

SURGICAL GUIDE AGREEMENT

THIS SURGICAL GUIDE AGREEMENT (this “Agreement”), is dated and effective as of ____, 2018 (“Effective Date”), is made and entered into by and between PETERSON DENTAL LABORATORY INC., a Florida corporation (“PDL”), and _____, a Florida _____ (“Customer”), each a “Party”, and collectively, the “Parties”.

BACKGROUND INFORMATION

PDL is a dental laboratory licensed by the State of Florida. PDL manufactures surgical guides for a variety of dental and oral surgeries (each, a “Guide”). To aid in PDL’s Customers use of each Guide, PDL also provides a Plan specific to each Guide (each, a “Plan”). Customer desires to engage PDL to supply Customer with Guides and Plans, and PDL has agreed to supply Customer with Guides and Plans on the terms and conditions contained in this Agreement.

SECTION 1. INCORPORATION OF BACKGROUND INFORMATION.

Both PDL and Customer agree that the facts set forth in the Background Information above are true and correct.

SECTION 2. PROCESS.

(a) Scan. For each patient, Customer will take a computed tomography (CT) scan or magnetic resonance image (MRI) to produce Digital Imaging and Communications in Medicine Data (“DICOM Data”). Customer will provide PDL with the DICOM Data. PDL may recommend that Customer uses a particular appliance be placed in the patient’s mouth while the CT or MRI is taken (a “Scan Appliance”) to ensure accurate DICOM Data and Guides.

(b) Virtual Surgery. PDL will use DICOM Data to prepare and deliver to Customer a preliminary virtual surgery (a “Virtual Surgery”) unique to such patient. The Customer may review and request modifications to the Virtual Surgery using a technology platform approved by PDL. The Customer may approve a Virtual Surgery by submitting to PDL the Work Authorization Form attached hereto as Exhibit A and incorporated herein (the “Work Authorization Form”).

(c) Guide and Plan. Upon PDL’s receipt of such Work Authorization Form, PDL shall manufacture the requested Guide and accompanying Plan and deliver such Guide and Plan to Customer.

(d) Billing and Collections. PDL shall invoice Customer for each Virtual Surgery, Guide and/or Plan upon delivery of same. Customer shall remit payment to PDL within thirty (30) days after Customer’s receipt of any Virtual Surgery, Guide and/or Plan.

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SECTION 3. CUSTOMER'S OBLIGATIONS.

(a) Responsibilities. Customer understands and acknowledges that it is Customer's sole responsibility to (i) review and request modifications to any Virtual Surgery prior to approving such Virtual Surgery by submitting the Work Authorization Form for each and any patient; and (ii) inspect and approve the Guide and Plan prior to use in any patient.

(b) Representations. Customer represents and warrants to PDL as follows:

(i) If Customer is the end user dentist, Customer is a licensed dentist qualified to order DICOM Data and review it for accuracy; to review and approve the Plan; and to perform the dental procedures outlined in the Plan and/or to use the Guide.

If Customer is not an end user dentist, Customer is qualified to order DICOM Data, Guide and Plan and review and approve them for accuracy; and that the end user dentist is a licensed dentist qualified to review and approve the Guide and/or Plan and to perform the dental procedures outlined in the Plan and/or to use the Guide. Customer represents that any Plan or Guide ordered or used was done so at the end user dentist's sole request and specifications.

(ii) Customer shall at all time retain the full and final responsibility to exercise independent professional judgment concerning all risk assessment factors related to each patient's case and to verify the suitability of any dental implant patient and location for a patient.

(b) Complaints. Customer shall provide PDL with written notification of any complaint or adverse claim related to a Guide within three (3) working days of Customer's receipt thereof. Each Party agrees to provide reasonable assistance and cooperation to the other Party in the investigation and resolution of any such complaint or claim.

SECTION 4. COMPLIANCE WITH LAWS.

(a) General Compliance. Each Party shall also at all times comply with all present and future laws, as amended from time to time, including, without limitation, any rules, orders, ordinances, regulations, statutes, requirements, codes, executive orders, binding restrictions, rules of common law, and any judicial interpretations thereof, extraordinary as well as ordinary, of all Governmental Authorities, and all rules, regulations, and government orders with respect thereto ("Laws") and to follow all generally accepted industry standards, and other regulatory agencies, applicable to the sale and distribution of Guides and/or Plans and to the operation of each such Party's business dealings under this Agreement, including without limitation federal, state and local anti-dumping and consumer protection laws. Each Party shall procure all permits, licenses and insurance (including, without limitation, workers' compensation or similar coverage) necessary or required by any governmental authority to perform its obligations under this Agreement.

(b) Regulatory Assistance and Inquiry. Each Party agrees to cooperate, as reasonably requested by the other Party, to assist in obtaining all necessary regulatory approvals to the extent such assistance of the other Party is necessary. The Party requesting assistance shall bear the reasonable cost of the complying Party's cooperation. Each party shall promptly and

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in any event within fifteen (15) days after receipt of any notice of inquiry from any local, state, national or international regulatory agency or government department, inform the other in writing of such formal or informal inquiry.

SECTION 5. WARRANTIES AND COVENANTS.

(a) Disclaimer of Warranties. PDL HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESSED OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE PLAN AND/OR GUIDE, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF MATERIALS IN THE GUIDE OR WORKMANSHIP IN THE GUIDE, PDL'S TITLE TO THE PLAN AND/OR GUIDE NOR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER.

Limitation of Liability. CUSTOMER AGREES AND UNDERSTANDS: THAT NEITHER PDL NOR ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS OR EMPLOYEES (COLLECTIVELY, "REPRESENTATIVES") IS AN INSURER; THAT CUSTOMER CURRENTLY HAS AND SHALL ALWAYS MAINTAIN INSURANCE COVERING CUSTOMER FOR USE OF THE GUIDE AND PLAN; THAT RECOVERY FOR ALL SUCH LOSS, DAMAGE AND EXPENSE SHALL BE LIMITED TO ANY SUCH INSURANCE COVERAGE ONLY; AND THAT PDL AND REPRESENTATIVES ARE RELEASED FROM ALL LIABILITY, INCLUDING CONSEQUENTIAL AND INCIDENTAL DAMAGES, DUE TO ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR DEGREE, BREACH OF CONTRACT, EXPRESS OR IMPLIED, BREACH OF WARRANTY, EXPRESS OR IMPLIED, OR BY LOSS OR DAMAGE RESULTING FROM THE GUIDE AND/OR THE PLAN. THAT SHOULD THERE ARISE ANY LIABILITY ON THE PART OF PDL OR REPRESENTATIVE OF PDL FOR ANY LOSS, DAMAGE OR EXPENSE DUE TO ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR DEGREE WHICH OCCURS BEFORE OR AFTER THE SIGNING OF THIS AGREEMENT, PRODUCT OR STRICT LIABILITY, BREACH OF WARRANTY, EXPRESS OR IMPLIED, BREACH OF CONTRACT, EXPRESS OR IMPLIED, OR FOR CONTRIBUTION OR INDEMNIFICATION, SUCH LIABILITY SHALL BE LIMITED TO THE MAXIMUM SUM OF FOUR HUNDRED DOLLARS (\$400.00) COLLECTIVELY FOR PDL AND REPRESENTATIVES, AND THIS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY REGARDLESS OF WHAT LEGAL AUTHORITY IS USED TO DETERMINE THAT PDL WAS LIABLE FOR THE INJURY OR LOSS. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR THE LIMITATION OF LIABILITY, DISCLAIMER OR WARRANTIES OR EXCLUSION OF DAMAGES, IS ATTENDED BY THE PARTIES TO BE SEVERABLE FROM ANY OTHER PROVISION AND IS A SEVERABLE AND INDEPENDENT ELEMENT OF RISK ALLOCATION AND IS INTENDED TO BE ENFORCED AS SUCH.

(b) Inaccurate or Defective Products. Customer agrees and understands that PDL shall not be liable to Customer or Customer's patients in the event that a Guide or Plan is inaccurate or defective based on erroneous DICOM Data, a defective Scan Appliance, or Customer error. Customer agrees to indemnify and hold PDL and its Representatives harmless from any and all claims, demands, actions, damages, costs, and expenses, including reasonable attorneys' fees, brought or incurred by a third party to the extent caused by erroneous DICOM Data, a defective Scan Appliance, or Customer error, or any event reasonably related to the foregoing.

(e) Essential Part of Bargain. The Parties acknowledge that the disclaimers and

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limitations set forth in this Section 5 are an essential element of this Agreement between the Parties and that the Parties would not have entered into this Agreement without such disclaimers and limitations.

SECTION 6. MISCELLANEOUS.

(a) Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to be in default under, or in breach of any provision of, this Agreement for failure or delay in fulfilling or performing any obligation of this Agreement, other than the obligation to make money payments, when such failure or delay is due to a Force Majeure Event, and without the fault or negligence of the Party so failing or delaying. For purposes of this Agreement, "Force Majeure Event" shall mean any event beyond the reasonable control of the Party affected by such circumstance, including, but not limited to, an act of God, delay or loss in transportation, fire, flood, hurricane, earthquake, storm, war, terrorism, riot, revolt, act of public enemy, embargo, explosion, civil commotion, strike, labor dispute, loss or shortage of power, shortage in supply of raw materials, or any adverse determination with respect to any law, rule, regulation, or order, or any other action by any third party, public authority, or regulatory body that prohibits or materially impairs either Party from performing its obligations under this Agreement. The Party whose performance is affected by a Force Majeure Event (the "Affected Party") shall give prompt notice to the other Party stating the details and expected duration of the event. Once said notice is given, the Parties shall keep each other apprised of the situation until the Force Majeure Event terminates or this Agreement is terminated, whichever occurs first. If the performance of the Affected Party does not resume within thirty (30) days of the occurrence of a Force Majeure Event, the other Party shall have the right to terminate this Agreement without penalty. Each Party has full management discretion in dealing with its own labor issues.

(b) Entire Agreement. This Agreement, along with any exhibits and attachments hereto, is the sole and entire Agreement between the Parties relating to the subject matter hereof, and supersedes all prior understandings, agreements, and documentation relating to such subject matter. Any modifications to this Agreement must be in writing and signed by both Parties hereto.

(c) Binding Effect; Assignment. This Agreement shall be binding upon the Parties hereto and their respective heirs, successors, assigns, agents, and representatives. Customer may not assign, sublicense, or transfer all or any its rights, duties, or obligations hereunder without the prior written approval of PDL, which approval may be withheld in PDL's reasonable business discretion. PDL may assign this Agreement or any portion of this Agreement in its sole and absolute discretion.

(d) Relationship of the Parties. In connection with this Agreement, each Party is an independent contractor. This Agreement does not, and shall not be construed to, create an employer-employee, agency, joint venture, or partnership relationship between the Parties.

(e) Waiver. The waiver by either Party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of a subsequent breach of the same provision by any

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Party or of a breach of any other term or provision of the Agreement, and failure by either Party at any time to require performance by the other Party shall not constitute a waiver of any right to require performance in the future or performance of any other promise nor prejudice either Party as regards to any subsequent action.

Severability. In the event any one or more of the agreements, provisions, or terms contained herein shall be declared invalid, illegal, or unenforceable in any respect, such agreement, provision, or term shall be enforced to the extent permitted by law and the validity of the remaining agreements, provisions, or terms contained herein shall be in no way affected, prejudiced, or disturbed thereby.

(f) Binding Arbitration. The Parties agree to resolve all disputes that remain unresolved by binding arbitration administered by the American Arbitration Association (the "AAA") pursuant to AAA's Commercial Arbitration Rules. The Parties agree that the arbitration will be held in Palm Beach County, Florida before a sole disinterested arbitrator who is appointed from the AAA panel in accordance with the AAA's rules. Issues of arbitrability will be determined in accordance solely with the federal substantive and procedural laws relating to arbitration; in all other respects, the arbitrator will be obligated to apply and follow the substantive law of the State of Florida. The prevailing Party shall be entitled to collect reasonable attorneys' fees and costs incurred in such action from the non-prevailing Party, which costs can include the reasonable costs of investigation, expert witnesses, and the costs in enforcing or collecting any judgment rendered, all as determined and awarded by the arbitrator. If any part of this Section is held to be unenforceable, it will be severed and will not affect either the duty to arbitrate or any other part of this Section.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida without reference to its conflict of laws provisions.

(h) Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received

(i) upon confirmation of a receipt of a facsimile transmission or email communication; (ii) if hand delivered, upon delivery against receipt or upon refusal to accept the notice; or (iii) if delivered by a standard overnight courier, one business day after deposit with such courier, postage prepaid, addressed to the address set forth in the signature block below, or as either Party may provide to the other Party pursuant to this Agreement.

(j) Further Assurances. Each Party hereto agrees to do such things, take such actions, and to make, execute, and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent, and purpose of this Agreement.

(k) Amendments. No amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by both Parties.

(l) Waiver of Trial by Jury. THE PARTIES HEREBY INTENTIONALLY, KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH OR PURSUANT TO ANY DISPUTE AMONG THE PARTIES RELATED TO OR ARISING FROM THIS

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AGREEMENT.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE. READ BEFORE SIGNING.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date firstabove written.

PETERSON DENTAL LABORATORY, INC.

CUSTOMER: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Address: 601 N Congress Ave., STE 111,
Delray Beach, FL 33445

Address: _____

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EXHIBIT A. WORK AUTHORIZATION FORM

Patient: _____

By my signature below:

- I assert that I have reviewed and have had the opportunity to request modifications to the Virtual Surgery created by Peterson Dental Laboratory Inc. for the patient indicated above.
- I certify that I have provided Peterson Dental Laboratory Inc. with all relevant data requested or required by Peterson Dental Laboratory to construct an accurate surgical guide for the patient indicated above.
- I give my consent for Peterson Dental Laboratory Inc. to produce a surgical guide for the placement of a dental implant for the patient indicated above on the terms and conditions contained in the Surgical Guide Agreement.
- I assume full responsibility for both the surgical plan and the surgical guide produced by Peterson Dental Laboratory Inc. for the patient indicated above.
- I declare that I have read and fully understand the Surgical Guide Agreement, to which this Exhibit A is annexed and incorporated.
- I reaffirm the obligations memorialized in Section 3 of the Surgical Guide Agreement.
- I understand and acknowledge that the Surgical Guide Agreement contains disclaimers on all warranties and a limitation of Peterson Dental Laboratory Inc.'s liability.

Customer Signature: _____

Customer Print Name: _____

Date Submitted: _____