

## CONFIDENTIALITY AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of September \_\_\_\_, 2014, by and between \_\_\_\_\_ dba Aava Dental (“Company”) (together with its parent and affiliated companies, the “Party 1”), and \_\_\_\_\_ (“Party 2”).

### RECITALS

WHEREAS, Company is in the business of, among other things, providing dental services to patients;

WHEREAS, Party 2 has been, or will be, engaged by Company to render services to Company and to make contributions to the success and growth of Company; and

WHEREAS, Company and Party 2 mutually desire to enter into this Agreement to provide certain terms and conditions for retention of Party 2 by Company, all as more fully provided herein;

NOW, THEREFORE, in consideration of the promises set forth herein, Party 2’s relationship with the Company, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. ***Best Efforts.*** Party 2 shall use best efforts in performance of Party 2’s duties for the Company throughout the duration of the relationship with Company.

B. ***Confidentiality.***

1. **Confidential Information.** As used herein, the term “Confidential Information” shall mean any and all information, regardless of whether kept in a document, in an electronic storage medium, or in Party 2’s memory, and includes but is not limited to all data, compilations, programs, devices, strategies, concepts, ideas, and methods concerning or related to:

- a. Company’s financial condition, results of operations, and amounts of compensation paid to officers and employees;
- b. Information and materials relating to Company’s purchasing, accounting and marketing, including, but not limited to, marketing plans, sales data, business methods, business partners (including this business relationship), unpublished promotional material, cost and pricing information, the terms and conditions of the products or services offered by Company, strategic plans, and customer lists.
- c. The terms, conditions, and current status of Company’s agreements and relationships with any patients, insurance companies, other dentists, or other entities;

- d. The identities and business preferences of Company's actual and prospective patients and suppliers or any employee or agent thereof with whom Company communicates, along with Company's practices and procedures for identifying prospective customers;
- e. The names and identities of any and all of Company's patients, including any and all patient lists or similar compilations;
- f. The know-how, manufacturing processes and techniques, regulatory approval strategies, computer programs, data, schematics, design work, formulas, compositions, service techniques and protocols, new and existing product designs and specifications, any modifications to such product designs and specifications, devices, notebook entries, technical notes and graphs, computer printouts, technical memoranda and correspondences, product development agreements and related agreements, and any other skills or ideas developed, accumulated, or acquired by Company;
- g. Personnel information, including the productivity and profitability (or lack thereof) of Company's employees, agents, or independent contractors;
- h. Any communications between Company or its officers, directors, shareholders, or employees and any attorney retained by Company for any purpose or any person retained or employed by such attorney for the purpose of assisting such attorney in his or her representation of Company; and
- i. The cost or overhead associated with the goods and services provided by Company, along with Company's pricing structure for its goods or services, including its margins, discounts, volume purchases, markups, or incentives.

2. Trade Secrets. As used herein, "Trade Secrets" includes certain Confidential Information and means, as provided in the Uniform Trade Secrets Act ([Civil Code §3426.1\(d\)](#)), without limitation, information, including a formula, pattern, compilation, program, device, method, technique, or process that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

3. Non-Disclosure. Party 2 acknowledges and agrees that Company is engaged in the highly competitive business of providing dental services and has expended, or will expend, significant sums of money and has invested, or will invest, a substantial amount of time to develop and use, and maintain the secrecy of, the Confidential Information and Trade Secrets. Company has thus obtained, or will obtain, a valuable economic asset that has enabled, or will enable, it to develop an extensive reputation and to establish long-

term business relationships with its suppliers, customers, and vendors. If such Confidential Information or Trade Secrets were disclosed to another person or entity or used for the benefit of anyone other than Company, Company would suffer irreparable harm, loss, and damage. Accordingly, Party 2 acknowledges and agrees that:

- a. The Confidential Information and Trade Secrets are, and at all times hereafter shall remain, the sole property of Company;
- b. Party 2 shall use the party's best efforts and utmost diligence to guard and protect Confidential Information and Trade Secrets from any unauthorized disclosure to any competitor, supplier, vendor, or patient of Company or any other person, firm, corporation, or other entity;
- c. Unless Company gives Party 2 prior express written permission, during Party's relationship and thereafter, Party 2 shall not use for the party's own benefit or use for or disclose to any competitor, supplier, or customer, or any other person, firm, corporation, or other entity, the Confidential Information or Trade Secrets as set forth herein;
- d. Except in the ordinary course of Company's business or for the Company's benefit, Party 2 shall not seek or accept any Confidential Information or Trade Secrets from any former, present, or future employee of Company.
- e. Return of Materials. On demand, Party 2 shall immediately return to Company all documentary or tangible Confidential Information and Trade Secrets in Party 2's possession, custody, or control and shall sign an affidavit under penalty of perjury that Party 2 has not made or kept any copies, notes, abstracts, summaries, tapes, or other record of any type of Confidential Information or Trade Secrets;
- f. On demand, Party 2 shall further immediately return to Company any and all other Company property in Party 2's possession, custody, or control, including, without limitation, any and all keys, security cards, passes, cell phones, laptop computers, PDAs, credit cards, and marketing literature.
- g. Non-Disclosure of Third Party's Trade Secrets. During Party's relationship with Company, Party 2 shall not disclose or use for Company's benefit or on its behalf any Trade Secrets or confidential information of any former employer or agent, and shall make no effort to reverse engineer or derive independently any information that is or could be a Trade Secret or confidential information of any former employer or agent. Party 2 further represents and warrants that Party 2 has provided to Company copies of any and all nondisclosure agreements, confidentiality agreements, and intellectual property assignment agreements that may bind Party 2.

- h. Following the termination of Company's relationship with Party 2 for any reason, Party 2 shall not directly or indirectly attempt to reconstruct any Trade Secret or Confidential Information of Company through the use of Company's records or Party 2's memory.
- i. Non-Solicitation of Patients. After the termination of Party 2's relationship with Company for any reason, Party 2 shall not directly or indirectly solicit the actual or potential patients of Company, because the identities of such actual or potential patients has been compiled over time by Company and Company takes reasonable measures to protect such information and considers information regarding its actual or potential customers to be its protected "trade secret" as that term is defined in the Uniform Trade Secrets Act ([Civil Code §§3426-3426.11](#)).

C. ***Nonsolicitation of Employees.*** Party 2 acknowledges and agrees that the business of Company is highly competitive, that Company invests substantial resources in locating, hiring, and training employees, and that the loss of employees to a competitor would cause immediate, immeasurable, and irreparable harm, loss, and damage to Company not adequately compensable by a monetary award. Accordingly, during the term of Party 2's relationship with Company and for a period of 5 years from the date when Party 2's engagement with Company ceases, Party 2 agrees not to directly or indirectly solicit any employee or agent of Company to disengage employment or retention with Company.

D. ***Intellectual Property Rights and Assignment.***

1. As used in this Agreement, the term "Inventions" shall mean and include all procedures, systems, machines, methods, processes, uses, apparatuses, compositions of matter, designs, configurations, and computer programs of any kind, discovered, conceived, reduced to practice, developed, made, or produced, and any improvements to them, and shall not be limited to the meaning of the term "invention" under the United States patent laws.

2. Party 2 agrees to disclose in writing promptly to Company any and all Inventions, whether or not patentable and whether or not reduced to practice, conceived, or developed by Party 2 during his or her engagement with Company, either alone or jointly with others, that relate to or result from the actual or anticipated business, work, research, investigations, products, or services of Company, or that result to any extent from use of Company's premises or property.

3. Party 2 acknowledges and agrees that Company is the sole owner of any and all property rights in all Inventions referred to in subparagraph D.2. above, including, but not limited to, the right to use, sell, license, or otherwise transfer or exploit the Inventions and the right to make such changes in them and the uses thereof as Company may from time to time determine.

4. Party 2 hereby grants and assigns to Company, without further consideration, Party 2's entire right, title, and interest (throughout the United States and in all foreign countries), free and clear of all liens and encumbrances, in and to all Inventions referred to in subparagraph D.2. above, which shall be and hereby are the sole property of Company, whether or not patentable, to the fullest extent possible by law and to the fullest extent under California [Labor Code §§2870-2872](#), whether or not applicable to independent contractors. A copy of California [Labor Code §§2870-2872](#) is attached to this Agreement as Exhibit A.

5. Without limiting the generality of the foregoing, Party 2 shall, at any time during or after engagement with Company, at Company's request, execute specific assignments in favor of Company or its nominee of Party 2's interest in any of the Inventions, writings, or other works covered by this Agreement and execute all papers, render all assistance, and perform all lawful acts that Company considers necessary or advisable for (a) the preparation, filing, prosecution, issuance, procurement, maintenance, or enforcement of patents, trademarks, copyrights, and other protections, and any applications for any of the foregoing, in the United States or in any foreign country for any such Inventions, writings, or other works and (b) the transfer of any interest Party 2 may have therein.

6. Party 2 hereby acknowledges and agrees that all writings and other works that may be copyrighted (including computer programs) and that are related to the past, present, planned, or reasonably anticipated business of Company and are prepared by Party 2 during his or her engagement with Company shall be, to the extent permitted by law, deemed to be works for hire, with the copyright automatically vesting in Company. To the extent that such writings and works are not works for hire, Party 2 hereby waives any and all "moral rights" in such writings and works and agrees to assign, and hereby does assign, to Company all of Party 2's right, title, and interest, including copyright, in such writings and works.

7. Party 2 further agrees to reasonably cooperate with Company, both during and after engagement, in obtaining and enforcing patents, copyrights, trademarks, and other protections of Company's rights in and to all such Inventions, writings, and other works. Party 2 shall execute any and all papers and documents required to vest title in Company or its nominee in any such Inventions, writings, other works, patents, trademarks, copyrights, applications, and interests.

8. Party 2 represents, warrants, and agrees that Party 2 has disclosed to Company all continuing obligations that Party 2 has with respect to the assignment of Inventions to any previous employers, and Party 2 claims no previous unpatented Inventions as his or her own, except for those that have been reduced to practice and are shown on Exhibit B attached to this Agreement. Party 2 acknowledges and agrees that Company does not seek the disclosure of any confidential information or Trade Secrets that Party 2 may have acquired from a previous employer, and Party 2 shall not disclose any such information to Company and shall describe the content of Exhibit B only in generalities.

E. ***Remedies.*** Party 2 acknowledges and agrees that the business of Company is highly competitive and that violation of any of the covenants in this Agreement would cause immediate, immeasurable, and irreparable harm, loss, and damage to Company not adequately compensable by a monetary award. Accordingly, Party 2 agrees, without limiting any of the other remedies or damages available to Company, that any violation of any such covenants may be enjoined or restrained by any court of competent jurisdiction and that any temporary restraining order or emergency, preliminary, or final injunctions may be issued by any court of competent jurisdiction.

F. ***Miscellaneous.***

1. **Relationships.** Nothing contained in this Agreement shall be deemed to create a partnership, joint venture, or alter the at-will nature of the employment relationship.

2. **Severability.** It is the desire of the parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies in each jurisdiction in which enforcement might be sought. Accordingly, whenever possible, each of the provisions of this Agreement shall be construed and interpreted in such a manner so as to be effective and valid under California law. If any provision of this Agreement or the application of any provision of this Agreement to any party or circumstance shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition without invalidating the remainder of such provision, any other provision of this Agreement, or the application of such provision to other parties or circumstances.

3. **Integration.** This Agreement constitutes the entire agreement between Party 2 and Company regarding the subject matter hereof and supersedes all other agreements, whether written, oral, or implied, regarding such subject matter. This Agreement may not be amended except in writing signed by both parties.

4. **Waiver.** No delay on the part of any party in the exercise of any right or remedy under this Agreement shall operate as a waiver thereof, and no single or partial exercise by any party of any right or remedy shall preclude an additional or further exercise thereof or the exercise of any other right or remedy.

5. **Governing Law.** This Agreement is being executed and delivered in the State of California, and the validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California, without regard to the principles of comity or conflicts of laws of such state.

6. **Execution in Counterparts.** This Agreement may be executed in any one or more counterparts, each of which shall constitute an original, no other counterpart needing to be produced, and all of which, when taken together, shall constitute but one and the same instrument.

7. Attorney Fees and Costs. In a dispute arising out of or related to this Agreement, the prevailing party shall have the right to collect from the other party its reasonable attorney's fees and costs and necessary expenditures.

8. Successors & Assigns. This Agreement shall bind each party's heirs, successors and assigns. Receiving Party may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Other Party. Such consent shall not be unreasonably withheld. Any assignment or transfer in violation of this section shall be void.

9. Headings. The headings of the paragraphs of this Agreement are merely for convenience of reference and shall not affect the interpretation of any of the provisions hereof. Whenever the context so requires, the plural shall include the singular and vice versa.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first above written.

\_\_\_\_\_ dba Aava Dental

Date: \_\_\_\_\_ (Signature)  
Dr. Abraham Ghorbanian

Party 2:

Date: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_

## **EXHIBIT A**

Cal. Lab. Code § 2870. Employment agreements; assignment of rights

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

Cal. Lab. Code § 2871. Conditions of employment or continued employment; disclosure of inventions

No employer shall require a provision made void and unenforceable by Section 2870 as a condition of employment or continued employment. Nothing in this article shall be construed to forbid or restrict the right of an employer to provide in contracts of employment for disclosure, provided that any such disclosures be received in confidence, of all of the employee's inventions made solely or jointly with others during the term of his or her employment, a review process by the employer to determine such issues as may arise, and for full title to certain patents and inventions to be in the United States, as required by contracts between the employer and the United States or any of its agencies.

Cal. Lab. Code § 2872. Notice to employee; burden of proof

If an employment agreement entered into after January 1, 1980, contains a provision requiring the employee to assign or offer to assign any of his or her rights in any invention to his or her employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention which qualifies fully under the provisions of Section 2870. In any suit or action arising thereunder, the burden of proof shall be on the employee claiming the benefits of its provisions.



**EXHIBIT B  
INVENTIONS**

**Name of Invention    Date of Invention    Owner of Invention    Description of Invention    of**