

Business Associate Agreement

PRIVACY AND SECURITY OF HEALTH INFORMATION

easydental®

This BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into on _____ between Easy Dental Systems (hereinafter "Business Associate") and _____ (hereinafter "Provider"). Both parties agree as follows:

I. DEFINITIONS

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information, at 45 Code of Federal Regulations ("CFR") part 160 and part 164 subpart E (the "Privacy Rule") and the Security Standards issued at 45 CFR part 160 and part 164 subpart C (the "Security Rule").

The following capitalized terms shall have the following meaning when used in this Agreement:

DESIGNATED RECORD SET Designated Record Set shall mean a group of records maintained for Provider that are the medical and/or billing records that refer to an individual Patient.

ELECTRONIC PHI Electronic PHI shall mean the PHI that is transmitted or maintained by Business Associate on behalf of Provider in electronic media, including, but not limited to, hard drives, disks, on the Internet, or on an intranet.

PATIENT Patient shall mean the individual whose PHI is contained in a specific medical or billing record that Business Associate maintains on behalf of Provider, or that person's duly appointed guardian or qualified personal representative.

PHI PHI shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Provider.

SECRETARY Secretary shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) Business Associate agrees to not use or further disclose PHI other than as specifically permitted or required by this Agreement or as required by law.

(b) Business Associate agrees to use appropriate Administrative, Technical and Physical Safeguards to (1) prevent use or disclosure of PHI other than as provided for by this Agreement; and (2) reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic PHI.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Provider if it becomes aware of any (1) use or disclosure of PHI not provided for by this Agreement; (2) unauthorized access of Electronic PHI; (3) unauthorized destruction or modification of Electronic PHI; or (4) unauthorized interference with the systems operations of Business Associate's electronic information systems containing Electronic PHI.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from or created or received by Business Associate on behalf of Provider, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including, without limitation, implementation of appropriate safeguards to protect the security of Electronic PHI.

(f) Upon the written request of Provider, Business Associate agrees to provide access to Provider to PHI that Business Associate maintains in a Designated Record Set (if in fact its arrangements with Provider require Business Associate to maintain Designated Record Sets on behalf of Provider), in order for Provider to meet the Patient access and copying requirements under 45 CFR 164.524.

(g) Upon the written request of Provider, Business Associate agrees to make any amendment(s) to PHI that Business Associate maintains in a Designated Record Set (if in fact its arrangements with Provider require Business Associate to maintain Designated Record Sets on behalf of Provider) that the Provider directs or agrees to pursuant to 45 CFR 164.526.

(h) Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available at the request of the Provider to the Secretary, for purposes of determining Provider's compliance with the Privacy Rule, subject to attorney-client or other applicable legal privileges.

(i) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Provider to respond to a request by Patient for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

(j) Upon written request of Provider, Business Associate agrees to provide to Provider with information collected in accordance with Section II (i) of this Agreement to permit Provider to respond to a request by Patient for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

(a) Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Provider, in accordance with the contractual or other arrangements between Provider and Business Associate.

(b) Except as otherwise specifically permitted by Section IV of this Agreement, Business Associate shall limit its use and disclosure of PHI to only the minimum necessary PHI required by Business Associate to furnish services on behalf of Provider.

IV. SPECIFIC USE AND DISCLOSURE PROVISIONS

(a) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement or any other arrangement between Business Associate and Provider, Business Associate may use PHI to provide data aggregation services as permitted by 45 CFR 164.504(e)(2)(i)(B) (i.e., the combining PHI received from Provider with protected health information received by Business Associate in its capacity as the business associate of another dental practice, to permit data analyses that relate to the health care operations of various dental practices).

V. OBLIGATIONS OF PROVIDER

(a) Provider represents and warrants to Business Associate that its Notice of Privacy Practices permits Provider to disclose PHI to Business Associate and that the Notice of Privacy Practices used by Provider incorporates the terms and statements required by the Privacy Rule.

(b) Provider shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule or Security Rule if done by Provider except the uses specifically permitted under Section IV above, where Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate.

VI. TERM AND TERMINATION

(a) **TERM** The Term of this Agreement shall be effective as of the date set forth above, and shall remain effective so long as a relationship between the Provider and the Business Associate shall persist. This Agreement shall terminate when all of the PHI provided by Provider to Business Associate, or created or received by Business Associate on behalf of Provider, is destroyed or returned to Provider or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in Section VI (c)(2).

(b) **TERMINATION FOR CAUSE** Upon Provider's knowledge of a material breach of this Agreement by Business Associate, Provider shall provide written notice to Business Associate identifying the breach, and permit Business Associate twenty (20) days to cure the breach; if Business Associate does not cure the breach or end the violation within the time specified, or if cure is not possible, Provider may immediately terminate this Agreement.

(c) EFFECT OF TERMINATION

(1) Except as provided in Section VI (c)(2), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Provider, or created or received by Business Associate on behalf of Provider. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Provider notification of the conditions that make return or destruction infeasible, and thereafter, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. MISCELLANEOUS

(a) This Agreement is between Provider and Business Associate and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party, including Patients.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to the conflicts of law principles of such state.

(c) Provider and Business Associate agree to negotiate in good faith if, in either party's reasonable judgment, modification of this Agreement becomes necessary due to legislative or regulatory amendments to the Privacy Rule or the Security Rule.

ACCEPTANCE

PROVIDER _____ TITLE _____

DATE _____ EASY DENTAL CLIENT NUMBER _____

BUSINESS ASSOCIATE, TJ BRADLEY, HIPAA COMPLIANCE OFFICER

 HENRY SCHEIN®
PRACTICE SOLUTIONS

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