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HIPPA BUSINESS ASSOCIATE AGREEMENT BETWEEN SMILE GALLERY PRO AND HEALTH CARE PROVIDER

This Agreement is entered into by and between _____
(Forthwith referred to in this agreement as **Health Care Provider**) and **Smile Gallery Pro** to set forth the terms and conditions under which "protected health information", as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Regulations enacted thereunder, created or received by Smile Gallery Pro on behalf of **Health Care Provider** may be used or disclosed.

This Agreement shall commence on ___/___/___ (**Date**) and the obligations herein shall continue in effect so long as **Smile Gallery Pro** uses, discloses, creates or otherwise possesses any protected health information created or received on behalf of **Health Care Provider** and until all protected health information created or received by **Smile Gallery Pro** on behalf of **Health Care Provider** is destroyed or returned to **Health Care Provider** pursuant to Paragraph 15 herein.

1) **Health Care Provider** and **Smile Gallery Pro** hereby agree that **Smile Gallery Pro** shall be permitted to use and/or disclose protected health information created or received on behalf of **Health Care Provider** for the following purpose(s):

Web based software allowing **Health Care Provider** to use patient before and after photos, videos, and/or portraits and related textual information such as testimonials, clinical discussions, or treatment information including descriptions with or without patient name, or with a fictitious name for the purpose of marketing. Web software allows **Health Care Provider** to share patient information for marketing purposes using the Internet.

2.) **Smile Gallery Pro** may use and disclose protected health information created or received by **Smile Gallery Pro** on behalf of **Health Care Provider** if necessary for the proper management and administration of **Smile Gallery Pro** or to carry out **Smile Gallery Pro's** legal responsibilities, provided that any disclosure is:

- a) Required by law, or
- b) **Smile Gallery Pro** obtains reasonable assurances from the person to whom the protected health information is disclosed that (i) the protected health information 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 (ii) **the Smile Gallery Pro** will be notified of any instances of which the person is aware in which the confidentiality of the information is breached.

3.) **Smile Gallery Pro** hereby agrees to maintain the security and privacy of all protected health information in a manner consistent with federal laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Regulations thereunder, and all other applicable law.

4.) **Smile Gallery Pro** further agrees not to use or disclose protected health information except as expressly permitted by this Agreement, applicable law, or for the purpose of managing **Smile Gallery Pro's** own internal business processes consistent with Paragraph 2 herein.

5.) **Smile Gallery Pro** shall not disclose protected health information to any member of its workforce unless **Smile Gallery Pro** has advised such person of **Smile Gallery Pro's** privacy and

security obligations under this Agreement, including the consequences for violation of such obligations. **Smile Gallery Pro** shall take appropriate disciplinary action against any member of its workforce who uses or discloses protected health information in violations of this Agreement and applicable law.

6.) **Smile Gallery Pro** shall not disclose protected health information created or received by **Smile Gallery Pro** on behalf of **Health Care Provider** to a person, including any agent or subcontractor of **Smile Gallery Pro** but not including a member of **Smile Gallery Pro's** own workforce, until such person agrees in writing to be bound by the provisions of this Agreement and applicable ("**Your State**") or Federal law.

7.) **Smile Gallery Pro** agrees to use appropriate safeguards to prevent use or disclosure of protected health information not permitted by this Agreement or applicable law.

8.) **Smile Gallery Pro** agrees to maintain a record of all disclosures of protected health information, including disclosures not made for the purposes of this Agreement. Such record shall include the date of the disclosure, the name and, if known, the address of the recipient of the protected health information, the name of the individual who is the subject of the protected health information, a brief description of the protected health information disclosed, and the purpose of the disclosure. **Smile Gallery Pro** shall make such record available to an individual who is the subject of such information or **Health Care Provider** within five (5) days of a request and shall include disclosures made on or after the date which is six (6) years prior to the request or April 14, 2003, whichever is later.

9.) **Smile Gallery Pro** agrees to report to **Health Care Provider** any unauthorized use or disclosure of protected health information by **Smile Gallery Pro** or its workforce or subcontractors and the remedial action taken or proposed to be taken with respect to such use or disclosure.

10.) **Smile Gallery Pro** agrees to make its internal practices, books, and records relating to the use and disclosure of protected health information received from **Health Care Provider**, or created or received by **Smile Gallery Pro** on behalf of **Health Care Provider**, available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Covered Entity's compliance with HIPAA.

11.) Within thirty (30) days of a written request by **Health Care Provider**, **Smile Gallery Pro** shall allow a person who is the subject of protected health information, such person's legal representative, or **Health Care Provider** to have access to and to copy such person's protected health information maintained by **Smile Gallery Pro**. **Smile Gallery Pro** shall provide protected health information in the format requested by such person, legal representative, or practitioner unless it is not readily producible in such format, in which case it shall be produced in standard hard copy format.

12.) **Smile Gallery Pro** agrees to amend, pursuant to a request by **Health Care Provider**, protected health information maintained and created or received by **Smile Gallery Pro** on behalf of Practitioner. **Smile Gallery Pro** further agrees to complete such amendment within thirty (30) days of a written request by **Health Care Provider**, and to make such amendment as directed by **Health Care Provider**.

13.) In the event **Smile Gallery Pro** fails to perform the obligations under this Agreement, **Health Care Provider** may, at its option:

- a) Require **Smile Gallery Pro** to submit to a plan of compliance, including monitoring by **Health Care Provider** and reporting by **Smile Gallery Pro**, as **Health Care Provider**, in its sole discretion, determines necessary to maintain compliance with this Agreement and

applicable law. Such plan shall be incorporated into this Agreement by amendment hereto; and

b) Require **Smile Gallery Pro** to mitigate any loss occasioned by the unauthorized disclosure or use of protected health information.

c) Immediately discontinue providing protected health information to **Smile Gallery Pro** with or without written notice to **Smile Gallery Pro**.

14.) **Health Care Provider** may immediately terminate this Agreement and related agreements if **Health Care Provider** determines that the **Smile Gallery Pro** has breached a material term of this Agreement. Alternatively, **Health Care Provider** may choose to: (i) provide **Smile Gallery Pro** with ten (10) days written notice of the existence of an alleged material breach; and (ii) afford the **Smile Gallery Pro** an opportunity to cure said alleged material breach to the satisfaction of **Health Care Provider** within ten (10) days. The **Smile Gallery Pro's** failure to cure shall be grounds for immediate determination of this Agreement. **Health Care Provider's** remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

15.) Upon termination of this Agreement, **Smile Gallery Pro** shall return or destroy all protected health information received from **Health Care Provider**, or created or received by **Smile Gallery Pro** on behalf of **Health Care Provider** and that **Smile Gallery Pro** maintains in any form, and shall retain no copies of such information. If the parties mutually agree that return or destruction of protected health information is not feasible, **Smile Gallery Pro** shall continue to maintain the security and privacy of such protected health information in a manner consistent with the obligations of this Agreement and as required by applicable law, and shall limit further use of the information to those purposes that make the return or destruction of the information infeasible. The duties hereunder to maintain the security and privacy of protected health information shall survive the discontinuance of this Agreement.

16.) **Health Care Provider** may amend this Agreement by providing ten (10) days prior written notice to **Smile Gallery Pro** in order to maintain compliance with your state or Federal law. Such amendment shall be binding upon **Smile Gallery Pro** at the end of the ten (10) day period and shall not require the consent of **Smile Gallery Pro**. **Smile Gallery Pro** may elect to discontinue the Agreement within the ten (10) day period, but **Smile Gallery Pro's** duties hereunder to maintain the security and privacy of PROTECTED HEALTH INFORMATION shall survive such discontinuance. **Health Care Provider** and **Smile Gallery Pro** may otherwise amend this Agreement by mutual written agreement.

17.) **Smile Gallery Pro** shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless **Health Care Provider** and his/her respective employees, directors, and agents ("Indemnitees") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys fees, including at trial and on appeal) asserted or imposed against any Indemnitees arising out of the acts or omissions of **Smile Gallery Pro** or any subcontractor of or consultant of **Smile Gallery Pro** or any of **Smile Gallery Pro's** employees, directors, or agents related to the performance or nonperformance of this Agreement.

Health Care Provider

Date

Smile Gallery Pro

Date