

**Software License Agreement**  
**Flex Dental Solutions, LLC**  
**Last Updated 10/1/24**

1. This Software License Agreement (this “**Agreement**”) is an agreement between Flex Dental Solutions, LLC (“**Flex**”) and the entity or person engaging with Flex to license software (“**Licensee**”) on the Order Site. The software selected by Licensee when subscribing on the <https://flexdental.co/subscribe/> website (the “**Order Site**”) shall be the “**Software**” governed by this Agreement. Flex may update the terms of this Agreement at any time.
2. PLEASE READ THIS AGREEMENT CAREFULLY. THE PERSON ORDERING SOFTWARE THROUGH THE ORDER SITE ACKNOWLEDGES LICENSEE’S ACCEPTANCE OF THIS AGREEMENT AND REPRESENTS THAT HE OR SHE IS AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSEE IS NOT PERMITTED TO USE THE SOFTWARE.
3. Subject to the terms and conditions of this Agreement, Flex grants to Licensee and its users a non-exclusive, non-transferable, non-assignable, revocable, limited license during the Term to access and use the Software over the internet, solely in the conduct of Licensee’s own internal business operations and in accordance with the terms of this Agreement. Licensee may not market, sublicense, resell, redistribute or otherwise provide or allow any party other than Licensee and its users to have access to or use of the Software, or to use the Software to provide services to others, in whole or in part. Except as expressly set forth in this Agreement, no express or implied license or right of any kind is granted to Licensee regarding the Software, including any right to obtain possession of any source code or other technical material relating to the Software, or regarding Flex’s trademarks or service marks. All rights not expressly granted to Licensee are reserved to Flex. Licensee acknowledges that it does not acquire any rights, express or implied, in the Software, other than those specified in this Agreement, and shall take no action, nor permit or facilitate any third party in taking such actions, against Flex’s intellectual property rights. To the extent Flex may receive feedback, comments or suggestions with respect to the Software from Licensee, Licensee grants Flex an exclusive, perpetual, royalty free license to incorporate that feedback into the Software and use that feedback for further development of the Software.
4. This Agreement permits Licensee to install the Software in one Office per subscription. An “**Office**” is defined as a single mailing address. Licensee will not make copies of the Software or allow copies of the Software to be made by others unless authorized by this Agreement. Licensee may make copies of the Software for backup purposes only. Licensee shall not itself nor permit any other party to: (i) disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce the source code for, any part of the Software; (ii) alter, modify, or prepare derivative works based on the Software; (iii) use the Software to create any computer program or other material that performs, replicates, or utilizes the same or substantially similar functions as the Software; (iv) demonstrate or display the Software or its operation for third parties; or (v) use the Software in any way other than the performance of this Agreement.
5. Licensee agrees that Flex may send, at Licensee’s direction, electronic communications to and from Licensee’s patients or their appointed designees utilizing the email address or the SMS text address on file for that patient in the Software. Licensee covenants and agrees to only utilize the email and text functions of the Software in compliance with U.S. federal, state and local laws or Canadian federal or provincial laws, including the CAN-SPAM Act of 2003, the Telephone Consumer Protection Act, the Children’s Online Privacy Protection Act, the Restore Online Shoppers’ Confidence Act, the California Consumer Privacy Act, other U.S. state privacy acts, the Canadian Personal Information Protection and Electronic Documents Act (“**PIPEDA**”) and Canadian provincial privacy acts, respectively, as may be applicable, and other similar laws. Licensee shall not place anything in a patient email or text message containing material that is obscene, threatening, harassing, libelous or that violates any law or the intellectual rights of any third party. Where prohibited by law, Licensee shall not send marketing messages utilizing the Software. Text messages and emails are sent by means of third-party services, that Flex cannot control. Excessive use of these services identified as ‘spam’ or outside what would be usual and customary for a dental office, may result in removal by these third-party services, or in additional charges or removal by Flex. Any office sending more than 10,000 SMS communications per month may incur additional charges. Further, Flex cannot guarantee the confidentiality of these messages, and Licensee assumes full responsibility for any content that is sent. SMS communication and emails are not HIPAA compliant, and while emails are encrypted opportunistically, this cannot be guaranteed. As such, sending patient data via email should be done at your own risk and when you have enabled your own HIPAA compliant email within the Software. Licensee is solely responsible for the contents of message it posts, transmits or makes available through its use of the Software. Licensee acknowledges and agrees that Flex does not control or monitor Licensee’s communications. If Flex, on its own or through any third party, has notice that Licensee is in violation of any law or infringes the rights of any third party, Flex shall have the right to immediately suspend Licensee’s access to the Software. Flex may, in its sole discretion, remove or require Licensee to remove any electronic communication, in whole or in part, alleged to be in violation of the rights of any third party or applicable law, rule, or regulation. This Section shall apply notwithstanding any contrary terms contained in this Agreement or any other written agreement between the parties, including the Business Associate Agreement or the Information

Management Agreement. Licensee shall indemnify, defend and hold harmless Flex, its affiliates, and any of their successors, assigns, employees, officers, agents and third party service providers from and against any and all losses, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Flex or such other person in connection with any claim or action by any third parties based upon, related to, or arising out of communications sent by Licensee utilizing the email or SMS text messaging capabilities of the Software.

6. If Licensee utilizes the FlexVerification functionality to retrieve electronically available insurance eligibility and benefits information ("Benefits Data") from insurance providers ("Providers") that allow that access, Flex will provide that service utilizing a third party vendor. Licensee will provide to Flex, and Licensee grants to Flex and its vendor, a non-exclusive, fully-paid, royalty-free, perpetual, irrevocable right and license to access and use its patient data and any log in protocols required for access to the systems of each Provider (the "Access Protocols") for the purposes of retrieving Benefits Data from Providers. For each patient whose Benefits Data is searched, Licensee is solely responsible for providing accurate, up-to-date and complete Patient Data and Access Protocols, including by providing any updates promptly after becoming aware of the need for the update. In addition, Licensee is solely responsible for obtaining all required permissions and consents from its patients to enable Flex or its vendor to retrieve the Benefits Data from Providers. Any office seeking Benefits Data more than 1,000 times per month may incur additional charges. Licensee acknowledges and agrees that (A) FlexVerification relies on (i) the accuracy, timeliness and completeness of the patient data and Access Protocols to access the Benefits Data available in the Provider's systems, and (ii) the accuracy, timeliness, and completeness of the Benefits Data itself, as made available by Providers, and (B) Flex makes no representations or guarantees regarding the Benefits Data retrieved from such Providers.

7. So long as the Software is not materially diminished, Flex reserves the right, in its sole discretion, to modify, discontinue, add, adapt, or otherwise change (collectively "modify", with any instance of one of the foregoing actions constituting a "modification") any design or specification of the Software or Flex's policies, procedures and requirements specified in or related to this Agreement. Flex may push modifications of the Software to Licensee's computer and storage systems to update Licensee's software to newer versions and maintain Software integrity. Flex will provide notice that a modification has been made to the Software either by e-mail to the Licensee or by posting notice in the Software or on the <https://www.flex.dental/> website, which notice shall direct Licensee to view Flex's website to review the specific modification made.

8. Flex will provide telephone and online support. Support services are not intended to replace or in any way augment training on the Software. Flex will use commercially reasonable efforts to correct all verifiable and reproducible errors in the Software reported by Licensee to Flex. Flex will utilize remote diagnostic procedures whenever possible for error diagnosis and correction. Flex may not issue error corrections for all errors. Notwithstanding anything in the Agreement to the contrary, Flex shall have no obligation to provide support to any person other than Licensee's authorized personnel trained on the System, and shall have no responsibility or liability of any kind, whether for breach of warranty, contract or otherwise, arising or resulting from: (a) any version of the Software other than the then-current unmodified version; (b) any problems that are not errors; (c) Licensee's failure to correctly install or operate any updates or other modifications to the Software provided by Flex; (d) problems caused by failed Internet connections or other hardware, software or equipment that is not owned, controlled or operated by Flex, or by failure by Licensee to provide and maintain its systems on which it operates the Software or its security authorization; (e) nonconformities resulting from misuse, abuse, negligence, revision, modification, or improper or unauthorized use of all or any part of the Software, or problems caused by Licensee's or other third-party products, services or equipment; (f) modification, amendment, revision, or change to the Software by any party other than Flex or Flex's authorized representatives; or (g) data or data input, output or integrity, all of which shall be deemed under Licensee's exclusive control. Any use of or reliance on data or data output are Licensee's sole responsibility.

9. Licensee shall pay to Flex the fees for Software reflected on the Order Site (the "Fees"). Except as otherwise provided in the Order Site, all Fees will be charged in advance on a monthly basis. Fees will be billed on the monthly anniversary of the Installation Date. Licensee shall be responsible for the cost of travel and expenses for any on-site training or consulting services delivered hereunder. Licensee agrees to provide Flex with a valid credit card number or checking account number to which Flex will automatically charge all Fees as they become due. All amounts specified herein are net amounts to be paid and are exclusive of all duties, sales, use, or value-added taxes, customs duties, tariffs, or other similar taxes, assessments, or excises, however designated or levied, (except for taxes on Flex's net income), which shall be Licensee's responsibility. All costs and expenses incurred by Licensee in connection herewith are the sole responsibility of Licensee. Any amounts not paid when due shall bear interest at a nominal rate of one percent (1.0%) per month, or the maximum legal rate, if less. If payment by Licensee's credit card or other payment method is denied, or Licensee otherwise fails to make any payments owing to Flex, Flex may withhold performance and discontinue service until all amounts due to Flex that are more than ten (10) days in arrears are paid in full. Licensee shall reimburse Flex for all costs of collection, including reasonable attorney's fees.

10. **This Software is subject to a limited warranty.** Flex warrants to Licensee that the Software will perform substantially in conformance with the functions described on the <https://www.flex.dental/> website, excluding any changes to third-party software outside of Flex's control, and to the best of Flex's knowledge Licensee's use of this Software according

to the printed documentation is not an infringement of any third party's intellectual property rights. The Software is tested with the Open Dental Software versions set forth on the Flex Dental Solutions: System Requirements, which are posted at <https://auth.flexdental.co/systemrequirements>, which are required for the warranty to be in effect. Flex has no affiliation with Open Dental, Chrome, Safari, Apple, or Google. This limited warranty lasts for the duration of the subscription. This Limited Warranty shall not apply to problems that result from (i) factors outside of Flex's reasonable control; (ii) any failure by Licensee to comply with this Agreement or use the Software in accordance with its printed documentation or other instructions of Flex; (iii) any actions or inactions by third parties; (iv) issues with software, or equipment of Licensee or third parties, or errors in entering data; (v) the fault or negligence of Licensee or Users, operator error, improper use or misuse of the Software, or any other causes external to the Software or Flex; (vi) any failure by Licensee to install updates or accept scheduled maintenance; or (vii) any failure of Licensee to use the most current release of the Software. Licensee shall be solely responsible for the accuracy and completeness of data input into the Software. In the event of an error in the Software within the warranty period, as Licensee's sole and exclusive remedy, Flex will repair, correct, or replace (at Flex's sole discretion and expense) the Software, or any portion thereof, with a conforming version. Repair or replacement may take the form of: (i) corrected Software; (ii) corrected Documentation; or (iii) instructions or procedures to bypass the problem until a more permanent correction can be implemented. No agent of Flex is authorized to make any other warranties or to modify this limited warranty. Any action for breach of this limited warranty must be commenced within one year of the expiration of the warranty. Because some jurisdictions do not allow any limit on the length of an implied warranty, the above limitation may not apply to this Agreement. If the law does not allow disclaimer of implied warranties, then any implied warranty is limited to 30 days after delivery of the Software to Licensee. Licensee has specific legal rights pursuant to this warranty and, depending on Licensee's jurisdiction, may have additional rights.

11. TO THE EXTENT PERMITTED BY LAW, THE LIMITED WARRANTY SET FORTH IN SECTION 10 IS MADE FOR THE BENEFIT OF LICENSEE ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS," AND FLEX MAKES NO, AND HEREBY DISCLAIMS ALL, OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE (IN WHOLE OR IN PART), THE ACCURACY OR COMPLETENESS OF ANY CODES, ALERTS OR OTHER DATA CONTAINED WITHIN THE SOFTWARE OR OTHERWISE ARISING UNDER THIS AGREEMENT. FLEX DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SOFTWARE SHALL BE UNINTERRUPTED OR ERROR-FREE.

12. In case of a breach of the Limited Warranty, Licensee's exclusive remedy is as follows: Licensee will remove and delete all of Flex's software from any of licensee's systems, at Licensee's cost. (Licensee can obtain a step-by-step explanation of this procedure by contacting Flex.) At Flex's option, Flex will provide updated Software, at Flex's expense, or issue a prorated refund for the period in which the breach occurred.

13. NOTWITHSTANDING THE FOREGOING, FLEX'S MAXIMUM LIABILITY TO LICENSEE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO THE TOTAL FEES PAYABLE BY LICENSEE TO FLEX UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL FLEX, ANY PARENT, SUBSIDIARY, AFFILIATE, OR LICENSOR, OR ANY OF THEIR OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, CONTRACTORS, UNITHOLDERS, MEMBERS, OR REPRESENTATIVES, BE LIABLE TO: ANY THIRD PARTY FOR DAMAGES OF ANY KIND (EXCEPT FOR PERSONAL INJURY); OR TO LICENSEE FOR ANY SPECIAL, COMPENSATORY, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS DUE TO LOSS OF PROFITS, LOSS OF INCOME, LOSS OF OPPORTUNITY, DATA, USE OR GOODWILL REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH FLEX'S DEFAULTS HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE. THE PRECEDING LIMITATIONS APPLY REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF FLEX HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IN NO EVENT SHALL FLEX BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES. THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY.

14. Licensee shall indemnify, defend and hold harmless Flex, its affiliates, and any of their parents, subsidiaries and affiliates and each of their successors, assigns, employees, officers, agents and independent contractors, from and against any and all claims, losses, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Flex or such other person in connection with any claim or action by any third parties based upon, related to, or arising out of any breach of this Agreement or any act or omission of Licensee arising from its business operations including (a) the input of any data, (b) a claim arising from Licensee's contravention of any applicable local, state, national, or foreign law or regulation; or (c) a third-party claim arising from Licensee's use of the Software in conjunction with any other product.

15. This Agreement commences on the date Licensee completes the enrollment on the Order Site and remains in effect until the end of the month in which it is terminated by either party, unless terminated by either party as follows: (i) for material breach of this Agreement that remains uncured more than thirty (30) days after receipt of written notice of such breach, except as otherwise provided in Exhibit A or Exhibit B; (ii) if either party makes an assignment of all or substantially all of its assets for the benefit of its creditors; or (iii) if either party (A) files a voluntary petition for relief under 11 U.S.C. 101, et. seq. or similar non-U.S. statute (the "**Bankruptcy Code**") or (B) has an involuntary petition for relief under the Bankruptcy Code filed against it and an order for relief is entered in such case. Upon termination of this Agreement for any reason: (a) all rights and obligations of Licensee shall immediately terminate, including all licenses; and (b) Licensee agrees to destroy all copies of the Software.

16. Flex may disclose to Licensee certain Proprietary Information, including the Software. For purposes of this Contract, "**Proprietary Information**" means trade secrets as defined under applicable law and other information that is of value to its owner and is treated as confidential. Licensee agrees to hold such Proprietary Information in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Flex to any third party, or utilize the Proprietary Information disclosed by Flex for any purpose whatsoever other than as expressly contemplated by this Agreement. Licensee acknowledges that the Software and printed documentation are the Proprietary Information of Flex and Flex's licensors, and Licensee, on behalf of its officers, employees and agents, agrees to treat such information as Proprietary Information in accordance with the terms of this Agreement. With respect to Proprietary Information deemed a trade secret under applicable law, the obligations in this Section will continue for so long as such information constitutes a trade secret under applicable law. With respect to all other Proprietary Information, the obligations in this Section will continue for the term of the Agreement and for a period of five (5) years thereafter. The foregoing obligations will not apply if and to the extent that: (a) the information communicated was already known to Licensee, without obligation to keep such information confidential, at the time of Licensee's receipt of information from the disclosing party, as evidenced by documents in the possession of Licensee prepared or received prior to disclosure of such information; (b) the information communicated was received by Licensee in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; or (c) the information communicated was publicly known at the time of Licensee's receipt from the disclosing party or has become publicly known other than by a breach of this Agreement.

17. Both parties agree to comply (a) of Licensee is a U.S. entity, with the Business Associate requirements under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), as amended from time to time, in accordance with the BAA which is attached hereto as Exhibit A, or (b) if Licensee is in Canada and one is required, the Information Management Agreement that is attached hereto as Exhibit B.

18. Licensee may not use any Flex logo or trademark without the written consent of Flex.

19. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware, without regard to its rules governing conflicts of laws. The parties consent to the exclusive jurisdiction of the state and federal courts in Wilmington, Delaware, subject to any applicable jurisdiction rules. Each party waives any objections to jurisdiction or venue in any proceeding before such courts. Neither party may assert or raise a cause of action, claim, defense or counterclaim against the other party arising under this Agreement, more than one (1) year from the date that it accrued, except that a claim by Flex for amounts due hereunder may not be asserted or raised more than two (2) years from the date that it accrued. In the event Licensee is in breach, or threatens to breach any covenants of this Agreement, Licensee acknowledges and agrees that Flex will be greatly damaged, and such breach will be irreparable and difficult to quantify; therefore, Flex may apply to any court of competent jurisdiction in the United States or any other jurisdiction accepting jurisdiction under this specific provision of the Agreement, that, notwithstanding the provisions of this Section, will apply the laws of its own jurisdiction in determining whether relief shall be granted to Flex, for injunctive or other equitable relief to restrain such breach or threat of breach, temporary or permanent, without impairing, invalidating, negating or voiding Flex's rights to relief either at law or in equity.

20. This Agreement may not be assigned by either party without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Flex may assign this Agreement without the consent of the Licensee to a successor of all or substantially all of its business, stock or assets, regardless of how the transaction or series of related transactions is structured.

21. Except for obligations of payment, neither party shall be liable for any delay or failure in performing hereunder if such failure arises, directly or indirectly, out of causes beyond the reasonable control of such party, including acts of God, fire, flood, strikes, war, pandemic, lightning, power surges or failures, terrorism, or acts or omissions of communications carriers. Performance shall be deferred until such cause of delay is removed, provided that the delayed party shall notify the other party of such occurrence promptly in writing.

22. All notices or other communications required hereunder shall be made in writing and shall be deemed to be effectively given if made as follows: (i) if hand-delivered, when received; (ii) if mailed, three (3) days after being deposited postage prepaid in the United States mail or its equivalent, and sent via certified mail, return receipt requested, or its

equivalent; (iii) if faxed or emailed, on the date of the sending party's receipt of confirmation of transmission or review; or (iv) if mailed for overnight delivery, when delivered by the overnight carrier, as demonstrated by receipt confirmation provided by such carrier. Each party may change its notices address by giving written notice to the other party.

23. Licensee agrees that Flex may utilize data that comes into the possession of Flex by virtue of its performance under this Agreement for the purpose of aggregating statistics that may be helpful for Licensee's benefit, for research and trend analysis, and for other lawful purposes, as determined by Flex. Flex shall only aggregate data in a manner that is fully compliant with HIPAA or PIPEDA and applicable legislation regarding private personal health information. The data utilized or shared pursuant to this provision that is not directly connected to the provision of the Software under this Agreement shall not contain any Protected Health Information, as such term is defined by HIPAA.

24. Flex and Licensee are independent contractors under this Agreement, which shall not be construed to create any employment relationship, partnership, joint venture, franchisor-franchisee or agency relationship, or to authorize any party to enter into any commitment or agreement binding on the other party except as expressly stated herein. The parties have no authority to make statements, warranties, or representations, or to create any liabilities on behalf of the other.

25. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision, and any such finding of invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event that any provision of this Agreement is held to be invalid or unenforceable, the parties agree that the remaining provisions shall remain in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid or unenforceable provision. It is expressly understood, however, that the parties hereto intend each and every provision of this Agreement to be valid and enforceable, and hereby knowingly waive all rights to object to any provision of this Agreement. Accordingly, if any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision(s) will, rather than be stricken in their entirety, be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in effect. Any failure or delay by either party hereto to detect, protest, or remedy any breach of this Agreement, or to exercise any right or remedy shall not constitute a waiver or impairment of any such term or condition, or be deemed a waiver of any further, prior, or future right or remedy hereunder. A waiver may only occur pursuant to the prior written express permission of an authorized officer of the other party.

26. All provisions of Sections 13, 14, 16-23 and 25 of this Agreement shall survive the expiration or termination of this Agreement.

27. The Order Site(s) and this Agreement, including the Exhibits annexed hereto, any mutually-executed Statements of Work that refer to this Agreement together constitute the entire agreement and understanding of the parties, whether oral or written, relating to the subject matter hereof; are intended as the parties' final expression and complete and exclusive statement of the terms hereof, superseding all prior or contemporaneous agreements, representations, promises and understandings, whether written or oral; and may be amended or modified only by an instrument in writing signed by both parties. In case of any conflict between this Agreement and any Exhibit, Statement of Work, or other amendment hereto, the provisions of this Agreement shall control.

28. This License Agreement is valid without Flex's signature. It becomes effective upon the earlier of Licensee's signature or Licensee's use of the Software.

## EXHIBIT A

### HIPAA BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This HIPAA BUSINESS ASSOCIATE AGREEMENT ADDENDUM (the “**BAA Addendum**”), by and between Flex (hereinafter referred to as “**Business Associate**”) and the Licensee is effective as of the Effective Date of the Agreement.

#### RECITALS

- A. Covered Entity and Business Associate are parties to the Agreement pursuant to which Business Associate provides certain services to Covered Entity, and, in connection with those services, Covered Entity discloses to Business Associate certain health information (the “**Protected Health Information**” as defined in 45 CFR 160.103 that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), and certain regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA (herein “**HIPAA Regulations**” found at 45 CFR Parts 160-164), all as may be amended from time to time.
- B. Business Associate, as a recipient of Protected Health Information from Covered Entity, is a “**Business Associate**” as that term is defined in the HIPAA Regulations.
- C. Pursuant to the HIPAA Regulations, Business Associate must, as a condition of receiving Protected Health Information in the course of doing business with Covered Entity, agree in writing to certain mandatory provisions regarding, among other things, the use and disclosure of Protected Health Information.
- D. The purpose of this Addendum is to satisfy the requirements of the HIPAA Regulations, including, but not limited to, 45 CFR §164.504(e), as the same may be amended from time to time.

#### I. OBLIGATIONS OF THE PARTIES

##### I. Definitions

Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designed Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. “**Business Associate**” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and with respect to the party to this agreement, shall mean Flex.
- (b) Covered Entity. “**Covered Entity**” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and with respect to the party to this agreement, shall mean Licensee.
- (c) HIPAA Rules. “**HIPAA Rules**” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required or permitted by law;
- (b) Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information, and any security incident of which it becomes aware, as required by 45 CFR 164.400-414. Notifications from Flex to Covered Entity shall be in writing and will include the information required under 45 CFR 164.404(c). Covered Entity shall take all further actions under this subsection at its sole cost;
- (d) As timely as reasonably possible, and in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, require that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to a Business Associate in the HIPAA Regulations;
- (e) To the extent Business Associate maintains any protected health information in a designated record set, make available protected health information in a designated record set to the Covered Entity as necessary to enable Covered Entity to meet its obligations under 45 CFR 164.524;

- (f) To the extent Business Associate maintains any protected health information in a designated record set, make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to enable Covered Entity to meet its obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to enable Covered Entity to satisfy its obligations under 45 CFR 164.528;
- (h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary of HHS for purposes of determining compliance with the HIPAA Rules.

### **III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- (a) Covered Entity and Business Associate agree that Business Associate may disclose protected health information to other business associates of Covered Entity for Business Associate's performance of services contemplated in the Agreements at Covered Entity's direction, provided that such other business associates have entered into agreements imposing the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. In addition, Business Associate may use de-identified information as set forth in Section 23 of the Agreement.
- (b) Business Associate may use or disclose protected health information as required or permitted by law.
- (c) Business Associate agrees to make uses and disclosures consistent with Covered Entity's minimum necessary policies and procedures. Business Associate will refer any requests for protected health information directly to Covered Entity for processing and resolution in accordance with this BAA Addendum Section IV.(d).
- (d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity. However, Business Associate may use or disclose protected health information for its own management and administration and legal responsibilities as set forth in paragraphs (e), (f), or (g) below.
- (e) Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (f) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required or permitted by law or for the purposes 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.
- (g) In addition to its rights under Agreement Section 23, Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

### **IV. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS**

- (a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.
- (c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
- (d) Covered Entity will be solely responsible for obtaining from its customers/patients all authorizations relating to the disclosure of Protected Health Information that are required under HIPAA to enable Business Associate and/or its subcontractors to facilitate communication between Covered Entity and its customers/patients and their family members and for Business Associate to otherwise perform its obligations under the Agreement. Covered Entity hereby represents and warrants to Business Associate that it will have received the necessary authorization from a customer/patient prior to the disclosure of such customer/patient's Protected Health Information to Business Associate. Business Associate

will forward to Covered Entity for processing and resolution, any and all requests for information it may receive. Covered Entity will be solely responsible for responding to these requests.

(e) Covered Entity shall promptly notify Business Associate of any breach of any HIPAA obligations that may affect Business Associate's use or disclosure of protected health information.

#### **V. PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. Provided, however, that the Business Associate may use or disclose protected health information for, data aggregation or management and administration and legal responsibilities of the Business Associate as may be set forth in the Agreement or as permitted by law.

#### **VI. TERM AND TERMINATION**

(a) Term. The Term of this BAA Addendum shall be effective as of the Effective Date of the Agreement, and shall terminate as set forth in the Agreement.

(b) Termination for Cause. Business Associate authorizes termination of this BAA Addendum according to terms and conditions set forth in the Agreement.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- 1) retain only that protected health information that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- 2) return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;
- 3) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
- 4) not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at paragraphs (e) and (f) above under "Permitted Uses and Disclosures by Business Associate" which apply prior to termination; and
- 5) return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of Business Associate under this Section VI shall survive the termination of the BAA Addendum and the Agreement.

#### **VII. MISCELLANEOUS**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree that Business Associate may amend this BAA Addendum as is necessary from time to time in its discretion, including for compliance with requirements of the HIPAA Rules and any other applicable law.

(c) Relationship of the Parties. Covered Entity and Business Associate agree that Business Associate's services here-under are being carried out as an independent contractor and not as an employee or agent of the Covered Entity.

(d) Any ambiguity in this BAA Addendum shall be resolved to comply with the HIPAA Regulations. There are no third-party beneficiaries to this BAA Addendum.



**EXHIBIT B**  
**INFORMATION MANAGEMENT ADDENDUM**

This INFORMATION MANAGEMENT ADDENDUM (this “**IMA**”), by and between the Licensee (hereinafter referred to as the “**Custodian**”) and Flex (hereinafter referred to as the “**Information Manager**”) is effective as of the Effective Date of the Agreement.

**RECITALS:**

1. **Licensee** hereby appoints Flex as its Information Manager.
2. This Information Management Addendum (this “**Addendum**”) is being entered into pursuant to section 66 of the Alberta *Health Information Act* (the “**HIA**”) and the *Health Information Regulation* (the “**HIR**”).
3. This Addendum establishes the objectives and principles of the relationship between the Custodian and the Information Manager, and outlines the rules governing the use and disclosure of Health Information (as defined in the HIA) by the Information Manager.

**DEFINITIONS**

4. Unless otherwise specified in this Addendum, capitalized terms in this Addendum shall have the meanings ascribed to such terms in the HIA and HIR.

**TERM AND TERMINATION**

5. This Addendum commences as of the date effective date of the Agreement (the “**Effective Date**”) and shall remain in effect for so long as Licensee continues to be a Licensee of Flex, or for so long as Flex remains obligated to protect Custodian Data as its Information Manager, whichever is later (the “**Term**”).
6. Either party may terminate this Addendum by providing 30 days advance written notice to the other party.

**CONTINUING CONSENT OF CUSTODIAN**

7. The Custodian consents to the release of Health Information to the Information Manager in accordance with this Addendum, and for the purpose of the Information Manager performing the Information Management Services, as defined at section 10 of this Addendum.
8. Where the Custodian designates other custodians or authorized representatives, as outlined at Schedule “A” of this Addendum, the other custodians and authorized representatives warrant that they are members of the Custodian group and have provided their consent to the release of Health Information to the Information Manager on the terms and conditions outlined in this Addendum.

**DISCLOSED HEALTH INFORMATION & SERVICES**

9. The Custodian shall disclose the following Health Information to the Information Manager (the “**Disclosed Health Information**”):

**Health Information relating to the care of dental patients.**

10. The Information Manager shall provide the following services to the Custodian (“**Information Management Services**”):

**Processing, storing, retrieving and disposing of Health Information**

**Collection, Use and Disclosure of Health Information**

11. The Information Manager shall not collect Health Information. Any collection of Health Information must be completed by the Custodian in accordance with the HIA.
12. The Information Manager may use the Disclosed Health Information only in performance of the Information Management Services, unless otherwise agreed to in writing between the parties.
13. The Information Manager may disclose the Disclosed Health Information for any of the following reasons:
  - a. To third parties, as authorized by the HIA or as otherwise permitted by law;
  - b. To third parties, in accordance with the specific directions from the Custodian and in compliance with the HIA;
  - c. To the Custodian or any of its designated custodians or authorized representatives outlined at Schedule “A”, in a non-identified or identifiable basis.

14. The parties agree that in providing the Information Management Services in accordance with this Addendum, the Information Manager will need to have access to, or may need to use, disclose, retain or dispose of the some or all of the Disclosed Health Information.
15. The Information Manager further agrees to the following:
  - a. The Information Manager will comply with the HIA, HIR and this Addendum with respect to Disclosed Health Information; and
  - b. The Information Manager shall not knowingly breach the terms and conditions of this Addendum.
16. The Custodian warrants and represents the following:
  - a. Health Information, including the Disclosed Health Information, has been collected, used, disclosed and stored with the consent of the individual who owns the Health Information;
  - b. The Custodian will comply with the HIA, HIR and this Addendum with respect to Health Information, including the Disclosed Health Information; and
  - c. The Custodian continues to be responsible for compliance with the HIA and HIR with respect to Health Information, including the Disclosed Health Information.

#### **REQUEST FOR INFORMATION**

17. Any requests to the Information Manager to access, amend or correct Health Information or any other expressed wish of an individual relating to that individuals' Health Information ("**Request**"), will be directed to the Custodian in writing within a time sufficient to permit Custodian to meet its obligations under law. The Information Manager will not be responsible to take any further action with respect to the Request without authorization by the Custodian and agreement between the parties.
18. Responding to any Request will at all times remain the responsibility of the Custodian. The Information Manager will work with the Custodian to retrieve any necessary Health Information and address the Request if required by the Custodian. All costs associated with the Request will be borne by the Custodian.

#### **PROTECTION AND SECURITY OF DISCLOSED HEALTH INFORMATION**

19. The parties agree that all Disclosed Health Information is private and confidential. The Information Manager will take reasonable steps to maintain that confidentiality.
20. The Information Manager shall limit its use and disclosure of the Disclosed Health Information to only the minimum necessary Health Information required by the Information Manager to perform the Information Management Services.
21. Only those employees, contractors or agents of the Information Manager who are engaged in Information Management Services shall have access to the Disclosed Health Information.
22. The Information Manager, and its employees, contractors and agents shall take reasonable steps to protect the Disclosed Health Information against such risks as unauthorized access, use, disclosure, destruction or alteration of the Disclosed Health Information.
23. The Information Manager and its employees, contractors and agents must not modify or alter the Disclosed Health Information unless it is required as part of the Information Management Services.
24. The Information Manager must notify the Custodian in writing with the limits of required notice periods, if the Information Manager become aware of unauthorized use or disclosure of the Disclosed Health Information, including the particulars of the unauthorized use or disclosure.

#### **RETENTION AND DESTRUCTION OF HEALTH INFORMATION**

25. The Custodian hereby acknowledges and consents that the Health Information may be used, processed, stored, secured, destroyed, managed or administered from outside of Alberta and Canada by the Information Manager using cloud computing or other information technology infrastructure selected by the Information Manager and managed using third parties, and that the Custodian has provided all required notices and information and/or obtained all required consents and approvals for such use, processing, storage, security, destruction, management and administration outside of Alberta and Canada.
26. No Health Information in the custody and control of the Information Manager shall be destroyed or disposed of without the express written consent of the Custodian.
27. Upon termination of this Addendum, the Information Manager will return the Disclosed Health Information to the Custodian, together with all modifications, additions and enhancements, and all remaining copies will be destroyed.

28. Upon termination of this Addendum, the Information Manager shall not use or disclose the Disclosed Health Information without the express consent of the individual who is the subject matter of the Health Information, unless the disclosure is done in a non-identifiable or aggregate manner and in compliance with the HIA.

**GENERAL**

29. Any Notice to be provided under this Addendum shall be delivered to the Custodian at the address given by the Custodian when it licensed the Flex software and to the Information Managers at the following address:

Flex Dental Solutions, LLC  
10745 Westside Way, Suite 350  
Alpharetta, GA 30009

30. This Addendum will be governed by and construed in accordance with the laws of the Province of Alberta.
31. Should any privacy commission, court or other decision maker of competent jurisdiction determine that all or any part of this Addendum is invalid or unenforceable, the remaining terms and provisions will not thereby be affected and will be given full force and effect without regard to the invalid provisions.

**SCHEDULE "A" TO INFORMATION MANAGEMENT AGREEMENT**

**AUTHORIZED REPRESENTATIVES AND CUSTODIANS**

The Custodian hereby designate the following as custodians or authorized representative(s) for the purposes of this Addendum:

- (1)
- (2)
- (3)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Acknowledgement of Authorized Representative(s)