

## SERVICE AGREEMENT AND TERMS OF USE

THIS SERVICE AGREEMENT AND TERMS OF USE (“Agreement”) is a binding contract between Digital Dental Brands LLC, a Washington limited liability company, (the “Company”), and the individual, entity or organization intending to access or otherwise use the Service (the “Client”). Company and Client are collectively referred to herein from time to time individually as a “Party” and collectively as the “Parties.”

COMPANY PROVIDES THE SERVICE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CLIENT ACCEPTS AND COMPLIES WITH THEM. BY ACCESSING OR USING THE SERVICE, CLIENT (A) ACCEPTS THIS AGREEMENT AND AGREES THAT CLIENT IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENTS AND WARRANTS THAT: (I) IF AN INDIVIDUAL, CLIENT IS 18 YEARS OF AGE OR OLDER; AND (II) CLIENT HAS THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND BIND CLIENT TO ITS TERMS. IF CLIENT DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, COMPANY WILL NOT AND DOES NOT PROVIDE THE SERVICE TO CLIENT AND CLIENT MUST NOT ACCESS OR OTHERWISE USE THE SERVICE OR RELATED SERVICE DOCUMENTATION.

**1. BACKGROUND.** Company currently provides dental practice users access to and use of an online patient check-in website system, which allows patients to remotely check-in for their scheduled dental appointments and complete a screening questionnaire related to symptoms of Coronavirus (COVID-19) (the “Questionnaire”) in conjunction with the check-in process (the “Service”). Once a patient has checked-in for their scheduled dental appointment, the dental practice user receives an email alerting the practice and their employees that the patient has checked-in for their appointment and providing the practice with the patient-completed Questionnaire. Client is a dental practice that desires to access and use the Service, and Company desires to provide Client access to the Service upon the terms and conditions set forth herein.

**2. SERVICE.** Subject to the terms and conditions of this Agreement, Company shall provide Client access to the Service described in the Statement of Work exhibit(s) attached as Exhibit A and incorporated by reference herein for use at Client’s dental practice location(s) (“Practice Location(s)”) solely in support of Client’s ordinary course of business in conducting its professional dental practice; however, Client shall not use the Service for any Unauthorized Use (as defined in Section 4 below). The Service may be updated by Company from time to time without prior notice to Client, and Company shall, if necessary, amend or add a Statement of Work as applicable. Company is under no obligation to provide support for the Service.

**3. FEES.** In consideration of access to and use of the Service, Client will pay to Company the fee(s) set forth in each Statement of Work (the “Service Fees”). Notwithstanding anything to the contrary contained herein, Company may adjust the Service Fees at any time for any reason or no reason upon thirty (30) days’ notice to Client. Such notice may be provided by mail, electronic mail, or by posting on Company’s website.

**4. CLIENT'S RESTRICTIONS ON USE.** Except as otherwise specifically permitted in this Agreement, Client may not conduct nor permit third parties to conduct, and shall prevent its employees from conducting, the following actions with respect to the Service ("Unauthorized Use"):

4.1. Use the Service on any computer equipment other than desktop or laptop computers located at the Practice Location(s) or use the Service for any purpose other than conducting the professional dental practice at the Practice Location(s);

4.2. Permit any person to use the Service other than Client's employees;

4.3. Copy the Service or any aspect of the Service except as provided in this Agreement or as otherwise authorized by Company;

4.4. Publicly disclose, reproduce, duplicate, copy, sublicense, sell or exploit for any commercial purpose, the Service or any portion of the Service; or

4.5. Remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or associated with the Service.

**5. OWNERSHIP.** The Service, all aspects of the Service and any copies thereof are proprietary to and the property of Company. Company shall own and retain all right, title and interest in and to all property rights, including intellectual property rights, in the Service including, without limitation, all applicable rights in all trade names and all derivations thereof, logos, software, tools, programs, systems, documents, platforms and domains, subject only to the limited use and access rights of Client expressly set forth in this Agreement. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO COMPANY.

**6. CLIENT'S RIGHTS, OBLIGATIONS AND RESPONSIBILITIES.**

6.1. Client shall secure, store and protect the Service and any access rights to the Service in a manner consistent with the maintenance of Company's rights therein and take appropriate actions to instruct its employees of such maintenance practices. Client shall be solely responsible for securing all logins and passwords and ensuring that only authorized users have access to the Service through Client.

6.2. Upon termination of this Agreement or at any time upon Company's request, within five (5) days, Client shall return or destroy all documentation related to the Service, and shall provide written confirmation to Company of such destruction.

6.3. Client is solely responsible for all information, data, text, messages or other materials ("Content") that Client, Client's employees and/or Client's patients, upload, post, e-mail or otherwise transmit via the Service. Company shall not be liable in any way for any third party Content, including, but not limited to, any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, e-mailed or otherwise transmitted via the Service.

6.4. In order to access and use the Service, Client shall be responsible for obtaining access to the Internet, either directly or through devices that access web-based content, and pay any service fees associated with such access. In addition, Client shall be responsible for providing all equipment necessary to make such connection to the Internet, including, but not limited to, a computer and modem or other access device.

**7. TERM AND TERMINATION.** The term of this Agreement shall commence on the date Company provides Client access to the Service, unless otherwise agreed by the Parties, and shall continue until either Party terminates this Agreement in accordance with this Section 7. Either Party may terminate this Agreement at any time for any reason or no reason upon written notice to the other Party; provided that if Client terminates this Agreement in accordance with this Section 7, Client shall provide notice to Company by e-mail or online service termination form, which email address and/or form shall be available on the Company's website. Termination of any Service shall be further subject to the terms of the applicable Statement of Work. Upon termination of this Agreement, Client shall immediately cease accessing and using the Service for any purpose and shall destroy any documentation related to the Service as provided in Section 6.2. The rights and obligations of the Parties set forth in Sections 3, 5, 6, 8, 9, 10, 11 and 14, and any other provision that would normally survive, shall survive termination of this Agreement.

**8. INDEMNIFICATION.** Client shall defend, indemnify and hold Company and its subsidiaries, affiliates, officers, members, partners, agents and employees harmless from any and all claims, causes of action, damages, costs and expenses (including reasonable attorneys fees and costs), arising from or related to Client's use of and connection to the Service, Client's violation of this Agreement or Client's violation of any rights of another, or any Content uploaded, posted, e-mailed or otherwise transmitted via the Service by Client, Client's employees and/or Client's patients.

**9. CONFIDENTIALITY.**

9.1. Client shall, during the term of this agreement and thereafter, hold in the strictest confidence, and not use, without prior written authorization from Company, any of Company's proprietary information, technical data, trade secrets, or know-how, including, but not limited to, program plans, research, technical data, program detailed design, or technology ("Confidential Information"). Client shall not, and shall ensure that its employees do not, disclose any Confidential Information to any third party without Company's prior written consent.

9.2. This Agreement shall impose no obligation of confidentiality upon Client with respect to any portion of the Confidential Information which: (i) now or hereafter, through no act or failure to act on Client's part, becomes generally known or available; (ii) is known to Client at the time Client receives access to the Service from Company; or (iii) is hereafter furnished to Client by a third party as a matter of right and without restriction on disclosure.

**10. DISCLAIMER OF WARRANTY.** CLIENT ACCEPTS THE SERVICE "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY

OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. Without limiting the foregoing, Client accepts that any Statement of Work shall not be construed as containing any express or implied warranties.

**11. LIMITATION OF LIABILITY.** IN NO EVENT SHALL COMPANY BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY GENERAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, DIRECT, SPECIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF CLIENT'S ACCESS TO OR USE OF THE SERVICE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY EVEN IF THIS AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

**12. HIPAA COMPLIANCE.** The Parties shall each comply with the requirements of regulations implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. 1320d, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, and applicable state laws relating to the storage, security, use and disclosure of protected health care information. If applicable and necessary to comply with HIPAA, the Parties shall enter into a standard form Business Associate Agreement.

**13. INDEPENDENT VERIFICATION.** Client acknowledges that the Service is not a substitute for independent verification with the patient of any Content uploaded, posted, e-mailed or otherwise transmitted via the Service. Client shall remain responsible for all such independent verification and shall not rely solely on the Service for such purposes.

**14. GENERAL PROVISIONS.**

**14.1. Governing Law; Venue; Attorneys Fees.** This Agreement shall be governed by and construed under the laws of the State of Washington without regard to conflicts of law principles. Any dispute arising from or relating to this Agreement shall be brought in the Superior Court of Washington in and for King County or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of Washington, 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 laid therein. In any action brought to interpret or enforce the terms of this Agreement, the Party that substantially prevails shall be entitled to recover from the non-substantially prevailing Party its attorneys fees and costs, expert witness fees and costs, and other expenses incurred in the action.

**14.2. Waiver.** No waiver by any Party of any condition or the breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

14.3. **Assignment; Severability.** Client shall not assign any rights or delegate any obligations under this Agreement, by operation of law or otherwise, without Company's prior written consent; any attempted assignment shall be null and void and shall result in the termination of this Agreement. If any part of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other part or provision of this Agreement which shall remain in full force and effect.

14.4. **Entire Agreement.** This Agreement embodies and reflects the entire agreement among the Parties relating to both the subject matter of this Agreement and supersedes and replaces any and all other agreements, written or oral, by or between Company and Client.

**EXHIBIT A-1**  
**GENERAL STATEMENT OF WORK**

Pursuant to the terms and conditions set forth in the foregoing Service Agreement and Terms of Use (the “Agreement”), Digital Dental Brands LLC, a Washington limited liability company, (the “Company”) shall provide you (the “Client”) with access to and use of the Service, as further defined below, according to the terms and conditions of this General Statement of Work.

**1. PROVIDED SERVICE.**

**1.1. Service.** Company shall provide Client access to and hosting, maintenance and use of an online patient check-in website system, which allows Client’s patients to remotely check-in for their scheduled dental appointments and complete a screening questionnaire related to symptoms of Coronavirus (COVID-19) (“Questionnaire”) in conjunction with the check-in process (the “Service”). Company shall provide Client with the following:

- (a) access to Company’s standard Questionnaire;
- (b) a custom check-in page with Client’s logo (if provided);
- (c) a custom URL;
- (d) a QR code that directs to the Client’s custom check-in page.

Once a patient checks-in for their scheduled dental appointment via the Service, Client shall receive an email by and through the Service alerting Client and their employees that the patient has checked-in for their appointment and providing Client with the patient-completed Questionnaire.

**1.2. Client Responsibility to Store and Save Data.** Company does not store any data for Client and undertakes no responsibility for data storage or retrieval. Without limiting the generality of the foregoing, patient Questionnaire responses are not saved on Company’s platform or in any other system maintained by Company. It is Client’s sole responsibility to save all completed Questionnaires and the data contained therein upon receipt via electronic mail. Failure to do so will result in loss of data.

**2. FEES FOR PROVIDED SERVICE.**

**2.1.** In consideration of access to and use of the Service, Client shall pay to Company a fee of Ten Dollars (\$10) per month, plus applicable sales or use tax, (the “Service Fee”). Notwithstanding the foregoing, Company may adjust the amount of the Service Fee at any time for any reason or no reason upon thirty (30) days’ notice to Client. Such notice may be provided via mail, electronic mail or by posting on Company’s website.

**2.2.** Client has provided a credit card to Company for purposes of billing the Service Fee and any other fees under any additional statement of work (“Additional Fees”). Client authorizes regularly scheduled charges to Client’s credit card in the amount of the Service

Fee and any Additional Fees. The Service Fee shall be charged automatically to Client's credit card each month and will appear on Client's credit card bank statement. By way of example, if Client subscribes to the Service in January and the first payment is processed on January 10, the Service Fee assessed to Client will be billed to Client's credit card on or about the 10<sup>th</sup> day of each calendar month thereafter. Client acknowledges and agrees that no prior notification of each regularly scheduled charge will be provided. Company may suspend Client's access to the Service at any time for failure to pay the Service Fee and any Additional Fees.

**2.3.** Client hereby authorizes Company and its agents, including any third party payment processing companies ("Company's Agents"), to store the credit card information provided by Client in connection with the Agreement, as well as any other credit card information provided by Client in the future ("Payment Information"). Company and/or Company's Agents will use the stored Payment Information to process payment of all Service Fees, Additional Fees, and sales taxes (if any) that are due or will become due. This consent to store Payment Information will not expire unless it is expressly revoked by written notice from Client to Company.

**3. CANCELLATION.** Client may cancel the Service at any time, subject to the terms of the Agreement and this Statement of Work. To cancel the Service, Client shall email Company at [support@onlinedentalcheckin.com](mailto:support@onlinedentalcheckin.com) (or such subsequent contact information for cancellation as Company may provide via its website or notice to Client in the future) with Client's office name, owner's name and the request to cancel. Upon receipt of the cancellation request, the Service will be cancelled effective as of the next billing cycle. Client will continue to have access to the Service for the remainder of the current monthly period in which the cancellation request was submitted. There are no prorated refunds for the current cycle upon cancellation.

**4. SPECIALIZED SERVICE.** If Client desires to receive services from Company outside the scope of the Service as specifically provided by this General Statement of Work and the Agreement, including but not limited to a customized Questionnaire, Company shall provide an additional statement of work describing Client's desired services and any additional service fees for such services.