

Wildcard Dental Services Business Associate Agreement

Version 1.0 / Effective Date: 11/01/2020

This Wildcard Dental Services Business Associate Agreement (“Services BAA”) is published by Wildcard Dental and is effective as of the Effective Date stated above.

Wildcard Dental provides dental technology support (“Services”) to dental offices in the Puget Sound region. Dental offices (“Clients”) may subscribe to Wildcard Dental services upon request and acceptance by Wildcard Dental. By requesting enrollment and using the Services a Client agrees to accept and comply with this Services BAA.

In order to provide some Services Wildcard Dental may maintain, process, and disclose Protected Health Information of the Client. Wildcard Dental therefore may be a Client’s Business Associate in providing the Client with Services.

In consideration of Wildcard Dental’s provision of the Services to the Client and the Client’s acceptance of the terms of this Services BAA, the parties therefore agree:

1. Interpretation. This Services BAA is intended to provide for compliance with the Health Information Technology for Economic and Clinical Health Act (“HITECH”); Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); the implementing regulations for HITECH and HIPAA at 45 CFR Part 160 Subpart A (“General Provisions”), Subpart B (“Preemption of State Law”), Subpart C (“Security Rule”), Subpart D (“Breach Rule”) and Subpart E (“Privacy Rule”), as these laws and regulations may be amended (collectively “HIPAA”). Capitalized terms in this Services BAA which are defined under HIPAA shall have the HIPAA definition. Other capitalized terms defined in this Services BAA shall have the Services BAA definition.

2. Client Subscription.

- a. Dental offices may subscribe to the Services upon request to Wildcard Dental through its website, phone or email, and acceptance of the request by Wildcard Dental. Upon acceptance Wildcard Dental will establish an account for the Client.
- b. Once an account has been established a Client may authorize individual members of the Client’s Workforce (“Users”) to act on behalf of the Client in accessing and using the Services. Users are required to comply with the terms of this Services BAA.
- c. A Client may terminate its subscription to the Services at any time by notice to Wildcard Dental according to Wildcard Dental’s Client termination procedures.
- d. Wildcard Dental may terminate a Client’s account and subscription to the Services for any reason upon no less than thirty (30) days’ notice to the Client.

3. Services.

- a. The Services are Cloud and On-Site Backup Management, Application of Windows Updates, Antivirus Management and LogMeIn Remote Access. Each Client is responsible for obtaining and maintaining the equipment, software and Internet connections necessary for the Client’s access to and use of the Services, at the Client’s own expense.
- b. Wildcard Dental or its suppliers own all title and intellectual property rights in and to any software, applications, images, graphics, photographs, animations, video, audio, music or text included in the Services, which are protected by applicable copyright or other intellectual property laws and treaties. The Client and its Users are granted a license to view, access and use all such content, solely for purposes of use of the Services.

c. Wildcard Dental may add to, modify or terminate the Services at any time. Wildcard Dental will provide notice of any material change to the Services on the Wildcard Dental website. Use of the Services after notice of a change shall be conclusive proof of acceptance of that change.

d. Wildcard Dental will use commercially reasonable efforts to make the Services available twenty-four hours per day, 365 days per year, subject to interruption for reasonable periods from time to time for purposes of maintenance, upgrades and other management activities. The Services may also be subject to interruption for other reasons not subject to Wildcard Dental's control, such as events or occurrences affecting Internet services providers or data hosting services.

e. In consideration of the use of the Services each Client and each User agrees to and acknowledges the following:

Wildcard Dental makes no warranties or representations with respect to the performance or accessibility of any of the Services, or the truth, accuracy, completeness, suitability, reliability, availability, or timeliness of any information provided through the Services. To the greatest extent permitted by law all content and information is provided "as is" without warranty or condition of any kind. Wildcard Dental for itself and its Subcontractors, Services Providers and vendors hereby disclaims all warranties and conditions with regard to Content and information provided through the Services, including all implied warranties or conditions of merchantability, fitness for a particular purpose, title and non-infringement. To the greatest extent permitted by law Wildcard Dental shall not be liable for any losses, including but not limited to any special, incidental, punitive, indirect or consequential damages, including but not limited to loss of profits, regulatory penalties, loss or corruption of data or information, personal injury, loss of privacy, breach of information security, due to any errors, omissions, incidents or events whether or not subject to Wildcard Dental's control, or otherwise arising from or pertaining to the Services, content or any information received or maintained in, or processed, used, disclosed or provided by or through the Services or otherwise arising from or pertaining to Wildcard Dental's performance in providing the Services or under this Services BAA.

4. User Administration.

a. Users may only access the Services and view Content and information, including Protected Health Information, with the authorization of a Client.

b. The Client shall be solely responsible for authorizing Users and ensuring that their use of the Services is for purposes authorized by the Client.

c. The Client is responsible for the acts and activities of its Users in accessing and using the Services, and for ensuring that the User complies with HIPAA and with Client privacy and security policies in doing so.

d. The Client acknowledges that Wildcard Dental cannot independently determine whether a party presenting a User's credential for access to the Services is in fact the identified individual. The Client and the User are therefore solely responsible for all acts and activities under a User's credentials unless the Client or User has notified Wildcard Dental that the User's credentials have been compromised, and Wildcard Dental has had a reasonable period to respond and terminate the compromised credentials.

5. Authorized Uses and Disclosures by Wildcard Dental. Wildcard Dental and its Subcontractors may use or disclose Protected Health Information obtained from or on behalf of a Client for the following purposes, provided that in all cases it shall use or disclose the minimum necessary if applicable:

- a. As specifically authorized by the Client, in which case the Client shall be responsible for designating the minimum necessary.
- b. For purposes of installing, maintaining, upgrading or removing software or hardware supporting the Services, in which case Wildcard Dental shall be responsible for designating the minimum necessary.
- c. In order to operate the Services and provide technical and administrative support to Clients and Users in the use of the Services, in which case the minimum necessary shall be determined by Wildcard Dental on a case-by-case basis.
- d. If Required by Law.
- e. Wildcard Dental may use Protected Health Information for purposes of Wildcard Dental's proper management and administration, and fulfillment of Wildcard Dental's legal obligations, in which case Wildcard Dental shall be responsible for designating the minimum necessary.
- f. Wildcard Dental may disclose Protected Health Information for purposes of the proper management and administration of Wildcard Dental or to carry out the legal responsibilities of Wildcard Dental, provided that Wildcard Dental obtains reasonable assurances from the person to whom the Protected Health Information is to be Disclosed ("Services Provider") establishing the purpose(s) for which the Protected Health Information is disclosed, and including reasonable assurances that:
 - (i) The Services Provider will hold the Protected Health Information confidential and shall not use or further disclose it except as Required by Law or for the purposes for which it was disclosed to the Services Provider.
 - (ii) The Services Provider will promptly notify Wildcard Dental of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

6. Wildcard Dental HIPAA Obligations. Without limitation and in addition to any other obligations or requirements under this Services BAA, Wildcard Dental shall be responsible for the following:

- a. *Compliance with Client Obligations.* If and to the extent that the Wildcard Dental carries out any obligations of the Client under the Privacy Rule, Wildcard Dental shall comply with the requirements of the Privacy Rule that apply to a Covered Entity in carrying out such obligations.
- b. *Use and Disclosure of Protected Health Information.* Wildcard Dental shall not use or further disclose Protected Health Information other than as permitted or required by this Services BAA.
- c. *Security Safeguards and Compliance with Security Rule.* Wildcard Dental shall comply with the Security Rule with respect to electronic Protected Health Information and shall implement appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Services BAA.
- d. *Use of Subcontractors.* Wildcard Dental acknowledges that any Subcontractor with which the Wildcard Dental has contracted to perform or delegated to functions, activities or services for purposes of this Services BAA, in the course of which the Subcontractor creates,

receives, maintains, transmits, uses or discloses Protected Health Information created, received or maintained for purposes of this Services BAA, is Wildcard Dental's Business Associate. Wildcard Dental may permit a Subcontractor to use and disclose such Protected Health Information provided that Wildcard Dental and the Subcontractor first enter into a Business Associate Agreement as required by HIPAA.

e. *Individual Access to PHI.* The parties acknowledge that the services provided through the do not entail the creation, procurement, maintenance, administration or operation of Protected Health Information in Designated Record Sets by Wildcard Dental or by any other party on behalf of or for Client, that this Services BAA does not require Wildcard Dental to do so, and that Wildcard Dental has not done so and does not intend to do so. Wildcard Dental therefore has no obligation or ability to provide Individuals or the Client with access to or copies of Designated Record Sets as required by the Privacy Rule, or to amend them as required by the Privacy Rule. Any request for access to, copies or amendment of Designated Record sets of the Client therefore must be directed to and fulfilled by or at the direction of the Client.

f. *Accounting of Disclosures.*

(i) Disclosures by Client. The parties acknowledge that Wildcard Dental has no ability or authority to audit or verify the purpose of any transactions or activities conducted by any of the Client's Users involving the Services, and does not have the ability or authority to obtain the information necessary for an accounting of disclosures for such transactions or activities. Any request for an accounting of disclosures through such transactions therefore must be directed to and fulfilled by or at the direction of the Client.

(ii) Disclosures by Wildcard Dental.

A. Wildcard Dental shall document, and shall require all Subcontractors to document, any disclosures of Protected Health Information they may make which are subject to the accounting of disclosures requirement of 45 CFR § 164.528, including all information related to such disclosures as would be required for Client to respond to a request for an accounting of disclosures, and shall retain and require the retention of such documentation for six (6) years from the date of disclosure.

B. Within ten (10) business days after receipt of a written notice from the Client of a request for an accounting of disclosures of Protected Health Information, Wildcard Dental shall either notify the Client that no disclosures for which an accounting is required were made; forward the requested accounting of disclosures; or give notice of an extension of up to an additional ten (10) business days, in writing including a statement of the reasons for the extension. If Wildcard Dental has given notice of an extension, it shall forward the required accounting of disclosures to the Client by the end of the extension period.

g. *Government Access to Books and Records.* Wildcard Dental shall make its internal practices, books, and records, and require all subcontractors to make their internal practices, books, and records, relating to the use and disclosure of Protected Health Information received, maintained or created by or for Wildcard Dental subject to this Services BAA available to the Secretary in a time or manner as mutually agreed to or as designated by the Secretary for purposes of determining the Client's compliance with HIPAA and HITECH and their implementing regulations. Unless prohibited by law or court or administrative order, Wildcard Dental shall notify the Client promptly upon receipt of any request or order for such review by the Secretary which was not forwarded to Wildcard Dental by Client.

h. *Retention of Compliance Documentation.* Wildcard Dental shall maintain, and shall require all Subcontractors to maintain, all documentation required for or generated for purposes of compliance with this Services BAA for a period of six (6) years after the termination of this BAA.

i. *Reporting of Security Incidents, Unauthorized Use and Disclosure of PHI, and Breaches of Unsecured PHI.*

(i) The Client acknowledges that Wildcard Dental has no ability or authority to determine or verify the purpose of any transactions or activities conducted by any of the Client's Users involving the Services, and does not have the ability or authority to obtain the information necessary for the determination whether any given transaction or disclosure by a User was unauthorized and therefore may have been an Unauthorized Use, Disclosure or Breach.

(ii) Reporting Definitions. The following definitions shall apply for purposes of this Section 6(i):

A. Access Attempts. Information systems are the frequent target of probes, scans, "pings" and other activities which may or may not indicate threats, whose sources may be difficult or impossible to identify and whose motives are unknown, and which do not result in access or risk to any information system or Protected Health Information ("Access Attempts").

B. Security Incidents. A "Security Incident" is defined under 45 CFR § 164.304 as the attempted or successful unauthorized access, use, disclosure, modification, or destruction of electronic Protected Health Information or interference with the system operations of an information system.

C. Unauthorized Use or Disclosure. An "Unauthorized Use or Disclosure" is any access to, use or disclosure of Protected Health Information which is not permitted under this Services BAA, where the Protected Health Information is Unsecured Protected Health Information as defined under 45 CFR § 164.402.

D. Breach. A "Breach" is defined under 45 CFR § 164.402 as any acquisition of, Access to, or Unauthorized Use or Disclosure of Unsecured Protected Health Information in a manner not permitted under the Privacy Rule which compromises the security or privacy of the Protected Health Information, under specific conditions included in that definition.

E. Unsecured Protected Health Information. "Unsecured Protected Health Information" is Protected Health Information which has not been rendered unusable, unreadable, or indecipherable to unauthorized persons as required by 45 CFR § 164.402.

(iii) Notification of Access Attempts.

Access Attempts are recorded in various system logs and fall under the definition of "Security Incident" in the Security Rule. Because Protected Health Information is not used or disclosed in an Access Attempt they do not fall under the definition of Unauthorized Use or Disclosure, but Access Attempts do fall under the definition of Security Incident and Wildcard Dental is required to report them to Client. At the same time Wildcard Dental's reporting and Client's review of records of Access Attempts would be materially burdensome to both parties without reducing risks to information systems or Protected Health Information.

Therefore, provided that Wildcard Dental ensures that there is appropriate review of logs and other records of Access Attempts, and investigates events where it is not clear whether or not an apparent Access Attempt was successful and was in fact a “successful” unauthorized Access to, modification or destruction of electronic Protected Health Information subject to this BAA, resulted in material interference with Wildcard Dental’s information system used with respect to electronic Protected Health Information subject to this BAA, or caused an Unauthorized Use or Disclosure, this provision shall serve as Wildcard Dental’s notice to Client that Access Attempts occur and are anticipated to continue occurring with respect to Wildcard Dental’s information systems. Client acknowledges this notification, and that Wildcard Dental shall not be required to provide further notification of Access Attempts unless they constitute Security Incidents.

(iv) Security Incident, Unauthorized Use or Disclosure Investigation and Mitigation.

Wildcard Dental shall immediately investigate any Security Incident or Unauthorized Use or Disclosure of which it becomes aware which affects or involved access to, use or disclosure, or may affect or have affected or involved access to, use or disclosure of Protected Health Information subject to this Services BAA, or materially affected the operations of an information system used with respect to Protected Health Information subject to this Services BAA, upon Wildcard Dental’s discovery of the Security Incident or Unauthorized Use or Disclosure, including notice from a Subcontractor or services provider. Wildcard Dental shall use all commercially reasonable efforts to investigate the event, mitigate potentially harmful consequences of the event, and prevent its recurrence.

(v) Security Incident Reporting.

Wildcard Dental shall report all Security Incidents which Wildcard Dental has determined do not entail an Unauthorized Use or Disclosure to Client or materially interfere with the operations of an information system used with respect to Protected Health Information subject to this Services BAA annually unless otherwise directed by Client. Security Incidents which do entail an Unauthorized Use or Disclosure shall be reported as provided in Section 6(i)(vi), and Security Incidents which materially interfere with the operations of an information system used with respect to Protected Health Information subject to this Services BAA shall be reported within thirty (30) business days of their discovery by Wildcard Dental.

(vi) Unauthorized Use and Disclosure Reporting.

Wildcard Dental shall notify Client of any Unauthorized Use or Disclosure within five (5) business days’ hours from Wildcard Dental’s discovery of the Unauthorized Use or Disclosure. To the extent reasonably possible, this report shall include the following:

- A. The identification of each individual whose Protected Health Information has been, or is reasonably believed by Wildcard Dental to have been accessed, acquired or disclosed;
- B. The nature of the Unauthorized Use or Disclosure, including a brief description of what happened, the date of the event(s) and the date of discovery;
- C. A description of the types of Protected Health Information involved;
- D. The investigative and remedial actions Wildcard Dental took or will take to prevent further mitigate harmful effects, and protect against recurrence; and
- E. Any details necessary for a determination of the potential harm to individuals whose Protected Health Information is believed to have been Used or Disclosed and the steps such Individuals should take to protect themselves.

(vii) Law Enforcement Notification.

Wildcard Dental may but is not required to notify appropriate law enforcement agencies in the event it believes a Security Incident or Unauthorized Use or Disclosure is a crime or the result of criminal activity. In the event Wildcard Dental notifies a law enforcement agency it shall also notify Client, unless Wildcard Dental has reason to believe the Client authorized or participated in the criminal activity. Wildcard Dental shall not delay notification of Client due to law enforcement notification.

(viii) Breach Determination and Notification.

Client, or its designee, shall be responsible for determining whether an Unauthorized Use or Disclosure constitutes a breach under the Breach Notification Rule, and for any notification under the Breach Notification Rule.

(ix) State Law Notification.

In the event Wildcard Dental determines that Wildcard Dental has or may have an independent notification obligation under any state breach notification laws, Wildcard Dental shall promptly notify Client, and shall in any event notify Client of its intent to give any notification under a state breach notification law no fewer than ten (10) business days before giving such notification.

7. Client HIPAA Obligations. Without limitation and in addition to any other obligations or requirements under this Services BAA, the Client shall be responsible for the following:

a. *Safeguards.* As between Client and Wildcard Dental, Client shall be solely responsible for the compliance with the Security Rule and the implementation of reasonable and appropriate safeguards with respect to Protected Health Information subject to this Services BAA prior to its receipt by Wildcard Dental from or on behalf of the Client, and upon and following its receipt by or on behalf of Client from or on behalf of Wildcard Dental. In particular, and without limitation:

(i) Client shall be responsible for administering all Workforce security safeguards applicable to its Users for purposes of using the Services.

(ii) Client shall be responsible for providing for all physical and technical safeguards applicable to all devices and equipment used to access the Services on its behalf.

b. *Notice of Privacy Practices.* Client shall be responsible for ensuring that the limitations and conditions of this Services BAA are not inconsistent with any notice of privacy practices of Client which applies to any Protected Health Information subject to this Services BAA.

c. *Authorizations and Consents.* Client shall be responsible for ensuring that any consent or authorization necessary for access to, creation, maintenance, use and disclosure of Protected Health Information subject to this Services BAA has been obtained.

d. *Requests in Violation of Privacy or Security Rule.* Client shall not request that Wildcard Dental use or disclose Protected Health Information subject to this Services BAA in any manner or for any purpose that would not be permissible under the Privacy or Security Rule if done by the Client.

8. Effect of Termination on Protected Health Information.

a. *Return of Protected Health Information.* All Protected Health Information maintained by Wildcard Dental for the Client is available as part of the information available to the Client through the Services. Upon termination of this Services BAA for any reason the Client may download any such information within five (5) business days of termination. If and to the extent the Client does not download such information within that period the Client will be considered to

have chosen not to have it returned and it will no longer be available for download. The Client stipulates is reasonable and acceptable process for return of its Protected Health Information.

b. *Destruction of Protected Health Information.* Unless Wildcard Dental gives notice of retention of Protected Health Information under Subsection 8(c), at any time after five (5) business days after termination of this Services BAA Wildcard Dental shall destroy or provide for the destruction of all Protected Health Information of the Client which it or any Subcontractor or Services Provider maintains, except for Protected Health Information retained by Wildcard Dental under Section 8(c).

c. *Retention of Protected Health Information.* In the event that Wildcard Dental or any Subcontractor or Services Provider of Wildcard Dental believes in good faith that it is not feasible to destroy any Protected Health Information, within ten (10) days of the termination of this Services BAA Wildcard Dental will notify the Client in writing, and Wildcard Dental, the Subcontractor or Services Provider may retain such Protected Health Information subject to the protections of this Services BAA which apply reasonably to the retained information, and limit future uses or disclosures of the Protected Information to those purposes which made its return or destruction infeasible. Wildcard Dental shall destroy, or if applicable require any Subcontractor or Services Provider retaining such information to destroy, all such information once the purposes of such retention have been fulfilled.

9. Limitations on Liability Relating to Performance of Applications and Services. The Client's sole remedies against Wildcard Dental for losses or damages caused by or arising in connection with the performance of Services, regardless of the form of action, whether in contract (including indemnification), tort, strict liability or otherwise, shall be as follows:

a. *Indemnification for Damages.* In the event that the Client suffers financial losses or damages due to a failure by the Services to comply with an applicable federal or state standard including but not limited to a standard related to professional services, Wildcard Dental shall pay the Client upon demand its actual losses or damages incurred, up to an amount equal to the total sums paid to Wildcard Dental by the Client for the Services during the twelve (12) month period preceding the losses or damages award. In no event shall Wildcard Dental be liable if the Client suffers financial losses or damages caused or contributed, in whole or in part, by a failure by the Client, any person or entity acting on behalf of or providing services to or for the Client (other than Wildcard Dental), to comply with any obligation applicable to the Client under federal or state law, including but not limited to privacy, security, confidentiality or professional standards or to use reasonable prudence in the use of the Services.

b. *Termination for Failure to Provide Services.* In the event of any failure to deliver or inadequacy in the Services the Client may terminate its subscription to the Services, upon written notice to Wildcard Dental, effective as of the end of the billing month in which the notice is given.

c. *Outsourced Services Acknowledgment.* The Client acknowledges that Wildcard Dental may subcontract to other organizations to provide services such as hosting and transmission of data. Wildcard Dental is not responsible and shall not under any circumstances be deemed liable for any failure by such Subcontractors to comply with any federal or state regulation, any security incident or breach of information by such Subcontractors, or any losses, harm or costs incurred by the Client due to any error or omission of such Subcontractors.

10. Amendment. Wildcard Dental may amend this Services BAA at any time upon posting of notice of the amendment to the Services website. Use of the Services following posting of notice of an amendment by any User shall be deemed acceptance of and agreement to such amendment.

11. Notices.

- a. Wildcard Dental may give notice of amendment of this Services BAA as provided in Section 10.
- b. Wildcard Dental may give the Client any other notice required or desirable under this Services BAA at the Client's contact address provided in its subscription application to enroll. The Client may change its contact address by notice to Wildcard Dental as provided in this Services BAA.
- c. The Client may give any notice required or desirable under this Services BAA to Wildcard Dental through the Wildcard Dental website.
- d. The Client consents to the giving and receipt of notice and communications and to electronic contracting with respect to or otherwise under this Services BAA, including but not limited to posting of amendments and notices on the Services website and by email at the party's contact address as provided in this Services BAA. The parties agree that any notices or documents provided for or pursuant to this Services BAA may be signed electronically.