



DentalTek Master Subscription Agreement

By executing this Agreement, you agree to its terms. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms “Customer”, “You” or “Your” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Service as defined below.

This DentalTek Master Subscription Agreement, is made and effective as of the date identified on the Order Form as the “Date Signed” and is by and between DentalTek, LLC, a Colorado limited liability company with its principal address at 7070 S. Tucson Way, Centennial, CO 80112 (“DentalTek”), and the entity listed as “Customer” on the Order Form. This Agreement, together with the exhibits, schedules and attachments hereto, including the Terms and Conditions below and the Business Associate Agreement know hereto as Exhibit A (collectively, the “Agreement”), govern the terms upon which DentalTek will provide Customer access to DentalTek’s Technology Service in accordance with the Order Form. Now, therefore, the parties agree as follows:

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which, when taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or other electronic transmission will be treated in all respects as an original. The parties have executed this Agreement as of the Date Signed on the Order Form.

TERMS AND CONDITIONS

1) Definitions.

As used in this Agreement and in any Order Forms now or hereafter associated herewith, the following definitions apply:

- a) “Administrators” means those Users designated by Customer who are authorized to purchase subscriptions by executing written Order Forms and to create User accounts and otherwise administer Customer’s use of the Service;
- b) “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity; and “control,” for the purposes of this definition of Affiliate means direct or indirect ownership or control of more than 50 of the voting interests of the subject entity;
- c) “Agreement” means the DentalTek Master Subscription Agreement (including all exhibits and attachments thereto), any Order Forms and the terms and conditions of the Business Associate Agreement attached hereto as Exhibit A, and any materials available on the DentalTek website specifically incorporated by reference herein, as such materials may be updated by DentalTek from time to time;
- d) “Customer Data” means any data, information or material provided or submitted by Customer to the Service in the course of using the Service including, without limitation, Customer’s name, account information, User information, information about Customer’s facilities, or protected health information;
- e) “Effective Date” means the “Date Signed” set forth in the Order Form;
- f) “Order Form” means the form evidencing the purchase of the Service, specifying, among other things, the Subscription Term, the number of Users, the applicable fees, the billing period, and other charges as agreed to between the parties);
- g) “Service” means DentalTek’s technology solutions or other services and associated content, as identified on an Order Form, developed, operated, and maintained by DentalTek, and made accessible via <http://www.DentalTek.com> or another web site or IP address designated by DentalTek, or ancillary online or



offline products and services provided to Customer by DentalTek, to which Customer is being granted access under an Order Form;

- h) "Subscription Term" means the period(s) during which a specified number of Users are authorized to use the Service pursuant to the Order Form;
- i) "Upgrade" means a new version of the Services released by DentalTek that may add new and different functions to or increases the capacity of its Services, and include revisions to documentation and new training as a result of such upgrades. An Upgrade does not include additional functionality that DentalTek makes available through the Service after the Effective Date for which DentalTek requires a separate charge; and
- j) "Users" means Customer's officers, employees, representatives, consultants, contractors, subcontractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by DentalTek at Customer's request).

2) Service.

- a) Provision of Service. Subject to the terms and conditions of this Agreement, DentalTek will make the Service available to Customer pursuant to this Agreement and all Order Forms during a Subscription Term. Customer agrees that Customer's purchase of subscriptions is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by DentalTek with respect to future functionality or features. DentalTek shall: (i) use commercially reasonable efforts to provide to Customer support for the Service as described on each Order Form, (ii) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for:
 - i) planned downtime (of which DentalTek shall give at least 8 hours of notice via the Services and by email to Users, and which DentalTek shall schedule to the extent practicable on Friday evenings between 6:00 p.m. Mountain time Friday to 9:00 p.m. Mountain time Friday)), or
 - ii) any unavailability caused by circumstances beyond DentalTek's reasonable control, including without limitation, acts of God, acts of government, natural disasters, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving DentalTek's employees), or Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.
- b) Upgrades. Upgrades are included as part of Customer's Service during the Subscription Term.
- c) User Reassignment. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require use of the Service.
- d) Additional Users. Unless otherwise specified in the relevant Order Form, the Subscription Term of additional Users shall be coterminous with the expiration of the Subscription Term in effect at the time the additional Users are added.
- e) Affiliates. Affiliates may purchase and use User subscriptions subject to the terms of this Agreement by executing an Order Form hereunder.

3) Customer's Responsibilities.

- a) User Accounts. Customer is responsible for all Users' compliance with this Agreement and shall maintain user access protocols reasonably designed to prevent unauthorized access to the Service. Customer is responsible for all activity occurring under Customer's accounts (including use by all Users) and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify DentalTek promptly of any unauthorized



use of any password or account or any other known or suspected breach of security; (ii) report to DentalTek promptly and use reasonable efforts to stop promptly any use, copying, or distribution of the Service that is known or suspected by Customer or Customer's Users; and (iii) not impersonate another DentalTek user or provide false identity information to gain access to or use the Service.

- b) Restrictions. Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, disclose, or otherwise commercially exploit or make available to any third party in any manner the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet "links" to the Service or "frame" or "mirror" the Service on any other server or wireless or Internet-based device; (iv) access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, or (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Service (except to the extent that applicable law prohibits reverse engineering restrictions), or (except as expressly permitted herein) access the Service, or copy any ideas, features, functions or graphics of the Service (vi) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (vii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violation of third party privacy rights; (viii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ix) modify, interfere with or disrupt the integrity or performance of the Service (including the data contained therein); or (x) attempt to gain or permit unauthorized access to the Service or its related systems or networks. Customer may not access the Service if Customer is a direct competitor of DentalTek, except if Customer discloses such to DentalTek and thereafter obtains DentalTek's prior written consent.
- c) Disclosure of Terms. During the term of this Agreement and for two years thereafter, Customer shall not disclose the pricing or terms hereunder to any third party without DentalTek's prior written consent. Customer shall safeguard all such information with the same or greater degree of care as it uses to safeguard its own confidential information. Customer shall, upon becoming aware of any unauthorized disclosure of such information, promptly notify DentalTek of, and provide reasonable assistance to, DentalTek in remedying such disclosures.

4) *Account Information and Data.*

- a) From time to time, Customer may deliver Customer Data to DentalTek. To the extent Customer is a Covered Entity (as defined in HIPAA), by their signature to the Agreement, DentalTek and Customer agree to be bound by the provisions of the Business Associate Agreement attached hereto as Exhibit C.
- b) Customer acknowledges that DentalTek may or may not prescreen the Customer Data, but that DentalTek shall have the right (but not the obligation) in its sole discretion to pre-screen, refuse or move the Customer Data that is available through the Service. DENTALTEK SHALL NOT BE LIABLE FOR THE DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STATE ANY OF CUSTOMER'S DATA.
- c) Customer agrees and acknowledges that DentalTek may access Customer's password-protected account(s), if any, to respond to service or technical problems or to ensure compliance with the Agreement.
- d) DentalTek agrees that the Customer Data remains the property of Customer and DentalTek will furnish such Customer Data without additional charge at Customer's request within thirty (30) days following the expiration of this Agreement for any reason. Customer however acknowledges and agrees, that subject to DentalTek's obligations under the Business Association Agreement and to the extent authorized under the HIPAA Privacy Rule, DentalTek may prepare, use, sell and distribute aggregated de-identified information collected and stored via the Services provided that DentalTek shall take appropriate steps required under 45 C.F.R. § 164.514 to ensure that the information has been appropriately de-identified. Such de-identified information will not be deemed to be Confidential Information of Customer. In addition, DentalTek may share Customer's Service usage statistics but not Customer Data to its third party marketing partners and such usage statistics will not be deemed Confidential Information of Customer.



5) *Privacy Disclosure.*

DentalTek's privacy policy may be viewed at <http://www.DentalTek.com>. DentalTek reserves the right to modify its privacy policy in its reasonable discretion from time to time. DentalTek will provide notification of the material changes to this privacy policy through the Company's Web site at least thirty (30) business days prior to the change taking effect. Notwithstanding the foregoing, DentalTek will not materially diminish Customer's privacy during the term.

6) *Ownership.*

DentalTek (and its licensors, where applicable) shall own all right, title and interest in and to the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in, or related to, the Service. The DentalTek name, the DentalTek logo, and the product names associated with the Service are trademarks of DentalTek or third parties, and no right or license is granted to Customer to use them. All rights not expressly granted to Customer herein is reserved by DentalTek and its licensors.

7) *Third Party Interactions.*

- a) During use of the Service, Customer may enter into correspondence with, agrees to receive phone calls explaining third party goods or services, purchase goods and/or services from, or participate in promotions of suppliers, advertisers or sponsors showing or otherwise making available their goods and/or services on or through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between Customer and the applicable third party. Customer agrees that DentalTek and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer and any such third-party. DentalTek provides the Service to Customer pursuant only to the terms and conditions of this Agreement.
- b) DentalTek agrees that it will not charge Customer's suppliers for the right to interact with Customer through the Service.

8) *Billing and Payment of Fees.*

- a) DentalTek charges and collects in advance for use of the Service. All payment obligations are non-cancellable and all amounts paid are nonrefundable except as otherwise specified in this Agreement. DentalTek will issue one or more invoices to Customer as specified in the Order Form and Customer agrees to pay such amounts not subject to a good faith dispute when and as specified in the Order Form. Customer agrees to pay DentalTek in the currency specified on the Order Form and if no currency is specified, payment shall be made in U.S. dollars. DentalTek's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on DentalTek's income. Customer agrees to provide DentalTek with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator. Customer agrees to update this information promptly upon any change to it. If the contact information Customer have provided is fraudulent, DentalTek reserves the right to terminate Customer's access to the Service in addition to any other legal remedies available to DentalTek. If Customer believe Customer's bill is incorrect, Customer must contact us in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit; otherwise such dispute shall be irrevocably waived.
- b) If a balance due is not paid when due, interest will be charged on the principal balance. Interest will be calculated by multiplying the unpaid balance by the periodic rate of 1.5% per month (EIGHTEEN PERCENT 18% ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest until paid.



9) *Confidentiality.*

- a) As used herein, “Confidential Information” means all confidential and proprietary information of a party (“Disclosing Party”) disclosed to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without either use of the Confidential Information or breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.
- b) The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement without the Disclosing Party’s prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).
- c) If the Receiving Party is compelled by law or regulatory process to disclose Confidential Information of the Disclosing Party, the Receiving Party shall first provide the Disclosing Party with notice of such compelled disclosure (to the extent such prior notice is legally permitted). Receiving Party will provide Disclosing Party (at Disclosing Party’s expense) reasonable assistance if the Disclosing Party wishes to contest the disclosure Confidential Information. Any information disclosed by Receiving Party pursuant to law or regulatory process shall continue to be treated as Confidential Information for all other purposes.
- d) Except as expressly provided in this Agreement, if the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections contained herein, the Disclosing Party shall have the right, in addition to any other remedies available to the Disclosing Party at law, to seek injunctive or other equitable relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.
- e) Notwithstanding the foregoing, DentalTek may use and report on Customer Data and other data and metrics related to Customer’s use of the Service in an aggregate and anonymous manner to support benchmarking or similar features of the Service (“Authorized Use”) provided such Authorized Use does not result in disclosure of Customer’s Confidential Information.

10) *Term, Termination, Survival.*

- a) The Agreement commences on the Effective Date and continues until all subscriptions granted in accordance with the Order Forms have been terminated pursuant to this Agreement.
- b) User subscriptions commence on the subscription start date specified in the relevant Order Form and continue for the Subscription Term specified therein. User subscriptions shall automatically renew for additional periods of one (1) year, unless either party gives the other written notice of non-renewal at least 90 days prior to the end of the relevant subscription term. DentalTek has the right to increase fees for the Services during the renewal term to the then-applicable prices being charged for the Services. DentalTek also reserves the right to increase prices to the Services at any time.
- c) A party may terminate this Agreement for cause: (i) upon 60 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- d) Upon any termination for cause by Customer, DentalTek shall refund any prepaid fees covering the remainder of the subscription term after the date of termination. Termination shall not relieve Customer of



the obligation to pay any fees accrued or payable to DentalTek prior to the effective date of termination. Upon termination the Customer agrees to pay \$499 to DentalTek for the de-installation of DentalTek software and the restoration of Customer Data to the Customer's local server.

- e) Upon Customer's request, within 30 days after the effective date of termination, DentalTek will make available for download a file of Customer Data in a native data format along with attachments in their native data format. After such 30-day period, DentalTek shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.
- f) Upon termination of the Agreement, Sections 3(c), and 4 through 20 of this Agreement shall survive.

11) *Representations and Warranties.*

- a) Each party represents and warrants that it has the legal power and authority to enter into this Agreement and to bind the entity named below.
- b) During the Term of the Agreement, DentalTek represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the Service shall perform materially in accordance with the documentation found, and updated, from time to time, at <http://www.DentalTek.com>; and (iii) the functionality of the Service will not be materially decreased during a subscription term.
- c) Customer represents and warrants that Customer has not falsely identified itself nor provided any false information to gain access to the Service, that Customer's billing information is correct, that Customer is a business and not a consumer, and that Customer has all necessary rights to provide all information provided hereunder.

12) *Indemnification.*

- a) Subject to this Agreement, DentalTek shall defend, indemnify and hold Customer harmless against any expense, liability, loss, damage or costs (including reasonable attorneys' fees), each to the extent payable to a third party, incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that the Service as provided hereunder infringes any issued U.S. patent, U.S. copyright, or other intellectual property right of such third party. Notwithstanding the foregoing if DentalTek reasonably believes that Customer's use of any portion of the Service is likely to be enjoined by reason of any Claims then DentalTek may, at its expense and in its sole discretion: (i) procure for Customer the right to continue using the Service; (ii) replace the same with other services of equivalent functions and efficiency that are not subject to any Claims of infringement; or (iii) modify the applicable Service so that there is no longer any infringement, provided that such modification does not adversely affect the functional capabilities of the Service as set out herein or the applicable Order Form. If, in DentalTek's opinion, (i), (ii), and (iii) above are infeasible or commercially impracticable, DentalTek may, in its reasonable discretion, terminate the applicable Service and refund to Customer the fees paid by Customer for the portion of the Services period that was paid by Customer but not rendered by DentalTek. The foregoing indemnification obligation of DentalTek shall not apply: (1) if the Service is modified by any party other than DentalTek, but solely to the extent the alleged infringement is caused by such modification; (2) the DentalTek Services are combined with other non-DentalTek products, applications, or processes not authorized by DentalTek, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the DentalTek Services; (4) to any action arising as a result of the Customer Data. THIS SECTION SETS FORTH DENTALTEK'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.
- b) Customer shall defend, indemnify and hold DentalTek harmless against any expense, liability, loss, damage or costs (including reasonable attorneys' fees), each to the extent payable to a third party, incurred in connection with Claims made or brought against DentalTek by a third party arising from or relating to Customer's use of the Customer Data or Customer's use of the Services in violation of this Agreement.



- c) Each party's indemnity obligations are subject to the following: (i) the indemnified party shall promptly notify the indemnifier in writing of any Claims; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to any Claims (provided that the indemnifier may not settle any Claims that requires the indemnified party to admit any civil or criminal liability or incur any financial obligation without the indemnified party's consent, which consent shall not be unreasonably withheld); and (iii) the indemnified party shall cooperate fully to the extent necessary at the indemnifier's cost in such defense and settlement.
- 13) **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, DENTALTEK AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICE AND ALL ASSOCIATED CONTENT ARE PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY DENTALTEK AND ITS LICENSORS.
- 14) **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE UNDER THE AGREEMENT FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), REGARDLESS OF THE CAUSE, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICE, INCLUDING THE USE OF OR INABILITY TO USE THE SERVICE, OR ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, IN THE SERVICE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER. THE LIMITATIONS IN THIS SECTION SHALL NOT APPLY TO LIABILITY ARISING FROM A PARTY'S INFRINGEMENT INDEMNIFICATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- 15) *Local Laws and Export Control.*

Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

16) *Notice.*

Except as provided elsewhere in this document, either party may give notice by written communication sent by next-day mail delivered by a nationally recognized delivery service to: (i) if to Customer, to Customer's address on record in DentalTek's account information or (ii) if to DentalTek, to 7070 S. Tucson Way, Centennial, CO 80112, addressed to the attention of: Legal. Such notice shall be deemed to have been given upon the expiration of 24 hours after mailing.

17) *Assignment.*

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its



Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination by Customer, DentalTek shall refund to Customer any prepaid fees covering the remainder of the Subscription Term of all Order Forms after the effective date of such termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

18) *Choice of Law, Conflicts of Law, and Dispute Resolution.*

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Denver, Colorado. There shall be one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent of the request for arbitration, or in default thereof, appointed by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration shall be governed by the laws of the State of Colorado without regard to the choice of law or conflicts of law provisions of any jurisdiction. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

19) *Publicity.*

Customer authorizes DentalTek to publicly disclose that Customer is a customer and to use Customer's name and logo to identify Customer as such. Customer agrees that DentalTek may issue a press release upon execution of this Agreement and/or any applicable Order Form announcing this Agreement and/or any applicable Order Form and describing the general nature of the Services DentalTek provides to Customer. Except as set forth in this subsection, there shall be no public announcement of this Agreement or the relationship between the parties without mutual review and approval by both parties, except as part of required governmental filings, SEC filings (forms 10-K, 10-Q, etc.), quarterly earnings announcements and financial presentations, or listings of other similar relationships.

20) *Miscellaneous*

- a) The Agreement comprises the entire agreement between Customer and DentalTek and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. In the event of any conflict between this Master Subscription Agreement and the Order Form, the Order Form shall govern to the extent of such conflict. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
- b) No joint venture, partnership, employment, or agency relationship exists between Customer and DentalTek as a result of the Agreement or use of the Service.
- c) The failure of a party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision. (e) The prevailing party in any dispute arising under this Agreement shall be awarded its reasonable attorney fees and costs.

21) *Government Users.*

As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Software and accompanying documentation provided by DentalTek Technology are "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with



DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by these terms and shall be prohibited except to the extent expressly permitted by these terms.

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

Under the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E (the “**Privacy Rule**”) of the Health Insurance Portability and Accountability Act (“**HIPAA**”). Customer is a covered entity (referred to herein as “**Covered Entity**”) and is required to comply with the Privacy Rule and with the Security Standards for the Protection of Electronic Health Information at 45 CFR Parts 160 and 164, Subparts A and C of HIPAA (the “**Security Rule**”). HIPAA further establishes a Data Breach Notification Rule, 45 CFR Part 164, Subpart D of HIPAA, applicable a “business associate” (the “**Data Breach Rule**,” together with the Privacy Rule and the Security Rule, the “**HIPAA Rules**”). DentalTek, LLC is referred to herein as (“**Business Associate**”). All references to the HIPAA Rules and to the Data Breach Notification Rule are deemed to include all amendments to such rules and any accompanying regulations, and any subsequently adopted amendments or regulations, as are applicable to this Agreement. The parties agree that this Business Associate Agreement (“**BAA**”) supplements the Agreement. Under the Agreement, Business Associate will have or may have access to Covered Entity’s Protected Health Information received by Business Associate or created by Business Associate on behalf of Covered Entity (“**PHI**”).

1. **DEFINITIONS: INTERPRETATION.** Except as otherwise defined herein, any and all capitalized terms in this BAA shall have the definitions set forth in the HIPAA Rules or the Data Breach Rule, as applicable. In the event of an inconsistency between the provisions of this BAA, the Agreement, and the requirements of the HIPAA Rules, the HIPAA Rules shall apply. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Rules and any other applicable state or federal law protecting the privacy, security and confidentiality of PHI.
2. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.** Business Associate agrees:
 - 2.1. to use or disclose PHI solely: (a) for meeting its obligations as set forth in the Agreement, (b) as required by applicable law, rule or regulations or as otherwise permitted under this BAA, the Agreement (if consistent with this BAA and the Privacy Rule), or the Privacy Rule; and (c) as would be permitted by the Privacy Rule if such use or disclosure were made by Covered Entity;
 - 2.2. that all such uses and disclosures shall be subject to the limits set forth in 45 C.F.R. §164.514 regarding limited data sets, and 45 C.F.R. §164.502(b) regarding the minimum necessary requirements, until such time as the U.S. Department of Health & Human Services (“**HHS**”) issues guidance as to the meaning of “minimum necessary,” at which time such guidance shall control and be incorporated herein by reference;
 - 2.3. to comply with all additional applicable requirements of the Privacy Rule contained in 45 C.F.R. §164.504(e), including but not limited to, §164.504(e)(1)(ii);
 - 2.4. to not directly or indirectly receive remuneration in exchange for any PHI;



- 2.5. to implement appropriate safeguards to prevent the use or disclosure of PHI other than as permitted or required by this BAA;
 - 2.6. to comply with all applicable requirements of the Security Rule contained in 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation) related to Electronic PHI, and comply with annual guidance published by HHS (and incorporated herein by reference) on the most effective and appropriate technical safeguards for use in carrying out the provisions of the Security Rule;
 - 2.7. to report to Covered Entity any use or disclosure of PHI, of which it becomes aware, which is not in compliance with the terms of this BAA and any attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or interference with system operations in an information system containing PHI subject to this BAA;
 - 2.8. following the discovery of a Breach of Unsecured Protected Health Information (a “**Breach**”), to notify the Covered Entity of such Breach pursuant to the terms of 45 CFR §164.410, and cooperate in the Covered Entity’s Breach analysis procedures and risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or its workforce or, by exercising reasonable diligence, would have been known to Business Associate or its workforce. Business Associate will provide such notification to Covered Entity within five (5) calendar days after discovery of the Breach. Such notification shall contain the information required by 45 C.F.R. §164.410. If Business Associate’s Breach results in Covered Entity’s notification to affected persons, Business Associate agrees to assume responsibility for all documented costs directly related with such notification;
 - 2.9. to mitigate, to the extent practicable, the harmful effect caused by Business Associate’s use or disclosure of PHI which is in violation of this BAA or by any Breach of PHI by Business Associate, its employees, agents or subcontractors, and to provide notice to Covered Entity of such mitigation efforts;
 - 2.10. to make its internal practices, books, and records relating to the use and disclosure of PHI, available to the Secretary of Health and Human Services, at a reasonable time and in a reasonable manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the HIPAA Rules;
 - 2.11. if Business Associate knows of a pattern of activity or practice by Covered Entity that constitutes a material breach or violation of Covered Entity’s obligations under this BAA or under the HIPAA Rules, Business Associate will take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful within a period of thirty (30) days, Business Associate will either: (a) terminate this BAA, or (b) report the problem to the Secretary; and
 - 2.12. to ensure that its employees and agents, including a subcontractor, who has access to PHI, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, and agree to implement reasonable and appropriate safeguards to protect such PHI.
3. AVAILABILITY OF PHI. Business Associate agrees:
- 3.1. to make PHI available to the Covered Entity (or, at the direction of the Covered Entity, to the individual) to the extent and in the manner necessary for Covered Entity to satisfy the access requirements of Section 164.524 of the Privacy Rule;
 - 3.2. if Business Associate maintains electronic PHI, it agrees to make such electronic PHI electronically available to the applicable individual in the format required by the Privacy Rule;
 - 3.3. to make PHI available for amendment and incorporate any amendments to PHI in accordance with the requirements of Section 164.526 of the Privacy Rule;



- 3.4. to document disclosures of PHI by Business Associate and maintain an accounting of such disclosures, and to provide such documentation and accounting to Covered Entity, upon Covered Entity's specific request, to permit it to respond to a request by an Individual for an accounting of PHI disclosures, as required by Section 164.528 of the Privacy Rule. Business Associate shall cooperate with Covered Entity in providing any accounting required on a timely basis; and
- 3.5. to comply with any requests for restrictions on certain disclosures of PHI, to which Covered Entity has agreed or which are required by the HIPAA Rules, of which Business Associate is notified by Covered Entity.

4. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.

- 4.1. General Use and Disclosure. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform the functions, activities or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if performed by Covered Entity.
- 4.2. Disclosure and Use of De-identified Data. Except as otherwise limited by the HIPAA Rules, Business Associate may convert PHI to De-identified ("DID") and use and disclose DID provided that such de-identification, use or disclosure complies with 45 C.F.R. Part 164.14.
- 4.3. Specific Use and Disclosure. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI, if necessary:
 - (a) for the proper management and administration of Business Associate or to carry out its legal responsibilities, provided that, as to any such disclosure, (a) the disclosure is required by law and (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; or
 - (b) for any Data Aggregation Services to be provided by Business Associate for the Covered Entity.

5. TERM AND TERMINATION.

- 5.1. Term. The Term of this BAA shall be effective on the date set forth above, and shall be coterminous with the term of the Agreement, unless earlier terminated as provided for herein.
- 5.2. Termination. Upon Covered Entity becoming aware of a violation of this BAA by Business Associate, or reasonably believes that Business Associate will be in violation of this BAA, Covered Entity shall:
 - (a) provide written notice and a reasonable opportunity for Business Associate to cure the violation, not to exceed thirty (30) days, and terminate this BAA and the Agreement if Business Associate does not cure within such time; or
 - (b) immediately terminate this BAA and the Agreement if Covered Entity reasonably and in good faith determines that a cure is not possible; or
 - (c) if neither termination nor cure is feasible, Covered Entity may take such action as may be allowed or required by the HIPAA Rules.
- 5.3. Effect of Termination.



- (a) Except as provided in paragraph 5.3 (b), below, upon termination of this BAA for any reason, Business Associate shall return or destroy, at Covered Entity's option and expense, all PHI. Business Associate shall insure compliance with this requirement by its subcontractors, if any. Any such destruction shall comply with the applicable guidance of HHS in effect at the time of such destruction and Business Associate shall provide to Covered Entity a certification attesting to such compliance.
- (b) Should Business Associate conclude that returning or destroying any PHI is not feasible, Business Associate shall immediately notify Covered Entity in writing of the circumstances upon which it bases this conclusion. Upon Covered Entity's written concurrence that such return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI, and shall limit its further uses and disclosures to those purposes that necessitate Business Associate continuing to maintain this PHI. The obligation of Business Associate under this provision shall continue for as long as Business Associate maintains this PHI, shall survive termination of this BAA, and shall continue to bind Business Associate, its agents, contractors, successors and assigns, for however long this PHI is held by any of them.

6. MISCELLANEOUS.

- 6.1.** Except as expressly stated herein or in the HIPAA Rules, the parties do not intend to create any rights in any third parties.
- 6.2.** The Business Associate is not the agent of the Covered Entity and the Covered Entity does not control or supervise the Business Associate. None of the provisions of this BAA are intended to create, nor will they be deemed to create, any relationship between the parties other than that of independent parties contracting with each other solely for the purposes of implementing the provisions of this BAA and the Agreement.
- 6.3.** This BAA may be amended or modified only in a writing signed by the parties. The parties intend, however, that this BAA comply with all applicable laws and regulations and that the requirement of any new or amended law or regulation affecting this BAA be incorporated herein at such time as it becomes effective. Notwithstanding the foregoing, the parties agree to take such action to amend this BAA from time to time as is necessary for either party to comply with any requirement of federal or state law or regulation, or any amendments thereto. Should a party believe in good faith that any provision of this BAA fails to substantially comply with the then-current requirements of law, that party shall notify the other party in writing, specifying the purported non-compliance and proposed revision(s). The parties shall negotiate in good faith, for a period of up to fifteen (15) calendar days, to so amend the terms of this BAA. If, after such 15-day period, the parties cannot agree to an acceptable amendment(s), then either party can terminate the BAA upon written notice to the other party, with such termination being effective immediately upon receipt.
- 6.4.** No party may assign its respective rights and obligations under this BAA without the prior written consent of the other party.
- 6.5.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of any continuing or other liabilities or obligations, nor shall they prohibit enforcement of any liabilities or obligations on any other occasions.
- 6.6.** This BAA shall be governed by the laws of the state of Colorado, and the venue and exclusive jurisdiction over any legal disputes between the parties arising under this BAA shall be in the state and federal courts of the state of Colorado.
- 6.7.** Should any provision of this BAA be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.
- 6.8.** To the extent the parties have previously executed a business associate agreement, this BAA amends, supersedes and replaces the prior business associate agreement in its entirety.