; or (b) other software, code, or program that is likely to or is intended to: (1) have an adverse impact on the performance of, (2) disable, corrupt, or cause damage to, or (3) cause or facilitate unauthorized access to or deny authorized access to, or cause to be used for any unauthorized or inappropriate purposes, any software, hardware, network, services, systems, or data of Dolphin, including the Dolphin Software; (vi) remove any proprietary notices from the Dolphin Software, Third Party Services, or any other Dolphin materials furnished or made available hereunder; (vii) scrap, collect, harvest any content, data, or information stored in, or accessed by, the Dolphin Software, including through the use of any computer code, scripts, queries, crawlers, bots, or other automated means; (viii) permit, enable or otherwise allow an unapproved third party vendor to view, access or otherwise use the Patterson Software without Patterson's prior express written consent or (iv) use the Dolphin Software in violation of applicable law. Dolphin shall have the right to immediately terminate, suspend, or limit Customer's access to the Dolphin Software, or any portion thereof, at any time without notice related to any of the foregoing inappropriate or improper activities, or for any other breach or suspected breach of this Agreement.

(b) Customer may otherwise use the Dolphin Software solely for internal professional purposes in the operation of its business (and not for any personal, household or family purpose) for the number of authorized users agreed to by the parties or set forth on the Customer Order. Except as provided above, use of or access to the Dolphin Software by any person or legal entity other than Customer is a breach of this Agreement. Customer is solely responsible for protecting the Dolphin Software from unauthorized reproduction, use or access by third-parties. Customer shall promptly notify Dolphin of any activity prohibited by this Agreement (whether actual or suspected) or of any other violation of Dolphin's intellectual property rights in or relating to the Dolphin Software.

(c) For backup purposes Customer may make one copy of the Dolphin Software. Use of the Dolphin Software by any person or legal entity other than Customer is a breach of this Agreement. Customer will use its best efforts to protect the Dolphin Software from unauthorized reproduction or use.

(d) Customer may use the Dolphin Software on a single computer, or on a network server system supporting multiple workstations for use by up to a designated number of concurrent users, upon payment of the applicable license fees for each module. To use Imaging Software at more than one site, Customer must purchase a separate license for each site.

(e) In addition, with respect to Aquarium™, Customer, for Customer's internal patient treatment purposes only, is permitted to provide copies of Aquarium™ content ("Content") solely to Customer's patients or prospective patients to support the diagnosis, treatment or education of Customer's patients or prospective patients. Customer shall notify all patients and prospective patients to whom Customer provides the Content that the Content may not be redistributed by such patient or prospective patient to any third party. In the event, subject to the limitations above, Customer desires to provide the Content to Customer's patients or prospective patients by uploading such Content to online content-sharing websites or similar services, Customer agrees that such Content shall be uploaded in a manner that (i) restricts the persons who may view the Content to those persons who have a specific Customer-provided link or reference to access the Content, (ii) prevents the Content from being publicly searchable, (iii) neither transfers nor is deemed to transfer any rights, title or interest in or to the Content, including any intellectual property rights, and (iv) permits Customer to remove the Content upon Customer's demand. Dolphin reserves the right, in its sole discretion, to require Customer to remove the Content from any online content-sharing website or similar service.

5. **Restrictions on Transfer of the Dolphin Software.** Customer shall not transfer its rights to use the Dolphin Software under this Agreement, except that Customer may transfer such rights so long as: (i) Customer has paid in full all license and other fees payable under this Agreement; (ii) Customer has provided written notice of such transfer to Dolphin and Dolphin has approved the transfer in writing; (iii) the transferee agrees to the terms of this Agreement in a writing furnished to Dolphin; (iv) Customer and the transferee jointly complete any other documentation reasonably requested by Dolphin; (v) Customer retains no copy of the Dolphin Software or Dolphin Confidential Information; and (vi) Customer stops all use of the Dolphin Software. Customer shall not otherwise sublicense, assign, or transfer any of its rights in this Agreement or to use the Dolphin Software without the prior written consent of Dolphin. The term "transfer," as used in this Section 5, includes a transfer via merger, sale of equity interests, sale of substantially all of Customer's assets, or any other change in control of Customer (either directly or indirectly).

6. **Ownership.** Customer acknowledges and agrees that Dolphin and its licensors are the sole owners of all right, title, ownership and interest in and to the Dolphin Software, the web site used in connection therewith, Dolphin®, Dolphin trademarks, logos and any other proprietary and intellectual property provided to Customer in the course of this Agreement (except for components distributed under open source licenses), including all related content and documentation and any corrections, updates, adaptations, enhancements, feedback, suggestions recommendations or modifications thereto or authorized copies thereof, which is and at all times shall be and remain the exclusive property of Dolphin and its Third Party Services, as applicable, including, without limitation, any information, content, software, aggregated data, analytics, business processes, ideas, tools, features, know-how, source code, items and/or databases contained therein (except for Customer's practice database) or generated from as compilations and expression of distinctive and creative formats. If Customer has, or acquires, any of the foregoing rights, titles, or interests, Customer does hereby assign to Dolphin its rights, titles, and interests in the foregoing. Dolphin's and Third Party Services' names and logos, and product names and trademarks or service marks associated with the Dolphin Software are trademarks owned by Dolphin or, as applicable, Third Party Services, and no right or license is granted to use them under this Agreement. The proprietary information, Confidential Information, and other material provided by Dolphin or Third Party Services to Customer in the course of Customer's use of the Dolphin Software shall include any and all improvements, enhancements, or other updates, alterations to, or derivative works thereof. Customer shall not remove, diminish, deface, modify or otherwise alter any trademarks, trade names, service marks, logos or proprietary rights notices of any kind belonging to Dolphin, Third Party

Services, or contained in the Dolphin Software. This Agreement confers on Customer no ownership interest or intellectual property rights in the Dolphin Software or Third Party Services. The Dolphin Software and Third Party Services are protected under United States and other applicable copyright, patent and intellectual property laws and international treaty provisions; and the Dolphin Software and Third Party Services have been developed at considerable time and expense to Dolphin and its licensors and contain confidential and proprietary information not generally known. Customer acknowledges that any misuse of the Dolphin Software or Third Party Services or other breach of this Agreement will cause irreparable harm to Dolphin including a real and immediate threat of future injury, for which Dolphin cannot be adequately compensated by damages. Consequently, Customer agrees that in addition to any other remedies available to Dolphin, Dolphin shall be entitled to seek injunctive or other equitable relief to prevent such breach or further breaches of this Agreement, without the need to post any bond, security, or surety. Dolphin reserves all rights not expressly granted in this Agreement. No implied licenses are granted.

7. **Confidentiality.**

(a) **Definition.** “Confidential Information” shall mean all tangible and intangible information or material disclosed by one party (“Disclosing Party”) to the other party (“Receiving Party”), that is described as proprietary or designated as confidential or proprietary by the Disclosing Party or a reasonable person knew or should have known was confidential and shall include, but is not limited to, the following types of information and other information of a similar nature: services, trade secrets, patents, proprietary information, techniques, drawings, models, templates, inventions, know-how, ideas, processes, algorithms, source code, object code, manuals, education materials, operating instructions, diagrams, flow charts, schematics, functions, procedures, information related to costs, prices, finances, customers, the Patterson Software (and any documentation relating thereto), any personally identifiable information provided by the Disclosing Party, and information disclosed by any third party which information the Disclosing Party is obligated to treat as confidential or proprietary information, as well as any modification, enhancements or derivatives prepared by the Receiving Party that contain or are based upon Confidential Information of the Disclosing Party. Without limiting the foregoing and Section 10 below, Patterson acknowledges that any Customer names and information provided to Patterson by Customer as part of the Patterson Software (collectively “Customer Data”) constitutes Confidential Information of Customer as between Patterson and Customer. All technical and non-technical information related to the Patterson Software, the web site and content, and any related documentation shall be deemed to be the Confidential Information of Patterson.

(b) **Exclusions.** Notwithstanding the foregoing, Confidential Information does not include information that: (i) is available or becomes available to the general public without restriction through no wrongful act or omission of the Receiving Party; (ii) is known by the Receiving Party at the time of disclosure as evidence by written records and is not subject to restriction; (iii) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information, except in the case of Patterson’s permissible use of data in accordance with Section 10, which non-identifying, aggregated and anonymous data, analysis and output created by Patterson shall be deemed Confidential Information of Patterson; or (iv) is lawfully obtained from a third party who has the right to make such disclosure. In the event Receiving Party receives a subpoena or other administrative or judicial process demanding Confidential Information of the Disclosing Party or is otherwise legally compelled to disclose any Confidential Information of the Disclosing Party, the Receiving Party will, if legally permissible, promptly notify the Disclosing Party so that the Disclosing Party may seek, at its sole expense, a protective order or other remedy to limit such disclosure. Unless the demand is timely limited, quashed, extended, or stayed, the Receiving Party is entitled to comply with such demand to the extent required by law. Further, Patterson shall have the right to use Customer’s name as part of a general list of customers and may refer to Customer as a user of the Patterson Software in its advertising and marketing materials.

(c) **Duties.** All Confidential Information disclosed by the Disclosing Party shall, remain the property of the Disclosing Party. The Disclosing Party is not granting or extending to Receiving Party any rights of any kind under any patent, copyright, trademark or other intellectual property right which Disclosing Party may now have or may hereby obtain with respect to the Confidential Information. The Receiving Party

shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations in regards to this Agreement or the Patterson Software, and shall take reasonable actions to preserve and protect the Confidential Information and the parties' respective rights therein, exercising the same degree of care it accords its own Confidential Information, but not less than a reasonable level of care. Neither party may reverse engineer, disassemble, or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to such party hereunder. Each Receiving Party agrees not to disclose Confidential Information of the Disclosing Party to anyone other than those employees or contractors of the Receiving Party who require access for the purpose set forth above or in order to perform its obligations in regards to this Agreement or the Patterson Software and who have entered into binding obligations of confidentiality similar to the obligations set forth herein. All Confidential Information, existing in written form or recorded in any other tangible medium, shall be destroyed or returned to Disclosing Party upon its request and in accordance with this Agreement. Even after termination or expiration of this Agreement, each Party will continue to treat Confidential Information received from the Disclosing Party in accordance with this Agreement, for so long as the information remains in the Receiving Party's possession, fits the definition of "Confidential Information," or until use and disclosure of the information would no longer be restricted even if this Agreement remained in full force. Notwithstanding the foregoing, Patterson will not be responsible, and shall have no liability, for any destruction, damage, loss or failure to store any Confidential Information of Customer, including Customer Data arising from Customer's failure to maintain the confidentiality of access credentials, passwords, secure Customer's own computers, networks or equipment, failure to obtain necessary authorizations or rights, failure in data transmission or operation of the Patterson Software by Customer or its authorized users, or any other loss, damage or failure beyond the reasonable control of Patterson.

(d) **Relief.** It is recognized that irreparable injury may result to the Disclosing Party and its business if the Receiving Party breaches its obligations in this Section 7, and, therefore, in the event of any breach by the Receiving Party, Disclosing Party shall be entitled to all rights and remedies available at law and in equity, including without limitation the right to seek damages for such breach and to enjoin the Receiving Party and all other persons acting in breach of this Section 7, from commencing or continuing, and to remedy, the activities which constitute such breach.

8. **Updates.** Dolphin may from time to time make updates or issue bug fixes, error corrections or other minor enhancements or improvements to the Dolphin Software available to Customer. Updates will be automatically downloaded, or made available, from time to time when Customer accesses the Dolphin Software. Customer hereby consents to the automatic downloading of updates to the Dolphin Software. Unless accompanied by, or expressly made subject to, another license agreement, such updates are "Dolphin Software" and subject to the terms of this Agreement. In addition, Dolphin may also add, remove, discontinue or issue new features or functionality from time to time at additional charge or no charge, as determined in Dolphin's sole discretion. Updates may require payment of additional fees, which will be agreed to in advance by the parties. Updates do not include features, improvements, or changes that constitute a new product or service, and/or that are subject to a separate agreement.

9. **Software Support.** Customer may purchase support services for the Dolphin Software from Dolphin. Dolphin does not provide support services. If Customer has purchased support, Dolphin will provide reasonable technical support by telephone (800-548-7241) or online during normal business hours, and by telephone outside of normal business hours. If Customer has not contracted for support and requests support, Customer agrees to pay Dolphin's then standard hourly service fees. Hours and other terms of service in effect from time to time are described at www.dolphinimaging.com. According to its pricing policies in effect from time to time, Dolphin may make certain software and updates available free of license fees to customers who are continuously enrolled in the Dolphin software support plans for such software. Software and updates are not generally free of license fees for customers not continuously on the Dolphin software support plan.

10. **Use of Data.** Customer acknowledges and agrees that Dolphin may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Customer's computers, systems and software: (i) to evaluate Customer's use of the Dolphin Software; (ii) to improve and enhance the

performance of the Dolphin Software; (iii) to develop updates to the Dolphin Software; (iv) to create, develop or enhance the functionality of additional software products; and (v) to provide to third parties (including Third Party Services) who provide services on behalf of Customer. Such information may include personally-identifying data. Customer further acknowledges and agrees that, to carry out the foregoing, such information may be exchanged among Dolphin, its affiliates, its service providers and its vendors; provided, however, that such information exchanged with Dolphin's service providers and vendors will be done on an aggregate, non-personally identifying manner, or pursuant to an agreement containing obligations for protecting such information consistent with the terms and conditions of this Agreement. In addition, Dolphin shall have the right to collect, maintain, process, and use, sell or disseminate any data or information arising from Customer's use of the Dolphin Software and any related services, including practice information, information about Customer's customers, demographics, trends in services, and other detail level information provided that such information will be used or disseminated by Dolphin strictly on a non-identifying, aggregated and anonymous basis. Customer grants Dolphin a non-exclusive, perpetual, non-revocable, royalty free license to use data including Customer Data (including any Customer Data received from any third party service providers) to do any of the foregoing, or as otherwise necessary for Dolphin to perform its obligations under this Agreement (subject to any limitations on use of Customer Data set forth in this Agreement).

11. **Limited Warranty.**

(a) **Media.** Dolphin warrants to Customer that, for a period of 30 days following the date of the invoice for the Dolphin Software, the media containing the Dolphin Software shall be free from material defects in materials and workmanship under normal use. If a material defect in such media appears during such period, Customer's sole and exclusive remedy and Dolphin's sole liability under this warranty is the replacement of defective media. To receive a replacement, during the 30 day period Customer must contact Dolphin, 9200 Oakdale Avenue Suite 500, Chatsworth, CA 91311 (800-548-7241).

(b) **Software: Customer Satisfaction.** If Customer is not satisfied with the Dolphin Software and returns it to Dolphin (9200 Oakdale Avenue Suite 500, Chatsworth, CA 91311) within 120 days after either delivery of the Dolphin Software to Customer or completion of initial training purchased with the Dolphin Software, Dolphin will refund all license fees paid by Customer for the returned Dolphin Software. Customer remains obligated to pay all charges for training, installation, and other services performed.

12. **Disclaimer of Warranty.**

(a) THE EXPRESS, LIMITED WARRANTIES PROVIDED IN THE FOREGOING SECTION 11 OF THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY DOLPHIN IN CONNECTION WITH THE DOLPHIN SOFTWARE AND CUSTOMER DATA, AND SUCH WARRANTIES APPLY ONLY TO THE MOST CURRENT RELEASE OF THE DOLPHIN SOFTWARE MADE AVAILABLE TO CUSTOMER. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, OTHER THAN THE EXPRESS WARRANTIES IN SECTION 11 OF THIS AGREEMENT, DOLPHIN DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS WITH RESPECT TO THE DOLPHIN SOFTWARE, CUSTOMER DATA OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES, REPRESENTATIONS OR CONDITIONS OF TITLE, MERCHANTABILITY, MERCHANTABILITY, DATA PROTECTION AND BACKUP, DATA ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. DOLPHIN PROVIDES NO WARRANTIES, REPRESENTATIONS OR CONDITIONS THAT THE DOLPHIN SOFTWARE WILL OPERATE ERROR FREE OR FREE FROM INTERRUPTION, VIRUSES OR OTHER HARMFUL COMPUTER CODE. DOLPHIN DOES NOT WARRANT THAT THE FUNCTIONS PERFORMED BY THE DOLPHIN SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, OR THAT DEFECTS IN THE DOLPHIN SOFTWARE WILL BE CORRECTED. THE DOLPHIN SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

(b) Dolphin does not, nor does it intend to, engage in the performance or delivery of dental, medical, or health care services. The Dolphin Software is not intended, and Customer agrees not to rely thereon, as a substitute for the knowledge, expertise, skill, verbal counseling, or judgment of a dental or healthcare professional. Customer acknowledges that the professional duty to its customers and patients for the provision of dental or healthcare services lies solely with Customer and the dental and healthcare professionals providing direct interaction therewith. Dolphin in no way guarantees that the Dolphin Software covers all possible dental and medical matters to which they pertain, or the appropriateness of the foregoing for any particular condition, treatment, or recommendation. Customer acknowledges and agrees that the Dolphin Software may contain inaccuracies and/or errors, and as such, the foregoing should be reviewed by applicable professional service providers. The Dolphin Software is intended only as a supplement to the knowledge, expertise, and professional judgment of dental and healthcare professionals. Customer hereby covenants and agrees that it shall use the highest degree of care when using the Dolphin Software, and use the Dolphin Software in light of all of the other available information and not rely on the Dolphin Software alone in making decisions regarding patient care. Any forms or other materials provided in the Dolphin Software are strictly outlines, templates or samples provided as a means to assist Customer in the efficiency of documenting and tracking its independent analysis, discretion or guidance.

13. **Limitation of Liability.**

(a) IN NO EVENT WILL DOLPHIN BE LIABLE, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, FOR ANY: (A) LOSS OF PROFITS OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, STATUTORY, PUNITIVE, OR INCIDENTAL DAMAGES, HOWEVER CAUSED OR WHETHER SUCH DAMAGES WERE FORESEEABLE, AND EVEN IF DOLPHIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; (B) CLAIMS MADE AGAINST DOLPHIN MORE THAN TWO YEARS AFTER THE RELATED CAUSE OF ACTION AROSE C) LOSS OF USE, LOSS OF DATA (INCLUDING CUSTOMER DATA), LOSS OF REVENUE OR GOODWILL HOWEVER CAUSED; (D) FAILURES OR DEFECTS OF THE DOLPHIN SOFTWARE OR CONNECTIVITY REQUIREMENTS; OR (E) DAMAGE CAUSED BY UNAUTHORIZED ACCESS OR USE, SECURITY BREACH, OR MALICIOUS SOFTWARE, WHETHER OR NOT PREVENTED OR PREVENTABLE BY ANTI-VIRUS OR INTRUSION PROTECTION SOFTWARE.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT EXCEPT SECTION 14, DOLPHIN'S CUMULATIVE AGGREGATE LIABILITY, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, INCLUDING WITHOUT LIMITATION IN RESPECT OF THE DOLPHIN SOFTWARE OR THE PERFORMANCE OR NON-PERFORMANCE OF OR INABILITY TO USE THE DOLPHIN SOFTWARE, WARRANTY, OR OTHERWISE, SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER TO DOLPHIN FOR USE OF THE DOLPHIN SOFTWARE FOR THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT DIRECTLY GAVE RISE TO THE DAMAGES CLAIMED. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY EVEN IF THIS AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

14. **Indemnification.**

(a) **Third Party Infringement Claims.** Dolphin will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Dolphin Software directly infringes any United States copyright or misappropriates any trade secret recognized as such under the Minnesota Uniform Trade Secrets Act, and Dolphin will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

(b) Conditions. Dolphin's obligations under the preceding paragraph with respect to an action are conditioned on (i) Customer notifying Dolphin promptly in writing of such action, (ii) Customer giving Dolphin sole control of the defense thereof and any related settlement negotiations, and (iii) Customer cooperating with Dolphin in such defense (including, without limitation, by making available to Dolphin all documents and information in Customer's possession or control that are relevant to the infringement or misappropriation claims, and by making Customer's personnel available to testify or consult with Dolphin or its attorneys in connection with such defense).

(c) Dolphin's Options. If the Dolphin Software becomes, or in Dolphin's opinion is likely to become, the subject of an infringement or misappropriation claim, Dolphin may, at its option and expense, either (i) procure for Customer the right to continue using the Dolphin Software, (ii) replace or modify the Dolphin Software so that it becomes non-infringing, or (iii) terminate Customer's right to use the Dolphin Software and give Customer a refund or credit for the license fees actually paid by Customer to Dolphin for the infringing components of the Dolphin Software less a reasonable allowance for the period of time Customer has used the Dolphin Software.

(d) Exclusions. Notwithstanding the foregoing, Dolphin will have no obligation or otherwise with respect to any infringement or misappropriation claim based upon (i) any use of the Dolphin Software not in accordance with this Agreement or any documentation for the Dolphin Software, or for purposes not intended by Dolphin; (ii) any use of the Dolphin Software in combination with other products, equipment, software, content, or data not supplied by Dolphin; (iii) any use of any release of the Dolphin Software other than the most current release made available to Customer; or (iv) any modification of the Dolphin Software made by any person other than Dolphin.

(e) Entire Liability. This Section 14 states Dolphin's entire liability and Customer's sole exclusive remedy for infringement and misappropriation claims and actions.

15. Term and Termination. The license granted under this Agreement is effective until terminated. Unless otherwise set forth in the Customer Order, the license and this Agreement shall be for an initial commitment of one (1) month. Unless otherwise set forth in the Customer Order, the license and this Agreement shall automatically continue after the initial commitment until terminated by Customer upon thirty (30) days prior written notice to Dolphin or by Dolphin upon ninety (90) days prior written notice to Customer. Written notice for purposes of discontinuing the license shall include electronic communications (Email) sent to the address designated in the Order or as specified by a party in writing to the other party. Notwithstanding the foregoing, Dolphin may terminate the license EFFECTIVE IMMEDIATELY if Customer (a) fails to comply with any term of the Agreement; (b) fails to pay any fee or other amounts owing or otherwise defaults under any other agreement providing for the payment of fees in respect of the Dolphin Software; (c) has a receiver appointed for it or its property; (d) makes an assignment for the benefit of creditors; (e) has any proceedings commenced by, for or against it under any bankruptcy, insolvency or debtor's relief law; or (f) is liquidated or dissolved. Upon the effective date of termination of this Agreement for any reason, Customer's access to the Dolphin Software will terminate and Customer shall cease accessing and using the Dolphin Software immediately. Upon termination of the license for any reason, Customer shall return all copies of the Dolphin Software to Dolphin upon its request, remove all copies of any Dolphin Software from its computers and demonstrate or certify to Dolphin's satisfaction that it has done so, and immediately pay in full any owing and unpaid portion of the license and other fees. All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies, or damages, and Dolphin's proprietary rights, shall survive termination of the license. Patterson will only retain Customer Data for a period of thirty (30) days after termination of this Agreement. It is Customer's responsibility to retrieve Customer Data prior to or within the foregoing retention period. Patterson has no duty to retain Customer Data beyond the retention obligations set forth in this Agreement.

16. Post-Termination Obligations. Within a commercially reasonable period of time following termination of this Agreement, Dolphin will make available to Customer a file of the Customer Data in a format designated by Dolphin. Dolphin may provide data transfers by other means or formats requested by Customer

at Dolphin's then current fees for such file transfer formats. Customer agrees and acknowledges that Dolphin has no obligation or duty to retain Confidential Information, including Customer Data, more than thirty (30) days after termination or expiration of this Agreement and will destroy Confidential Information, including Customer Data, in its possession or control in the ordinary course of its information security policies and program guidelines and in accordance with applicable law.

17. **Government License Rights.** The Dolphin Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government licensees and end users acquire the Dolphin Software with only those rights set forth herein. Contractor/manufacturer is Dolphin.

18. **Customer Obligations.**

(a) **Customer Systems.** Customer will be solely responsible for all activity occurring under Customer's accounts, including authorized users of the Dolphin Software, and will ensure Customer and authorized users will only use the Dolphin Software in accordance with this Agreement, any documentation provided by Dolphin as part of or in conjunction with the Dolphin Software, and in accordance with applicable laws and regulations. Customer is responsible for obtaining and maintaining all computer hardware, software, networks and communications equipment needed to access the Dolphin Software, and for paying all telecommunication fees or other third party charges incurred to access the Dolphin Software via the internet. Customer agrees it has the sole responsibility for the adequate protection of its equipment, systems, networks, hardware, software and facilities and backup of Customer's data or equipment used in conjunction with the Dolphin Software, including monitoring against anticipated threats or hazards to Customer's networks, systems, access credentials, or unauthorized access to Customer's Dolphin Software account and Customer's Confidential Information. Customer is solely responsible for (a) the security and backup of its networks, hardware, systems, data and facilities, including without limitation sufficient anti-virus software and other protections from unauthorized access to Customer's networks, equipment and facilities, (b) the entry, deletion, correction, accuracy, quality, legality, appropriateness and completeness of all data entered and stored by Customer in the process of using the Dolphin Software, (c) keeping all software and Connectivity Requirements current with the latest security patches and updates, and (d) employing up-to-date encryption technology or other appropriate means to protect the security of its data while transmitted, electronically or otherwise, to Dolphin. Customer and its authorized users are responsible for maintaining the confidentiality of all access credentials, passwords and user names issued for the Dolphin Software and for monitoring and ensuring that each access credential is used only by the authorized user. Dolphin shall have no liability for Customer's failure to fulfill any of its responsibilities set forth in this Section 18, nor for any unauthorized interception, disclosure or access to Customer's Confidential Information or Customer's patient data.

(b) **Cooperation.** Customer shall provide Dolphin all data, information and cooperation Dolphin deems necessary for the performance of Dolphin's obligations under this Agreement. Dolphin shall have no liability for any delay in the performance of Dolphin's obligations resulting from Customer's failure to provide data or information or to cooperate.

(c) **Data Security & PCI Standards.** Dolphin has used commercially reasonable efforts to ensure that the Dolphin Software, if subject to Payment Card Industry Data Security Standards (PCI DSS), complies as of the date of this Agreement with PCI DSS. In its use of the Dolphin Software, Customer shall comply with Customer's obligations under PCI DSS and other applicable data protection standards.

(d) **Compliance with Law.** Customer shall comply with all laws and contractual obligations, including requirements of insurers, credit card issuers and other third party service providers, applicable to Customer's use of any product described in the proposal. Such laws and obligations include, but are not limited to, state and federal statutes, rules and regulations governing record retention, billing error resolution, confidentiality, data privacy and security, and claims and payment processing; state Medicaid rules and regulations restricting access to and use of eligibility information; rules and regulations of the federal

Department of Health and Human Services; and PCI DSS. Customer agrees not to use Third Party Services for any unlawful purpose. For the avoidance of doubt, Customer is the transmitter of all content, data, or other messaging in the Dolphin Software and any transmission performed by Dolphin is done so at the direction of Customer as a conduit in providing the technology and software for operation in Customer's practice.

(e) Use in Accordance with Specifications. Customer shall use the Dolphin Software in accordance with the operator and user guides and other manuals and technical information and specifications, whether in hard copy, electronic or other format, furnished by Dolphin to Customer.

(f) Back-Up. Customer shall keep up-to-date backup copies of all data for recovery purposes. Dolphin shall have no liability for any loss of data arising out of the provision of maintenance and support services to Customer, including losses arising from the installation of upgrades or error corrections provided by Dolphin. In all circumstances, Customer and not Dolphin is responsible for ensuring that its data is accurately backed up on a daily basis.

(g) Indemnification. Dolphin shall have no liability for Customer's failure to comply with its obligations under this Section 18. Customer shall defend, indemnify and hold harmless Dolphin, its affiliates, directors, officers, employees, third party Dolphins or agents from and against any and all claims, suits, actions, liability, loss, costs, demands, damages or expenses, including attorneys' fees, resulting from, relating to, or in any way connected with a claim by a third party alleging (i) Customer's Confidential Information, including Customer Data, infringes on, or misappropriates, the privacy or property rights of a third party, or has caused harm to a third party; (ii) any unauthorized use or access by Customer or authorized users of the Dolphin Software or Third Party Services; (iii) any violation of authorizations, laws, or regulations by Customer related to this Agreement, its business operations or the use of Customer Data granted to Dolphin herein, including data privacy laws; (iv) that Customer has breached any of its obligations under this Agreement; (v) personal injury or medical malpractice; or (vi) any grossly negligent act or willful misconduct of Customer or its authorized users or other personnel. Customer will defend any claim against Dolphin where the indemnity herein applies; however, Customer will not enter into any settlement or compromise that adversely affects any rights of or imposes any obligation or liability on Dolphin without Dolphin's prior written consent. Dolphin may monitor, and participate in, the claim defense at its own expense.

19. No Waiver. Any representation, affirmation of fact, course of dealing, usage of trade, promise or condition in connection with this Agreement not incorporated herein shall not be binding on either party. No waiver, alteration or modification of any of the provisions hereof shall be effective unless in writing and signed by a duly authorized representative of Dolphin. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

20. Governing Law. This Agreement shall be governed by the laws of the state of Minnesota, U.S.A. Customer agrees that the courts located in Hennepin County, Minnesota, shall have jurisdiction over any dispute related to this Agreement, and Customer agrees that said courts have personal jurisdiction over Customer. The parties agree that the United Nations Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act are excluded in their entirety from this Agreement. The Dolphin Software may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Further, Customer will not permit authorized users to access or use the Dolphin Software in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

21. Force Majeure. Dolphin shall not be in default if its failure to perform any obligation under this Agreement is caused solely by supervening conditions beyond Dolphin's reasonable control including, without limitation, acts of God, civil commotion, pandemic, war, strikes, labor disputes, third party internet service interruptions or slowdowns, vandalism, acts of terrorism or governmental demands or requirements.

22. **Notices.** Except as otherwise set forth in this Agreement, all notices to a party shall be in writing and sent to the addresses specified in the Customer Order or such other address as a party notifies the other party in writing, and shall be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

23. **Miscellaneous.** The parties to this Agreement are independent entities, and no agency, partnership franchise, joint venture or employee-employer relationship is intended or created by this Agreement. This Agreement, together with the Customer Order, privacy policy applicable to the Dolphin Software, and any other written agreement between Dolphin and Customer expressly referenced in this Agreement constitute the entire agreement between the parties as to the subject matter of this Agreement and supersedes all other communications, oral or written. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves. Any terms and conditions on or attached to any Customer purchase order (other than the Dolphin Customer Order or another authorized Dolphin order form) shall be of no force or effect. Third Party Services are third party beneficiaries under this Agreement to the extent necessary to enforce Third Party Service terms and end user license agreements and shall be entitled (along with Dolphin or alone) to enforce Third Party Service terms and agreements by legal proceeding or otherwise against Customer for Customer's or Customer's authorized users' violations of the restrictions set forth in this Agreement or the Third Party Service terms or agreements.

24. **Identity of Customer.** If the dentist (or other dental specialist) who signed the proposal for the Dolphin Software (the "signer") operates his or her dental practice or business as a corporation, partnership or other legal entity, "Customer" as used in this Agreement means the legal entity, and the signer shall be deemed to have signed the proposal on behalf of that legal entity with the intention and authority to bind it. In that case, the legal entity, and not the signer in his or her individual capacity, is the licensee of the Dolphin Software. If the signer does not do business as a legal entity, but as a sole proprietor or otherwise, the signer in his or her individual capacity is the Customer (and licensee). In that case, use of the Dolphin Software in the signer's dental practice or business by employees of the signer on the terms agreed to by Customer is not a breach of this Agreement.

25. **Export Control Laws.** Customer shall comply with all laws and regulations controlling the export of certain commodities and technical data, including without limitation all Export Administration Regulations of the United States Department of Commerce. Among other terms, such laws prohibit, or require a license for, the export of computer software to specified countries, entities and persons. Customer will indemnify, defend and hold harmless Dolphin from and against the consequences of any violation of such laws.

26. **Customer Responsibility for Data Security and Backup.** Customer is solely responsible for the security and backup of its data and for the accuracy and completeness of all data entered by Customer in the process of using the Dolphin Software. Dolphin strongly encourages Customer to (a) protect its network from unauthorized access, (b) archive and verify its data on a daily basis, (c) keep all software current with the latest security patches and updates, and (d) employ up-to-date encryption technology or other appropriate means to protect the security of its data while transmitted, electronically or otherwise, to Dolphin. Dolphin shall have no liability for any unauthorized interception or disclosure of Customer data while transmitted by Customer to Dolphin.

27. **Client Consent.** Customer represents and warrants to Dolphin that it has obtained and shall obtain all consents required by law or contract from clients of Customer whose health, financial or other personal information may be disclosed to Dolphin in the course of Customer's use, or Dolphin's installation, maintenance or support of, the Dolphin Software. Customer shall defend, indemnify and hold harmless Dolphin from and against any loss or damage resulting from Customer's failure, or claimed failure, to obtain any such consent.

HIPAA BUSINESS ASSOCIATE AGREEMENT.

RECITALS

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined), the HIPAA Privacy Regulations (as hereinafter defined), the HIPAA Security Regulations (as hereinafter defined) and the HITECH Standards (as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in connection with the Services Agreement; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard the privacy, confidentiality, integrity and availability of Individually Identifiable Health Information;

NOW THEREFORE, the Parties agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.
 - a. *“Breach”* shall mean the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “HIPAA Privacy Rule”) which compromises the security or privacy of the Protected Health Information. “Breach” shall not include:
 - (1) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or
 - (2) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at the Covered Entity or Business Associate to another person authorized to access Protected Health Information at the Covered Entity or Business Associate, respectively, or Organized Health Care Arrangement in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or
 - (3) A disclosure of Protected Health Information where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
 - b. *“Data Aggregation”* means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

- c. *“Electronic Protected Health Information”* or *“Electronic PHI”* means Protected Health Information that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.
- d. *“HIPAA”* means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- e. *“HIPAA Privacy Regulations”* means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E.
- f. *“HIPAA Security Regulations”* means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C.
- g. *“HITECH Standards”* means the privacy, security and security Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (*“HITECH”*), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.
- h. *“Individually Identifiable Health Information”* means information that is a subset of health information, including demographic information collected from an individual, that is;
 - (1) created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - (2) 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
 - (a) that identifies the individual; or
 - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- i. *“Protected Health Information”* or *“PHI”* means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.
- j. *“Security Incident”* means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- k. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Regulations, the HIPAA

Security Regulations, and the HITECH Standards and shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.

2. **Obligations and Activities of Business Associate**

- a. *Use or Disclosure.* Business Associate agrees to not use or further disclose Protected Health Information other than as expressly permitted or required by this Agreement or as required by law.
- b. *Safeguards.* Business Associate agrees to use appropriate safeguards to prevent any use or disclosure of the Protected Health Information other than uses and disclosures expressly provided for by this Agreement. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any Electronic Protected Health Information in accordance with the HIPAA Security Regulations.
- c. *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. *Reporting.* Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information in violation of this Agreement by Business Associate or by a third party to which Business Associate disclosed Protected Health Information pursuant to Section 2.e (“Subcontractors and Agents”), in the time and manner agreed to by the Parties. Business Associate further agrees to report promptly to Covered Entity any Security Incident of which it becomes aware.

Notwithstanding the foregoing provisions of this Section 2.d., Business Associate shall promptly report to Covered Entity any Breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services at 45 C.F.R. Part 164, Subpart D.

- e. *Subcontractors and Agents.* Business Associate agrees to ensure that any agents, including subcontractors, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. *Access.* Upon request by Covered Entity for access to Protected Health Information about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity, in the time and manner reasonably designated by Covered Entity, such Protected Health Information for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity in the time and manner reasonably designated by Covered Entity such that Covered Entity can respond to such individual in accordance with 45 C.F.R. § 164.524. Any denials of access to the Protected Health Information requested shall be the responsibility of Covered Entity.
- g. *Amendment.* Upon receipt of a written request by or on behalf of Covered Entity for the amendment of an individual’s Protected Health Information or record contained in a Designated Record Set (for so long as the Protected Health Information is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity

for amendment, in the time and manner reasonably designated by Covered Entity, and incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. §164.526.

- h. *Audit and Inspection.* Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information and the security of Electronic Protected Health Information, available to Covered Entity, or, at the request of Covered Entity, to the Secretary of Health and Human Services (the “Secretary of HHS”) or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary of HHS determining Covered Entity’s compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.
- i. *Documentation of Disclosures.* Business Associate agrees to document such disclosures of Protected Health Information, and such information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- j. *Accounting.* Upon receipt of notice by or on behalf of Covered Entity that Covered Entity has received a request for an accounting of disclosures of Protected Health Information, Business Associate shall make available to Covered Entity, in the time and manner reasonably designated by Covered Entity, that information collected in accordance with Section 2.i (“Documentation of Disclosures”) of this Agreement,] to permit Covered Entity to respond to the request in accordance with 45 C.F.R. § 164.528.
- k. *Compliance with the HITECH Standards.* Notwithstanding any other provision in this Agreement, no later than February 17, 2010, unless a separate effective date is specified by law or this Agreement for a particular requirement (in which case the separate effective date shall be the effective date for that particular requirement), Business Associate shall comply with the HITECH Standards, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH § 13405(b); (ii) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH § 13405(a); (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH § 13405(d) applies; (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. § 164.501 unless permitted by this Agreement and Section 13406 of HITECH; (v) the requirements relating to the provision of access to certain information in electronic access under HITECH § 13405(e); (vi) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (vii) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH § 13405(c) to the extent that Business Associate discloses any PHI maintained in an Electronic Health Record on behalf of the Covered Entity pursuant to this Agreement. Amendments to this Agreement may be required to comply with any regulations promulgated pursuant to HITECH. In such case, this Agreement will be amended by Covered Entity in accordance with Section 6.b.
- l. *Minimum Necessary Use and Disclosure.* In conducting functions and/or activities under the Services Agreement and this Agreement that involve the use and/or disclosure of PHI, Business Associate shall make reasonable efforts to limit the use and/or disclosure of PHI to

the minimum amount of information necessary as determined by Covered Entity to accomplish the intended purpose of the use or disclosure.

- m. *Electronic Transactions Regulations.* If Business Associate conducts any Transaction for or on behalf of Covered Entity which is covered under the Electronic Transactions Standards from and after the Agreement Effective Date, Business Associate agrees that it will comply with, and cause its employees, agents and representatives, and subcontractors to comply with, the applicable requirements of the Electronic Transactions Standards.

3. Permitted Uses and Disclosures by Business Associate

- a. *General Use and Disclosure Provisions.* Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information in connection with its performance of the services under the Services Agreement if such use or disclosure of Protected Health Information would not violate HIPAA, the HIPAA Privacy Regulations or the HITECH Standards if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b (“Specific Use and Disclosure Provisions”) of this Agreement.
- b. *Specific Use and Disclosure Provisions.*
 - (1) Except as otherwise limited in this Agreement, Business Associate may use and disclose Protected Health Information for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such Protected Health Information may only be disclosed for such purposes only if the disclosures are required by law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:
 - (a) the information will remain confidential;
 - (b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and
 - (c) the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (2) Business Associate may use and disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
 - (3) *Data Aggregation.* Business Associate may use and disclose PHI received by Business Associate in its capacity as a Business Associate of Covered Entity to provide the following Data Aggregation services relating to the health care operations of Covered Entity: (i) to evaluate use of system, (ii) to improve and enhance the performance of the system, (iii) to develop updates to the system, (iv) to create, develop or enhance the functionality of the system, or (v) for other business purposes.

4. Obligations of Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Privacy Regulations or the HITECH Standards if done by Covered Entity or that is not otherwise expressly permitted under Section 3 (“Permitted Uses and Disclosures by Business Associate”) of this Agreement.

5. Term and Termination

- a. *Term.* This Agreement shall be effective as of the Agreement Effective Date and shall continue until terminated in accordance with the provisions of Section 5.b (“Termination for Cause”) or 6.b (“Amendment”) hereof, or until the Services Agreement terminates.
- b. *Termination for Cause.* Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with notice of and an opportunity to cure such breach and then terminate this Agreement if Business Associate does not cure the breach within time period specified by Covered Entity, or (2) terminate this Agreement immediately. In the event that termination of the Agreement is not feasible, Business Associate acknowledges and agrees that Covered Entity has the right to report the breach to the Secretary of HHS.

Upon Business Associate’s knowledge of a material breach by the Covered Entity of this Agreement, Business Associate may, in its sole discretion, provide Covered Entity with notice of and an opportunity to cure such breach and then terminate this Agreement if Covered Entity does not cure the breach within time period specified by Business Associate. In the event that termination of the Agreement is not feasible, Covered Entity acknowledges and agrees that Business Associate has the right to report the breach to the Secretary of HHS.

- c. *Effect of Termination.*
 - (1) Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - (2) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such Protected Health Information.

6. Miscellaneous

- a. *Regulatory References.* A reference in this Agreement to a section in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations or the HITECH Standards means the section as in effect or as amended from time to time, and for which compliance is required.
- b. *Amendment.* Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of Protected Health Information, including, but not limited to, changes under the HIPAA Privacy Regulations, the HIPAA Security Regulations and the HITECH Standards. Business Associate agrees that Covered Entity may amend this Agreement, in its sole discretion, upon thirty (30) days written notice in order to ensure that Covered Entity will be able to comply with such laws and regulations. For the avoidance of doubt, in the event Business Associate

has not objected in writing to such amendment within such thirty (30) day notice period, the amendment shall be deemed to have been accepted by Business Associate.

- c. *Survival.* The respective rights and obligations of Business Associate under Section 5.c (“Effect of Termination”), 6.f (“Injunctions”) and 6.g (“Indemnification”) of this Agreement shall survive the termination of this Agreement.
- d. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with applicable law protecting the privacy, security and confidentiality of Protected Health Information, including, but not limited to, HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations or the HITECH Standards.
- e. *State Law.* Nothing in this Agreement shall be construed to require Business Associate to use or disclose Protected Health Information without a written authorization from an individual who is a subject of the Protected Health Information, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
- f. *Injunctions.* Covered Entity and Business Associate agree that any violation by Business Associate of any of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- g. *Indemnification.* Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement, without regard to any limitation or exclusion of damages provision otherwise set forth in the Services Agreement or any other agreement between the Parties.
- h. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- i. *Primacy.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the Parties, this Agreement shall control with respect to the subject matter of this Agreement.
- j. *Independent Contractors.* No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between Covered Entity and Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. None of the parties nor any of their respective representatives shall be construed to be the agent, employer, or representative of the other. The parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency and it is not the intention of either Covered Entity or Business Associate that Business Associate constitute an “agent” under such common law.