

# HIPAA BUSINESS ASSOCIATE AGREEMENT

**THIS AGREEMENT** is made and entered into this day, \_\_\_\_\_ by and between Creative Consulting Co. (Vendor) and \_\_\_\_\_ (Business Associate).

**WHEREAS**, Business Associate has agreed to provide certain services for the Vendor involving the use and/or disclosure of individually identifiable health information relating to the Vendor's records containing patient information ("Protected Health Information" or "PHI"); and

**WHEREAS**, in accordance with the federal privacy regulations set forth at 45 CFR Part 160 and Part 164 (the "HIPAA Privacy Regulations"), which require the Vendor to have a written contract with each of its business associates, the parties wish to incorporate satisfactory assurances that the Business Associate will appropriately safeguard Protected Health Information.

**NOW, THEREFORE**, in consideration of the mutual promises and other consideration contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Services.** The services to be provided by Business Associate are identified in a separate agreement between the parties entitled USER AGREEMENT FOR DATAVAULT SYSTEM, to which this agreement serves as an addendum.
2. **Permitted Uses and Disclosures.** Business Associate shall not use or disclose any Protected Health Information other than as permitted by this Agreement in order to perform Business Associate's obligations hereunder or as required by law. Business Associate shall not use or disclose the PHI in any way that would be prohibited if used or disclosed in such a way by the Vendor. Business Associate may also use or disclose PHI as required for Business Associate's proper management and administration, provided that if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring that party (i) to hold the PHI confidentially and not to use or further disclose the PHI except as required by law, and (ii) to notify Business Associate immediately of any instances of which it becomes aware in which the confidentiality of the PHI is breached.
3. **Minimum Necessary Information.** Business Associate shall only request from the Vendor, and shall only use and disclose, the minimum amount of PHI necessary to carry out the Business Associate's responsibilities under this Agreement.
4. **Reporting.** If Business Associate becomes aware of any use or disclosure of PHI in violation of this Agreement, Business Associate shall immediately report such information to the Vendor. Business Associate shall also require its employees, agents, and subcontractors to immediately report any use or disclosure of PHI in violation of this Agreement. Business Associate shall cooperate with, and take any action required by, the Vendor to mitigate any harm caused by such improper disclosure.
5. **Agents and Subcontractors.** Business Associate shall require its employees, agents, and subcontractors to agree not to use or disclose PHI in any manner except as specifically allowed herein, and shall take appropriate disciplinary action against any employee or other agent who uses or discloses PHI in violation of this Agreement. Business Associate shall require any agent or subcontractor that carries out any duties for Business Associate involving the use, custody, disclosure, creation of, or access to PHI to enter into a written contract with Business Associate containing provisions substantially identical to the restrictions and conditions set forth in this Agreement.
6. **Policies, Privacy Practices, and Restrictions.** The Vendor shall provide Business Associate with access to the Vendor's notices, policies, and procedures, including updates thereto provided from time to time by the Vendor, and Business Associate shall comply with all such notices, policies, and procedures. Business Associate shall assure that each of its agents and employees has received appropriate training regarding HIPAA confidentiality and patient privacy compliance issues.
7. **Patient Rights.** Business Associate acknowledges that the HIPAA Privacy Regulations require the Vendor to provide patients with a number of privacy rights, including (a) the right to inspect PHI within the possession or control of the Vendor, its business associates, and their subcontractors, (b) the right to amend such PHI, and (c) the right to obtain an accounting of certain disclosures of their PHI to third parties. Business Associate shall establish and maintain adequate internal controls and procedures allowing it to readily assist the Vendor in complying with patient requests to exercise any patient rights granted by the Privacy Regulations, and shall, at no additional cost to the Vendor, immediately comply with all Vendor requests to amend, provide access to, or create an accounting of disclosures of the PHI in the possession of Business Associate or its agents and subcontractors. If Business Associate receives a request directly from a patient to exercise any patient rights granted by the Privacy Regulations, Business Associate shall immediately forward the request to the Vendor.
8. **Safeguards and Chain of Trust Requirements.** Business Associate shall use appropriate physical, technical, and administrative safeguards to prevent the use or disclosure of PHI in any manner other than as provided for by this Agreement and as required by the Vendor's privacy and security policies. Upon request, Business Associate shall allow the Vendor to review such safeguards. If Business Associate uses electronic media to obtain, transmit, or store PHI, Business Associate shall comply with all "chain of trust" requirements established by applicable HIPAA security and transaction regulations, including the implementation of appropriate security measures and procedures for its data systems which shall maintain the integrity and confidentiality of the transmitted information and otherwise prevent unauthorized access to the PHI as required by this Agreement.

9. Audits and Inspections. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI available to the Vendor for inspection upon request, and to the Secretary of Health and Human Services to the extent required for determining the Vendor's compliance with the Privacy Regulations. Notwithstanding the above, not attorney-client, accountant-client, or other legal privilege shall be deemed waived by the Vendor or Business Associate by virtue of this provision.
10. Termination and Return of PHI. Notwithstanding anything to the contrary in the Agreement, Vendor may terminate this Agreement immediately if, in the Vendor's reasonable opinion, Business Associate breaches any provision of this Agreement. The Vendor may, in its sole discretion, give Business Associate 30 days in which to cure the breach and mitigate any damages. Upon termination of this Agreement for any reason, Business Associate shall, if feasible, return or destroy all PHI received from the Vendor or created by Business Associate on behalf of the Vendor. If such return or destruction is not feasible, the parties agree that the requirements of this Agreement shall survive termination and that Business Associate shall limit all further uses and disclosures of PHI to those purposes that make the return or destruction of such information infeasible.
11. Indemnification. Business Associate agrees to indemnify, defend, and hold the Vendor, its officers, directors, employees, agents, and assigns, harmless from and against any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or related to the Business Associate's breach of its obligations under this Agreement.
12. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Vendor to comply with the HIPAA Privacy Regulations. In the event of any inconsistencies between the terms of this Agreement and any other agreement between the parties, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties enter into this Agreement, to become effective *as of the later of the signature dates indicated below.*

ACCEPTED BY BUSINESS ASSOCIATE:

Signed: \_\_\_\_\_

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

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

ACCEPTED BY Creative Consulting Co.:

Signed: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_