



## Privacy and Information Security Addendum

This Privacy and Information Security Addendum (“Addendum”) is entered into by and between [ ] (“Vendor”) and Baymeadows Family Dentistry, on behalf of itself and its affiliates (collectively, “Customer”), and is appended to and effective as of the effective date of the [Services Agreement] (“Agreement”). This Addendum is incorporated into the Agreement, which supersedes any conflicting provisions.

WHEREAS, Customer and Vendor have entered into the Agreement pursuant to which Vendor performs certain services (“Services”) for or on behalf of Customer;

WHEREAS, in performing such Services, Vendor may “Process” (defined below) “Personal Information” (defined below) from or on behalf of Customer;

WHEREAS, the parties wish to set forth in this Addendum the additional requirements applicable to Personal Information Processed by Vendor in connection with providing the Services;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

### DEFINITIONS

Capitalized terms shall have the meanings set out below. Any capitalized terms not defined below or elsewhere in this Addendum shall have the meanings ascribed to them in the Agreement:

“Data Protection Impact Assessment” means an assessment by Customer of the impact of the anticipated Processing on the protection of Personal Information.

“Incident” means the unauthorized and/or unlawful Processing of Personal Information whether in electronic, hard copy or other form including but not limited to interference with information system operations; provided, however that trivial attempts to penetrate Vendor’s networks or systems that occur on a daily basis, such as scans, and “pings,” will not be considered an Incident.

“Government Request” is a request for access to Personal Information Processed by Vendor by any government official or judicial or administrative proceeding.

“Laws” means all national, state, regional and/or local laws, rules, regulations, security requirements and regulatory guidance applicable to the either party’s performance under the Agreement including but not limited to those applicable to the Processing of “Personal Information”, except for the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and its promulgating regulations (collectively, “HIPAA”), which, if applicable, compliance is governed by the “business associate agreement” between the Parties.

“Personal Information” has the meaning given by the applicable Laws and shall include, without limitation, any data or information (regardless of the medium in which it is contained and whether alone or in combination) which may be supplied to Vendor by Customer or its supported dental practices or Processed by or on behalf of Vendor in connection with the provision of the Services, that relates to or is reasonably capable of being associated with an identified or identifiable person (“Data Subject”) including, without limitation, name, postal address, email address, telephone number, IP address, and information about the Data Subject, except “protected health information” as defined by HIPAA (which, if applicable, compliance is governed by the “business associate agreement” between the Parties).

“Process” means any operation which is performed upon Personal Information, whether or not by automatic means, including but not limited to the access, acquisition, collection, recording, organization, storage, alteration, retrieval, consultation, use, disclosure, combination, “Transfer”, blocking, return or destruction of Personal Information. “Processed,” or “Processing” shall be construed accordingly.

“Remediation Efforts” means, as applicable to Vendor’s Services or other obligations under the Agreement,

activities related to the investigation of, response to and remediation of an Incident including, without limitation, forensic investigations, breach notification, establishment and operation of toll-free phone support for affected individuals, and identity theft insurances for affected individuals cooperation with regulatory authorities and management and response to litigation and other legal or regulatory actions including but not limited to engaging attorneys and the payment of fines, settlements and damages.

“Security Issue” means any material weakness reasonably likely to give rise to an Incident.

“Transfer” means both (a) the moving of Personal Information from one location or person to another, whether by physical or electronic means and (b) the granting of access to Personal Information by one location or person to another, whether by physical or electronic means. “Transferred,” or “Transferring” shall be construed accordingly.

“Vendor Assessment” means any privacy and security practices vendor assessment or similar document or process completed or performed by Vendor at Customer’s request.

## GENERAL OBLIGATIONS

### 1. Limitations on Vendor’s Use of Personal Information.

- (a) Vendor shall maintain all Personal Information in strict confidence and shall only Process the Personal Information to perform the Services and only in accordance with Customer’s written instructions, and for no other purpose unless otherwise provided in the Agreement or authorized in advance in writing by Customer.
- (b) Vendor is prohibited from retaining, using, or disclosing the Personal Information for any purpose other than for the specific purpose of performing the Services.

### 2. Access and Other Requests.

- (a) Notification of Requests. Vendor shall, where not legally prohibited from doing so, notify Customer as soon as reasonably practicable, and in any event within three (3) business days, of receiving any request or complaint related to any Personal Information.
- (b) Responses to Requests. Except for Government Requests, Vendor shall not respond to any requests described above, unless this Agreement provides otherwise; Vendor is explicitly authorized by Customer in writing to do so; or where Vendor has a mandatory obligation under applicable Laws to respond directly, in which case Vendor shall notify Customer as soon as possible and, at a minimum, at the same time as making the initial notification set forth in the preceding paragraph and shall comply with Customer’s reasonable requests in responding to, and dealing with, such request.
- (c) Assistance with Requests. With respect to Government Requests, Vendor shall cooperate fully with Customer, at Customer’s cost, in any effort led by Customer to intervene and quash or limit such requests or respond to a governmental authority in the course of any investigation or claim by any governmental authority relating to the Personal Information Processed by Vendor under the Agreement. Should Vendor be legally required to respond to a Government Request, Vendor, after consultation with Customer, shall only disclose the minimum amount of Personal Information necessary to comply with applicable Laws or judicial process.
- (d) Data Protection Impact Assessments. Vendor shall provide reasonable assistance to Customer in order for Customer to comply with applicable Laws which require the preparation of any Data Protection Impact Assessment prior to commencing any Processing.

3. **Data Quality.** Vendor shall preserve the accuracy and integrity of Personal Information. Vendor shall update, amend, correct or delete Personal Information that is inaccurate or incomplete at the request of Customer or Data Subject, consistent with the provisions set forth in Section 2.
4. **Vendor Employees.** Vendor shall take all reasonable steps to ensure the reliability of its employees or other personnel having access to the Personal Information, including the conducting of appropriate background and/or verification checks. Vendor will ensure that access to, and use of, the Personal Information is limited to those of its employees or personnel who require access to it to perform the Services and that such individuals, as appropriate to address Vendor's obligations pursuant to this Addendum: (i) have undertaken training on privacy, confidentiality, security and the notice requirements in relation to data protection principles and the applicable Laws that apply to their handling of Personal Information; (ii) are aware of Vendor's duties and their personal duties on privacy, confidentiality, security and the notice requirements in compliance with the Agreement (including this Addendum); (iii) are subject to appropriate confidentiality undertakings with Vendor that are in writing or are legally enforceable; and (iv) are permitted access to the Personal Information only to the extent necessary to perform their role in providing the Services.
5. **Subcontractors and Other Third Parties.** Vendor shall not engage any third parties or non-employees ("Subcontractors") to Process Personal Information unless Customer has expressly consented in writing in advance to the use of such Subcontractor(s). Where Customer has provided such prior written consent, Vendor shall: (i) carry out adequate due diligence on each Subcontractor to ensure that it is capable of providing the level of protection for the Personal Information that is required by the Agreement (including this Addendum); (ii) execute a written agreement with each Subcontractor that includes provisions that are no less protective of Personal Information than the level of protection required by the obligations set forth in this Agreement (including this Addendum); and (iii) remain fully liable for all the acts and/or omissions of the Subcontractor.
6. **General Cooperation.** Vendor shall reasonably cooperate with, and assist, Customer in relation to any notifications or prior approvals that Customer may be required to effect or obtain from a regulator in connection with the Personal Information, including without limitation the provision of supporting documentation sufficient to evidence that Vendor is legally bound by the terms of this Agreement.
7. **Return of Personal Information.** To the extent not otherwise prohibited by applicable Laws, the Agreement or this Addendum, at any time upon Customer's written request, including at termination of the Agreement, Vendor shall immediately return or securely destroy all originals and copies of Personal Information (whether in electronic or hard copy form) in its, or its Subcontractor's, possession, custody, or control or in accordance with the requirements of the Agreement, this Addendum and applicable Laws. Vendor shall provide a written certification signed by an officer of Vendor confirming that all Personal Information Processed under the Agreement has been securely destroyed within ten (10) business days of Customer's written request.
8. **Privacy & Security Standards.** Vendor agrees that it has implemented and will maintain appropriate technical, physical, administrative and other security measures ("Security Measures") to maintain the confidentiality, availability, security and integrity of Customer's data and Personal Information, if applicable, and any network access tool (such as a security token) or any password or other security feature of the Customer's computer network. Such Security Measures shall be commensurate with the sensitivity of the Personal Information to be Processed by Vendor hereunder and compliant with applicable Laws, including but not limited to appropriate administrative, technical and physical safeguards to protect against (i) reasonably anticipated threats or hazards to the privacy, security, availability, integrity and/or confidentiality of Personal Information; (ii) an Incident.
9. **Vendor Assessment.** Vendor acknowledges and agrees that Customer shall have the right, at any time during the term of the Agreement, including any renewal thereof, and for as long as Vendor holds or otherwise Processes Personal Information, to conduct onsite interviews and assessments of the Vendor or to request that Vendor complete a security practices assessment, and Vendor will cooperate with such requests.
10. **Audits.** Vendor shall maintain all necessary documentation to evidence its compliance with this Addendum for a period of six (6) years after the expiration or termination of this Agreement or for such longer period as otherwise may be required by applicable Laws, whichever occurs latest. Vendor shall provide Customer with access to such documentation upon request. Vendor shall provide Customer, Customer's authorized representatives and/or applicable regulatory authorities having the right to carry out audits of Customer, on reasonable notice, during Vendor's business hours and under obligations of confidentiality, the right to audit Vendor's business processes and practices involving the privacy, security and/or Processing of Personal

Information in the performance of the Services, no more than once on an annual basis as well as following each occurrence of an Incident. Customer shall bear the full cost and expense that Customer incurs as a result of any such audit, unless such audit discloses a Security Issue or was triggered by an Incident, in which case Vendor shall bear the full cost and expense of such audit or re-audit (if reasonably required).

- 11. Security Issues.** To the extent that a Security Issue is identified by a Vendor assessment, audit or otherwise discovered by or made known to Vendor, Vendor shall immediately notify Customer in writing and, within ten (10) business days thereafter, either remediate such Security Issue and provide Customer with a copy of the incident response report, or provide Customer with a plan acceptable to Customer for Vendor to remediate the Security Issue. If (i) the Security Issue is not remediated within such period; or (ii) an acceptable plan for remediating such Security Issue is not agreed to by the parties during such time period, or (iii) if an acceptable plan is not executed according to the terms of such plan, then Customer may, by giving Vendor written notice thereof, immediately terminate the Agreement and/or exercise such rights and remedies it deems appropriate under the circumstances. In connection with such termination, Customer may exercise all rights and remedies available to it in the event of breach. Vendor shall bear all reasonable costs for re-testing performed to verify the remediation of any Security Issue.

**12. Incidents**

- (a) **Notice.** Vendor shall notify Customer in writing of an Incident in the most expedient time possible under the circumstances, and in any event within forty-eight (48) hours of discovery of the Incident. An Incident shall be deemed discovered by Vendor or its Subcontractors as of the first day on which the Incident is known to Vendor or Subcontractor (including an individual employee or officer or other agent of Vendor or Subcontractor) or should reasonably have been known to have occurred. Such notice shall summarize in reasonable detail the timing and nature of the Incident, the impact on Customer and/or the Data Subjects affected by such Incident and the corrective action taken or proposed to be taken by Vendor.
- (b) **Consultation.** As soon as reasonably practicable after any Incident, Customer and Vendor shall consult in good faith regarding Remediation Efforts, and Vendor shall cooperate fully with Customer in all reasonable and lawful efforts to prevent, mitigate or rectify such Incident. However, Remediation Efforts required by applicable Laws must be carried out and are not dependent upon the completion of the consultation process, provided however that to the extent the circumstances and timeframe permit, the parties shall use good faith efforts to discuss and coordinate Remediation Efforts required by applicable Laws during the consultation process. Failure by Vendor to engage in substantive or meaningful discussions regarding an Incident reasonably believed by Customer to have occurred or failure by Vendor to take Remediation Efforts shall be deemed an immediate and material breach of the Agreement.
- (c) **Remediation.** Pursuant to the consultation described in the section immediately above, Vendor shall immediately undertake Remediation Efforts at its sole expense.
- (d) **Cooperation.** Vendor shall keep Customer apprised of, and cooperate reasonably with Customer in connection with, Vendor's, Customer's or any regulatory or government authority's investigation of or inquiry into any Incident. Vendor shall not make any public announcement (including, without limitation, website postings and press releases) or notify affected individuals regarding such Incident without Customer's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed) unless it is required to do so pursuant to applicable Laws in which case it shall provide Customer reasonable prior notice where not prohibited by Laws from doing so.

- 13. Warranties.** Without limitation to the other provisions of the Agreement or this Addendum, Vendor represents and warrants that it shall, at all times, comply with all Laws applicable to Provider in relation to its processing of Personal Information.

- 14. Indemnification.** Vendor shall indemnify, defend and hold harmless Customer from and against any and all liability, loss, claim, injury, damage, penalty, fine, settlement or expense (including, without limitation, fines, damage awards, costs of Remediation Efforts and reasonable attorneys' fees and costs arising from or relating to any action, claim or allegation of a third party (including, without limitation, any regulatory or government authority) of or with respect to any Incident or breach of this Addendum.

**15. Liability and Remedies.** Vendor's indemnification obligations under the above section shall be in addition to any indemnification or similar obligations Vendor may have under the Agreement, including, without limitation, the obligation to pay for remediation efforts. The rights and remedies of Customer pursuant to this Addendum shall not be subject to any limitation of actions, arbitration provisions or any other similar limiting provisions stated in the Agreement. Without limiting the foregoing: (i) there shall be no limitations on Vendor's liability arising under this Addendum or otherwise relating to privacy, security, availability, integrity or confidentiality of Personal Information, (ii) Customer shall not be precluded from immediately pursuing any rights or remedies it may have under or relating to this Addendum, and (iii) Vendor shall be liable for all indemnification obligations under the above section and for reimbursement of costs and expenses for remediation efforts regardless of whether such amounts are characterized by any party, regulatory or government body or other third party as direct, indirect, consequential, special, punitive or other damages or as contractually-agreed preventative measures designed to limit future damages.

**16. Miscellaneous Provisions.**

(a) **Notices.** Any notices to be given under this Addendum to a party shall be made via U.S. Mail or express courier to such party's address set forth below, and/or via facsimile to the facsimile telephone numbers listed below.

<p><u>If to Customer, to:</u></p> <p>Baymeadows Family Dentistry 9471 Baymeadows Rd. Suite 101 Jacksonville, Fl. 32256 Attn: Renae Payne</p> <p>[PHONE] [FAX]</p> <p><u>With a copy to:</u></p>	<p><u>If to Vendor, to:</u></p>      <p><u>With a copy to:</u></p>
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(b) **Conflicts with Obligations Under the Agreement.** In the event Vendor believes that it cannot satisfy its other obligations under the Agreement while complying fully with this Addendum, Vendor must notify Customer immediately and shall not proceed with any act that would violate this Addendum until the issue is resolved to Customer's reasonable satisfaction.

(c) **Survival.** Notwithstanding anything to the contrary in the Agreement, the obligations pursuant to this Addendum shall survive termination of the Agreement.

(d) **Authority to Execute.** The parties represent and warrant to each other that each has the legal power and authority to enter into this Addendum.

(e) **Entire Agreement.** Except as expressly set forth in this Amendment, the terms, provisions and conditions of the Agreement are hereby ratified and confirmed and shall remain unchanged and in full force and effect without interruption or impairment of any kind.



- (f) Precedence. In the event of any conflict between the provisions of the Agreement and the provisions of this Addendum, the provisions which provide greater protection for Personal Information shall take precedence, provided that if the Parties have entered into a “business associate agreement”, that agreement shall take precedence over this Addendum with respect to that agreement’s terms.
- (g) Third Party Beneficiaries. Subject to the Assignment provision in the Agreement, nothing in this Addendum shall confer any benefits or rights on any person or entity other than the parties to this Addendum.
- (h) No Waiver. A waiver by a party of any term or condition of this Addendum in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof.
- (i) Counterparts; Facsimiles. This Addendum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile copies hereof shall be deemed to be originals.

*[Signature page follows.]*



IN WITNESS WHEREOF, this Addendum has been duly executed and delivered as of the effective date set forth above.

**CUSTOMER:**

**VENDOR:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_