

**HIPAA PRIVACY COMPLIANCE AGREEMENT
(BUSINESS ASSOCIATES AGREEMENT)**

This HIPAA Privacy Compliance Agreement (the "**Agreement**") is made and entered into and between the dental, orthodontic, or oral and maxillofacial practice identified below or as provided herein ("**Dental Practice**") and PracticeWorks, Inc., a Delaware corporation (including its subsidiaries and affiliates, "**PracticeWorks**").

RECITALS

- A. In performing services on behalf of Dental Practice, PracticeWorks shall have access to certain information, some of which information may constitute Protected Health Information.
- B. Dental Practice and PracticeWorks intend to protect individual privacy and provide for the security and confidentiality of Protected Health Information disclosed to PracticeWorks, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("**HIPAA**") and regulations promulgated thereunder by the U.S. Department of Health and Human Services ("**HIPAA Regulations**") and other applicable laws, as of such time that such laws and regulations shall become effective and govern such services as PracticeWorks may provide on behalf of Dental Practice.
- C. As part of the HIPAA Regulations, the Privacy Rule requires Dental Practice to enter into a contract with PracticeWorks containing specific requirements restricting the use and disclosure of Protected Health Information, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations ("**CFR**").

In consideration of the mutual promises below and the exchange of information between the parties, the parties agree as follows:

1. Definitions. All capitalized terms have the definitions set forth below unless otherwise set forth herein:

- (a) **Data Aggregation.** "Data Aggregation" shall have the same meaning given to such term in 45 CFR 164.501 and shall include the combining of Protected Health Information received or created by PracticeWorks to permit data analyses relating to healthcare operations of Dental Practice.
- (b) **Designated Record Set.** "Designated Record Set" shall have the same meaning given to such term in 45 CFR 164.501 and shall include patients' medical or billing records or any group of records which contains Protected Health Information that are used, in whole or in part, by or for Dental Practice to make decisions about patients.
- (c) **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (d) **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (e) **Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by PracticeWorks from or on behalf of Dental Practice.
- (f) **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- (g) **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Permitted Uses and Disclosures by PracticeWorks:

- (a) Except as otherwise limited in this Agreement, PracticeWorks may use or disclose Protected Health Information to perform the functions, activities, and services set forth in Paragraph 2(f) below (collectively, the "**Services**") on behalf of Dental Practice to the extent that PracticeWorks will provide such Services pursuant to a service agreement, software license, or other written agreement(s) presently in effect or entered into after the effective

date of this Agreement between PracticeWorks and Dental Practice (collectively, "**Service Agreement**" or "**Service Agreements**").

- (b) Except as otherwise limited in this Agreement, PracticeWorks may use Protected Health Information for the proper management and administration of PracticeWorks or to carry out the legal responsibilities of PracticeWorks.

- (c) Except as otherwise limited in this Agreement, PracticeWorks may disclose Protected Health Information for the proper management and administration of PracticeWorks, provided that disclosures are Required By Law, or PracticeWorks 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 PracticeWorks of any instances of which it is aware in which the confidentiality of the information has been breached.

- (d) Except as otherwise limited in this Agreement, PracticeWorks may use Protected Health Information to provide such Data Aggregation services to Dental Practice as permitted by 45 CFR 164.504(e)(2)(i)(B).

- (e) PracticeWorks may use and disclose Protected Health Information to report violations of law to appropriate state or Federal authorities, consistent with 45 CFR 164.502(j)(1).

- (f) The following are the Services of PracticeWorks referred to in this Agreement:

- (i) providing practice management software with applications that include administrative, financial and clinical applications, and digital imaging and radiography systems;
- (ii) electronic commerce services, including collection of claims data, submission of electronic claims information to health plans and provision of statements, website hosting, dental supply procurement, credit card processing and other billing activities;
- (iii) ongoing maintenance, support and training associated with PracticeWorks' products and services provided to Dental Practice; and
- (iv) other activities related to the Services set forth above.

3. Obligations and Activities of PracticeWorks:

- (a) PracticeWorks agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement or as permitted or Required By Law.
- (b) PracticeWorks agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) PracticeWorks agrees to report to Dental Practice any use or disclosure of the Protected Health Information not provided for by this Agreement of which PracticeWorks becomes aware.
- (d) PracticeWorks agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information agrees to the same restrictions and conditions that apply through this Agreement to PracticeWorks with respect to such information.
- (e) PracticeWorks agrees to provide Dental Practice access, at Dental Practice's request and in the time and manner designated by PracticeWorks (provided that such time and manner shall also permit Dental Practice to comply with its obligations under the Privacy Rule), to Protected Health Information maintained in Designated Record Sets in order for Dental Practice to meet its requirements under 45 CFR 164.524.
- (f) At the request of Dental Practice, PracticeWorks agrees to make, in the time and manner designated by PracticeWorks (provided that such time and manner shall also permit Dental Practice to comply with its obligations under the Privacy Rule), any amendment(s) to Protected Health Information maintained in Designated Record Sets that Dental Practice directs or agrees to pursuant to 45 CFR 164.526.

(g) PracticeWorks agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Dental Practice's compliance with the Privacy Rule.

(h) PracticeWorks agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Dental Practice to respond to a request by an Individual for an accounting of such disclosures pursuant to 45 CFR 164.528.

(i) PracticeWorks agrees to provide to Dental Practice, in the time and manner designated by PracticeWorks (provided that such time and manner shall also permit Dental Practice to comply with its obligations under the Privacy Rule), information collected in accordance with Paragraph 3(h) of this Agreement, to permit Dental Practice to respond to a request by an Individual for an accounting of disclosures of Protected Health Information to the extent required under 45 CFR 164.528.

4. Obligations of Dental Practice:

(a) Dental Practice shall notify PracticeWorks with any limitations(s) in its notice of privacy practices of Dental Practice in accordance with 45 CFR 164.520 to the extent that such limitation may affect PracticeWorks' use or disclosure of Protected Health Information.

(b) Dental Practice shall provide PracticeWorks with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such change may affect PracticeWorks' use or disclosure of Protected Health Information.

(c) Dental Practice shall notify PracticeWorks of any restriction to the use or disclosure of Protected Health Information that Dental Practice has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect PracticeWorks' use or disclosure of Protected Health Information.

(d) Dental Practice shall not request that PracticeWorks use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Dental Practice; provided, however, that Dental Practice acknowledges that PracticeWorks may use Protected Health Information for data aggregation or management and administrative activities of PracticeWorks.

5. Term and Termination:

(a) *Term.* Unless sooner terminated as set forth below, the Term of this Agreement shall be from the earlier of the date of this Agreement and the date delivered by PracticeWorks and shall terminate on the effective date of termination of the Service Agreement, or, if more than one, the effective date of termination of the last such agreement to remain in effect between the parties.

(b) *Termination for Cause.* Upon either party's knowledge of a material breach by the other, the non-breaching party shall either:

(i) provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement by delivery of written notice if the breaching party does not cure the breach or end the violation within the reasonable time specified by non-breaching party; or

(ii) terminate this Agreement as soon as it desires by delivery of written notice if the breaching party has breached a material term of this Agreement and cure is not possible or the non-breaching party reasonably believes cure is not possible.

(c) *Effect of Termination.* Upon termination of this Agreement (i) if feasible, PracticeWorks shall return to Dental Practice, or destroy, all Protected Health Information received from, or created or received by PracticeWorks on behalf of, Dental Practice, that PracticeWorks still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible and (ii) Dental Practice shall cease providing any Protected Health Information to PracticeWorks, including through transmission of electronic transactions.

6. Miscellaneous:

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required. Notwithstanding any contrary provision in this Agreement, the occurrence of the date upon which persons or entities such as Dental Practice shall be required to comply with the applicable provisions of the Privacy Rule, as specified therein, is a condition precedent to the activities and obligations of PracticeWorks set forth in Paragraph 3 hereof or elsewhere herein.

(b) *Survival.* The respective rights and obligations of PracticeWorks under Paragraph 5(c) of this Agreement shall survive the termination of this Agreement.

(c) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Dental Practice to comply with the Privacy Rule.

(d) *Written Notice.* Any notice from one party to the other required under this Agreement shall be in writing and shall be given to such party at its address set forth below or such other address as such party may hereafter specify by notice to the other party.

(e) *Entire Agreement.* This Agreement contains the entire agreement and understanding between the parties regarding Protected Health Information. This Agreement can only be modified by written agreement duly signed by persons authorized to sign agreements on behalf of both PracticeWorks and Dental Practice.

(f) *Governing Law.* The construction and performance of this Agreement will be governed by applicable federal law and the laws of the State of Georgia.

(g) *Assignment.* This Agreement may not be assigned by either party without the written consent of the other party to this Agreement. Notwithstanding the foregoing, PracticeWorks may assign this Agreement to any successor in interest of all or substantially all of its assets.

(h) *Counterparts/Facsimile/Binding Effect.* This Agreement may be executed in counterparts, which taken together shall constitute one and the same contract. Both parties agree to accept a facsimile signature of the other as representative of valid execution by the executing party. If Dental Practice has received a copy of this document executed by PracticeWorks and thereafter delivers Protected Health Information to PracticeWorks, PracticeWorks may deem such performance as acceptance of this document as a binding Agreement.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement.

PRACTICEWORKS, INC.

1765 The Exchange
Suite 200
Atlanta, Georgia 30339

By: 

C. Lamar Roberts
Vice President

Date: November 13, 2003

("Dental Practice")
PracticeWorks Customer Number: _____

Address: _____

By: _____
Print Name: _____
Title: _____

Date: _____