

## HIPAA BUSINESS ASSOCIATE ADDENDUM

### Recitals

This HIPAA Business Association Addendum (this “HIPAA Addendum”) is an addendum to the DoseDr Product Terms (the “Terms”). This HIPAA Addendum shall be applicable only in the event and to the extent DoseDr meets, with respect to you and as to your use of the Services, the definition of a Business Associate set forth at 45 C.F.R. §160.103, or applicable successor provisions.

### Definitions

Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules and applicable state law.

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean PocketSquares Inc.
- (b) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) **Prohibited Use and Disclosure of PHI**. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.
- (b) **Safeguards**. Use appropriate safeguards, and 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 the Agreement.
- (c) **Reporting of Improper Access, Use or Disclosure**. Report to you any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.
- (d) **Business Associate’s Subcontractors**. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or

transmit protected health information on behalf of Business Associate agree *in writing* to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

(e) **Designated Record Set**. Make available protected health information in a designated record set to you as necessary to satisfy your obligations under 45 CFR 164.524.

(f) **Amendments**. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by you pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy your obligations under 45 CFR 164.526.

(g) **Accounting**. Maintain and make available the information required to provide an accounting of disclosures to you as necessary to satisfy your obligations under 45 CFR 164.528.

(h) **Access to Records**. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(i) **Further Compliance**. To the extent Business Associate is to carry out one or more of your obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to you in the performance of such obligation(s).

#### **Permitted Uses and Disclosures by Business Associate**

(a) Business Associate may only use or disclose protected health information as necessary to perform the Services. In addition, Business Associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

(b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with your minimum necessary policies and procedures.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by you, except for any specific uses and disclosures set forth below.

(e) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Business Associate may provide data aggregation services relating to your health care operations.

#### **Your Obligations**

(a) You shall be responsible for all breach notifications to individuals, the Secretary, the media, and other third parties arising from any breach by Business Associate or any of its subcontractors of unsecured PHI or, as required, from any violation by Business Associate or any of its subcontractors of this Agreement, the HIPAA Rules, or applicable state laws or regulations; provided, however, Business Associate shall promptly reimburse you for all reasonable expenses you incur in connection with such notifications, including, without limitation, reasonable attorneys' fees, postage, public relations, credit monitoring services, and media placements.

(b) You and Business Associate shall cooperate with one another regarding the content of such notification and that you shall provide copies to Business Associates of all such notifications concurrently with any notifications you provide to individuals or government.

(c) You shall notify Business Associate of any limitation(s) in the notice of your privacy practices under 45 CFR 164.520, to the extent that such limitation will affect Business Associate's use or disclosure of protected health information.

(d) You shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes will affect Business Associate's use or disclosure of protected health information.

(e) You shall notify Business Associate of any restriction on the use or disclosure of protected health information that you have agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

(f) You shall be responsible for using administrative, physical, and technical safeguards at all times to maintain and ensure the confidentiality, privacy, and security of protected health information transmitted by you to Business Associate in accordance with the standards and requirements of the HIPAA Rules and applicable state laws and regulations, until such protected health information is received by Business Associate.

(g) You shall obtain any consent or authorization from an individual that may be required by applicable federal or state laws and regulations for Business Associate to perform the Services.

### **Permissible Requests by You**

You shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by you; provided, however, that you may request Business Associate to use or disclose protected health information for data aggregation or management and administration and legal responsibilities of the Business Associate including under the Management Services Agreement.

### **Term and Termination**

(a) Term. The term of this HIPAA Addendum shall continue for the term of your use of the DoseDr Services, and following termination of such use of Services, until all PHI is destroyed or returned to you or your designee.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by you, if you reasonably determine that Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by you.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from you, or created, maintained, or received by Business Associate on your behalf, shall:

1. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to you or, if agreed to by you (which agreement shall not unreasonably be withheld), destroy the remaining protected health information that Business Associate still maintains in any form in accordance with the HIPAA Rules and applicable state laws and regulations;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
4. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out under “Permitted Uses and Disclosures By Business Associate” which applied prior to termination; and
5. Return to you or, if agreed to by you (which agreement shall not unreasonably be withheld), destroy the protected health information retained by Business Associate, in accordance with the HIPAA Rules and applicable state laws and regulations, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

In the event Business Associate destroys any protected health information, it shall promptly provide a written certification to you that the protected health information has been destroyed in accordance with the HIPAA Rules and applicable state laws and regulations.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

**Miscellaneous**

(a) Interpretation. Every term and provision of this Agreement is to be construed simply according to its fair meaning and not strictly for or against any Party. No provision of this Agreement is to be interpreted as a penalty upon, or forfeiture by, any Party. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. The Parties acknowledge their right to separate legal counsel, and agree to obtain any appropriate advice or opinions about this Agreement from their respective counsel. The Parties acknowledge that they have had the opportunity to participate equally in the drafting of this Agreement and that in the event of a dispute, no Party shall be treated, for any purpose, as the author of this Agreement nor have any ambiguity resolved against it on account thereof. This Section shall survive termination of this Agreement.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Binding Agreement; Assignment. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than you, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. This Section shall survive termination of this BAA.

(d) Governing Law and Choice of Forum. The parties agree that this BAA shall be construed in accordance with the laws of the State of California, without regard to conflict of laws principles. The parties further agree that any litigation concerning this Agreement shall only be brought in a court of competent jurisdiction within Contra Costa County, California, and each Party hereby irrevocably and unconditionally: (i) consents to submit to the exclusive jurisdiction of the courts above for any action, suit, or proceeding arising out of or relating to this Agreement (and each Party hereby irrevocably and unconditionally agrees not to commence any such action, suit, or proceeding except in such courts); (ii) waives any objection to the laying of venue of any such action, suit, or proceeding in any such courts; and (iii) waives and agrees not to plead or claim that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum. To the extent that the HIPAA Rules apply to any provision in this Agreement, any ambiguity shall be resolved to permit you to comply with the HIPAA Rules. This Section shall survive termination of this Agreement.

(e) Integration. This BAA constitutes the sole and only agreement of the parties hereto with respect to the subject matter herein. Any and all prior agreements, promises, proposals, negotiations or representations, whether written or oral, which are not expressly set forth in this BAA are hereby superseded and are of no force or effect.

(f) Amendment. This BAA may not be amended, modified or terminated orally, and no amendment, modification, termination or attempted waiver shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

(g) Severability. Should any provision of this BAA or application thereof be held invalid, illegal or unenforceable for any reason whatsoever, then notwithstanding such invalidity, illegality or unenforceability, the remaining terms and provisions of this BAA shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purposes of this BAA. The Parties further agree to use their commercially reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business, and other purposes of such void or unenforceable provision.

(h) Waiver. The failure at any time by either party to require or demand performance of any provision of this BAA shall not constitute a waiver by such party of such provision and shall not affect such party's full right to require performance at any later time.

(i) No Third Party Beneficiary. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the parties to this BAA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

(j) Headings. The headings to the various paragraphs of this BAA have been inserted for convenient reference only and shall not modify, define, limit or expand the provisions of this BAA.

(k) Independent Contractor. Business Associate is an independent contractor for you. No agency, employment, partnership, or joint venture is intended to be created by this BAA. Neither Business Associate nor you shall take any action or position which is inconsistent with those descriptions of the relationship.