

## AlignerInsider Orthodontics

Welcome to Barry J. Glaser, DMD, PC, doing business as AlignerInsider Orthodontics. We look forward to being of service and assisting you to better treat your patients.

The following agreement governs your relationship with AlignerInsider Orthodontics and use of AlignerInsider Orthodontics. By choosing to utilize the services of AlignerInsider Orthodontics and using this website, you agree to the following terms and conditions:

The information and services provided by AlignerInsider Orthodontics is not intended, nor shall it be construed, as medical or dental advice. The advice that you receive is intended only to assist you, the licensed dental practitioner, to create a better diagnosis and treatment plan for your patient. Any advice received from AlignerInsider Orthodontics is not meant to, nor shall it, create a doctor-patient relationship between AlignerInsider Orthodontics and your patient or a professional relationship between you and AlignerInsider Orthodontics.

AlignerInsider Orthodontics may require access to your computer files and data, which contain protected health information. You agree to permit such access under the terms of the attached Business Associates Agreement. The Business Associates Agreement shall be incorporated by reference into this document. AlignerInsider Orthodontics shall exercise reasonable care when accessing your files. AlignerInsider Orthodontics shall use reasonable efforts to ensure HIPAA compliance in the transmission of any data sent by AlignerInsider Orthodontics and shall use reasonable care to ensure that electronic correspondence shall be free from malicious content. You agree to transmit all data in a HIPAA-compliant manner and use reasonable care to ensure that any electronic correspondence sent by you is free from malicious content. Each party to this agreement shall indemnify the other for any breach related to a party's transmission of protected health information.

This Agreement is "at-will" and may be terminated by either party at any time. Upon termination, you are responsible for any balance due AlignerInsider Orthodontics and agree to pay any balance due within thirty days of the receipt of any statement from AlignerInsider Orthodontics. A late charge of 1.5% per month will be assessed on accounts thirty days or more in arrears. You agree to pay the reasonable costs of collection, including attorney's fees, expended by AlignerInsider Orthodontics, to collect a delinquent account.

The contents of this website and any advice given by AlignerInsider Orthodontics is solely the property of AlignerInsider Orthodontics and shall not be disseminated or reproduced in any manner without the express written consent of AlignerInsider Orthodontics.

You agree that the laws of the State of New York govern this Agreement and any claim or dispute shall be venued in the Westchester County, New York.

**BY AGREEING TO THESE TERMS OF USE, YOU ARE: (1) WAIVING CLAIMS THAT YOU MIGHT OTHERWISE HAVE AGAINST US BASED ON THE LAWS OF OTHER JURISDICTIONS, INCLUDING YOUR OWN; (2) IRREVOCABLY CONSENTING TO THE**

EXCLUSIVE JURISDICTION OF, AND VENUE IN, STATE OR FEDERAL COURTS IN THE STATE OF NEW YORK OVER ANY DISPUTES OR CLAIMS YOU HAVE WITH US; AND (3) SUBMITTING YOURSELF TO THE PERSONAL JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK FOR THE PURPOSE OF RESOLVING ANY SUCH DISPUTES OR CLAIMS.

ENTIRE AGREEMENT. This Agreement and any supplemental terms constitute the entire agreement between you and us concerning the subject matter of this Agreement, which may only be modified by us.

By checking this box I acknowledge that I have read the entire agreement and agree with its terms and conditions.

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## BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is made and entered into by and between Client (“Covered Entity”), and Barry J. Glaser, DMD, PC, dba AlignerInsider Orthodontics (“Business Associate” and, collectively with Covered Entity, the “Parties”).

### RECITALS:

**A.** Concurrently with the execution of this Agreement, the Parties are entering into a Consulting Agreement (the “Service Agreement”) under which Business Associate will regularly use and/or disclose Protected Health Information (sometimes referred to as “PHI”) in its performance of the Services described below.

**B.** Both Parties are committed to complying with the Health Insurance Portability & Accountability Act of 1996 (“HIPAA”) and the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”) and the regulations promulgated under those laws, including, without limitation, the standards for privacy of individually identifiable health information (the “Privacy Rule”), the standards for the security of electronic protected health information (the “Security Rule”), the breach notification provisions (“Breach Notification Rule”) and the enforcement and penalties provisions (“Enforcement Rule”) (the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule, as amended from time to time are collectively referred to hereinafter as the “Regulations”).

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, the Parties agree and covenant to abide by the terms hereof regarding the handling of PHI during the term of the Service Agreement and after its termination, as follows:

### ARTICLE I Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Regulations and ARRA, except that the term “Protected Health Information” and “Electronic Protected Health Information” shall have the same meaning as set forth in 45 C.F.R. § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity in connection with the Service Agreement.

**ARTICLE II**  
**Services**

Pursuant to the Service Agreement, Business Associate provides Invisalign consulting services (“Services”) for Covered Entity that may involve the use and disclosure of PHI. Business Associate agrees to only use and disclose PHI as authorized by this Agreement.

**ARTICLE III**  
**Privacy of Protected Health Information**

**3.1 Permitted Uses and Disclosures of PHI by Business Associate.** Business Associate may use or disclose PHI received from Covered Entity for the purpose of providing Services to Covered Entity; (b) as directed by Covered Entity; (c) as otherwise permitted by this Agreement; or (d) as required by law. All other uses or disclosures not authorized by this Agreement are prohibited.

**3.2 Responsibilities of Business Associate.** Regarding the use or disclosure of PHI, Business Associate hereby agrees to perform the following:

(a) Only use or further disclose PHI as allowed under this Agreement or as required by law.

(b) Only use or further disclose PHI in a manner that would not violate the Regulations if done so by Covered Entity.

(c) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for by this Agreement.

(d) Business Associate agrees to report to Covered Entity: (i) any Security Incident; and (ii) any access to, or use or disclosure of PHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required under 45 C.F.R. § 164.410. Business Associate further agrees to notify Covered Entity in writing of any potential breach of unsecured PHI within five (5) days of the date of discovery by Business Associate. The notice shall include at a minimum the identification of each individual whose PHI was, or is reasonably believed to have been, accessed, acquired or disclosed in connection with the event giving rise to Business Associate’s obligation to notify Covered Entity under this Section 3.2(d).

(e) Ensure that Business Associate’s subcontractors or agents that create, receive, maintain, or transmit PHI, on behalf of Business Associate, agree to (i) the same restrictions and conditions that apply to Business Associate with respect to such PHI; and (ii) to the implementation of reasonable and appropriate privacy, security safeguards and breach notification provisions to protect PHI (including but not limited to electronic PHI).

(f) Make Business Associate’s records, books, agreements and policies, and procedures relating to the use and disclosure of PHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, and relating to the security safeguards under Section 3.2(c), available to the Secretary for purposes of determining Covered Entity’s or Business Associate’s compliance with the Regulations.

(g) Use or disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder, in compliance with the minimum necessary provisions of HIPAA and ARRA.

(h) Business Associate shall document all disclosures of PHI and information related to such disclosures as necessary in order that it may provide an accounting of such disclosures as required under 45 C.F.R. § 164.528 of the Regulations. As directed by Covered Entity, Business Associate shall either:

A. Provide an accounting as required under HIPAA to those patients who direct their requests to Business Associate, in the time and manner designated by Covered Entity for responding to such requests; or

B. Provide the accounting information required under HIPAA to Covered Entity, if so requested by Covered Entity, in the time and manner designated by Covered Entity, such that Covered Entity may fulfill its obligations under 45 C.F.R. § 164.528 of the Regulations.

(i) At the request of, and in the time and manner designated by Covered Entity, provide access to the PHI maintained by Business Associate to Covered Entity or individual if Business Associate maintains a Designated Record Set on behalf of Covered Entity, in order to allow Covered Entity to meet the requirements of 45 CFR § 164.524 of the Regulations.

(j) At the request of, and in the time and manner designated by Covered Entity, make any amendment(s) to PHI when directed by Covered Entity if Business Associate maintains a Designated Record Set on behalf of Covered Entity, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526.

**3.3 Compliance with Covered Entity's Policies.** Business Associate hereby agrees to abide by Covered Entity's policies and procedures relating to the confidentiality, privacy and security of PHI as Business Associate becomes aware of such policies and procedures.

**3.4 Use of PHI for Management and Administration or Legal Responsibilities of Business Associate.** Business Associate may use or disclose PHI received by Covered Entity pursuant to this Agreement: (i) for the proper management and administration of Business Associate; or (ii) to carry out the legal responsibilities of Business Associate. However, Business Associate may only disclose PHI for the aforementioned uses if (x) the disclosure is required by law; or (y) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances in which the person is aware of a confidentiality breach of PHI.

**3.5 Data Aggregation Services.** With respect to PHI created, received, maintained, or transmitted by Business Associate in its capacity as a business associate of Covered Entity, Business Associate may combine such PHI it has received from Covered Entity with the PHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities, if data analyses is part of the Services that Business Associate is to provide under the Service Agreement.

## **ARTICLE IV** **Confidentiality**

In the course of performing under this Agreement, each Party may receive, be exposed to or acquire the confidential information including, but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential (“Confidential Information”) of the other Party. For purposes of this Agreement, Confidential Information shall not include PHI, the security and privacy of which is the subject of this Agreement in Article III. The Parties, including their employees, agents, or representatives, shall (i) not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents and representatives of their obligations to keep such Confidential Information confidential. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party; (b) which is later publicly released by either Party in writing; (c) which is lawfully obtained from third parties without restriction; or (d) which can be shown to be previously known or developed by either Party independently of the other Party.

## **ARTICLE V** **Termination**

**5.1 Automatic Termination.** This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Service Agreement.

**5.2 Duties of Business Associate Upon Termination.** When the Service Agreement and this Agreement are terminated, the PHI that Business Associate received from or created or received on behalf of Covered Entity must be destroyed or returned to Covered Entity, including all PHI in the possession of Business Associate’s subcontractors or agents; provided, however, if Covered Entity determines that returning or destroying PHI is not feasible, Business Associate must maintain the privacy protections under this Agreement and according to applicable law for as long as Business Associate retains the PHI, and Business Associate may only use or disclose the PHI for the specific uses or disclosures that make it necessary for Business Associate to retain the PHI.

## **ARTICLE VI** **Miscellaneous**

**6.1 Agreement Subject to All Applicable Laws.** The Parties recognize and agree that this Agreement and their activities are governed by federal, state, and local laws, including the Social Security Act; regulations, rules, and policies of the U.S. Department of Health and Human Services; various state laws, among others, and including but not limited to HIPAA and the accompanying Regulations.

**6.2 No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**6.3 Survival.** The rights and obligations of the Parties in Article IV and Section 5.2 shall survive termination of this Agreement indefinitely.

**6.4 Interpretation.** The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with ARRA, HIPAA and the Regulations. This

Agreement shall be deemed to have been prepared jointly by the parties hereto. Any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements. Each party has had the opportunity for independent review by legal and other counsel, and all terms and conditions contained herein have been arrived at by arm's length negotiations.

**6.5 Amendment.** This Agreement may be revoked, amended, changed or modified only by a written amendment executed by both Parties. The Parties acknowledge that state and federal laws relating to data and PHI security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. Except as otherwise limited in this Agreement, the Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of ARRA, HIPAA and the Regulations.

**6.6 Execution/Authority.** The parties to this Agreement represent and warrant that they possesses all necessary capacity and authority to act for, sign, and bind the respective Party on whose behalf he or she is signing.

**6.7 Governing Law.** This Agreement shall be construed and all of the rights, powers and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of New York; provided, however, that the conflicts of law principles of the State of New York shall not apply to the extent that they would operate to apply the laws of another state.

**6.8 Notice.** Except as expressly set forth to the contrary in this Agreement, all notices, approvals or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid and registered or certified, with return receipt requested, or by delivering that writing to the recipient in person or by courier; and a notice, request or consent given under this Agreement is effective on receipt by the person to receive it. All notices, approvals and consents must be given to the Parties at the addresses set forth in the Services Agreement.

**6.9 Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. It is further the intention of the Parties that if any provisions of this Agreement are capable of two constructions, one of which would render the provision void and the other one which would render the provision valid, then the provision shall have the meaning which renders it valid.

**6.10 Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto, their respective successors and permitted assigns.

**6.11 Venue: Waiver of Trial by Jury.** Subject to Section 6.15, any action or proceeding seeking to enforce any provision, or based on any right arising out of this Agreement, shall be brought against any of the Parties in the state or federal courts located in the State of New York, Westchester County and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere, **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT**

OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT OR DEALINGS, STATEMENTS OR ACTIONS OF ANY PARTY IN CONNECTION THEREWITH.

**6.12 Waiver of Breach.** No failure by a Party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. Any Party may waive compliance by the other Party with any of the provisions of this Agreement if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.

**6.13 Entire Agreement.** The Service Agreement, this Agreement and any addendums or attachments thereto shall constitute the entire understanding between the Parties as to the rights, obligations, duties and services to be performed thereunder.

**6.14 Counterparts.** This Agreement may be executed in multiple, identical counterparts which, when taken together, shall constitute one instrument. The Parties may deliver executed counterpart signature pages to this Agreement by facsimile transmission, by electronic mail in .pdf form, or by “checking the box” on this website, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, and such delivery shall have the same effect as physical delivery of the paper document bearing an original signature. This Agreement shall be effective upon execution by all Parties hereto.

**6.15 Limitation on Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE DISCLAIMERS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

By checking this box I acknowledge that I have read the entire agreement and agree with its terms and conditions.