

### DENTRIX ASCEND SERVICE – TERMS AND CONDITIONS

These Terms and Conditions were updated and effective as of 14th of March 2013.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE DENTRIX ASCEND SERVICE AND WEBSITE AT [DENTRIXASCEND.COM](http://DENTRIXASCEND.COM), INCLUDING, WITHOUT LIMITATION, ALL CONTENT SUCH AS TEXT, INFORMATION, IMAGES, APPLICATIONS, TEMPLATES, SOFTWARE, FEATURES, UPDATES, AND OTHER INFORMATION, SERVICES AND MATERIALS (COLLECTIVELY, THE "SERVICE(S)"). BY ACCESSING OR USING ALL OR ANY PORTION OF THE SERVICE, YOU ACKNOWLEDGE YOUR ACCEPTANCE TO THESE DENTRIX ASCEND TERMS AND CONDITIONS, AS AMENDED FROM TIME TO TIME, ("AGREEMENT") AND REPRESENT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE CUSTOMER. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, HSPS DOES NOT GRANT YOU THE RIGHT TO USE THE SERVICES, AND YOU MUST CEASE USE OF AND ACCESS TO THE SERVICES IMMEDIATELY.

This Agreement is between Henry Schein Practice Solutions Inc., a Utah corporation with its principal place of business at 1220 S 630 E, Suite 500, American Fork, UT 84003 ("HSPS") and you or the entity you represent ("You") and governs Your use of the Service.

#### 1. Service Plans

The Service is available as a paid service with a limited number of licensed users ("Users") as specified on your registration form ("Registration Form"). Additional services are included as part of the paid service except where specified on the Registration Form.

#### 2. Payment

In consideration of the license granted hereunder, payment for Services shall be at prices and under terms stated on the Registration Form, or as otherwise stated or quoted by HSPS from time to time. All prices are exclusive of taxes, which may or may not be added to the price, depending on applicable law and your legal residence. You shall be responsible for any and all taxes related to this Agreement.

HSPS may, in its sole discretion, adjust the prices, functionality and number of Users for the Service from time to time. Adjusted prices shall take effect upon any subsequent term of the Service.

You hereby agree to provide HSPS with a valid credit card number to which HSPS will automatically charge all fees hereunder as they become due. All monthly fees and set-up fees shall be due in advance of the month incurred and all additional charges shall be due at the end of the month in which such charges are incurred.

If payment by your credit card is denied, or your charge is returned to HSPS for any reason, including charge back or if you otherwise fails to make any payments owing to HSPS, HSPS may, at HSPS's sole discretion, suspend or terminate your access to the Service and/or terminate this Agreement. Your right to use the Services are subject to any limits established by HSPS or by the issuer of your credit card. Interest charges of 1% per month (or the highest rate permitted by law if lower than 1% per month) will accrue daily on any unpaid balance which is more than thirty (30) days overdue.

HSPS reserves the right to impose a reconnection fee in the event You request to resume access to the Service after a previous termination of access.

#### 3. Right of Use

You and your Users are hereby granted a non-exclusive, non-transferable, right to use the Service, solely for your own internal business purposes, subject to this Agreement. All rights not expressly granted to You are reserved by HSPS. Your right of use is at all times conditioned on compliance with the terms of this Agreement and your prompt and timely payment for the Service. Breach of any term of this Agreement, non-payment, or delay in payment shall terminate any right of use granted to the You and your Users under this Agreement.

The Service may not be used in any way that is illegal or promotes illegal activities or in a manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age or is otherwise indecent.

You shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet "links" to the Service or "frame" or "mirror" any content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of

the Service. You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity, bandwidth or performance of the Service or the data contained therein; (v) attempt to gain unauthorized access to the Service or its related systems or networks; or (vi) use the Service, including the content, intellectual property, technology, trademarks or service marks for any commercial purposes (i.e. soliciting customers, resale, etc.) without HSPS's prior written consent.

#### 4. Access

Access to the Service is available via a unique URL given at the time of registration. The Service supports both full and mobile webpage formats. HSPS will provide You and your User(s) with a username and password for accessing the Service. Usernames and passwords are personal, and are to be considered part of Confidential Information.

Access to the Service is only available to You and Users, subject to compliance with these Terms and Conditions, including, making the applicable payments for the Service under this Agreement.

#### 5. Your Responsibilities

You are responsible for all activity occurring under your and your Users' account(s) and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, including but not limited to the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act (collectively referred to herein as "HIPAA"), Payment Card Industry Data Security Standards ("PCI DSS"), international communications and the transmission of technical or personal data. In addition, You are responsible for abiding by any and all internal policies, procedures and regulations, which are required, by your employer and/or the applicable administrators of your account. You shall: (i) notify HSPS immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to HSPS immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by You or others to violate this Agreement or the intellectual property rights of third parties; and (iii) not impersonate another user or provide false identity information to gain access to or use the Service. By accessing the Service, You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

#### 6. Data

HSPS does not own any data, information or material that You or others submit to the Service in the course of using the Service ("Uploaded Data"). You shall have sole responsibility for, and agree to assume all liability related to, the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of or right to use any and all Uploaded Data. HSPS shall have no responsibility for the Uploaded Data, including, without limitation, the deletion, correction, destruction, damage, loss or failure to store any Uploaded Data. You agree and acknowledge that HSPS has no obligation to retain Uploaded Data (as defined herein) and that such Uploaded Data may be irrevocably deleted in accordance with HIPAA, the Business Associate Agreement between You and HSPS, and HSPS's data retention policies. If HSPS on its own or through any third party has notice that Uploaded Data stored by You and/or Users is in violation of any law or infringes third party rights, HSPS shall have the right to, without liability to You or User and without prior notice, immediately suspend your access to the Service and the Uploaded Data. You and/or User(s) may be notified by HSPS of any such action under this Section, when reasonable and possible. You or the administrator(s) designated by You ("Administrator") shall have control over all applicable Uploaded Data submitted to the Service, and all Uploaded Data will be deemed to be owned by You. You or the Administrator may, request that HSPS remove, modify, edit or otherwise alter any Uploaded Data. With respect to Uploaded Data that contains individually identifiable health information, the parties agree to comply the provisions of HIPAA and the Business Associate Agreement between You and HSPS.

#### 7. Service Level

The Service is hosted by HSPS, or a subcontractor of its choice. HSPS makes no warranties of any kind, regarding any specific availability or time of access to the Service. If You experience loss of Uploaded Data, HSPS may use reasonable efforts to attempt to

restore such data from the most recent working backup; provided, however, HSPS gives no warranties with respect to recovering or restoring any Uploaded Data.

#### 8. Intellectual Property Rights

HSPS (and its successor or assigns, or its licensors, where applicable) shall own all right, title and interest, including all related intellectual property rights, in and to the Service, including all related technology and content (other than Uploaded Data), and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating thereto. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Service. The Dentrix Ascend name, the Dentrix Ascend logo, and the product names associated with the Service are trademarks of HSPS or its affiliated companies, and no right or license is granted to use them.

All copyrights and/or other intellectual property rights, title and interests in a) software on which the Service is based and made available to You and/or User, b) source codes or other software components of the Service, c) content of the website [dentrixascend.com](http://dentrixascend.com) and the Service including text and graphics, excluding Uploaded Data, d) trademarks, names, etc. are the sole property of HSPS and its affiliated companies, and/or third parties having granted HSPS license for its use, and You and your User(s) shall gain no rights therein other than the limited right of use for your internal business purposes as stipulated in this Agreement.

You and your User(s) shall not reproduce or redistribute any software, content or trademarks, intellectual property in any form, except as allowed in this Agreement.

You and your User(s) retain all intellectual property rights to Uploaded Data stored by You and your User(s) on the Service.

#### 9. Marketing

HSPS will not send marketing material from third parties to You or Users. HSPS may send product news relevant to Your or Users' use of the Service as HSPS sees fit from time to time. All data obtained from You or Users shall be used only in accordance with the Dentrix Ascend Privacy Policy, which may be found at [www.DentrixAscend.com](http://www.DentrixAscend.com).

#### 10. Indemnification

You agree to defend, indemnify and hold HSPS, Henry Schein, Inc., their licensors, subsidiaries, affiliates, stockholders, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Service, whether by You or Users, or any Uploaded Data, whether provided by You or Users, infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by You of your representations and warranties made herein; or (iii) a claim arising from the breach by You or Users of this Agreement.

#### 11. Disclaimer of Warranties

HSPS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. HSPS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, 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, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY HSPS AND ITS LICENSORS. FURTHER, NO ADVICE OR INFORMATION GIVEN BY AN HSPS REPRESENTATIVE SHALL CREATE A WARRANTY OR SERVE AS AN AMENDMENT TO THIS AGREEMENT. HSPS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS.

## Terms and Conditions Cont.

### 12. Limitation of Liability

IN NO EVENT SHALL HSPS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER DAMAGES RELATED TO THIS AGREEMENT OR WHETHER DIRECT OR INDIRECT, INCLUDING BUT NOT LIMITED TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, AND (v) COSTS OF RECOVERY OR ANY OTHER DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, AND INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR OTHERWISE, AND WHETHER OR NOT HSPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, HSPS'S LIABILITY HEREUNDER IS LIMITED TO \$500.00.

### 13. Force Majeure

HSPS will not be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, pest damage, floods); power surges or failures, wars, acts of military authorities, riots, terrorist activities, and civil commotions; activities of local exchange carriers, inability to secure raw materials, transportation facilities, fuel or energy shortages, unauthorized use of this Service, telephone carriers, wireless carriers, Internet service providers, and other third parties; explosions and fires; embargoes, strikes, and labor disputes; governmental decrees; and any other cause beyond the reasonable control of HSPS whether similar to the foregoing or not.

### 14. Personal Data

HSPS shall abide by the terms of its Privacy Policy, HIPAA Business Associate Agreement, and the PCI DSS. The Privacy Policy and the PCI DSS can be found at <http://www.dentrixascend.com/privacy>.

### 15. Term and Termination

The Service is pre-paid and all fees associated with the Service are non refundable. HSPS DOES NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL MONTHS OF USE OF THE SERVICE. You may cancel your subscription to the Service at anytime, which will be effective immediately upon notice to HSPS. If you wish to cancel your subscription to the Service, you may do so by contacting HSPS, or otherwise as instructed. Should you elect to cancel your subscription to the Service, please note that You will not be issued a refund for any charged and paid fees. It is your responsibility to keep your contact and payment information current. You explicitly authorize HSPS to continue billing your credit card on file unless and until you cancel your subscription to the Service, and in the event that HSPS is unable to collect fees from your credit card for any reason, You remain responsible for any uncollected amounts in accordance with Section 2 above. Notwithstanding anything to the contrary contained herein, HSPS may terminate this Agreement and the Service at any time and for any reason.

This Agreement shall commence on the date of availability of the Services and will remain in effect for an initial term of contract as stipulated on the Registration Form (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term at the then current fees, unless Customer specifically terminates the Service.

If either party is in material breach of this Agreement, the other party is entitled to terminate this Agreement for cause after having given the breaching party a written notice of no less than thirty (30) days, if the breaching party has not remedied the breach to the satisfaction of the other party.

The rights and obligations in Sections 2, 3, 8, 10-12 and 18-19 shall stay in full force and effect after termination of this Agreement.

You agree and acknowledge that HSPS has no obligation to retain the Uploaded Data, and may delete such Uploaded Data in accordance with HIPAA data retention policies, without prior notice (i) if You have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within thirty (30) days' notice of such breach or (ii) upon termination of this Agreement for any reason. If You and/or User request HSPS to assist in restoring Uploaded Data that has been deleted in accordance with this paragraph, HSPS will determine whether such recovery is possible and shall be entitled to payment, at HSPS's standard rates, for such work.

### 16. Notice

HSPS may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record, or by written communication sent by first class mail or pre-paid post to your address on record. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

### 17. Modification to Terms

HSPS reserves the right to modify this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Dentrix Ascend website at <http://www.dentrixascend.com/terms>. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

### 18. Confidentiality

Unless expressly authorized in writing by the other Party, neither Party shall disclose to any third party any Confidential Information of the other Party, nor use such Confidential Information in any manner other than to perform its obligations under this Agreement Confidential Information means any non-public information and/or materials provided by a Party under this Agreement to the other Party and reasonably understood to be confidential.

The foregoing restrictions do not apply to any information that (i) is publicly disclosed through no fault of the receiving Party, (ii) is already lawfully in the receiving Party's possession and not subject to a confidentiality obligation to the disclosing Party, (iii) becomes known to the receiving Party from a third party having an apparent bona fide right to disclose the information, or (iv) is Confidential Information that the receiving Party is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative subpoena, provided receiving Party supplies disclosing Party with timely notice of such court order or subpoena. Furthermore, You and your Users will keep in confidence all passwords and/or other access information related to the Services. You acknowledge, on behalf of You and your Users, that HSPS and its licensors retain all intellectual property rights and title, in and to, all of their Confidential Information and/or other proprietary

information. This shall include, but not be limited to: products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Services provided by HSPS hereunder.

### 19. General

**(a) Entire Agreement.** You agree that this Agreement, including the Registration Form and the Business Associate Agreement constitutes the entire agreement between You and HSPS and shall supersede any prior agreement or any other communications relating to the use of the Services or any portion thereof.

**(b) Severability.** If any provision herein is otherwise held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**(c) Governing Law.** This Agreement is governed by the laws of the State of Utah and the United States of America, including U.S. copyright laws. The Federal and State Courts resident in Utah shall have exclusive jurisdiction to adjudicate any dispute arising under or out of this Agreement.

**(d) Assignment.** You shall not have the right to assign (by operation of law or otherwise), transfer, or sublicense any obligations or benefit under this Agreement without the prior written consent of HSPS. Any purported assignment in violation of this section shall be void. Except as otherwise provided herein, this Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties.

**(e) Export Restrictions.** You acknowledge that the Services, or any portion thereof, may be subject to U.S. export restrictions. You agree to comply with all applicable international and national laws that apply to the Services, or any portion thereof, including the U.S. Export Administration Regulations, as well as destination and all other restrictions issued by U.S. and other governments.

**(f) Notices.** All written notices given to HSPS through certified mail under this Agreement shall be sent with a copy to Henry Schein Practice Solutions Inc., 1220 S 630 E, American Fork, Utah 84003 with a copy to Henry Schein, Inc. 135 Duryea Road, Melville, NY 11747, Attn: General Counsel, Fax (631) 843-5660.

**(g) No Waiver.** The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

**(h) Independent Contractor.** Notwithstanding any provision hereof, for all purposes of this Agreement each party shall be and act as an independent contractor and not as partner, joint venturer or agent of the other party and shall not bind nor attempt to bind the other party to any contract.

**(i) Headings; Sections.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

You have read this Agreement in its entirety and You understand and accept all of the provisions stated herein.

## Acceptance

I hereby agree to the Terms and Conditions stated on this form for the services I choose to purchase. I have read this Agreement in its entirety and I understand and accept all of the provisions stated herein. By signing this agreement, I hereby authorize and approve the transmission by HSPS and Henry Schein, Inc. (and all affiliates, divisions, representatives and agents thereof) of all advertising and other faxes to the fax number(s) identified in this agreement for news and information regarding products, services and specials. This consent shall be valid until revoked in writing by an authorized representative of the licensee.

PRINT NAME \_\_\_\_\_ DOCTOR OR PRACTICE OWNER SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

 HENRY SCHEIN®  
PRACTICE SOLUTIONS

1220 S 630 E • American Fork, Utah 84003 • Telephone 800.DENTRIX • [www.DentrixAscend.com](http://www.DentrixAscend.com)