

## RESOLUTION AGREEMENT

### I. Recitals

1. Parties. The Parties to this Resolution Agreement (Agreement) are
  - A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS” or “OCR”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. See 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).
  - B. Northcutt Dental-Fairhope, LLC (“Northcutt Dental”), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. Since 1995, Northcutt Dental provides general, cosmetic, restorative and preventative dental services in south Alabama and the Florida panhandle. It has approximately 17 employees and served approximately 4,889 patients in 2017.

HHS and Northcutt Dental shall together be referred to herein as the “Parties.”

### 2. Factual Background and Covered Conduct.

In 2017, Dr. David Northcutt, owner and operator of Northcutt Dental, decided to run for state senator for district 32 in Alabama under the Republican Party. Dr. Northcutt engaged a campaign manager for assistance in this endeavor. On or about July 10, 2017, Dr. Northcutt provided an excel spreadsheet to the Campaign Manager which contained the names and addresses of 3,657 patients of Northcutt Dental. The Campaign Manager mailed letters to these patients to announce Dr. Northcutt's run for state senate. The letter was on the campaign's letter head but addressed the recipient as “Dear Valued Patient.”

On April 30, 2018, Northcutt Dental sent an email communication to its patients regarding Dr. Northcutt's campaign. The email header showed the email as coming from “Northcutt Dental” and the email message was signed “Sincerely, Northcutt Dental.” Northcutt Dental used a third-party marketing company, Solutionreach, to send the emails. The campaign email was sent to the same patients that received the mailed letter in July 2017 plus an additional 1,727 patients, for a total of 5,385 individual recipients.

OCR's investigation indicated that the following conduct occurred (“Covered Conduct”):

- A. Northcutt Dental impermissibly disclosed the name and address of 3,658 individual patients when it shared this information with Dr. Northcutt's Campaign Manager in 2017. See 45 C.F.R. § 164.502(a).
- B. Northcutt Dental impermissibly disclosed the name and email address of 5,385 individuals in 2018 when it shared this information with its marketing vendor for purposes outside the service arrangement in place. See 45 C.F.R. § 164.502(a).

- C. Northcutt Dental did not designate a privacy official until November 14, 2017. *See* 45 C.F.R. § 164.530(a).
- D. Northcutt Dental did not implement policies and procedures to comply with the requirements of the Privacy and Breach Notification Rules until January 1, 2018. *See* 45 C.F.R. §164.530(i).
3. No Admission. This Agreement is not an admission of liability by Northcutt Dental.
4. No Concession. This Agreement is not a concession by HHS that Northcutt Dental is not in violation of the HIPAA Rules and that Northcutt Dental is not liable for civil money penalties.
5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve HHS Transaction Number 18-304734 and any violations of the HIPAA Rules related to the Covered Conduct specified in Section I, Paragraph 2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

## II. Terms and Conditions

1. Payment. Northcutt Dental agrees to pay to HHS the amount of **\$62,500** ("Resolution Amount"). Northcutt Dental agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in Section II, Paragraph 9 pursuant to written instructions to be provided by HHS.
2. Corrective Action Plan. Northcutt Dental has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If Northcutt Dental breaches the CAP, and fails to cure the breach as set forth in the CAP, then Northcutt Dental will be in breach of this Agreement and HHS will not be subject to the Release set forth in Section II, Paragraph 3 of this Agreement.
3. Release by HHS. In consideration and conditioned upon Northcutt Dental's performance of its obligations under this Agreement, HHS releases Northcutt Dental from any actions it may have against Northcutt Dental under the HIPAA Rules for the Covered Conduct identified in Section I, Paragraph 2. HHS does not release Northcutt Dental from, nor waive any rights, obligations, or causes of action other than those specifically referred to in that paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.
4. Agreement by Released Parties. Northcutt Dental shall not contest the validity of its obligations to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. Northcutt Dental waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a- 7a) and 45 C.F.R. Part 160 Subpart E and HHS Claims Collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.
5. Binding on Successors. This Agreement is binding on Northcutt Dental and its successors, heirs, transferees, and assigns.
6. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
7. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this

instrument the Parties do not release any claims against or by any other person or entity.

8. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.
9. Execution of Agreement and Effective Date. The Agreement shall become effective (*i.e.*, final and binding) upon the date of signing of this Agreement and the CAP by the last signatory (“Effective Date”).
10. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six (6) years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this agreement, Northcutt Dental agrees that the time between the Effective Date of this Agreement (as set forth in Section II, Paragraph 9) and the date the Resolution Agreement may be terminated by reason of Northcutt Dental’s breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this agreement. Northcutt Dental waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct identified in Paragraph 2 of Section I that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Resolution Agreement.
11. Disclosure. HHS places no restriction on the publication of the Agreement.
12. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.
13. Authorizations. The individual(s) signing this Agreement on behalf of Northcutt Dental represent and warrant that they are authorized by Northcutt Dental to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

For Northcutt Dental-Fairhope, LLC

/s/  
\_\_\_\_\_  
David Northcutt, DMD  
Owner  
Northcutt Dental-Fairhope, LLC

03/08/2022  
\_\_\_\_\_  
Date

For the United States Department of Health and Human Services

/s/  
\_\_\_\_\_  
Barbara Stampul  
Regional Manager, Southeast Region  
Office for Civil Rights

03/08/2022  
\_\_\_\_\_  
Date

Appendix A  
CORRECTIVE ACTION PLAN  
BETWEEN THE  
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
NORTHCUTT DENTAL-FAIRHOPE, LLC

I. Preamble

Northcutt Dental-Fairhope, LLC (“Northcutt Dental”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS” or “OCR”). Contemporaneously with this CAP, Northcutt Dental is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. Northcutt Dental enters into this CAP as consideration for the release set forth in Section II, Paragraph 3 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

Northcutt Dental has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Richard E. Davis, Attorney  
Starnes Davis Florie LLP  
100 Brookwood Place, 7th Floor  
Birmingham, AL 35209  
(205) 868-6011  
Facsimile: (205) 868-6099  
E-mail: [rdavis@starneslaw.com](mailto:rdavis@starneslaw.com)

HHS has identified the following individual as its authorized representative and contact person with whom Northcutt Dental is to report information regarding the implementation of this CAP:

Barbara Stampul, Regional Manager  
Office for Civil Rights, Southeast Region  
61 Forsyth St, Suite 16T70  
Atlanta, GA 30303-8909  
Voice: (404) 562-2799  
Fax: (404) 562-7881  
Email: [barbara.stampul@hhs.gov](mailto:barbara.stampul@hhs.gov)

Northcutt Dental and HHS agree to promptly notify each other of any changes in the contact persons or

the other information provided above.

B. Proof of Submissions.

Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

III. Effective Date and Term of CAP

The Effective Date for this CAP shall be calculated in accordance with Section II, Paragraph 9 of the Agreement (“Effective Date”). The period of compliance (“Compliance Term”) with the obligations assumed by Northcutt Dental under this CAP shall begin on the Effective Date and end two (2) years from the Effective Date unless HHS has notified Northcutt Dental under Section VIII hereof of its determination that Northcutt Dental has breached this CAP. In the event of such a notification by HHS under Section VIII hereof, the Compliance Term shall not end until HHS notifies Northcutt Dental that it has determined that the breach has been cured. After the Compliance Term ends, Northcutt Dental shall still be obligated to submit the final Annual Report as required by Section VI and comply with the document retention requirement in Section VII.

IV. Time

Any reference to number of days refers to number of calendar days. In computing any period of time prescribed or allowed by this CAP, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

V. Corrective Action Obligations

Northcutt Dental agrees to the following:

A. Policies & Procedures

1. Northcutt Dental shall review and revise its written policies and procedures to comply with the Privacy, Security, and Breach Notification Rules, pursuant to 45 C.F.R. Part 160 and Subparts A, C and E of Part 164. Northcutt Dental’s policies and procedures shall include, but not be limited to, the minimum content set forth in Paragraph V.B below.
2. Northcutt Dental shall provide such policies and procedures to HHS within 90 days of the Effective Date. Upon receiving any recommended changes to such policies and procedures from HHS, Northcutt Dental shall have 30 days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval. This process shall continue until HHS approves the policies and procedures.

B. Minimum Content of Policies and Procedures

The Policies and Procedures required by Paragraph V.A above shall include, but not be limited to, the following provisions, standards, implementation specifications and obligations:

*Privacy Rule Provisions:*

1. Uses and Disclosures of PHI - 45 C.F.R. § 164.502(a)
2. Minimum Necessary - 45 C.F.R. § 164.502(b)
3. Disclosures to Business Associates- 45 C.F.R. § 164.502(e)(1)
4. Training – 45 C.F.R. § 164.530(b)(1)
5. Safeguards - 45 C.F.R. § 164.530(c)(1)
6. Changes to Policies and Procedures - 45 C.F.R. § 164.530(i)(2)

*Security Rule Provisions:*

7. Administrative Safeguards, including all required and addressable implementation specifications – 45 C.F.R. § 164.308(a) and (b).
8. Physical Safeguards, including all required and addressable implementation specifications – 45 C.F.R. § 164.310.
9. Technical Safeguards, including all required and addressable implementation specifications – 45 C.F.R. § 164.312.

*Breach Notification Rule Provisions:*

10. Notification to Individuals, including all required and addressable implementation specifications – 45 C.F.R. § 164.404.
11. Notification to the Media, including all required and addressable implementation specifications – 45 C.F.R. § 164.406.
12. Notification to the Secretary of HHS, including all required and addressable implementation specifications – 45 C.F.R. § 164.408.

C. Adoption, Distribution, and Updating of Policies and Procedures

1. Within thirty (30) calendar days of obtaining HHS' approval of the policies and procedures required by Section V.A of this CAP, Northcutt Dental shall finalize and officially adopt the policies and procedures in accordance with its applicable administrative procedures.
2. Northcutt Dental shall distribute the approved policies and procedures to all Northcutt Dental workforce members, including all workforce members of covered entities that are owned, controlled or managed by Northcutt Dental, as appropriate.
3. Northcutt Dental shall distribute the approved policies and procedures to all new workforce members within fourteen (14) days of when they become workforce members of Northcutt Dental. The approved policies and procedures shall be provided to business associates and vendors at or before the time service commences.
4. At the time of distribution of policies and procedures, Northcutt Dental shall document that workforce members have read, understand, and shall abide by such policies and procedures. Northcutt Dental will not provide workforce members with access to PHI unless and until this documentation is obtained. This documentation shall be retained in compliance with Section VII of this CAP.

5. Northcutt Dental shall review the approved policies and procedures routinely and shall promptly update the policies and procedures to reflect changes in operations at Northcutt Dental, federal law, HHS guidance, and/or any material compliance issues discovered by Northcutt Dental that warrant a change in the policies and procedures. Northcutt Dental shall assess, update, and revise, as necessary, the policies and procedures at least annually. Northcutt Dental shall provide such revised policies and procedures to HHS for review and approval. Within thirty (30) days of any approved revisions, Northcutt Dental shall distribute such revised policies and procedures to all workforce members. Northcutt Dental shall document that workforce members have read, understand, and shall abide by such policies and procedures. Northcutt Dental will not provide access to PHI unless and until this documentation is obtained.

D. Training

1. Within sixty (60) days of HHS' approval of the revised policies and procedures required by this CAP, Northcutt Dental shall submit its proposed training materials to HHS for its review and approval.
2. HHS will inform Northcutt Dental in writing as to whether HHS approves or disapproves of the proposed training materials. If HHS disapproves of them, HHS shall provide Northcutt Dental with comments and required revisions. Upon receiving notice of any required revisions to the training materials from HHS, Northcutt Dental shall have thirty (30) calendar days in which to revise the training materials and then submit the revised training materials to HHS for review and approval. This process shall continue until HHS approves the training materials.
3. Within thirty (30) days of HHS' approval of the training materials, Northcutt Dental shall provide training to all workforce members, in accordance with Northcutt Dental's approved procedures. Any new workforce members that are hired during or after the initial training period described in this paragraph shall be trained within fourteen (14) days of when they become workforce members of Northcutt Dental and in all cases before being provided access to PHI.
4. Northcutt Dental shall continue to provide routine retraining using the training materials HHS approved under this CAP to all workforce members for the duration of the Compliance Term of this CAP and as required by Northcutt Dental's approved training procedures.
5. Each workforce member who is required to receive training shall certify, in electronic or written form, that he or she received the training. The training certification shall specify the date on which the training was received. All training materials and certifications shall be retained in compliance with Section VII of this CAP.
6. Northcutt Dental shall be responsible for ensuring workforce members comply with training requirements and complete all required training.

7. Northcutt Dental shall review the training materials annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during audits or reviews, and any other relevant developments.

VI. Reportable Events and Annual Reports

A. Reportable Events

1. During the Compliance Term, upon receiving information that a workforce member may have failed to comply with any provision of the revised policies and procedures required by this CAP, Northcutt Dental shall promptly investigate the matter. If Northcutt Dental determines that a workforce member has violated the revised policies and procedures required by this CAP, Northcutt Dental shall notify HHS in writing within thirty (30) days. Such violations shall be known as “Reportable Events.” The report to HHS shall include the following:
  - a. A complete description of the event, including relevant facts, the person(s) involved, and the implicated provision(s) of Northcutt Dental’s Privacy, Security, and Breach Notification policies and procedures; and
  - b. A description of actions taken and any further steps Northcutt Dental plans to take to address the matter, to mitigate the harm, and to prevent it from recurring, including the application of appropriate sanctions against workforce members who failed to comply with Privacy, Security, and Breach Notification policies and procedures.
2. If no Reportable Events occur during any one Reporting Period, as defined in this CAP, Northcutt Dental shall so inform HHS in its Annual Report for that Reporting Period.

B. Annual Reports

1. The one-year period after HHS’ last approval of the policies and procedures required by Section V, Paragraph A of this CAP, and each subsequent one-year period during the Compliance Term, as defined in Section III of this CAP, shall each be known as a “Reporting Period.” Northcutt Dental shall submit to HHS a report with respect to the status of and findings regarding its compliance with this CAP for each Reporting Period (“Annual Report”). Northcutt Dental shall submit each Annual Report to HHS no later than thirty (30) days after the end of each corresponding Reporting Period. Each Annual Report shall include:
  - a. An attestation signed by an officer of Northcutt Dental attesting that the policies and procedures required by Section V of this CAP: (a) have been adopted; (b) are being implemented; and (c) have been distributed to all workforce members, business associates, and vendors;
  - b. A copy of all training materials used for the workforce training required by Section V, Paragraph D of this CAP, a description of the training, including a summary of

the topics covered, who conducted the training, who participated in the training, and a schedule of when the training session(s) were held;

- c. An attestation signed by an officer of Northcutt Dental attesting that it is maintaining written or electronic certifications from all workforce members that are required to receive training that they received the requisite training pursuant to the requirements set forth on this CAP and pursuant to Northcutt Dental's approved training procedures;
- d. Evidence demonstrating that Northcutt Dental has implemented security measures to reduce risks and vulnerabilities identified in its most recent risk analysis, which may include an updated risk management plan;
- e. An attestation signed by an officer of Northcutt Dental listing all of its locations, the name under which each location is doing business, the corresponding mailing address, phone number and fax number for each location, and attesting that each location has complied with the obligations of this CAP;
- f. A summary of Reportable Events identified during the Reporting Period and the status of any corrective or preventative action(s) taken by Northcutt Dental relating to each Reportable Event; and
- g. An attestation signed by an officer of Northcutt Dental stating that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content, and believes that, upon such inquiry, the information is accurate and truthful.

#### VII. Document Retention

Northcutt Dental shall maintain for inspection and copying, and shall provide to HHS upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

#### VIII. Requests for Extensions and Breach Provisions

Northcutt Dental is expected to fully and timely comply with all provisions contained in this CAP.

##### A. Timely Written Requests for Extensions

Northcutt Dental may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CAP. A "timely written request" is defined as a request in writing received by HHS at least five (5) days prior to the date by which any act is due to be performed or any notification or report is due to be filed. It is within HHS's sole discretion as to whether to grant or deny the extension requested.

##### B. Notice of Breach and Intent to Impose Civil Monetary Penalty (CMP)

The Parties agree that a breach of this CAP by Northcutt Dental constitutes a breach of the Resolution Agreement. Upon a determination by HHS that Northcutt Dental has breached this CAP, HHS may notify Northcutt Dental of (a) Northcutt Dental's breach;

and (b) HHS's intent to impose a civil money penalty (CMP) pursuant to 45 C.F.R. Part 160 for the Covered Conduct set forth in Section I, Paragraph 2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (this notification is hereinafter referred to as the "Notice of Breach and Intent to Impose CMP").

C. Response.

Northcutt Dental shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMPs from HHS to demonstrate to the satisfaction of HHS that:

1. Northcutt Dental is in compliance with the obligations of this CAP that HHS cited as the basis for the breach;
2. The alleged breach has been cured; or
3. The alleged breach cannot be cured within the 30 day period, but that Northcutt Dental (a) has begun to take action to cure the breach; (b) is pursuing such action with due diligence; and (c) has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP.

If at the conclusion of the 30 day period, Northcutt Dental fails to respond under the requirements of Section VIII, Paragraph C to the satisfaction of HHS, HHS may proceed with the imposition of a CMP against Northcutt Dental pursuant to 45 C.F.R. Part 160 for the Covered Conduct set forth in Section I, Paragraph 2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Rules. HHS shall notify Northcutt Dental in writing of its determination to proceed with the imposition of a CMP.

For Northcutt Dental-Fairhope, LLC

/s/

03/08/2022

\_\_\_\_\_  
David Northcutt, DMD  
Owner  
Northcutt Dental-Fairhope, LLC

\_\_\_\_\_  
Date

For the United States Department of Health and Human Services

/s/

03/08/2022

\_\_\_\_\_  
Barbara Stampul  
Regional Manager, Southeast Region  
Office for Civil Rights

\_\_\_\_\_  
Date