

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) by and between Medical Alliance Insurance Company (“**MAIC**”) and the undersigned healthcare provider policyholder (“**Provider**”) (each a “**Party**” and collectively the “**Parties**”) is effective upon its mutual execution (“**Effective Date**”).

WHEREAS, MAIC provides professional liability coverage and related services to Provider as set forth in the application for Professional Liability Insurance and/or subsequent MAIC Insurance Policy (collectively the “**Insurance Policy**”);

WHEREAS, Provider may be or is regulated as a Covered Entity under the Health Insurance Portability and Accountability Act of 1996, as amended, the Health Information Technology for Economic and Clinical Health Act, Subtitle D-Privacy (§§ 13400-13424), as part of the American Recovery and Reinvestment Act of 2009, as amended, and their implementing regulations (collectively “**HIPAA**”) as amended from time to time;

WHEREAS, in carrying out its obligations pursuant to the Insurance Policy, MAIC may or will perform certain functions or activities that involve the Use or Disclosure of Protected Health Information (“**PHI**”) on behalf of or as part of the provision of services to Provider that pursuant to HIPAA requires a business associate agreement;

WHEREAS, MAIC and Provider mutually agree to the terms of this BAA to comply with the HIPAA Rules (as hereinafter defined); and

WHEREAS, where MAIC is providing a service for which it is not a Business Associate, it will provide the same privacy and security protections set forth below to the Personal Information subject to state personal information protection laws whether or not the personal information falls within the definition of PHI as defined by HIPAA.

NOW, THEREFORE, the Parties agree as follows:

1. **Definitions.** In addition to the terms defined in this BAA, the capitalized terms used herein will have the meanings set forth in HIPAA as amended from time to time, unless the context requires otherwise. Any reference to Protected Health Information or PHI includes Electronic PHI to the extent applicable.
 - 1.1 “**HIPAA Rules**” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164.
 - 1.2 “**Disclosure**” as used in this BAA has the same meaning provided in 45 C.F.R. § 160.103.
 - 1.3 “**Use**” as used in this BAA has the same meaning provided in 45 C.F.R. § 160.103.
2. **Obligations of MAIC.**
 - 2.1 *Uses and Disclosures.* MAIC may Use or Disclose PHI as necessary or required to perform its obligations under the Insurance Policy, to provide Provider’s insurance, including the provision of insurance services, and as otherwise permitted by this BAA and by the HIPAA Rules, including but not limited to the creation of de-identified health

information from PHI. MAIC may not otherwise Use or further Disclose PHI other than as permitted or required by the Insurance Policy, this BAA, the Provider, or as Required by Law.

- 2.2 *Minimum Necessary.* MAIC shall comply with the minimum necessary requirements under HIPAA Rules.
- 2.3 *Safeguards.* MAIC shall use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI to prevent the Use or Disclosure of PHI other than as provided for by this BAA. MAIC shall ensure that its Workforce is trained as required by HIPAA.
- 2.4 *Subcontractors.* MAIC shall require that any subcontractor that creates, receives, maintains, or transmits PHI on behalf of MAIC agree to same restrictions and conditions that apply to MAIC with respect to such information.
- 2.5 *Reporting and Notification.* MAIC shall report to Provider (i) any Security Incident, (ii) any Use or Disclosure of PHI not provided for by this BAA of which MAIC becomes aware, and (iii) any Breach of Unsecured PHI. A Breach Notification shall comply with the HIPAA Rules. Notwithstanding the foregoing, the Parties acknowledge and agree that this Section of the BAA constitutes notice by MAIC to Provider of the ongoing existence and occurrence of Unsuccessful Security Incidents which are not of a type or pattern that warrant further action (e.g., pings and other broadcast attacks on a firewall, unsuccessful log on attempts, denials of service, etc.). **“Unsuccessful Security Incidents”** are those Security Incidents which do not result in unauthorized access, Use, Disclosure, modification, or destruction of Electronic PHI or interfere with the operation of information systems.
- 2.6 *Mitigation of Harmful Effects.* MAIC will mitigate, to the extent practical, any harmful effect that is known to MAIC of its Use or Disclosure of PHI or violation of the requirements of this BAA.
- 2.7 *Accounting.* MAIC shall maintain and make available to Provider upon request the information required for Provider to respond to a request by an Individual for an Accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 2.8 *Access for Audit.* MAIC shall make its internal practices, books, and records available to the Secretary of the U.S. Department of Health and Human Services in a time and manner directed by the Secretary for the purpose of determining Provider’s compliance with HIPAA.
- 2.9 *Access by Individuals.* MAIC shall make available to Provider any PHI maintained in a designated record set as necessary for Provider to satisfy its obligations under 45 C.F.R. § 164.524.

- 2.10 *Amendments to PHI.* MAIC shall make any amendments to PHI maintained in a designated record set as necessary for Provider to satisfy its obligations under 45 C.F.R. § 164.526.
- 2.11 *Compliance with HIPAA.* MAIC will comply with all HIPAA requirements applicable to it. In addition, to the extent that MAIC is to carry out one or more of Provider's obligation(s) under Subpart E of 45 C.F.R. Part 164, MAIC will comply with the requirements of Subpart E that apply to Provider in the performance of such obligation(s).

3. Permitted Uses and Disclosures of PHI by MAIC.

- 3.1 *MAIC Services.* MAIC may Use and Disclose PHI for the purpose of providing the services under the Insurance Policy including but not limited to:
 - 3.1.1 Underwriting professional liability insurance.
 - 3.1.2 Managing professional liability claims.
 - 3.1.3 Providing risk management services.
 - 3.1.4 Investigating any reported incidents.
 - 3.1.5 Professional liability research and study.
 - 3.1.6 Litigation relating to professional liability claims.

If Provider is a partnership, professional corporation, hospital, or other healthcare entity, then MAIC may Disclose PHI to Provider's insureds, receive PHI from Provider's insureds, and Use PHI to provide risk management services to Provider's insureds on Provider's behalf. If Provider is a physician or other healthcare provider, then MAIC may Disclose PHI to Provider's employer partnership, professional corporation, hospital, or other healthcare entity (the "**Employer**"), receive PHI from Provider's Employer, and Use PHI to provide risk management services to Provider's Employer on behalf of Provider.

- 3.2 *Data Aggregation.* MAIC may Use PHI to perform Data Aggregation services relating to the health care operations of the Provider.
- 3.3 *Uses for MAIC's Management and Administration.* MAIC may Use PHI for the proper management and administration of MAIC or to carry out MAIC's own legal responsibilities, but only if such Use would not violate the HIPAA Rules if done by Provider.
- 3.4 *Disclosures for MAIC's Management and Administration.* MAIC may Disclose PHI to a third party for its proper management and administration or to carry out its legal responsibilities if such Disclosure would not violate the HIPAA Rules if done by Provider, provided that:
 - 3.4.1 The Disclosure is Required by Law; or
 - 3.4.2 MAIC obtains reasonable assurances from the person or entity 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 entity, and the person or entity notifies MAIC of any instances of which it is aware in which the confidentiality of the information has been compromised.

3.5 *Required by Law.* MAIC may Use and Disclose PHI as Required by Law.

4. **Obligations of Provider.**

4.1 *Notice to MAIC.* Provider shall notify MAIC of any limitation(s) in its notice of privacy practices to the extent that such limitation may affect MAIC's Use or Disclosure of PHI.

4.2 *Changes in or Revocation of Permission to Use or Disclose PHI.* Provider shall notify MAIC of (a) any changes in, or revocation of, a permission by an Individual to Use or Disclose PHI, and (b) any restriction on the Use or Disclosure of PHI that Provider has agreed to or is required to abide by under 45 C.F.R. § 164.522, in each case to the extent that such restriction may impact in any manner the Use and/or Disclosure of PHI by MAIC under this BAA.

4.3 *Impermissible Request by Provider.* Provider shall not request MAIC to Use or Disclose PHI in any manner that would be impermissible under HIPAA if done by Provider.

5. **Term and Termination.**

5.1 *Term.* The term of this BAA begins on the Effective Date and terminates when (a) Provider no longer receives services from MAIC or (b) either Party terminates this BAA for cause in accordance with Section 5.2.

5.2 *Termination for Cause.* Either Party may terminate this BAA in the event of a material breach, if the non-breaching Party provides the breaching Party thirty (30) days prior written notice and an opportunity to cure, and the breach is not cured within such thirty (30) day period. The prior written notice shall appraise the other Party of the nature of the alleged breach and contain the facts necessary for the other Party to evaluate and cure the alleged breach.

5.3 *Effect of Termination.* Upon termination of this BAA for any reason, MAIC will, if feasible, return or destroy all PHI received from Provider, or created or received by MAIC on behalf of Provider that MAIC still maintains in any form and retain no copies of such PHI, or, if such return or destruction is not feasible, extend the protections of this BAA to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the PHI infeasible.

6. **Miscellaneous.**

6.1 *Survival.* The provisions that by their nature are ongoing shall survive termination of this BAA indefinitely.

6.2 *Compliance with HIPAA.* Any ambiguity in this BAA will be resolved in favor of a meaning that permits compliance with HIPAA. At Provider's or MAIC's request, the Parties will take reasonable actions to seek to amend this BAA as necessary to comply with any changes to applicable law. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.

- 6.3 *Notice.* All notices, requests, consents, and demands that either Party may be required or permitted to give to the other Party under this BAA must be made in writing and must be delivered in person, sent by recognized overnight courier service signature required, or sent by United States mail, first-class, registered or certified, postage prepaid, return receipt requested, and will be deemed sufficient when received at the addresses listed in the signature blocks below.
- 6.4 *Affiliated Entities.* The term “**Affiliated Entities**” means any other entity that is now or hereafter, directly or indirectly, owned or controlled by, controlling, or under common ownership or control with, managed by, under an affiliation contract (such as a joint venture or partnership) with MAIC or any other Affiliated Entity. One Affiliated Entity is the Illinois Health and Hospital Association, which is a trade association for Illinois hospitals and health systems.
- 6.5 *Entire Agreement.* This BAA contains the entire understanding of the Parties with regard to the subject matter contained herein. It supersedes all prior proposals, understandings, and all other agreements, oral and written, between the Parties relating to this subject matter. This BAA may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The term “including” means “including but not limited to.”
- 6.6 *Amendment.* This Agreement may not be modified or altered except by written instrument duly executed by both Parties.
- 6.7 *Governing Law.* This BAA will be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles; the Parties hereby irrevocably and unconditionally consent and submit to the personal jurisdiction of Illinois courts over all matters related to this BAA. Any and all causes of action brought in connection with this BAA shall be brought in the appropriate state court sitting in DuPage County, Illinois or the federal court with proper jurisdiction and venue over MAIC’s principle place of business, and the Parties hereby consent to the exclusive jurisdiction of such courts.
- 6.8 *Waiver.* Failure of either Party to insist on the performance of any term or condition of this Agreement or to exercise any right of this Agreement shall not be deemed a waiver of the term, condition, or right.
- 6.9 *Severability.* If any provision of this BAA shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be modified to the minimum extent necessary to achieve the purpose originally intended, if possible, and the remaining provisions of this BAA shall remain in full force and effect and shall be enforceable if the Agreement can be construed in a manner so as to carry out as nearly as possible the original intent of the Parties.
- 6.10 *Assignment.* Neither Party may assign all or any part of this BAA without the prior written consent of the other Party, except that MAIC, in its sole discretion, may assign its obligations under this BAA to an Affiliated Entity.

6.11 *Authority.* Each Party acknowledges and agrees that the individual signing below on behalf of each Party has the authority to bind, and is authorized to sign on behalf of, the Party.

IN WITNESS WHEREOF, the Parties agree to the terms of this BAA.

Medical Alliance Insurance Company

By: Ed Holzhauer

Title: President

Signature

Notices to MAIC:

Privacy Officer

Illinois Health and Hospital Association

1151 E. Warrenville Rd.

Naperville, IL 60563

[PROVIDER SIGNATURE PAGE TO FOLLOW]

BY TYPING YOUR NAME BELOW YOU ACKNOWLEDGE AND AGREE THAT IT IS YOUR INTENT THAT YOUR TYPED NAME SERVES AS YOUR SIGNATURE FOR THE PURPOSE OF THIS BAA. IF PROVIDER IS A PARTNERSHIP, PROFESSIONAL CORPORATION, HOSPITAL, OR OTHER HEALTHCARE ENTITY, THEN BY SIGNING THIS BAA, YOU REPRESENT THAT YOU ARE AUTHORIZED TO SIGN ON BEHALF OF SUCH ENTITY. BY SIGNING THIS BAA, YOU UNDERSTAND YOU ARE ENTERING INTO A LEGALLY BINDING ELECTRONIC TRANSACTION, AGREE TO CONDUCT THE CONDUCT THIS TRANSACTION ELECTRONICALLY, AND AGREE TO THE TERMS AND CONDITIONS OF THIS BAA.

Provider

Name of Policyholder

MAIC Policy Number

Name of Individual Completing this BAA

Title of Individual Completing this BAA

Signature

Signature Date

Street Address

Street Address

City

State

Zip Code

Preferred Email Address