

DENTAMETRIX® END USER LICENSE AGREEMENT

Last Updated: December 22, 2020

1. INTRODUCTION.

PLEASE READ THE TERMS OF THIS END USER LICENSE AGREEMENT (“**EULA**”) CAREFULLY. THIS EULA IS A BINDING, CONTRACTUAL AGREEMENT BETWEEN DENTAMETRIX, LLC (“**DENTAMETRIX**”) AND YOU AND APPLIES TO YOUR USE OF THE LICENSED MATERIALS, REGARDLESS OF WHETHER DENTAMETRIX CHARGES YOU FOR THE SERVICES OR NOT. DentaMetrix and You are referred to herein collectively, as the “**Parties**” and individually, each as a “**Party**.”

This EULA is comprised of the body of this DentaMetrix® End User License Agreement, the Business Associate Addendum attached hereto as Exhibit A, and all addenda subsequently agreed to by the Parties in writing and that expressly reference this DentaMetrix® End User License Agreement (each, an “**Addendum**” and collectively, the “**Addenda**”).

You understand and agree that doing any or all of the following will constitute Your agreement to all of the terms and conditions of this EULA: (a) confirming Your email account as part of the registration process to permit You or an Authorized User to access the Application or in connection with receiving Services from DentaMetrix; (b) responding to an email from DentaMetrix requesting Your authorization to perform any of the Services or to install the Application on a computer owned, managed, or controlled by You or the Entity that employs You, by sending DentaMetrix a response email with an affirmative response (such response being, for example, “Yes,” “I agree,” “please install,” “let’s move forward,” or the like) (this subsection b, collectively, as an “**Email Authorization**”); (c) if You are a consulting firm or management organization, (i) accepting an administrative level account, which acceptance will be indicated by logging in using the administrator level Access Credentials; or (ii) facilitating DentaMetrix’s remote access to an Authorized User’s network environment to install the Application in such Authorized User’s network environment; (d) granting DentaMetrix any necessary rights to remotely access Your environment and install the Application in Your or an Authorized User’s environment; or (e) paying an invoice for the Services.

BY ACCEPTING THIS EULA, YOU (i) ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS EULA; (ii) REPRESENT THAT YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT; (iii) REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS EULA AND TO TAKE ANY OR ALL OF THE STEPS DESCRIBED IN THIS SECTION 1(a) – (e) ABOVE, PERSONALLY OR, OF IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF AN ENTITY, ON BEHALF OF THAT ENTITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS EULA. **IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS EULA OR IF YOU DO NOT HAVE SUCH AUTHORITY, YOU MUST NOT ACCEPT THIS EULA, ACCESS OR USE ANY OF THE LICENSED MATERIALS, OR PERMIT ANY AUTHORIZED USER TO ACCESS OR USE ANY OF THE LICENSED MATERIALS, AND YOU ARE ACCORDINGLY NOT PERMITTED TO OR ALLOW ANY AUTHORIZED USERS TO ACCESS OR USE ANY OF THE LICENSED MATERIALS.**

2. HOW TO CONTACT DENTAMETRIX.

If You have any questions, comments, concerns, or wish to report a violation of this EULA, please contact DentaMetrix at the following:

Mail

Attn: Chief Financial Officer
DentaMetrix, LLC
1365 Whiteside Mountain Rd.
Highlands, NC 28741

E-mail

info@dentametrix.com
Subject: DentaMetrix EULA

You may not use the contact information provided for unauthorized purposes, including solicitations and marketing.

3. DEFINITIONS.

3.1. “Application” means, collectively, (a) any of DentaMetrix’s proprietary software, including, without limitation, DentaMetrix Pro Excel, DentaMetrix Pro Cloud, DentaMetrix Practice, DentaMetrix Patients, DentaMetrix DSOs, and any other DentaMetrix software application commonly marketed under the DentaMetrix® brand; (b) any Improvements provided pursuant to this EULA that DentaMetrix may develop or acquire and which DentaMetrix elects to make available to its clients as part of the DentaMetrix standard offering; (c) any Improvements made for You pursuant to a separately executed Addendum or Email Authorization; and (d) and any Intellectual Property Rights in and to any and all of the foregoing. Application does not include the Third-Party Products, Third-Party Software, or Your Systems.

3.2. “Authorized User” means (a) if You, as DentaMetrix’s client, are a consulting firm or management company, then (i) those of Your employees to whom Access Credentials have been assigned, (ii) Your subcontractors and any other individuals who provide services to You or on Your behalf and who are authorized, by virtue of such subcontractors’ or individuals’ relationship to, or permissions from, You to access the Licensed Materials pursuant to Your rights under an arrangement or contract between You and such user, which arrangement or contract is subject to the applicable terms of this EULA, and (iii) Your dental practice customers that have accepted this EULA and such dental practice customers’ employees and independent contractors to whom Access Credentials have been assigned; or (b) if You, as DentaMetrix’s client, are a dental practice, then (i) Your employees to whom Access Credentials have been assigned, and (ii) Your subcontractors and any other individuals who provide services to You or on Your behalf and who are authorized, by virtue of such subcontractors’ or individuals’ relationship to, or permissions from, You to access the Licensed Materials pursuant to such Your rights under an arrangement or contract between You and such user, which arrangement or contract is subject to the applicable terms of this EULA.

3.3. “Billing Start Date” means (a) with respect to Your first purchase, the earlier of the billing start date as set forth in an applicable Fee Statement or the date upon which You are first billed; (b) with respect to any purchases made after Your first purchase, the earlier of the Services Start Date or 30 days after the purchase is made under Your Access Credentials or in accordance with Section 4.2 (Changing Services), except that DentaMetrix may shift Your billing date to be concurrent with the date of Your first purchase; and (c) with respect to any Addendum, the earlier of the billing start date as set forth in such Addendum or the date upon which You are first billed with respect to such Addendum.

3.4. “DentaMetrix IP” means, collectively, any: (a) tangible or intangible content, data, or information made available by DentaMetrix in connection with the Licensed Materials or the Services, including, without limitation, algorithms, analytics, audio-visual works, charts, code, coherence and methods of operation of systems, compilations, conceptions, configurations, creations, data, database structuring techniques, databases, designs, developments, diagrams, discoveries, drafts, drawing, documents, formatting, forms, graphics, graphs, ideas, images, information, interfaces, inventions, know-how, libraries (code or otherwise), lists, logic, “look and feel,” materials, methodologies, metrics, models, notes, outlines, records, reports, photos, policies, preparatory materials, procedures, processes, reports, routines, schematics, screen designs, sketches, software and its object and source code (including, without limitation, the Application), sounds, specifications, system designs, technical documentation, techniques, templates, text, tools, user interfaces, utilities, and other works of authorship or any part thereof and any arrangement, coordination, combination, and selection thereof, that are used by DentaMetrix to deliver or supplied in connection with the Licensed Materials or the Services and any Improvement thereto, including any customized Improvement made specifically for You, whether any of the foregoing are in tangible or intangible form; (b) processes, routines, Feedback, General Skills, and Usage Data; and (c) all Intellectual Property Rights in and to any and all of the foregoing. DentaMetrix IP does not include the Third-Party Products.

3.5. “Entity” means a corporation, professional corporation, professional association, partnership, limited liability company, professional limited liability company, or other entity.

3.6. “General Skills” means any general skills, concepts, ideas, know-how, methodologies, techniques, and tools that are gained or learned in the course of DentaMetrix performing the Services that have general applicability beyond the provision of the Services to You.

3.7. “Improvements” means any enhancement, error correction, modification, revision, update, upgrade, or addition to, or derivative work of the applicable item, data, or information and any Intellectual Property Rights in and to such item, data, or information.

3.8. “Intellectual Property Rights” means any intellectual property rights that may exist or be created under the laws of any country or other jurisdiction anywhere in the world, whether arising under statutory or common law or otherwise, and whether or not perfected, including, without limitation, all right, title, and interest in and to all (a) patents; (b) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work; (c) trademarks, service marks, trade dress, trade names, proprietary indicia, logos, symbols, and any associated goodwill therein; (d) trade secret rights and equivalent rights arising under the common law, state law, federal law, or laws of foreign countries; (e) industrial property rights, sui generis database rights, moral rights, rights of publicity, or rights of privacy; (f) applications, continuations, divisionals, extensions, renewals, and restorations of any of the foregoing, whether in whole or in part (as and to the extent applicable) now existing, hereafter filed, issued, acquired, or in force and effect worldwide; (g) any right analogous to those set forth in this definition; and (h) any other proprietary rights relating to intangible property.

3.9. “Licensed Materials” means, collectively, the Application, and any component thereof, delivered, generated, or made available by DentaMetrix to You or an Authorized User in connection with this EULA. Licensed Materials does not include Third-Party Products or Your Systems.

3.10. “Minimum Commitment” means Your commitment to pay a minimum charge for the Services, regardless of actual usage or other factors.

3.11. “Professional Services” means those certain professional services performed by DentaMetrix for You pursuant to an Addendum or an Email Authorization, which services may include, by way of example, configuration or customization of the Application, development of custom reports, and training of Authorized Users regarding use of the Application.

3.12. “Services” means the services You ordered from DentaMetrix under this EULA, including, but not limited to, **(a)** access to and use of the features and functionality of the Application, and **(b)** the Professional Services as set forth and further described in an Addendum or an Email Authorization.

3.13. “Services Start Date” means the date DentaMetrix makes the applicable Service(s) available to You for Your or Your Authorized Users’ use.

3.14. “Third-Party Software” means any software where such software is owned or licensed by a third party that is not a Party to this EULA and any Improvements thereto.

3.15. “Third-Party Products” means Third-Party Software **(a)** that interfaces with DentaMetrix’s software, but for which You hold a separate license, such as Your electronic dental records software; **(b)** that is not part of DentaMetrix’s standard software offering and not otherwise licensed to You by DentaMetrix; or **(c)** that DentaMetrix identifies as Third-Party Software that is not part of the Application and which is not otherwise licensed to You by DentaMetrix.

3.16. “You” (and its formatives, including “**Your**”) mean, as applicable, **(a)** you, the individual end user; and **(b)** the Entity on whose behalf you are accepting this EULA as such Entity is identified when you register to use the Application, in your registration email, the invoice for the Services fee (if any), in the Billing Portal, in the administrative level account under which your Access Credentials were issued (if any), in the online portal for your Access Credentials (if any), or such other applicable DentaMetrix records.

3.17. “Your Data” means the tangible or intangible data, information, and materials related to You, Your Authorized Users, and Your or Your Authorized Users’ patients, as applicable, that You provide to or that are provided on Your behalf to DentaMetrix in connection with the Services or through the Application, including, but not limited to, Protected Health Information, as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended. Your Data does not include Feedback, Usage Data, or any component thereof.

3.18. “Your Systems” means **(a)** information technology and other technical resources operated by You or Your Authorized Users, or on behalf of You or Your Authorized Users by a third party (other than DentaMetrix), and made available by You to DentaMetrix in connection with the Services; **(b)** any Third-Party Software or any other system or materials operated or owned by a third party (other than DentaMetrix) and which You have requested that DentaMetrix interface with or use in connection with the Services, including, without limitation, **(i)** Your or an Authorized User’s practice management solutions, and **(ii)** CDT® codes as licensed by the American Dental Association, and any other disease classifications or performance measurement specifications; and **(c)** any Intellectual Property Rights in and to any and all of the foregoing.

4. PURCHASING SERVICES.

4.1. Services. DentaMetrix’s delivery of the Services is subject to the terms and conditions contained in this EULA. DentaMetrix will provide the Services in accordance with this EULA.

4.2. Changing Services. You may request changes to the Services by providing to DentaMetrix a written request (which request may be provided by email) that describes in reasonable detail the scope of the change. DentaMetrix will reasonably evaluate the requested change and provide notice (which notice may be provided by email) in the event the requested change impacts the pricing or other applicable time or delivery constraints. The Parties will, as applicable, negotiate in good faith with respect to any change requested, *provided that* neither Party is obligated to accept the requested change. No changes to the Services will be effective until the Parties have accepted the change request. The Parties agree that the applicable change request will be deemed to be accepted by both Parties when: **(a)** an authorized representative of each Party signs (whether manually or electronically) an Addendum describing the change; **(b)** DentaMetrix sends You an email describing the requested change and You respond to such email with an affirmative response (such response being, for example, “Yes,” “I agree,” “please install,” “let’s move forward,” or the like); **(c)** You email DentaMetrix instructions that result in DentaMetrix issuing Application license keys to You or registering You for a DentaMetrix account, issuing You or Your Authorized Users’ Access Credentials, or amending DentaMetrix’s record of the SKUs, types, quantities, or other use metrics related to You or Your Authorized Users; or **(d)** as applicable, any of the methods described in Section 1(a) – (e). A downgrade to the Services may result in a cancellation fee in accordance with Section 7.2.4(a) (Payment and Cancellation Fee).

4.3. Order of Precedence. In the event of a conflict between the components of this EULA, unless otherwise expressly set forth in the applicable section of the body of this DentaMetrix® End User License Agreement, the following order of precedence will apply, but only to the extent of an express conflict or inconsistency: **(a)** the Business Associate Addendum; **(b)** the Addendum; and **(c)** the body of this DentaMetrix® End User License Agreement.

5. YOUR OBLIGATIONS.

5.1. Contact. You will, within a reasonable time after the Effective Date, designate a primary contact to work collaboratively and in good faith with DentaMetrix. You agree that DentaMetrix will be permitted to act upon the direction and apparent authority of such primary contact. You may replace Your primary contact person by providing written notice to DentaMetrix, which notice may be provided by email.

5.2. Cooperation. You understand and acknowledge that DentaMetrix cannot perform the Services without the assistance and cooperation of You and Your employees, agents, contractors, subcontractors, and service providers (collectively, the "**Personnel**"), and, as applicable, Your Authorized Users. To that end, You will: **(a)** cooperate, in good faith, with DentaMetrix with respect to activities necessary or reasonably appropriate for DentaMetrix to perform its obligations under this EULA, including, without limitation, devoting such time as may reasonably be requested by DentaMetrix to discuss with, respond to, and advise DentaMetrix with respect to activities as they relate to this EULA; **(b)** provide to DentaMetrix all information reasonably requested by DentaMetrix, including, without limitation, the Your Data, for DentaMetrix to perform its obligations under this EULA; **(c)** provide to DentaMetrix, at no charge, reasonable access to any of Your Personnel and Authorized Users to reasonably assist DentaMetrix with respect to the activities as they related to this EULA; and **(d)** reasonably facilitate and hereby authorize the communication between DentaMetrix and Your Personnel and the Authorized Users, as necessary or reasonably appropriate for DentaMetrix to deliver the Services and otherwise make the Application available to You and Your Authorized Users, including, without limitation, subject to the Business Associate Addendum, promptly signing applicable data sharing acknowledgments as necessary or requested from time to time. For the avoidance of doubt, if You, as DentaMetrix's client, are a dental practice and You are working with a consulting firm as one of Your Personnel or if such consulting firm has facilitated Your access to the Application or the Licensed Materials, then You hereby consent to DentaMetrix providing such firm with such of Your Data to permit such firm to perform its services as well as information about Your account with DentaMetrix, including, without limitation, Your, Your Personnel, and Your Authorized Users' use of the Application and Licensed Materials.

5.3. Access to Your Data. You agree and understand that to perform the Services, You must make available to DentaMetrix access to Your Data. You will make Your Data available in a timely manner and at no charge to DentaMetrix, as required or reasonably requested by DentaMetrix to perform the Services. Further, You will make Your Data available in accordance with the access specifications provided by DentaMetrix, as such specifications may be changed from time to time upon reasonable advance notice. As between You and DentaMetrix, You will be responsible for, and assume the risk of, any problems resulting from the accuracy, completeness, consistency, content, and integrity of all of Your Data. Further, as between You and DentaMetrix, You will, at Your own expense, obtain all third-party consents and permissions with respect to Your Data as may be necessary or reasonably appropriate for DentaMetrix to perform the Services in accordance with this EULA and to ensure that DentaMetrix can comply with all applicable laws, rules, and regulations in providing the Services, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and applicable state laws and regulations governing patient privacy of medical information.

5.4. Access to Resources. You agree and understand that to perform the Services, You must make available to DentaMetrix access to Your Systems. As between You and DentaMetrix, You will, at Your own expense, and will ensure that Your Authorized Users will, take the necessary steps (including, without limitation, obtaining all consents, interfaces, licenses, and sublicenses) to make available to DentaMetrix those of Your Systems that DentaMetrix may reasonably require to provide the Services. You will, and will cause Your Authorized Users to, add the Application to the "allowed" list of programs to ensure the Application's run time is not blocked by Your or Your Authorized Users' firewall or anti-virus programs. As between You and DentaMetrix, You and Your Authorized Users and Personnel are solely responsible for any and all of Your Systems and those of Your other information technology costs and for obtaining and maintaining appropriate equipment and ancillary services needed for You and Your Authorized Users to connect to, access, or otherwise use the Application, including, without limitation, computers, operating systems, web browsers, mobile devices, and communication lines. Further, in the event You, an Authorized User, or Your or an Authorized User's vendor modifies Your or such Authorized User's information technology configuration or software, including the applicable components of Your Systems, You agree to pay DentaMetrix at DentaMetrix's then current professional rates in the event such modification causes DentaMetrix to incur additional costs or expend additional efforts to provide the Services.

5.5. Remote Log-in Authorization. You agree and will ensure that Your Authorized Users agree that DentaMetrix may remotely log-in to Your and Your Authorized Users' computers, devices, and systems for the purposes of installing the Application and providing remote Services, including without limitation, technical support and training to You and Your Authorized Users. You acknowledge and agree that remote log-in may require You and Your Authorized Users to install Third-Party Products, and such Third-Party Products are not licensed to You or Your Authorized Users by DentaMetrix.

5.6. Time for Performance. You acknowledge and agree that the timely performance by DentaMetrix of the Services is dependent upon You, Your Personnel, and the Authorized Users performing their obligations under this EULA, and that

any delay or failure to perform by any such party may extend the time for DentaMetrix to perform its obligations, as reasonably determined by DentaMetrix.

5.7. Management of Authorized Users.

5.7.1. Registering Authorized Users. If You require access to the Licensed Materials, DentaMetrix may, as applicable, register the applicable Entity for an administrative account and **(a)** upon such registration, You will designate an Authorized User to manage the administrative account ("**Account Manager**"); **(b)** upon such registration, the Account Manager will be issued a unique username and password (collectively, the "**Access Credentials**") to access the Application; and **(c)** the Account Manager may assign Access Credentials to additional Authorized Users.

5.7.2. Your Responsibility. You will cause the Authorized Users and Personnel to comply with the applicable provisions of this EULA and You acknowledge and agree that, as between You and DentaMetrix, You will be solely responsible for all acts and omissions of Authorized Users and Personnel, and any act or omission by an Authorized User or Personnel which, if undertaken by You, would constitute a breach of this EULA, will be deemed a breach of this EULA by You. You further agree and understand that You, and not DentaMetrix, are responsible for managing whether Your Authorized Users are authorized to access the Licensed Materials, use the Access Credentials, and to otherwise create, disclose, share, upload, and use the Content with the Application and DentaMetrix will have no obligations relating thereto. Further, You understand and agree that You remain solely responsible for **(a)** understanding Your legal and compliance obligations and ensuring that the Services meet Your needs; **(b)** evaluating and understanding the limitations of the Services and the Application; **(c)** using commercially reasonable administrative safeguards, physical safeguards, and technical safeguards to secure Your Systems and that of Your Data stored therein; **(d)** timely reviewing and assessing any alerts, reports, and log files in accordance with Your policies and otherwise properly monitoring the functionality of the Application as well as the use thereof by Your Authorized Users; and **(e)** backing up Your Data and implementing a business continuity and disaster recovery process with respect thereto.

5.7.3. Activities. You will **(a)** except as otherwise permitted in this EULA, limit access and use of the Services and the Licensed Materials to only those Authorized Users who have Access Credentials assigned; **(b)** use commercially reasonable efforts to protect the Access Credentials and to otherwise ensure the security and confidentiality of the Access Credentials; **(c)** provide and maintain accurate, complete, current, and true information about You and Your Authorized Users; **(d)** ensure that Access Credentials are not shared among Authorized Users or used by anyone who is not an Authorized User; **(e)** promptly notify DentaMetrix in the event You or any of Your Authorized Users have any reasonable reason to believe or become aware of any loss, theft, or unauthorized use of the Access Credentials, or access to the Services, Licensed Materials, or Third-Party Products may have been in any way compromised; and **(f)** to the extent applicable, promptly suspend or cancel the Access Credentials of any Authorized Users who are no longer authorized to access or use the Application, the Licensed Materials, or the Third-Party Products. You are solely responsible for all actions and activities taken or not taken, as the case may be, under Access Credentials assigned to You or Your Authorized Users and, if applicable, the Services purchased under the Access Credentials or in accordance with [Section 4.2 \(Changing Services\)](#).

6. FEES AND PAYMENT TERMS.

6.1. Usage Limits. If You exceed a contractual usage limit, DentaMetrix may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding DentaMetrix's commercially reasonable efforts and advance notice, You are unable or unwilling to abide by a contractual usage limit, DentaMetrix will bill and You will pay for such excess usage in accordance with this EULA and, in the event usage is sold in bundles or levels (e.g., a bundle of 5 or 10 licenses or full time equivalent dentists), DentaMetrix may increase the on-going bundle or level for Your account in accordance with DentaMetrix's then-current pricing policy. If You lose one or more full-time equivalent dentist during the term of this EULA, the fees will not decrease during such term.

6.2. Invoicing. In consideration of the Services provided and rights granted under this EULA, You will timely pay DentaMetrix the Services fee(s) provided by DentaMetrix in a fee schedule, in an Email Authorization, in an emailed invoice, in accordance with [Section 4.2 \(Changing Services\)](#), or an Addendum (collectively, the "**Fee Statement**"), as applicable. If a applicable Fee Statement includes a Minimum Commitment, then You will timely pay DentaMetrix no less than the Minimum Commitment for the Services. Unless otherwise provided in the Fee Statement, DentaMetrix will bill You upon the execution date of the applicable Fee Statement for the initial setup fees, if any, specified on such Fee Statement. Initial setup fees are non-refundable. Unless otherwise provided in the applicable Fee Statement, You will be responsible for fees commencing on the Billing Start Date, whether or not You, Your Personnel, or Your Authorized Users have completed Your or their portion of the deployment process (including delivering all of Your Data) and whether or not You or Your Authorized Users have begun use of the applicable Services. To facilitate billing all subsequent recurring payments to a common date (currently the 15th of each month), Your first Fee Statement will cover the short period between the Billing Start Date and the next common date (currently the 15th of each month). Unless otherwise provided in a Fee Statement, DentaMetrix will **(a)** bill in advance all fees charged on a monthly, annual, or other periodic basis; **(b)** bill for all variable or use-based fees in

arrears at the end of each month, quarter, or applicable period based on Your and Your Authorized Users' actual use of the Services in accordance with the applicable Fee Statement; and (c) bill as and when incurred all other fees. Where applicable, Services charges for any partial period of Service will be pro-rated and billed. Billing accrues through and includes the day that the applicable Service is discontinued. If a Fee Statement includes a Minimum Commitment, then You agree that DentaMetrix will bill You on such periodic basis as set forth in such Fee Statement (and if not set forth, then monthly) for no less than the Minimum Commitment. The Minimum Commitment fee only applies to the applicable Services in the relevant Fee Statement and will not be credited towards, without limitation, setup fees and other non-recurring fees, credits, taxes, regulatory charges, and cancellation fees.

6.3. Payment Terms. All payments will be made in United States dollars via ACH or credit card through DentaMetrix's online payment portal ("**Billing Portal**"), unless the Parties expressly agree in writing that DentaMetrix will bill You using invoices (collectively, "**Billing Statement**"). You agree to maintain Your information in the Billing Portal current. Unless otherwise provided in a Fee Statement, all payments will be due, and You agree to pay all undisputed amounts in the Billing Statement with no deductions, setoffs, or abatements, upon receipt of such Billing Statement ("**Payment Due Date**"). The Billing Statement will be deemed received by You when the Billing Statement is posted for payment to the Billing Portal. For example, if DentaMetrix bills You monthly, DentaMetrix will post Your Billing Statement on or about the 15th of each month, even if You first purchased the Services on a date other than the 15th. Undisputed amounts not paid on or before the Payment Due Date will be considered past due, and DentaMetrix will issue a written notice of default (which notice may be issued in the form of a past due payment reminder via email or automatically by DentaMetrix's invoicing system). You will have 15 calendar days from the date of such notice ("**Payment Cure Period**") to cure the default, during which period the accrual of late payment interest charges as contained below will be postponed. The responsibility for payment of all fees hereunder is the sole responsibility of You and You agree not to delay payment or condition payment in any manner on the abandonment, suspension, or termination of any services by any Authorized User, including, as applicable, any of Your dental practice clients. No refunds will be due for any fees hereunder for any Authorized Users that suspend or terminate their relationship with You or otherwise. By providing DentaMetrix with a payment method, You (i) consent to DentaMetrix's use of account information regarding the selected payment method provided by the issuing bank or applicable payment network (i.e., to charge the credit card or similar payment, or process an electronic debit or fund transfers from the designated bank account) (each an "**Electronic Payment**"); (ii) hereby authorize DentaMetrix to charge Your payment method automatically and as further described in this EULA (e.g., automatically on the 15th of every month) until the applicable Fee Statement or this EULA is terminated; (iii) represent that You are authorized to use that payment method, that any payment information You provide is true and accurate, and that You will maintain such information current; and (iv) hereby authorize DentaMetrix to charge You using that payment method for orders under this EULA as further set forth in this EULA. You agree that if any check is returned unpaid or if any credit card or similar transaction is rejected or denied, DentaMetrix reserves the right to collect any applicable return item, rejection, or insufficient funds fee to the maximum extent permitted by applicable law and to process any such fees as an Electronic Payment or to invoice You for the amount due, as applicable. You understand that DentaMetrix may receive updater services from card issuers or acquirers, such that certain types of Electronic Payment numbers will be updated automatically (e.g., credit card number updated automatically if Your bank issues You a replacement card). Accordingly, You must handle all terminations directly with DentaMetrix.

6.4. Late Payments. DentaMetrix will deem delinquent any (a) undisputed Billing Statement not paid in full by the Payment Cure Period, or (b) settled disputed amount of any Billing Statement not paid within 7 days after resolution of such dispute. Upon the occurrence of any such delinquent Billing Statements, You will be in material breach and DentaMetrix will be entitled to any or all of the following: (i) immediately suspend all Access Credentials and Application license keys issued or otherwise made available hereunder and suspend all Services until all outstanding payments are received by DentaMetrix; (ii) request and receive a deposit or other advance payment before any additional performance is rendered by DentaMetrix, including reactivation of any Access Credential or Application license keys, and thereafter require advance payments or deposit refresh by You in advance of performance by DentaMetrix; (iii) collect all past and current amounts due and owing, such that all remaining periodic payments are immediately due and owing; (iv) charge interest at the lower of 1.5% per month, compounded, or the maximum amount allowed by law, as applied against the past due amounts, until and including the date payment is received; (v) submit reports to Dun & Bradstreet and other business credit reporting organizations; and (vi) You will be responsible to pay any collection costs and expenses (including reasonable attorneys' fees and DentaMetrix staff time) incurred by DentaMetrix and such costs will immediately become due and payable to DentaMetrix.

6.5. Disputing Fees. DentaMetrix will make a "pre-bill" draft of the Billing Statement available for Your review via the Billing Portal at least 10 days before DentaMetrix posts the final Billing Statement for payment to the Billing Portal. You must give DentaMetrix written notice of a dispute with respect to any DentaMetrix Billing Statement before the Payment Due Date or such Billing Statement will be deemed to be correct and binding on You.

6.6. Fee Changes. DentaMetrix reserves the right to increase the Services fees periodically and DentaMetrix will provide notice of all such changes no less than 45 days prior to the effective date thereof, except as otherwise set forth in an applicable Fee Statement. If a Third-Party Products vendor increases its fees for the Third-Party Products, DentaMetrix reserves the right to pass-through the fee increases to You upon written notice (which notice may be provided by email).

6.7. Taxes. The Services fees are exclusive of all federal, state, and municipal taxes (including sales taxes and withholding taxes), levies, duties or similar charges, however designated, levied or imposed, that may be assessed by any jurisdiction, under current or future laws or regulations, including penalties and interest thereon (collectively, the "**Taxes**"). You will pay all applicable Taxes, *provided that* You will be under no obligation to pay for Taxes **(a)** based on DentaMetrix's revenues, number of employees, corporate existence, or net income; and **(b)** if You are tax exempt, upon request from DentaMetrix, You provide DentaMetrix with a valid tax exemption certificate.

7. TERM AND TERMINATION.

7.1. Agreement. This EULA commences when You first perform any of the activities set forth in Section 1(a) – (e) ("**Effective Date**") and will remain in effect until all Services have been terminated in accordance with Section 7.2 (*Termination*).

7.2. Termination.

7.2.1. Termination for Convenience. During the term of this EULA, either Party may terminate the Services (in whole or in part) for any or no reason with 30 days' advance written notice to the other Party.

7.2.2. Termination for Cause. A Party, upon giving written notice to the other Party, may terminate this EULA upon the occurrence of any of the following:

(a) In the event such other Party materially breaches this EULA and fails to cure the breach within 30 days after receipt of written notice describing the material breach in reasonably sufficient detail. The termination will be effective on the 31st day after receipt of the written termination notice, unless otherwise withdrawn by the Party that first provided notice. Notwithstanding the foregoing, if You fail to make payments as further contemplated in Section 6.3 (*Payment Terms*), DentaMetrix does not receive Application license key validation information, or You otherwise interfere with the reporting mechanisms for reporting and monitoring license limits or the mechanisms to validate Application license keys, DentaMetrix may, at its option, take any or all of the following actions, without liability to You or any of Your Authorized Users: **(i)** terminate this EULA and all Addenda issued thereunder immediately upon written notice (which notice may be provided by email); **(ii)** stop or suspend performance of the Services (in whole or in part); and **(iii)** disable any or all of the Access Credentials and Application license keys issued to You and Your Authorized Users (including, if You are a consulting or management firm, any of Your dental practice clients). Such Services, Access Credentials, and keys may remain suspended until the applicable amounts are paid in full or the license key monitoring issues are remedied, as applicable. Notwithstanding the foregoing, You agree that issues related to reporting and monitoring license limits and the mechanisms to validate Application license keys must be remedied within 5 days of receiving notice from DentaMetrix (which notice may be provided by email).

(b) In the event that: **(i)** such other Party's assets are seized or attached in conjunction with any action against it by a third party; **(ii)** such other Party has taken any action for the purpose of entering into winding-up, dissolution, bankruptcy, reorganization, or similar proceedings analogous in purpose or effect thereto, including making a general assignment for the benefit of its creditors; **(iii)** such other Party becomes insolvent or admitted in writing to its inability to pay its debts as they mature; or **(iv)** such other Party ceases operations for any reason. The termination will be effective immediately upon written notice to such other Party or such later date as set forth in such notice.

(c) In the event such other Party, an officer of such other Party, or such other Party's employee directly involved in performing under this EULA, is excluded from participating in the Federal Health Care Programs or as otherwise contemplated in Section 11.2 (*Warranty of Non-Exclusion*). The termination will be effective immediately upon written notice to such other Party or such later date as set forth in such notice.

(d) In the event such other Party transferred or otherwise assigned this EULA except as permitted in accordance with Section 13.10 (*Assignments*). The termination will be effective immediately upon written notice to such other Party or such later date as set forth in such notice.

(e) The Parties fail to amend this EULA as contemplated in Section 10.1 (*Fraud and Abuse Laws*).

7.2.3. Termination of Individual Addenda. In addition to each Party's rights under Sections 7.2.1 (*Termination for Convenience*) and 7.2.2 (*Termination for Cause*), each Party may terminate any particular Addendum according to any provision therein permitting such termination, *provided that* this EULA, including all other Addenda, if any, will remain in full force and effect in accordance with the respective terms, unless there are no other Services outstanding between the Parties. For the avoidance of doubt, the termination or expiration of one Service component will not affect any

other Service component and will not automatically terminate this EULA, unless there are no other Services outstanding between the Parties. In the event this EULA is terminated for any reason, all Addenda thereunder will automatically terminate.

7.2.4. Obligations Upon Termination.

(a) Payment and Cancellation Fee. In the event of any expiration or earlier termination of this EULA or a Service component, You will pay to DentaMetrix all accrued and unpaid fees incurred prior to termination, including, without limitation, pro-rated fees for any partial month of Services following notice of termination. In addition to Your other obligations hereunder, if You terminate this EULA or a Service component (including, in the event of a consulting or management firm, an individual dental practice location) for a reason other than pursuant to Section 7.2.2 (Termination for Cause) (i) during the initial 3 consecutive months of Services (in whole, or, in the event of a consulting or management firm, Services for a dental practice location), You will reimburse DentaMetrix for any discount off of standard fees and pay a cancellation fee in an amount equal to 3 months of fees for each of the terminated Services or, as applicable, each of the terminated Services locations; or (ii) during the term of any Minimum Commitment, You will reimburse DentaMetrix for any discount off of standard fees and pay to DentaMetrix the sum total of the Minimum Commitment for the remainder of the applicable Minimum Commitment term. Such fees will be remitted to DentaMetrix in accordance with Section 6.2 (Invoicing).

(b) License. Upon expiration or termination of this EULA or Your Access Credentials, Your rights to use the Application and other components of the Licensed Materials and receive the Services, end immediately. Upon request from DentaMetrix, You will certify to DentaMetrix in writing that You have stopped using the Application and, if applicable, that You have destroyed all copies of the Application and any other component of the Licensed Materials.

(c) Return of Confidential Information and Deletion of Data. Except as otherwise set forth in this Section 7.2.4(c), upon expiration or termination of this EULA, Recipient agrees to end all further use of, to immediately return to Discloser the original version of, and to delete or destroy all tangible and intangible copies of (and upon request from Discloser, provide a written certification to Discloser of such deletion or destruction), all of Discloser's Confidential Information furnished by Discloser and in the possession or under the control of Recipient. Notwithstanding the foregoing, You agree and understand that nothing in this Section 7.2.4(c) will require DentaMetrix to (i) return or destroy (1) Your Confidential Information stored on backup medium, other than in the normal course of DentaMetrix's data management activities; (2) any Usage Data or de-identified data; (3) any data DentaMetrix is permitted to maintain under the Business Associate Addendum or another Addendum; or (4) any data related to an Authorized User until the applicable Entity client of DentaMetrix terminates this EULA; or (ii) return any of Your Confidential Information that You already have in Your possession. Further, notwithstanding anything to the contrary in this Section 7.2.4(c), You agree and understand that DentaMetrix may, in its reasonable discretion, retain certain of Your Confidential Information for relevant business purposes, including, without limitation, to comply with business recordkeeping obligations, federal and state data retention laws and requirements, and to respond to government and third party audits.

7.3. Survival. The terms and conditions of this EULA that would, by their nature, survive the expiration or termination hereof, including, without limitation, Sections 1 (Introduction), 4.3 (Order of Precedence), 5.7 (Management of Authorized Users), 6 (Fees and Payment Terms), 7.2.4 (Obligations Upon Termination), 7.3 (Survival), 8.2 (Evaluation License, limited to subsections (c) and (d)), 8.3 (Copies), 8.4 (Restrictions), 8.5 (Your Data), 8.6 (Usage Data), 8.9 (DentaMetrix Proprietary Rights), 8.10 (Feedback), 8.13 (General Knowledge), 9 (Confidentiality), 10.2 (Access to Books and Records), 11 (Representations and Warranties), 12 (Indemnification and Limitation of Liability), and 13 (General Terms) will survive the termination or expiration of this EULA until any obligations arising prior to such termination or expiration have been satisfied in accordance with the applicable terms.

8. LICENSE AND USAGE.

8.1. Standard License Grant. Subject to Your full and ongoing compliance with the terms and conditions of this EULA, including, without limitation, timely payment of all applicable fees and compliance with usage limits, DentaMetrix grants Entity and Entity accepts a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable (except in accordance with Section 13.10 (Assignments)), revocable license during the term of this EULA to (a) access and use the Application (i) only in the form made available by DentaMetrix for use and using the means specified by DentaMetrix for access, whether remotely or otherwise, (ii) using a computer or mobile device that Entity owns or controls or to which it has authorized access, (iii) subject to the license volume and type limitations specified, if any, and (iv) any such access or use will be solely for Entity's own internal business purposes and in connection with a good faith use of the Application; and (b) permit Entity's Authorized Users to access and use the Application (i) only in the form made available by DentaMetrix for use and using the means specified by DentaMetrix, (ii) using a computer or mobile device that Entity or its Authorized User owns or controls or to which it has authorized access, (iii) subject to the license volume and type limitations specified, if any, (iv) using the Access Credentials assigned solely to such Authorized User, and (v) any such access or use will be solely for Entity's or Authorized User's own internal business purposes and in connection with a good faith use of the Application. For the avoidance of doubt, if Entity is a consulting firm or a management company, an Entity's own internal

business purposes includes using the Application to provide practice management analytics, revenue analytics, and related financial services to such Entity's customers, *provided that* Entity is in the business of providing such services. DentaMetrix may, from time to time, make available Improvements, *provided that* DentaMetrix will be under no obligation to provide any such Improvements or to make available to all Licensed Materials' end users any Improvements that are specially developed for an end user or specific group of end users. The license granted in this [Section 8.1](#) does not apply when the Application is accessed under an Evaluation License.

8.2. Evaluation License. If DentaMetrix granted Entity access rights based on an early access, beta, evaluation, or other similar program or if Entity has a trial use in connection with a test or pilot period, then **(a)** DentaMetrix grants Entity and Entity accepts a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable, revocable license during the Evaluation License term as specified by DentaMetrix, to access and use the Application **(i)** only in the form made available by DentaMetrix and using the means specified by DentaMetrix for access, whether remotely or otherwise, **(ii)** using a computer or mobile device that Entity owns or controls or to which it has authorized access, **(iii)** using the assigned Access Credentials, and **(iv)** any such access or use will be solely for Entity's own internal business purposes and limited solely to evaluating the Application for potential use by Entity (this subsection (a) collectively, as the "**Evaluation License**"); **(b)** DentaMetrix may terminate the Evaluation License at any time, in its sole discretion, and without prior notice; **(c)** NOTWITHSTANDING ANY OTHER TERM IN THIS EULA, THE SERVICES, EVALUATION LICENSE, AND LICENSED MATERIALS ARE PROVIDED "AS IS", "AS AVAILABLE", "WITH ALL FAULTS", AND WITHOUT ANY WARRANTY OF ANY KIND AND ANY IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW; and **(d)** notwithstanding any other term in this EULA, You will not be entitled to and DentaMetrix will not be under any obligation to indemnify You or any Authorized User or to provide You with any support services of any kind. Entity may not extend the Evaluation License by uninstalling and re-installing the Application or by any other means other than DentaMetrix's written consent. For the avoidance of doubt, Entity will be required to pay for a license for the Application and the Services at DentaMetrix's then applicable fee schedule if Entity continues to use the Application, after the Evaluation License expires or terminates, and the terms and conditions of the EULA in effect at that time will apply to Entity's continued use of the Application.

8.3. Copies. Subject to Your full and ongoing compliance with the terms and conditions of this EULA, including, without limitation, timely payment of all applicable fees, DentaMetrix grants Entity and Entity accepts a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable (except in accordance with [Section 13.10 \(Assignments\)](#)), revocable license during the term of this EULA to **(a)** access, use, copy, download, and print the reports produced by the Application as well as the documentation that are purposely made available by DentaMetrix for using, copying, downloading, and printing for Entity's own internal business purposes and in connection with a good faith use of the Application; and **(b)** permit Entity's Authorized Users to access, use, copy, download, and print the reports produced by the Application as well as the documentation purposely made available by DentaMetrix for using, copying, downloading, and printing for such Entity's and its Authorized Users own internal business purposes and in connection with a good faith use of the Application. Notwithstanding the immediately preceding sentence, Entity will not and will not permit any Authorized User to **(i)** obscure, modify, or delete (including through selectively copying or printing material) any copyright, trademark, government restructured rights, or other proprietary or confidentiality notices or legends that appears on the material; or **(ii)** make any additional representations or warranties relating to such reports and documentation. Entity may make and, if Entity is Entity is a consulting firm or a management company, Entity may permit its dental practice Authorized Users to make a reasonable number of archive copies of the reports and documentation for such Entity's and, as applicable, dental practice Authorized Users' own internal business recordkeeping purposes subject to such party's compliance with this [Section 8.3](#) and the other applicable terms of this EULA. For the avoidance of doubt, if Entity is a consulting firm or a management company, an Entity's own internal business purposes includes accessing, using, copying, downloading, and printing to provide practice management analytics, revenue analytics, and related financial services to such Entity's customers, *provided that* Entity is in the business of providing such services. The license granted in this [Section 8.3](#) does not apply when the Application is accessed under an Evaluation License.

8.4. Restrictions. DENTAMETRIX RETAINS ALL RIGHTS, TITLE, AND INTEREST IN AND TO THE LICENSED MATERIALS AND ALL RIGHTS TO THE LICENSED MATERIALS NOT EXPRESSLY GRANTED TO YOU IN THIS EULA ARE RESERVED. You understand that the Application is licensed and not sold. Any unauthorized use of the Licensed Materials or any portion thereof terminates the licenses granted by DentaMetrix pursuant to this EULA. Except as expressly permitted in this EULA, You will not: **(a)** copy or reproduce the Licensed Materials in whole or in part or access or use the Licensed Materials in any way other than as expressly permitted in this EULA; **(b)** modify, translate, or create derivative works of the Licensed Materials, or any portion thereof; **(c)** reverse engineer, decompile, disassemble, decrypt, or otherwise attempt to gain the source code to the Application and You hereby acknowledge that nothing in this EULA will be construed to grant You any right to access, receive a copy of, obtain, or use such source code; **(d)** assign, distribute, grant a security interest in, lease, loan, rent, share, sublicense, timeshare, use for service bureau purposes, or otherwise transfer the Licensed Materials; **(e)** export, re-export, divert, or transfer the Licensed Materials to any country that is embargoed by the United States, in violation of any U.S. export law or governmental regulation, or otherwise identified on a list of debarred,

prohibited, sanctioned, or denied parties; **(f)** unless expressly authorized by DentaMetrix in writing, access or use the Application for purposes of monitoring its availability, functionality, or performance, or for any other benchmarking purpose, including authorizing or undertaking a penetration test, vulnerability scan, social engineering test, or any other similar activity against the Application, DentaMetrix, or any of DentaMetrix's employees, agents, or subcontractors; **(g)** interfere with or attempt to interfere with the proper functioning of the Application, DentaMetrix, or any DentaMetrix agent or subcontractor, including subverting or attempting to subvert embedded security controls, controls and reporting mechanisms for license limitations and restrictions, and mechanisms to validate Application license keys and Access Credentials; **(h)** access or use the Licensed Materials to develop a service, functionality, data, or content similar to or competitive with any component of the Licensed Materials; **(i)** except with DentaMetrix's prior written consent, access or use the Licensed Materials, or any part thereof, for any reason if You are acting on behalf of or in collaboration with, a competitor of DentaMetrix, including to develop, design, or market data or content or functionality similar to or competitive with the Application; **(j)** except for Your Data, perform any general or mass downloads of content made available in the Application; **(k)** use the Licensed Materials **(i)** in connection with any product or service that is similar to or directly or indirectly competitive with the Application; or **(ii)** except for Your Data, to extract content from the Licensed Materials and incorporate or attempt to incorporate or integrate such Licensed Materials into any application, service, or offering that is directly or indirectly competitive to the Application, even if such product or service is not made available commercially; **(l)** remove, alter, cover, or obfuscate any copyright, trademark, government restricted rights, or other proprietary rights or confidentiality notices or legends that are placed or embedded by DentaMetrix or its licensors in the Application or on any other Licensed Materials or are displayed when the Application is run; **(m)** violate this EULA; or **(n)** authorize, assist, or cause any third party, including any of Your Authorized Users or Personnel, to do any of the foregoing. You agree and understand that the restrictions in this Section 8.4 apply to any component of the Licensed Materials that is relevant to the restriction.

8.5. Your Data. As between You and DentaMetrix, You own and will retain title to Your Data. You hereby grant DentaMetrix a nonexclusive, fully paid, royalty-free, worldwide right and license **(a)** during the term of this EULA, to access, adapt, aggregate, copy, disclose, display, distribute, modify, process, publish, reformat, store, and use Your Data for the purpose of delivering the Services, delivering and improving the Application and the other Licensed Materials, administering and delivering the Application license keys, facilitating Your and Your Authorized Users' use of the Licensed Materials, making the Licensed Materials available, facilitating Your and Your Authorized Users' relationship with its consulting firm or management company, as applicable, developing metrics and analytics, and to otherwise fulfill DentaMetrix's obligations under this EULA; and **(b)** on a perpetual basis and subject to compliance with the Business Associate Addendum to the extent applicable to Your Data, to access, adapt, aggregate, copy, modify, process, reformat, use, create derivative works of, and display Your Data, statistics, metrics, and other analytics and to aggregate, copy, disclose, distribute, publish, and use such information for any legally permitted purposes, including, without limitation, delivering anonymized benchmarks and metrics, *provided that*, with respect to the use contemplated in this Section 8.5(b), DentaMetrix will exercise commercially reasonable efforts intended to ensure that the Your Data is used in de-identified form only.

8.6. Usage Data. Certain of DentaMetrix's systems (including the Application) may, from time to time, collect and automatically report back information to the servers and systems of DentaMetrix and its subcontractors and vendors related to usage of the Licensed Materials and other programs and systems (collectively, the "Usage Data"), without notice to You or Your Authorized Users. Usage Data may be used by DentaMetrix for any legally permitted purposes, including, without limitation, helping diagnose and resolve technical and performance issues in relation to the DentaMetrix's systems, validating Application license keys and Access Credentials, improving the Application and other Licensed Materials, monitoring for compliance with license limits, developing metrics and analytic algorithms, and developing additional use cases for the Licensed Materials. Further and for the avoidance of doubt, You agree and understand that DentaMetrix uses all data collected in connection with its business and operations for the operation and management of its business including, without limitation, **(a)** creation of operational statistics; **(b)** creation and inclusion in financial reporting of aggregate statistics regarding services performed; **(c)** creation and inclusion in marketing materials of aggregate statistics highlighting the Services, Application, and other Licensed Materials; **(d)** creation of analytics, benchmarks, and reports; and **(e)** advancing and improving existing products and services, creating new and enhanced products and services, and development and publication of market and industry intelligence and expertise; all of which and any Improvements and enhancements thereto and whether in tangible or intangible form, will be and remain the intellectual property of DentaMetrix and DentaMetrix will own all Intellectual Property Rights therein.

8.7. Trademarks. Subject to Section 7 (Term and Termination), DentaMetrix will have the right to copy, disclose, display, publish, reproduce, store and use the Entity's logo, service mark, slogan, trademark, trade dress, trade name, trade dress, and other similar source indicator (collectively, the "Marks") for identification purposes in printing on the reports, communicating with the Authorized Users, and otherwise as reasonably appropriate in performing the activities described in this EULA. DentaMetrix will ensure that all such use will comply with the standards of display provided by Entity as applicable, which Entity reserves the right to change at its sole discretion at any time. DentaMetrix agrees that, as between Entity and DentaMetrix, any goodwill generated with respect to the use of Entity's Marks will redound and inure to the benefit of Entity.

8.8. Sharing Information with Entity. If You are an individual end user, then by using any of the Licensed Materials, You acknowledge that DentaMetrix will share and consent to DentaMetrix sharing the information You input into the Application, Usage Data about You, and any other information related to Your use of the Licensed Materials with the Entity. For example, if You are an employee of a dental practice or a consulting firm that is a DentaMetrix client, DentaMetrix will share the information You input into the Application with such DentaMetrix client.

8.9. DentaMetrix Proprietary Rights. You acknowledge and agree that the DentaMetrix IP and the Licensed Materials and each of its component parts (including without limitation, text, images, user interfaces, visual interfaces, graphics, trademarks, logos, sounds, source code and computer code, including but not limited to the design, structure, selection, coordination, expression, 'look and feel' and arrangement thereof) together with all Improvements thereto and all Intellectual Property Rights therein are the exclusive property of and owned by DentaMetrix or its licensors, are protected by trademark, copyright, and other intellectual property and unfair competition laws, and nothing contained in this EULA will be construed as the relinquishment on the part of DentaMetrix or its licensors of any of DentaMetrix's or its licensors ownership interest in such items and materials.

8.10. Feedback. You agree that submission of any ideas, suggestions, documents, proposals, improvements, modifications, error identification, or content corrections (collectively, the "**Feedback**") to DentaMetrix through its suggestion form, feedback form, wiki, forum, support email, support calls or conference calls, meetings, or similar means is at Your own risk and that DentaMetrix has no obligations (including, without limitation, obligations of confidentiality or use) with respect to such Feedback. You hereby grant to DentaMetrix a fully paid, royalty-free, perpetual, sub-licensable, transferable, irrevocable, worldwide, and nonexclusive right and license to adapt, copy, disclose, display, distribute, modify, perform, reformat, use, create derivative works of, and otherwise exploit any and all Feedback for any legally permitted purposes. Further, to the extent any Improvements are developed by DentaMetrix based on the joint effort or collaboration of the Parties (collectively, the "**Joint Works**"), You hereby irrevocably assign, transfer, and convey to DentaMetrix all of Your rights and title, of any nature, in and to any Joint Works together with all Intellectual Property Rights in any such Joint Works in the United States and all other countries and jurisdictions of the world, including, without limitation, all exclusive rights granted to an author or owner under the copyright laws of the United States, foreign countries, and international copyright conventions, all ancillary rights arising therefrom, all other rights of any nature and in any media, whether now known or hereafter devised, throughout the world, and the right to sue and recover for any past infringement of any such rights.

8.11. Malicious Code. You will and will cause Your Authorized Users to use commercially reasonable efforts and will implement technical and administrative safeguards intended to prevent transmission of any "computer viruses," "time bombs," "malware," worms, trojans, malicious software, or any code that is designed to delete, disable, deactivate, interfere with, or otherwise harm or disrupt the Application or DentaMetrix's technology network, or that in any way affects the use, enjoyment, or service of the Application, or any user's computer or other medium used to access the Application or DentaMetrix's technology network.

8.12. Suspension of Services. DentaMetrix will have the right, in addition to any of its other rights or remedies, to suspend Your or Your Authorized Users' access to the Services and the Licensed Materials, without liability to You or any Authorized User, if DentaMetrix determines, in its reasonable discretion, that such suspension is necessary or reasonably appropriate to protect the security or integrity of the Licensed Materials or the security of other DentaMetrix clients. Such access may remain suspended until DentaMetrix reasonably determines that the threat has passed or that You have taken the appropriate steps, as reasonably determined by DentaMetrix, to remedy the identified threat, as applicable. Further, without in any way limiting Your obligations pursuant to Section 5.7 (Management of Authorized Users), DentaMetrix may, without liability to You or any of Your Authorized Users, suspend the Access Credentials of Authorized Users who violate this EULA and may terminate the Access Credentials of Authorized Users who repeatedly violate this EULA.

8.13. General Knowledge. DentaMetrix, its employees, and agents will be free to use and employ their skills, know-how, expertise and General Skills gained in performing the Services, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, and skills gained or learned during the course of any Services performed hereunder, subject to its obligations regarding Entity's Confidential Information.

8.14. Future Functionality. You agree that You are not entering into this EULA, any Addendum, or any Email Authorization contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by DentaMetrix, its agents, or employees regarding future functionality or features.

9. CONFIDENTIALITY.

9.1. Definition of Confidential Information.

9.1.1. Definition. In the provision of the Services, DentaMetrix and Entity (a "**Recipient**") may have access to or otherwise receive Confidential Information from the other Party ("**Discloser**"). For purposes of this EULA, "**Confidential Information**" means all information in spoken, printed, electronic, or any other form or medium, relating directly or indirectly to: **(a)** information relating to Discloser's business or financial affairs, including, without limitation, all financial information

and statements, pricing structures and policies, employee information, contractor information, know-how, processes, vendor lists, clients, prospective clients, price lists, business plans and techniques, reports, work-in-process and product plans, marketing plans and techniques, competitive intelligence, management plans and techniques, negotiations, communications, internal controls, security procedures, policies, manner of operation, and trade secrets; **(b)** with respect to DentaMetrix, the terms and fees under this EULA, software and technical information, the Licensed Materials, DentaMetrix IP, demos and associated materials, training materials, user interfaces, formatting, audio-visual works, “look and feel,” analytics, schematics, audit and security reports, and know-how that is used by DentaMetrix to deliver the Services, whether tangible or intangible; **(c)** with respect to Entity, Your Data; and **(d)** any other information, knowledge, or data, in whatever form or medium, concerning or relating to the business affairs of Discloser or of any other person or entity that has entrusted information to Discloser in confidence and that should reasonably have been understood by the Recipient (because of legends or other markings, the circumstances of disclosure, or the nature of the information itself) to be proprietary or confidential to Discloser.

9.1.2. Exclusion. Confidential Information does not include and the obligations set forth in this Section 9 (Confidentiality) with respect to Confidential Information do not apply to, any information that the Recipient can demonstrate by written records: **(a)** at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of its disclosure by the Recipient or its Representatives); **(b)** was available to the Recipient on a non-confidential basis prior to its disclosure by the Discloser or its Representatives; **(c)** becomes available to the Recipient on a non-confidential basis from a person who is not otherwise bound by a confidentiality agreement with the Discloser or its Representatives, or by any other obligation of secrecy; **(d)** is independently developed by the Recipient without the aid, application, or use of the Discloser's Confidential Information; or **(e)** subject to Section 9.4 (Required Disclosures), is required by law to be disclosed. Specific aspects or details of Licensed Materials will not be deemed to be publicly known merely because general aspects of the Licensed Materials are publicly known. In addition, any combination of Licensed Materials will not be considered to be publicly known merely because individual elements of such Licensed Materials are publicly known unless the combination itself is publicly known.

9.2. Permitted Disclosures. Except as permitted in this EULA, Recipient will not use the Confidential Information of Discloser except for the purpose of performing its obligations under this EULA or exercising the rights granted in this EULA (“**Purpose**”). Recipient may disclose Confidential Information of Discloser only to its employees, subcontractors, contractors, directors, advisors (including financial advisors, legal counsel, and accountants), auditors, and agents (collectively, the “**Representatives**”) who have a reasonable need for access thereto for the Purpose, *provided that* the Representatives will be bound by an obligation of confidentiality. The Parties further agree that Recipient may disclose Discloser's Confidential Information **(a)** to establish Recipient's rights or enforce obligations under this EULA, but only to the extent that any such disclosure is required or reasonably appropriate; **(b)** to any potential transferee or assignee as contemplated in Section 13.10 (Assignments); **(c)** in connection with acquisition or investment activity, *provided that* Recipient agrees that any such third-party recipient is treated as if such third-party recipient was a Representative of Recipient; **(d)** to a government or other third-party auditor in connection with an audit; **(e)** in connection with government reporting obligations, if any, except in connection with an Order, which will be handled in accordance with Section 9.4 (Required Disclosures); **(f)** when Recipient is Entity, Entity may disclose DentaMetrix's Confidential Information to Entity's Authorized Users, *provided that (i)* any such disclosure will be limited only to the information such Authorized User needs to know to use the relevant Services; and **(ii)** for the avoidance of doubt, Entity will be responsible for any breach of the confidentiality obligations by any such Authorized Users; and **(g)** when Recipient is DentaMetrix, DentaMetrix may disclose Entity's Confidential Information to Entity's consulting firm or management company, as applicable.

9.3. Obligations to Protect. Recipient agrees to maintain the confidentiality of Discloser's Confidential Information, and to protect as a trade secret any portion of the Discloser's Confidential Information that constitutes a trade secret, by using the same standard of care in protecting Discloser's Confidential Information as Recipient uses to protect its own Confidential Information and trade secrets, but in any case no less than a commercially reasonable degree of care.

9.4. Required Disclosures. In the event Recipient receives a request to disclose any of Discloser's Confidential Information under the terms of a valid and effective subpoena or order (including oral questions, interrogatories, requests for information or documents, civil investigative demand or similar process, or otherwise) issued by a court of competent jurisdiction, administrative agency, or is otherwise legally compelled (collectively, the “**Order**”), unless otherwise prohibited in such Order, Recipient agrees to: **(a)** promptly notify Discloser of the existence, terms, and circumstances surrounding such request to permit Discloser the reasonable opportunity to appear in any judicial proceeding involved or otherwise act to preserve its rights; and **(b)** if disclosure of such Confidential Information is required, disclose to the person compelling disclosure only that portion of Discloser's Confidential Information that is required to be compliant with such Order.

9.5. Ownership of Confidential Information. Confidential Information is and will remain the property of Discloser. Discloser's furnishing of Confidential Information to Recipient will not be construed as granting Recipient any right or license whatsoever in Discloser's Confidential Information, except for and only to the extent of the limited use granted in this EULA.

10. COMPLIANCE.

10.1. Fraud and Abuse Laws. Neither Party has provided or received anything of value with the intent to induce referrals from or to the other Party. The Parties have used their best efforts to structure this EULA to comply with any and all applicable federal, state, and local laws and notwithstanding any unanticipated effect of any of the provisions herein, neither Party will intentionally conduct itself under the terms of this EULA in a manner to constitute a violation of the Medicare and Medicaid Fraud and Abuse Provisions (42 U.S.C. §§ 1395nn(b) and 1396h(b)), including the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977 and the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. §§ 1320a-7 *et seq.*) or any other applicable federal, state, or local law, rule, or regulation governing health care fraud and abuse. Further, if the foregoing laws are amended or legislation is passed, the effect of which, in the reasonable opinion of a Party, results or could reasonably result in this EULA violating any of such federal or state laws or regulations, the Parties will reasonably cooperate to amend the applicable terms of this EULA to effectuate the purposes and intent of this EULA within 90 days of receiving a request for amendment from a Party and, in the event the Parties cannot agree on an appropriate amendment, this EULA will immediately terminate in accordance with Section 7.2.2(e) (Termination for Cause).

10.2. Access to Books and Records. DentaMetrix agrees to the extent applicable and required by 42 U.S.C. § 1395x(v)(1)(I) that: **(a)** until the expiration of 4 years after the furnishing of Services pursuant to this EULA, DentaMetrix will make available, upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General of the United States, or any of their authorized representatives, any and all books, documents, and records required that are necessary to certify the nature and extent of such services and costs thereof; and **(b)** if DentaMetrix carries out any of its duties under this EULA through a subcontract with a value or cost of \$10,000 or more over a 12 month period with a related organization (as that term is defined in 42 C.F.R. § 413.17(b)), such subcontract will contain a clause to the effect that until the expiration of 4 years after the furnishing of such services pursuant to such subcontract, the related organization will make available, upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General of the United States, or any of their authorized representatives, the subcontracts and books, documents and records of such organization necessary to verify the nature and extent of such costs.

11. REPRESENTATIONS AND WARRANTIES.

11.1. Authority and Compliance with Laws. DentaMetrix and Entity represent and warrant to each other that: **(a)** it has the authority to enter into this EULA, to perform all of its obligations hereunder, and this EULA constitutes the valid and binding obligation of such Party enforceable against it in accordance with the terms hereof; **(b)** it has not previously entered into any agreement, license, or other arrangement that would restrict its ability to comply with the terms and conditions of this EULA; **(c)** it will, at its sole expense, materially comply with all applicable United States federal, state, and local laws to the extent applicable to its performance of its obligations under this EULA; and **(d)** it is duly organized, existing, and in good standing under the laws of any jurisdiction where the ownership of its assets or the conduct of its business require it to be so qualified, or if it is not so qualified, the failure to so qualify will not have an adverse effect on its ability to perform its obligations under this EULA. Entity represent and warrant to DentaMetrix that the individual that confirmed Entity's email account and completed the registration process or otherwise agreed to this EULA has the right and authority to enter into this EULA on behalf of Entity and You, as applicable, represent and warrant to DentaMetrix that You have such right and authority.

11.2. Warranty of Non-Exclusion. DentaMetrix and Entity represent and warrant to each other that: **(a)** it is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. § 1320a-7b(f) (the "**Federal Health Care Programs**"); **(b)** it has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Health Care Programs; and **(c)** it is not presently indicted or otherwise criminally charged by a government entity (federal, state, or local) with commission of any offenses that may result in it being excluded from participation in the Federal Health Care Programs.

11.3. Performance by You. You represent and warrant to DentaMetrix that **(a)** You will not and will not permit an Authorized User to violate or tamper with the security of the Services, Licensed Materials, or any network delivering the Services or Licensed Materials or otherwise interfere with DentaMetrix's ability to receive reporting on and validate the Application license keys and license limitations, and that You will use commercially reasonable efforts to prevent transmission of any malicious software in accordance with Section 8.11 (Malicious Code); **(b)** Your use and disclosure of Your Data as contemplated in this EULA will comply with all applicable federal and state laws; **(c)** You own, otherwise control, or will, at Your own expense, obtain sufficient rights and all third-party consents or permissions to Your Data, Your Systems, Feedback, and other content and information You submit or otherwise make available under this EULA (collectively, the "**Content**"); **(d)** the Content is accurate and true; **(e)** access to, use of, or disclosure of the Content in accordance with this EULA is not infringing of any third-party Intellectual Property Rights and does not violate any obligations of confidentiality, privacy rights, publicity rights, or terms You may have agreed to with a third party; **(f)** that the Content is

not defamatory or otherwise trade libelous; and **(g)** You will ensure that each Authorized User complies with the applicable terms of this EULA and the Business Associate Addendum in such Authorized User's use of the Services and the Licensed Materials.

11.4. Performance by DentaMetrix. DentaMetrix represents and warrants to Entity that **(a)** DentaMetrix has the experience and capacity to perform the Services and the appropriate level of experience to perform such Services; and **(b)** the Services performed hereunder will be of professional quality and will be performed in a professional manner consistent with the level of care and skill exercised by other professionals in performing Services of a similar nature.

11.5. Warranty Limitations.

11.5.1. General Disclaimer. The warranties set forth in this Section 11 (*Representations and Warranties*) are the only warranties made by DentaMetrix. TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE LICENSE MATERIALS IS AT YOUR SOLE RISK, AND THE LICENSED MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 11, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DENTAMETRIX EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR THE LICENSED MATERIALS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, NON-INFRINGEMENT, NON-INTERFERENCE, AND WARRANTIES IMPLIED FROM A COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 11 AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DENTAMETRIX MAKES NO WARRANTY, REPRESENTATION, OR CONDITION THAT: **(a)** THE LICENSED MATERIALS WILL MEET YOUR REQUIREMENTS; **(b)** THE APPLICATION WILL BE UNINTERRUPTED, TIMELY, ERROR-FREE, OR SECURE (SUBJECT TO DENTAMETRIX'S MATERIAL COMPLIANCE WITH THE BUSINESS ASSOCIATE ADDENDUM); **(c)** THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE APPLICATION WILL BE ACCURATE OR RELIABLE; **(d)** ANY ERRORS IN THE LICENSED MATERIALS WILL BE CORRECTED; OR **(e)** THAT YOUR USE OF THE APPLICATION OR OTHER LICENSED MATERIALS WILL NOT RESULT IN THE LOSS OF, OR DAMAGE TO, YOUR INFORMATION OR YOUR SYSTEMS OR YOUR AUTHORIZED USERS' INFORMATION OR SYSTEMS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN (EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 11), OBTAINED BY YOU FROM DENTAMETRIX OR THROUGH OR FROM THE LICENSED MATERIALS WILL CREATE ANY WARRANTY OF ANY KIND. DENTAMETRIX IS NOT RESPONSIBLE FOR ANY LIABILITY OR DAMAGES ARISING FROM YOUR OR YOUR AUTHORIZED USERS UPLOADING ANY CONTENT IN VIOLATION OF ANY AGREEMENT, LAW, POLICY, OR ANY THIRD-PARTY RIGHTS AND, AS BETWEEN DENTAMETRIX AND YOU, YOU ARE SOLELY RESPONSIBLE FOR SUCH ACTIONS. YOU ACKNOWLEDGE THAT DENTAMETRIX'S OBLIGATIONS UNDER THIS EULA ARE FOR THE BENEFIT OF THE ENTITY THAT IS DENTAMETRIX'S CLIENT ONLY AND TO NO OTHER ENTITY OR INDIVIDUAL. DENTAMETRIX'S SERVICES MAY BE SUBJECT TO LIMITATION, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND DENTAMETRIX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING THEREFROM. DentaMetrix will not be liable for any defects, flaws, inefficiencies, malfunctions, or programming errors, in any third-party product or software. Termination of Your or an Authorized User's access or use will not waive or affect any other right or relief to which DentaMetrix may be entitled at law or in equity. DentaMetrix reserves the right to make Improvements to the Services at any time and without notice.

11.5.2. Patient Care. You agree that the Licensed Materials are not intended to provide diagnoses, practice guidelines, advice, or protocols for delivering medical care. You understand and agree that DentaMetrix is not a medical provider and does not make clinical, medical, or other decisions related to patient care. You will only look to Your Authorized Users and medical providers for medical advice and, as between You and DentaMetrix, You and Your Authorized Users are solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for Your patient's health care services resulting from, or in any way related to, the use of the Services or the Licensed Materials.

11.5.3. Reimbursement and Reporting. DentaMetrix disclaims any warranties or representations pertaining to the eligibility for, timing, and amount of reimbursement from any federal, state, or commercial payers that may result from Your use of the Licensed Materials. To the extent applicable in connection with the Services, You acknowledge and agree that You are solely responsible for refunding any overpayments and complying with any unclaimed property laws. You will be solely responsible for billing any claims with the appropriate payers, evaluating and understanding Your eligibility for quality and merit-based programs, and implementing all compliance reporting obligations in connection therewith, and DentaMetrix will have no obligation related thereto.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY.

12.1. Indemnification.

12.1.1. By DentaMetrix. DentaMetrix will defend, indemnify, and hold Entity and its directors, officers, employees, and agents (collectively, the "**Entity Indemnitees**") harmless from and against all damages, liabilities, losses, and related costs and expenses (including, without limitation, reasonable attorneys' fees) actually incurred (collectively, "**Losses**") for any action, claim, or demand by a third party alleging that Entity's authorized use of the Services or Licensed Materials (collectively, the "**Indemnified Items**") infringe that third-party's U.S. patent issued as of the first day of the Services term or infringe or misappropriate that third-party's copyright, trademark, or trade secret under applicable laws of any jurisdiction within the United States. Notwithstanding the foregoing or anything to the contrary in this EULA and subject to applicable law, DentaMetrix will have no indemnity, defense, or hold harmless obligations for any infringement claims arising from **(a)** use of the Indemnified Items in excess of the rights granted in this EULA or in violation of this EULA; **(b)** use of the Indemnified Items in combination with Third-Party Products not provided by DentaMetrix; **(c)** Entity's failure to implement an update or enhancement to the Indemnified Items; **(d)** modifications made by anyone other than DentaMetrix employees or compliance by DentaMetrix with Entity's or an Entity's Authorized User's specifications or instructions; or **(e)** an Entity Indemnity Responsibility. Further, notwithstanding anything to the contrary in this EULA and subject to applicable law, DentaMetrix will have no defense, indemnity, or hold harmless obligations for any infringement claim arising from settlements and their related Losses where an Entity Indemnitee settles an infringement claim without DentaMetrix's prior written consent. If the Indemnified Items, or any portion of them, become or in the reasonable opinion of DentaMetrix are likely to become the subject of an infringement claim, then DentaMetrix will, at its option and in its sole discretion, either **(i)** promptly replace or modify the Indemnified Items, to make them non-infringing, *provided* such replacement or modification maintains the same material functionality as reasonably determined by DentaMetrix; or **(ii)** promptly procure the right to continue using the Indemnified Items pursuant to this EULA. If neither of the alternatives set forth in this Section 12.1.1(i) and (ii) is available on terms which are reasonable in DentaMetrix's sole judgment, the Entity and DentaMetrix will reasonably cooperate to identify an alternate solution or, at either party's option, terminate the EULA in accordance with Section 7.2 (Termination) without any further opportunity to cure. Upon written request by DentaMetrix, Entity will and will ensure all of Entity's Authorized Users cease using any allegedly infringing Indemnified Items. This Section 12.1.1 states DentaMetrix's entire liability for any action, claim, or demand based upon or related to any alleged infringement of any Intellectual Property Rights, *provided that* Entity will be permitted to terminate this EULA for cause in accordance with Section 7.2 in the event of an infringement claim related to the Indemnified Items.

12.1.2. By Entity. Entity will defend, indemnify, and hold DentaMetrix and its directors, officers, employees, agents, affiliates, permitted assigns and successors in interest harmless from and against any Losses, for any action, claim, or demand by **(a)** a third party to the extent arising out of **(i)** a breach of Client's representations and warranties contained in Section 11 (Representations and Warranties) of this EULA; **(ii)** the Content; or **(iii)** Entity's or its Authorized Users' use of the Services or the Licensed Materials in breach of this EULA; or **(b)** any of Entity's Authorized Users, any of Entity's Personnel, or the individual end user contemplated in Section 3.16 (Definition of You) (circumstances under clauses (a) through (b), each, a "**Entity Indemnity Responsibility**").

12.2. Indemnification Process. Each Party's indemnification obligations hereunder are conditioned upon the indemnified party: **(a)** promptly notifying the indemnifying Party of any claim in writing, *provided that* failure to provide such notice will not diminish the indemnifying Party's indemnity obligations hereunder except and only to the extent that the indemnifying Party forfeits rights or defenses by reason of such failure; **(b)** reasonably cooperating with the indemnifying Party and its insurance carrier in the defense or settlement or both of the indemnifiable claim; and **(c)** granting the indemnifying Party sole control of the defense, management, and settlement of the claim and the right to make counterclaims pertaining to any such indemnifiable claim in the name and on behalf of the indemnified party. Any settlement by the indemnifying Party requiring the indemnified party to make any admission of liability will be subject to the indemnified party's written approval in its sole discretion. The indemnified party will have the right to participate in the defense of any indemnifiable claim with counsel selected by it, at its expense, subject to the indemnifying Party's right to control the defense thereof. In no event will either Party be liable to the other or to any third party for claims (whether direct or indirect) caused by or incurred as a result of the party's own negligence, acts or omissions or that of its employees or agents in connection with this EULA.

12.3. No Special Damages. EXCEPT IN THE EVENT OF YOUR MATERIAL BREACH OF SECTIONS 5.3 (ACCESS TO YOUR DATA) OR 8.4 (RESTRICTIONS), TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY (INCLUDING ANY AUTHORIZED USER), IN CONNECTION WITH, OR RELATED TO THIS EULA FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST BUSINESS OPPORTUNITY, OR LOSS OF GOODWILL, whether such liability is asserted on the basis of contract, warranty, tort (including negligence or strict liability), product liability, course of dealing, or otherwise, and regardless of whether or not such Party has been advised of the possibility of such damages or losses or such damages or losses were otherwise foreseeable, and notwithstanding any failure of essential purpose of any limited remedy.

12.4. Damages Cap. Subject to Section 12.3 (*No Special Damages*) and applicable law, and except for a material breach of Section 8.4 (*Restrictions*), notwithstanding anything in this EULA to the contrary DentaMetrix's total liability concerning performance or non-performance by DentaMetrix or in any way related to this EULA, and regardless of whether a claim is based in contract, equity, negligence, strict liability, tort, or any other theory will not exceed, in the aggregate, the sum of the Services fees paid by You to DentaMetrix under this EULA during the 12 consecutive months immediately preceding the event giving rise to such claim. The limitations in this Section 12.4 will apply notwithstanding any failure of essential purpose of any limited remedy. Nothing in this Section 12.4 will be interpreted to limit or cap the fees due to DentaMetrix in accordance with Section 6 (*Fees and Payment Terms*) or otherwise modify Your obligation to pay such fees.

12.5. Basis of the Bargain. You acknowledge and agree that DentaMetrix has set its prices and entered into this EULA in reliance upon the disclaimers, exclusions, and the limitations of liability set forth herein, that such disclaimers, exclusions, and limitation of liability reflect an allocation of risk between the Parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that such disclaimers, exclusions, and limitation of liability form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions, or limitations of liability, the provisions of this EULA, including, without limitation, the economic terms, would be substantially different.

13. GENERAL TERMS.

13.1. Dispute Resolution. In the event that a claim, controversy, or dispute relating to this EULA arises between the Parties, either Party will, by written notice, call a meeting regarding the dispute to be attended (in person or by phone) by executive officers of each Party, with authority to settle the dispute, who will attempt in good faith, to resolve the dispute. If the dispute cannot be resolved through good faith negotiations within 45 days from the initial meeting between the officers, then either Party may, pursue its remedies at law. Before any litigation may be commenced against either Party, a Party will provide 10 days' written notice of the alleged default and intent to file a lawsuit to the other Party. Notwithstanding the foregoing terms, the Parties agree that a Party may promptly file a claim in the event the statute of limitations is due to expire for a claim within the 45-day or 10-day period contemplated in this Section 13.1. All negotiations pursuant to this Section 13.1 will be confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence to the fullest extent permitted under such rules.

13.2. Equitable Relief. Notwithstanding Section 13.1 (*Dispute Resolution*), if Entity or DentaMetrix determines, in good faith, that a breach or threatened breach of the terms of this EULA by the other party would result in irreparable harm, such that a temporary restraining order or other form of injunctive relief is the only appropriate and adequate remedy, such party may proceed directly to court and may obtain such relief without bond (if permitted by law). Entity and DentaMetrix further agree that either party may proceed directly to court if the other party breaches or threatens to breach its obligations under Section 9 (*Confidentiality*) or the Business Associate Addendum, or Entity or an Entity Authorized User or Personnel breaches or threatens to breach its obligations under Section 8.4 (*Restrictions*).

13.3. Governing Law and Venue. The provisions and conditions of this EULA will be governed by and construed in accordance with the substantive laws of the State of Georgia, without regard to conflict of laws provisions. Further, the Parties consent to the exclusive jurisdiction and venue of the state and federal courts residing in Fulton County, Georgia for the resolution of any and all disputes arising under this EULA or in any manner related to the Services.

13.4. Relationship of Parties. The Parties are independent contractors, and nothing in this EULA will be deemed to place the Parties in the relationship of employer-employee, principal-agent, or partners or in a joint venture. Neither Party will have any authority to bind or make commitments on behalf of the other Party for any purpose, nor will any such Party hold itself out as having such authority.

13.5. Entire Agreement. This EULA and each of its attachments and exhibits, each incorporated herein by reference, constitutes the Parties' entire agreement and understanding relating to the subject matter hereof, and supersedes all prior or contemporaneous communications between the Parties, whether written and oral, with respect to the subject matter hereof. Any terms or conditions stated on Your orders, purchase orders, or other accounting statement, whether delivered by You prior to or subsequent to this EULA are hereby expressly rejected. DentaMetrix may amend or modify this EULA at any time by updating it on the DentaMetrix website and You agree that You indicate Your agreement to such changes by continuing to use the Licensed Materials, continuing to pay for the Services, or, as applicable, any of the methods described in Section 1(a) – (e). No amendment or modification unilaterally offered or proposed by You will be valid or binding on DentaMetrix unless such amendment or modification specifically refers to this EULA, is in writing, and is signed by an authorized representative of each of Entity and DentaMetrix.

13.6. Force Majeure. Except with respect to payment obligations hereunder, either Party will be excused from any delay or failure in performance hereunder caused by reason of any occurrence beyond its commercially reasonable control, including but not limited to, acts of God, earthquakes, governmental requirements, labor disputes and strikes, riots, war, or telecommunication interruptions. Except for payment obligations hereunder, the obligations and rights of the Party so

excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay as long as such delay remains beyond such Party's commercially reasonable control and provided such Party makes commercially reasonable efforts to keep the other Party informed of the status of the delay and to resume performance promptly.

13.7. Waiver. Failure of either Party to enforce any of its rights hereunder will not be deemed to constitute a waiver of its future enforcement of such rights or any other rights. No waiver of any provision of this EULA will be binding upon the Parties, unless evidenced by a writing duly signed by an authorized representative from each Party.

13.8. Severability. If any provision of this EULA is held to be illegal, invalid, or unenforceable in any respect by a court of competent jurisdiction, then the Parties will exercise commercially reasonable efforts and negotiate in good faith to substitute for such provision a legal, valid, and enforceable provision which obtains, to the fullest extent reasonably practicable, the same result as the provision declared illegal, invalid, or unenforceable. The provisions hereof are severable, and, if the Parties are unable to agree upon a substitute provision after attempting to do so as required under the preceding sentence, then the provision of this EULA that is held to be illegal, invalid, or unenforceable will be severed from this EULA, and, *provided that* the fundamental terms and conditions of this EULA (including, without limitation, Sections 6.2 (Invoicing), 8.4 (Restrictions), 12.3 (No Special Damages), and 12.4 (Damages Cap)) remain legal and effective, the remaining provisions of this EULA will remain in full force and effect.

13.9. Notices. Unless expressly permitted otherwise with respect to a particular notice requirement of this EULA, any required notices hereunder will be given in writing by certified mail, overnight express delivery service (such as Federal Express), or by priority mail by a recognized express mail vendor, at the headquarters address of each Party, to such contact address as indicated on a Party's website, or to such contact address as indicated in the Billing Portal. Notice will be deemed served when delivered or, if delivery is not accomplished by reason or some fault of the addressee, when tendered. For the avoidance of doubt, notice to the consulting firm or management company will be deemed served on the dental practice client when delivered to such consulting firm or management company or, if delivery is not accomplished by reason or some fault of such consulting firm or management company, when tendered.

13.10. Assignments. This EULA and the rights, interests, and obligations hereunder will be binding upon, inure to the benefit of and be enforceable against the Parties hereto and their respective successors and permitted assigns. You may not assign or otherwise transfer this EULA or its rights, interests, or obligations hereunder without DentaMetrix's prior written consent. All transfers of rights or duties herein in violation of this Section 13.10 will be void and unenforceable as a matter of law.

13.11. Publicity. Notwithstanding Section 8.7 (Trademarks) or Section 9 (Confidentiality), DentaMetrix may use Entity's Marks in press releases, the DentaMetrix website, general advertising materials, case studies, and other promotional materials, *provided that* DentaMetrix will include protective legends necessary to protect Entity's rights in and to its Marks. Any use other than as set forth in the immediately preceding sentence or Section 8.7 made by DentaMetrix will only occur upon the receipt of prior written approval from Entity.

13.12. Third-Party Beneficiaries. Nothing express or implied in this EULA is intended to confer, nor will anything herein confer, upon any person other than DentaMetrix, Entity, or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever, *provided that* DentaMetrix will be named a third-party beneficiary in any agreement between Entity and any Authorized User, where Entity grants such Authorized User the right to use or access the Licensed Materials or any components thereof.

13.13. Interpretation. Capitalized terms defined in the singular include the plural and vice versa. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this EULA unless otherwise noted. Reference to and the definition of any document will be deemed a reference to such document, including any schedules or exhibits thereto, as it may be amended, supplemented, revised, or modified. The Section headings appearing in this EULA are inserted for convenience only and in no way define, limit, construe, or describe the scope or extent of such Section or in any way affect such Section. Unless the context suggests otherwise, the words "include", "includes", and "including" mean include, includes, and including "without limitation".

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EXHIBIT A

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (this "**BAA**") is entered into by and between DentaMetrix, LLC ("**DentaMetrix**") and that certain Entity, which is a Business Associate or Covered Entity, to whom DentaMetrix is providing Services ("**Client**"), and is effective as of the "Effective Date", as such quoted term is defined in Section 7.1 (Agreement) of the body of the End User License Agreement. Client and DentaMetrix are referred to herein collectively, as the "**Parties**" and individually, each a "**Party**."

RECITALS

(A) DentaMetrix provides to Client certain dental software technology services as further described in the End User License Agreement ("**Services**"), and the Services may involve access, creation, Disclosure, maintenance, receipt, transmission, or Use of PHI by DentaMetrix.

(B) The Parties desire to ensure that their respective rights and responsibilities reflect applicable legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), as amended by the Health Information Technology for Economic and Clinical Health Act ("**HITECH**") provisions of the American Recovery and Reinvestment Act of 2009, and Title I of the Genetic Information Nondiscrimination Act of 2008, and any regulations promulgated thereunder, including the Privacy Rule, Security Rule, and Breach Notification Rule, as each may be amended from time to time (collectively, the "**HIPAA Rules**," together with HIPAA and HITECH, as the "**Privacy Laws**").

(C) To comply with the Privacy Laws, the Parties must enter into an agreement that governs the access, creation, Disclosure, maintenance, receipt, transmission, and Use of the PHI by DentaMetrix in the course of performing the Services in connection with the End User License Agreement.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA and the End User License Agreement, the Parties agree as follows:

1. DEFINITIONS.

1.1. General Statement. The following terms used in this BAA will have the same meaning as those terms in the HIPAA Rules: Administrative Safeguards, Availability, Breach, Business Associate, Confidentiality, Covered Entity, Data Aggregation, Designated Record Set, Disclosure, Electronic Protected Health Information ("**EPHI**"), Individual, Integrity, Limited Data Set, Marketing, Minimum Necessary, Notice of Privacy Practices, Physical Safeguards, Required by Law, Secretary, Security Incident, Subcontractor, Technical Safeguards, Unsecured Protected Health Information, Use, and Workforce. A change to the Privacy Laws that modifies any defined term referenced in this Section 1.1 or that alters the regulatory citation for the definition will be deemed incorporated into this BAA.

1.2. Breach Notification Rule means Part 2, Subtitle D of HITECH and Notification in the Case of Breach of Unsecured Protected Health Information at 45 CFR Part 164 Subpart D.

1.3. Privacy Rule means the standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and E of Part 164.

1.4. Protected Health Information or "**PHI**" has the meaning attributed to such term in the HIPAA Rules and is limited to the Protected Health Information created, maintained, received, or transmitted on behalf of, Client by DentaMetrix in performance of the Services, but only to the extent of DentaMetrix's capacity as a Business Associate of Client.

1.5. Security Rule means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Subparts A and C of Part 164.

2. STATUS OF THE PARTIES AND SCOPE. The Parties acknowledge and agree that Client is a Covered Entity or a Business Associate of Client's customers and that DentaMetrix is either a Business Associate or Subcontractor of Client. This BAA is an addendum to, and is hereby incorporated into, that certain End User License Agreement entered into between DentaMetrix and Client ("**EULA**"), but only to the extent of DentaMetrix's capacity as a Business Associate or Subcontractor, as applicable, of Client.

3. RIGHTS AND OBLIGATIONS OF DENTAMETRIX.

3.1. Data Use and Disclosure.

3.1.1. Limits on Use and Disclosure. DentaMetrix will not Use or Disclose PHI except as permitted or required by this BAA, the EULA, or as Required by Law. Further, DentaMetrix agrees, to the extent applicable in light of DentaMetrix's Services, to make Uses, Disclosures, and requests for PHI consistent with the Privacy Rule's Minimum Necessary requirements and, to the extent practicable and applicable in light of DentaMetrix's Services, the Limited Data Set

requirements set forth in HITECH § 13405(b). Except as otherwise provided in this BAA or by the Privacy Laws, DentaMetrix may:

(a) Use and Disclose the PHI in connection with performing the Services as specified in the EULA and to exercise its rights and perform its obligations under the EULA, *provided that* such Use and Disclosure would not violate the Privacy Laws if done by a Covered Entity;

(b) Use PHI for its own proper management and administration or to carry out its legal responsibilities; and

(c) Disclose PHI for the proper management and administration of DentaMetrix or to fulfill its legal responsibilities, *provided that* (i) the Disclosures are Required By Law; or (ii) DentaMetrix obtains reasonable assurances from the third party to whom the information is Disclosed that (1) such PHI will be held secure and confidential as provided pursuant to this BAA and will only be Used or further Disclosed for the purpose that it was Disclosed to such third party or as may otherwise be Required by Law, and (2) such third party agrees to notify DentaMetrix of any Breach involving Unsecured PHI or Security Incidents that result in a Use or Disclosure of EPHI, which become known to such third party.

3.1.2. Data Aggregation. Pursuant to the EULA, DentaMetrix may Use PHI in its possession to perform Data Aggregation services in accordance with 45 CFR § 164.504(e)(2)(i)(B).

3.1.3. De-Identification. Client agrees and understands that DentaMetrix desires to continually improve its Services and that these improvements are made for the benefit of Client and, if Client is a Business Associate, for the benefit of Client's Covered Entity customer. Accordingly, in addition to any other rights that may be granted in the EULA, DentaMetrix may de-identify PHI to deliver analytics and benchmark data and reports, for process and service improvement and management, product and service development, and other business purposes and may, from time to time, work with third parties that may assist DentaMetrix in such endeavors. DentaMetrix agrees that any PHI Used or Disclosed by DentaMetrix in connection with such endeavors will be in a de-identified form as set forth and prescribed in (a) the standards for statistical and scientific de-identification as set forth in 45 CFR § 164.514(b)(1), or (b) the safe harbor de-identification of patient information contained in 45 CFR § 164.514(b)(2) ((a) and (b) collectively as the "**De-Identified Data**"). DentaMetrix may use and disclose De-Identified Data for all business purposes except those prohibited by applicable law.

3.2. Appropriate Safeguards. DentaMetrix will use reasonable and appropriate Administrative Safeguards, Physical Safeguards, and Technical Safeguards pursuant to the HIPAA Rules to prevent the Use or Disclosure of PHI other than pursuant to the terms and conditions of the EULA, this BAA, or as Required by Law and to reasonably and appropriately protect the Confidentiality, Integrity, and Availability of PHI that DentaMetrix accesses, creates, maintains, receives, or transmits on behalf of Client.

3.3. Mitigation. DentaMetrix will mitigate, to the extent practicable, any harmful effect that is known to DentaMetrix resulting from a Use or Disclosure of PHI by DentaMetrix, its Workforce members, or its agents, including Subcontractors, if any, in violation of the requirements of this BAA. DentaMetrix will further take prompt action to mitigate, to the extent practicable, harmful effect of any Security Incidents or Breaches involving Unsecured PHI, provided that such harmful effects are known to DentaMetrix.

3.4. Reporting Improper Access, Use, or Disclosure.

3.4.1. Notification. DentaMetrix will notify Client in writing promptly after becoming aware of (a) any Use or Disclosure of PHI that is not authorized by this BAA or the EULA; (b) any Breach involving Unsecured PHI; or (c) any Security Incident that results in successful access to or a Use or Disclosure of EPHI in violation of this BAA or the EULA ((a), (b), and (c), each a "**Reported Incident**"). For the avoidance of doubt, unauthorized Use or Disclosure as contemplated in this Section 3.4.1(a) does not include a Security Incident, which will in all circumstances be handled in accordance with this Section 3.4.1(c) or Section 3.4.2 (Unsuccessful Security Incidents), as applicable. With respect to any Reported Incident, DentaMetrix will provide to Client all information that is necessary for Client to comply with Client's obligations under the Breach Notification Rule to the extent such information is available to and known by DentaMetrix.

3.4.2. Unsuccessful Security Incidents. For Security Incidents that do not result in successful access to or a Use or Disclosure of EPHI in violation of this BAA or the EULA, this Section 3.4.2 will be deemed as notice to Client that DentaMetrix periodically receives unsuccessful attempts for unauthorized access, destruction, Disclosure, modification, or Use of information or interference with the general operation of DentaMetrix's information systems and the Services, including pings and other broadcast attacks on DentaMetrix's firewall, port scans, unsuccessful log-on attempts, malware (such as a worm or a virus), and denial-of-service attacks, and, even if such events are defined as a Security Incident under the HIPAA Rules, DentaMetrix will not provide any further notice regarding such unsuccessful attempts.

3.5. Subcontractors and Agents. DentaMetrix will ensure that any agent, including a Subcontractor, that accesses, creates, maintains, receives, or transmits PHI on behalf of DentaMetrix agrees in writing to substantially similar (but in no event more permissive) restrictions, conditions, and requirements that apply through this BAA to DentaMetrix with respect to such PHI.

3.6. Prohibition on Marketing Communications Using PHI. DentaMetrix will not engage in Marketing communications Using or Disclosing any PHI of an Individual, unless otherwise contemplated in the EULA and (a) Client or Client's Covered Entity customer, as applicable, has obtained from the Individual a valid authorization in accordance with 45 CFR § 164.508(3); or (b) such Marketing communications are permitted by the Privacy Laws.

3.7. Prohibition on Sale of PHI. DentaMetrix will not sell or otherwise directly or indirectly receive remuneration in exchange for any PHI of an Individual, unless otherwise contemplated in the EULA and (a) Client or Client's Covered Entity customer, as applicable, has obtained from the Individual a valid authorization in accordance with 45 CFR § 164.508(4); or (b) receipt of such remuneration is permitted by the Privacy Laws.

3.8. Government Audits. To the extent required by law, and subject to applicable attorney-client privileges, DentaMetrix will make its internal practices, books, and records, including policies and procedures, relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Client's compliance with the Privacy Laws.

3.9. Privacy Rule Compliance. To the extent that DentaMetrix's Services expressly include DentaMetrix carrying out one or more of Client's or Client's Covered Entity customer's obligations under the Privacy Rule, then DentaMetrix agrees to comply with the requirements of the Privacy Rule that apply to Client or the Covered Entity, as applicable, in the performance of such obligation(s).

4. INDIVIDUAL RIGHTS. DentaMetrix will promptly make any PHI maintained in a Designated Record Set by DentaMetrix in connection with providing the Services available to Client, so that Client may satisfy Client's obligations regarding an Individual's right of access, amendment, and accounting under 45 CFR §§ 164.524, 164.526, and 164.528, respectively. In the event DentaMetrix receives such a request directly from an Individual, DentaMetrix will forward such request to Client as soon as reasonably practicable and, as between DentaMetrix and Client, Client is solely responsible for deciding on and responding to such Individual, as may be required by the Privacy Laws. If applicable, in the event DentaMetrix receives such a request directly from Client's Covered Entity customer, DentaMetrix may, at its option or as otherwise appropriate in light of the Services, either respond to such customer or forward the request to Client for Client to respond to such customer as may be required by the Privacy Laws. Further, Client is responsible for managing its use of the Services to appropriately respond to such requests from Individuals and Client's customers, as applicable. To the extent applicable in light of the Services, DentaMetrix will comply with any restrictions on Disclosure of PHI requested by an Individual and agreed to by Client in accordance with 45 CFR § 164.522 and HITECH § 13405(a), *provided that* such information is Disclosed to DentaMetrix by Client.

5. OBLIGATIONS OF CLIENT.

5.1. Restrictions. Client will notify DentaMetrix of any restriction to the Use or Disclosure of PHI that Client has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a), to the extent that such restriction may affect DentaMetrix. Client will notify DentaMetrix of any changes in, or revocation of, permission by an Individual to the Use or Disclosure of such Individual's PHI, if such changes affect DentaMetrix's permitted or required Uses or Disclosures.

5.2. Notice of Privacy Practices. Client will notify DentaMetrix, in writing, of any limitation(s) in the Client's or Client's Covered Entity customer's, as applicable, Notice of Privacy Practices, to the extent that such limitation may affect DentaMetrix.

5.3. Compliance with Laws. Client will not request DentaMetrix to Use or Disclose PHI in any manner that would not be permissible under the Privacy Laws if done by Client or Client's Covered Entity customers.

5.4. Security Obligations. Client agrees and understands that the security of PHI requires the reasonable cooperation of both Parties. Accordingly, Client will use commercially reasonable efforts to secure the Client-side environment, by, for example, training Workforce members, securing and using strong passwords, using secure connections, and other similar Client-side Administrative Safeguards, Physical Safeguards, and Technical Safeguards.

5.5. End Users. Client agrees and understands that Client and not DentaMetrix, is responsible for managing whether Client's end users, including, as applicable, its providers, office staff, agents, and other Workforce members, are authorized to access, create, Disclose, or Use PHI and DentaMetrix will have no obligations relating thereto.

6. TERM AND TERMINATION.

6.1. Term. The term of this BAA will begin on the "Effective Date", as such quoted term is defined in Section 7.1 (Agreement) of the body of the EULA, and will remain effective until terminated as provided in Section 6.2 (Termination).

6.2. Termination. A Party may terminate this BAA in the event the other Party materially breaches this BAA and fails to cure, or fails to commence and continuously maintain substantial efforts to cure, as reasonably determined by the Party that first provided notice, such breach within 30 calendar days after receipt of written notice describing the material breach. The termination will be effective on the 31st day after receipt of the written termination notice unless otherwise withdrawn

by the Party that first provided notice. The termination will be effective immediately upon written notice in the event the Party providing notice reasonably believes that cure of the material breach is not feasible. A Party's option to have cured a material breach of this BAA will not be construed as a waiver of any other rights such Party has under the EULA, this BAA, by operation of law, or in equity. If the EULA is terminated for any reason, this BAA will also terminate.

6.3. Effect of Termination. Upon the termination of this BAA for any reason, DentaMetrix will and will cause its agents and Subcontractors to return to Client, or, at DentaMetrix's reasonable discretion, destroy, all PHI received from Client that DentaMetrix, its agents, or Subcontractors, maintain in paper or electronic form, recorded on any medium, or stored in any storage system. If return or destruction is not feasible, as reasonably determined by DentaMetrix, then DentaMetrix will retain the PHI, subject to all of the protections of this BAA, and will make no further Use or Disclosure of such PHI. DentaMetrix will remain bound by the provisions of this BAA, even after termination, until such time as all of the PHI has been returned or otherwise destroyed as provided in this Section 6.3. DentaMetrix will not retain any copies of PHI, except as permitted in this Section 6.3, permitted by the EULA, Required by Law, as may reasonably be necessary to comply with business recordkeeping requirements, or otherwise agreed to by the Parties in writing. Further, Client agrees and understands that the return of PHI stored in backup media is not feasible and that such PHI will be destroyed in the normal course of DentaMetrix's data management activities. For the avoidance of doubt, DentaMetrix will be under no obligation to return or destroy the De-Identified Data. Termination of this BAA will not relieve Client of any monetary obligations set forth in the EULA. Each Party may seek all remedies at law or in equity, including but not limited to injunctive relief.

7. GENERAL TERMS.

7.1. Relationship to EULA. Any ambiguity in this BAA will be resolved to permit the Parties to comply with the Privacy Laws. If any express term of this BAA conflicts with the EULA, then this BAA, if applicable, will control as to that term, but only to the extent of an express ambiguity. The EULA will control in all other instances, including, without limitation, remedies, limitation of liability, limitation of remedies, warranties, disclaimer of warranties, governing law, venue, assignment, and injunctive relief.

7.2. Regulatory References. A reference in this BAA to a section of the Privacy Laws means the section or regulation in effect or as amended, and for which compliance is required.

7.3. Waiver. No delay or failure of either Party to exercise any right or remedy available hereunder, at law or in equity, will act as a waiver of such right or remedy, and any waiver will not waive any subsequent right, obligation, or default.

7.4. Severability. If any provision of this BAA is held to be illegal, invalid, or unenforceable in any respect by a court of competent jurisdiction, then the Parties will exercise commercially reasonable efforts and negotiate in good faith to substitute for such provision a legal, valid, and enforceable provision which obtains, to the fullest extent reasonably practicable, the same result as the provision declared illegal, invalid, or unenforceable. The provisions hereof are severable, and, if the Parties are unable to agree upon a substitute provision after attempting to do so as required under the preceding sentence, then the provision of this BAA that is held to be illegal, invalid, or unenforceable will be severed from this BAA, and the remaining provisions of this BAA will remain in full force and effect.

7.5. Survival. The rights and obligations contained in Sections 3.3 (Mitigation), 3.4 (Reporting Improper Access, Use, or Disclosure), 3.8 (Government Audits), 4 (Individual Rights), with respect to an Individual's request for an accounting of disclosures), 6.3 (Effect of Termination), and 7 (General Terms) will survive the termination of this BAA.

7.6. No Third-Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor will anything herein confer upon any person, other than Client, DentaMetrix and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. This BAA is binding upon the Parties and their respective heirs, successors, and permitted assigns.

7.7. No Agency Relationship. It is not intended that an agency relationship (as defined under the Federal common law of agency) be established hereby expressly or by implication between Client and DentaMetrix under any of the Privacy Laws. No terms or conditions contained in this BAA will be construed to make or render DentaMetrix an agent of Client.

7.8. Interpretation. This BAA includes the same pronoun in other genders and numbers, and each noun includes the same noun in other numbers. The section headings appearing in this BAA are inserted for convenience only and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect such section.

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