

SheepMedical USA

Business Associate Agreement

(last modified: April 19, 2022)

By clicking “accept” below, you agree to be bound to the terms and conditions set forth in this Business Association Agreement (“**Agreement**”) governing the use and disclosure of Protected Health Information you provide, as a HIPAA Covered Entity, Business Associate of a HIPAA Covered Entity, or Subcontractor of a Business Associate to SheepMedical USA Inc, a Delaware corporation, (“**SheepMedical USA**”). This Agreement is effective immediately.

From time to time herein, (i) Covered Entity, Business Associate, and Subcontractor shall collectively, and individually be referred to herein as “**Contracting Entity**”, and (ii) SheepMedical USA, Business Associate, and Subcontractor shall collectively, and individually be referred to herein as “**Downstream Entity**”. From time to time herein, Contracting Entity and SheepMedical USA shall collectively be referred to as “**Parties**”, and individually, each is a “**Party**”.

Recitals

A. SheepMedical USA provides to or receives from Contracting Entity certain services (“**Services**”) which are outlined in separate agreements.

B. Contracting Entity may make available and/or transfer to Downstream Entity Protected Health Information (“**PHI**”) in conjunction with the Services, which Downstream Entity will use or disclose in the course of providing Services for Contracting Entity in accordance with this Agreement.

Now, Therefore, in consideration of the Parties’ continuing obligations under the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder regarding privacy and security of PHI, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement as follows:

Agreement

The Parties agree to the terms and conditions of this Agreement in order to comply with the rules on handling of PHI under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E (“**Privacy Standards**”), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (“**Security Standards**”), and the HIPAA Breach Notification Regulations, 45 C.F.R. Part 164, Subpart D (“**Breach Notification Regulations**”), all as amended from time to time (collectively the “**Requirements**”).

Downstream Entity acknowledges and agrees that all Protected Health Information that is created or received by Contracting Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic media by Contracting Entity or its operating units to Downstream Entity or is created or received by Downstream Entity on Contracting Entity’s behalf shall be subject to this Agreement.

1. Definitions. Except as otherwise defined herein, all capitalized terms in this Agreement shall have the definitions set forth in the current Requirements. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Requirements, as amended, the Requirements shall control. Where provisions of this Agreement are different than those mandated in the Requirements, but are nonetheless permitted by the Requirements, the provisions of this Agreement shall control.

2. Permitted Uses and Disclosures of PHI

2.1 Downstream Entity agrees to Use or Disclose PHI only as follows: (i) to perform Services as may be set forth in any agreements between the Parties; (ii) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Contracting Entity is required to disclose such information; or (iii) as otherwise permitted under this Agreement or the Requirements. Downstream Entity agrees that it may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Contracting Entity.

2.2 Notwithstanding the prohibitions set forth in this Agreement, Downstream Entity may Use and Disclose PHI as follows: (i) if necessary, for their own proper management and administration; or (ii) to carry out their legal responsibilities, provided that as to any such Disclosure, the following requirements are met:

2.2.1 The Disclosure is required by law, not merely permitted by law; or

2.2.2 Downstream Entity obtains reasonable written assurances from the person or party to whom the information is disclosed that it 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 or party, and the person or party notifies Downstream Entity of any instances of which it is aware in which the confidentiality of the information has been breached.

2.3 Downstream Entity may Use or Disclose PHI for data aggregation services, if to be provided by Downstream Entity for the Health Care Operations of Contracting Entity pursuant to any agreements between the Parties evidencing their business relationship. Contracting Entity acknowledges and agrees that it maintains no ownership or other rights in the aggregated data sets created or maintained by Downstream Entity.

3. Obligations and Activities of Downstream Entity

3.1 Downstream Entity shall comply with the HIPAA Security Standards, including the Security Standards' Administrative, Physical, and Technical safeguard requirements to prevent use or disclosure of electronic PHI other than as provided for by this Agreement.

3.2 Downstream Entity agrees to use appropriate safeguards and to comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement.

3.3 Downstream Entity agrees to mitigate, to the extent practicable, any harmful effect that is known to Downstream Entity of a use or disclosure of Protected Health Information by Downstream Entity in violation of the requirements of this Agreement.

3.4 Downstream Entity shall report to Contracting Entity within a reasonable timeframe after discovering any unauthorized Use or Disclosure of Protected Health, any Security Incident, and any Breach of Unsecured PHI. Specifically, the following shall apply:

3.4.1 A breach is considered discovered on the first day the Downstream Entity knows or should have known about it.

3.4.2 In no case shall Downstream Entity notify Contracting Entity of any breach later than 24 hours after a breach is discovered.

3.4.3 Downstream Entity shall notify the Contracting Entity of any and all breaches of Protected Health Information and provide detailed information to Contracting Entity about the breach, along with the names and contact information of all individuals whose Protected Health Information was involved.

3.4.4 For breaches determined to be caused by Downstream Entity, where such breaches require notifications to patients or consumers, the cost of such breach notifications shall be borne by Downstream Entity.

3.5 Downstream Entity agrees, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Downstream Entity agree to the same restrictions, conditions, and requirements that apply to the Downstream Entity with respect to such information.

3.6 Downstream Entity agrees to apply HIPAA's Minimum Necessary Standard to all Uses, Disclosures, and requests for PHI, and to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure, or request.

3.7 If applicable, Downstream Entity agrees to provide access, at the request of Contracting Entity, and in a reasonable time and manner, to PHI in a Designated Record Set, to Contracting Entity or, as directed by Contracting Entity, to an Individual in order to meet the requirements of 45 CFR § 164.524.

3.8 If applicable, Downstream Entity agrees to make any amendment(s) to PHI in a Designated Record Set that Contracting Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Contracting Entity or an Individual, and in a reasonable time and manner.

3.9 Downstream Entity agrees to make internal practices, books, and records, including policies and procedures, relating to the Use and Disclosure of PHI received from, or created or received by Downstream Entity on behalf of Contracting Entity available to the Contracting Entity or to the United States Secretary of Health and Human Services or designate of the Secretary, in a reasonable time and manner, for purposes of the Secretary determining Contracting Entity's compliance with the Requirements.

3.10 Downstream Entity agrees (i) to document such Disclosures of PHI and information related to such Disclosures as would be required for Contracting Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528; and (ii) to provide such accounting to Contracting Entity within a reasonable time upon request.

3.11 If applicable, Downstream Entity agrees to comply with the requirements of the "Red Flags" Rule, if applicable, and implement a compliant identity theft prevention program by or before the required "Red Flags" Rule compliance date, and ongoing thereafter.

4. Termination

4.1 Notwithstanding anything in this Agreement to the contrary, Contracting Entity may terminate this Agreement effective immediately if Downstream Entity has violated any material term of this Agreement.

4.2 Notwithstanding anything in this Agreement to the contrary, if Contracting Entity reasonably believes Downstream Entity will violate a material term of this Agreement, Contracting Entity may terminate this Agreement upon ninety (90) days written notice (“**Notice Period**”) if the Downstream Entity fails to provide adequate written assurance within the Notice Period that it will not breach the cited term.

4.3 Upon termination of this Agreement, or upon request of Contracting Entity, whichever occurs first, if feasible, Downstream Entity will return or destroy all PHI received from Contracting Entity or created, maintained, or received by Downstream Entity on behalf of Contracting Entity that Downstream Entity still maintains in any form. Downstream Entity will retain no copies of the PHI in any form or medium. If such return or destruction is not feasible, Downstream Entity will extend the protections of this Agreement to the information in perpetuity and limit further Uses and Disclosures to those purposes that make the return or destruction of the information not feasible.

5. Miscellaneous

5.1 The Parties to this Agreement do not intend to create any rights in any third parties.

5.2 This Agreement constitutes the entire agreement between the Parties, and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter.

5.3 This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

5.4 None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

5.5 No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion. The Parties agree that, in the event that any documentation of the arrangement pursuant to which Downstream Entity provides services to Contracting Entity contains provisions relating to the Use or Disclosure of PHI which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Downstream Entity’s Use and Disclosure of PHI.

5.6 The obligations of Downstream Entity under this Section and Section 4.3 shall survive the expiration, termination, or cancellation of this Agreement, and/or the business relationship of the parties, and shall continue to bind Downstream Entity, its agents, employees, contractors, successors, and assigns as set forth herein.

5.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby. Each Party irrevocably and unconditionally consents and submits to the exclusive jurisdiction of the courts of the State of Delaware and the courts of the United States located in the District of Delaware, for the adjudication of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The provisions of the “Convention on Contracts for the International Sale of Goods” of the United

Nations shall be explicitly excluded and shall not apply to this Agreement. Each of the Parties hereto, agrees and hereby waives their right to jury trial as to matters arising out of the terms of this Agreement and any matters herein released to the extent permitted by law. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

5.8 In the event a Party believes in good faith that any provision of this Agreement fails to comply with the then-current Requirements issued by HHS, such Party shall notify the other Party in writing. For a period of up to thirty days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary, to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the Requirements, either Party has the right to terminate upon written notice to the other Party.

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