**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (the “Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ (the “Effective Date”) by and between **MID-ATLANTIC WOMEN’S CARE, PLC**, who is a covered entity under HIPAA (“Covered Entity”) and , who is a business associate under HIPAA (“Business Associate”).

RECITALS

* 1. Covered Entity is a health care provider and has engaged Business Associate to perform certain services (the “Services”).
  2. In connection with those Services, Covered Entity plans to disclose to Business Associate Protected Health Information (“PHI”) (defined below) that is subject to certain restrictions and obligations pursuant to the Health Insurance Portability Act of 1996 (“HIPAA”) and the HIPAA Privacy and Security Rules (as defined below), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) enacted as a part of the American Recovery and Reinvestment Act of 2009.
  3. As required under HIPAA, an appropriate Business Associate Agreement must be executed between Covered Entity and Business Associate to address the obligations related to the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity.
  4. The purpose of this Agreement is to address the obligations of and restrictions on Business Associate in connection with its access, creation, use, disclosure, and destruction of the PHI of Covered Entity.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions**. Terms used but not otherwise defined in this Agreement shall have the meaning ascribed in 45 C.F.R. Parts 160-164, as amended.
   1. **Business Associate** means any entity that creates, receives, maintains or transmits protected health information for a function or activity regulated by HIPAA on behalf of a covered entity or another business associate and shall have the same meaning as defined in 45 C.F.R. § 160.103.
   2. **HIPAA** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d to 1320d-7, and future amendments thereto, and the regulations issued thereunder.
   3. **Protected Health Information or PHI** shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate on behalf of or from Covered Entity. PHI will include PHI in electronic form (“ePHI”) unless specifically stated otherwise.
   4. **Regulations** means the final Regulations implementing the privacy and security provisions of HIPAA, as amended from time to time. The Regulations are presently codified at 45 C.F.R. Part 164 Subpart E (the “Privacy Rule”) and 45 C.F.R. Part 164 Subpart C (the “Security Rule”).
   5. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate as defined in 45 C.F.R. § 160.103.
2. **Purpose**. Covered Entity has engaged Business Associate to perform certain services. Business Associate will have access to PHI in order to perform its functions. HIPAA requires Covered Entity to obtain satisfactory written contractual assurances from Business Associate. The purpose of this Agreement is to obtain satisfactory written contractual assurances from Business Associate that Business Associate will appropriately safeguard such PHI.
3. **Permitted Uses and Disclosures of PHI**. Business Associate shall only use and disclose PHI for the following purposes:
   1. To perform its functions as a Business Associate pursuant to this Agreement.
   2. As needed for the proper management and administration of Business Associate to carry out the legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.
4. **Special Conditions on Disclosure for Business Associate’s Purposes**. Before Business Associate may disclose PHI to another party for a reason described in subparagraph III(B), one of the following two conditions must be met; either —
   1. The disclosure must be required by law; or
   2. Business Associate must obtain written assurances from the person to whom the PHI is disclosed that such person will safeguard the PHI and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it to such person; and such person must agree in writing to notify Business Associate of any instances of which it is aware in which the confidentiality of PHI has been breached.
5. **Obligations of Business Associate**. As an express condition of performing the Services, Business Associate agrees to and acknowledges the following:
   1. Business Associate is directly subject to HIPAA’s Privacy and Security Rule pursuant to the HITECH Act, the requirements of which are incorporated by references herein.
   2. Business Associate shall use and disclose PHI only as permitted or required by this Agreement, or as otherwise required by law.
   3. Business Associate shall use appropriate technical, physical, and administrative safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement.
   4. Business Associate shall report to Covered Entity’s designated information security officer, within one (1) business day of discovery by Business Associate, any security incident as defined by § 164.304 of the Regulations and any use or disclosure of PHI not provided for in this Agreement, including breaches of unsecured PHI, together with all the information required by § 164.410(c) of the Regulations and any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall cooperate with Covered Entity in mitigating any harmful effects of any such unauthorized disclosure.
   5. Business Associate shall provide individuals with access to and copies of their PHI maintained in designated record sets, and limit fees therefore, pursuant to § 164.524 of the Regulations.
   6. Business Associate shall Notify Covered Entity within five (5) business days of any request by an individual to amend PHI maintained by Business Associate, direct the requesting individual to Covered Entity for handling of such request, cooperate with Covered Entity in the handling of such request, and incorporate any amendment accepted by Covered Entity in accordance with § 164.526 of the Regulations. Business Associate is not authorized to independently agree to any amendment of PHI unless authorized in writing by Covered Entity on a case-by-case basis.
   7. Business Associate shall log or otherwise track those disclosures of PHI by Business Associate which are subject to the individual’s right to an accounting under § 164.528 of the Regulations, and report such disclosures to Covered Entity in form and manner specified by Covered Entity from time to time.
   8. Business Associate shall make its internal practices, books and records relating to the use and/or disclosure of PHI and/or safeguards available to the Secretary of Health and Human Services or his or her designee for purposes of determining Covered Entity’s compliance with the Privacy Rule and/or the Security Rule.
   9. Business Associate shall return to Covered Entity or destroy (and not retain a copy) all PHI in its possession, upon the termination of the Agreement(s) or as soon as such PHI is no longer needed by Business Associate to perform its responsibilities thereunder, whichever comes first, and require its agents and contractors to do likewise. To the extent that return or destruction is not feasible, the protections of this Agreement shall remain in effect for so long as Business Associate or its agents or contractors have possession of or access to such PHI, and Business Associate agrees to limit further uses and disclosures of PHI to those purposes which make return or destruction infeasible.
   10. In accordance with §§ 164.502(e)(1)(ii) and 164.308(b)(2) of the Regulations, as applicable, Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information. It is the direct responsibility of the Business Associate to create a Business Associate Agreement with all subcontractors as stated in § 164.314(a)(2)(iii) of the Regulations.
   11. Business Associate shall execute and deliver a chain of trust partner agreement, trading partner agreement, or business associate agreement as and when required by Covered Entity in accordance with its obligations under HIPAA.
   12. Business Associate shall comply with any voluntary restriction on use or disclosure of PHI accepted by Covered Entity under § 164.522(a) of the Regulations which is properly communicated to Business Associate.
   13. Business Associate shall comply with any reasonable requests by individuals under § 164.522(b) of the Regulations to receive communications of PHI by alternative means or at alternate locations, whether communicated to Business Associate or directly by the individual.
   14. Establish, maintain and update, in accordance with the Identity Theft Rules promulgated by the Federal Trade Commission (16 C.F.R. Part 681), reasonable policies and procedures designed to: (1) detect and prevent identity theft and/or medical identity theft (“Red Flags”); (2) promptly report to Covered Entity the occurrence of any Red Flags; and (3) take appropriate steps to prevent or mitigate identity theft and/or medical identity theft.
   15. Disclose to its subcontractors, agents or other third parties, and request from the Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
   16. Implement administrative safeguards, physical safeguards, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI as required by the Security Rule, and ensure that any agent and subcontractor to whom Business Associate provides ePHI agrees to implement reasonable and appropriate safeguards to protect ePHI.
6. **Responsibilities of Covered Entity**. Covered Entity agrees to the following:
   1. To notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement, including, but not limited to, restrictions on use and/or disclosure of PHI as provided for in § 164.522 of the Regulations agreed to by the Covered Entity.
   2. To notify Business Associate in writing of any reasonable requests by individuals under § 164.522(b) of the Regulations to receive communications of PHI by alternative means or at alternative locations if such requests will affect Business Associate’s Services.
   3. To furnish Business Associate with a written or electronic copy of its Notice of Privacy Practices at the time this Agreement is executed and thereafter promptly furnish Business Associate with a written or electronic copy of all amendments or revisions to the Notice of Privacy Practices.
   4. To provide Business Associate with a copy of any amendment to PHI which is accepted by Covered Entity under § 164.526 of the Regulations which Covered Entity believes will apply to PHI maintained by Business Associate in designated record sets.
   5. To inform the Business Associate in writing of any changes in, or withdrawal of, the permission or authorization provided to the Covered Entity by Individuals.
   6. To inform the Business Associate in writing of any opt-outs exercised by any Individual from fundraising activities of the Covered Entity pursuant to § 164.514(f) of the Regulations.
   7. To permit the Business Associate to make any use and/or disclosure of PHI permitted under § 164.512 of the Regulations except uses or disclosure for research are not permitted without prior approval by the covered entity.
7. **Supervening Law**. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to Business Associate, propose to amend this Agreement in such manner as it determines necessary to comply with such law or regulation. If Business Associate disagrees with any such proposed amendment, Business Associate shall so notify Covered Entity in writing within thirty (30) days of Covered Entity’s notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of them may terminate the underlying agreement for contractual services on not less than thirty (30) days’ written notice to the other.
8. **Term and Termination**.
   1. **Term**. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, including return or destruction of all PHI in Business Associate’s possession (or in the possession of Business Associate’s agents and/or contractors) as necessary, unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Agreement designed to safeguard PHI shall survive expiration or other termination of the Agreements and shall continue in effect until Business Associate has performed all obligations under this Agreement.
   2. **Termination by Covered Entity**. Covered Entity may immediately terminate the Agreement, if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may choose to provide Business Associate with written notice of the existence of an alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure to take reasonable steps to cure is grounds for immediate termination of this Agreement. If termination is not feasible, the Covered Entity may report such breach to the Secretary.
   3. **Return/Destruction Infeasible**. In the event Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide Covered Entity with notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate shall only be required to return or destroy PHI when it is feasible to do so.
9. **Miscellaneous**. The following miscellaneous provisions shall apply throughout the term of this Agreement:
   1. **Covered Entity**. For purposes of this Agreement, Covered Entity shall include the named Covered Entity and all entities covered by a joint Notice of Privacy Practices with Covered Entity, whether as part of an affiliated covered entity or an organized health care arrangement.
   2. **Survival**. The respective rights and obligations of Business Associate and Covered Entity hereunder shall survive termination of this Agreement according to the terms hereof and the obligations imposed on Covered Entity under HIPAA.
   3. **Interpretation; Amendment**. This Agreement shall be interpreted and applied in a manner consistent with Covered Entity’s obligations under HIPAA. All amendments shall be in writing and signed by the parties, except that this Agreement shall attach to additional Agreement(s) entered into between the parties in the future without the necessity of amending this Agreement each time. This Agreement is intended to cover the entire Business Associate relationship between the parties, as amended, from time to time, through Agreement(s) or other means.
   4. **Waiver**. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
   5. **No Third-Party Beneficiaries**. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies or obligations hereunder.
   6. **Indemnification**. The Business Associate agrees to indemnify and hold harmless the Covered Entity, its officers, directors, principals, employees, agents, subcontractors, and affiliates (each of the foregoing is an “Indemnified Party”) against any actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach or violation of this Agreement or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Rule, by the Business Associate or its officers, directors, employees, agents, subcontractors, and affiliates. The Business Associate shall reimburse Covered Entity for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may be imposed upon the Covered Entity by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate’s breach hereunder. This indemnification obligation shall survive expiration or termination of this Agreement for any reason.
   7. **Notices**. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party’s address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below. Each Party named below may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

If to the Covered Entity, to:

MID-ATLANTIC WOMEN’S CARE, PLC

420 North Center Drive, Suite 203

Norfolk, VA 23502

Attn: Privacy Officer

If to the Business Associate, to:

Attn:

* 1. **Conflict**. In the event of any conflict or inconsistency between this Agreement and the terms of any other agreement between the parties, the terms of this Agreement shall govern.

**IN WITNESS WHEREOF**, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

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| MID-ATLANTIC WOMEN’S CARE, PLC   *Signature*  Print Name:  Title:  Date: | BUSINESS ASSOCIATE   *Signature*  Print Name:  Title:  Date: |

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