

ATTN: Health Care Providers – Applicants and Policyholders

RE: HIPAA Compliance

The Health Insurance Portability and Accountability Act of 1996 (“the HIPAA Act”), as amended by the Health Information Technology for Economic and Clinical Health Act under the American Recovery and Reinvestment Act of 2009 (the HITECH Act”) and associated regulations (collectively referred to as “HIPAA” for ease of reference in this memo) require health care providers to maintain the confidentiality of patients’ protected health information (“PHI”). PHI includes, among other things, medical records and billing records relating to medical care. As a “covered entity” under HIPAA, you are not permitted to share PHI with a “business associate” unless the business associate has provided you with a Business Associate Agreement that provides for the protection of PHI. Although a professional liability insurer may not be deemed to be a “business associate” as defined by HIPAA, we want to assure compliance with the regulations in the event a Business Associate Agreement is necessary.

As the affiliated underwriting manager for your professional liability insurer, we are committed to maintaining the confidentiality of PHI that you may provide as a part of the administration of your insurance coverage. Enclosed you will find a Business Associate Agreement that explains how we will safeguard any PHI that you may provide to us in the process of underwriting your policy or handling a claim on your behalf. Please review it and keep it with your professional liability policy. You need not sign or return this agreement to us. Please maintain it in your files to document our mutual obligations with respect to PHI.

Please note: This is the only form of Business Associate Agreement that will be established on your behalf. Any alternative forms of the Business Associate Agreement submitted to us will be returned to the sender.

If you have any questions or concerns about the Business Associate Agreement, please contact Gina G. A. Cabay at (847) 572-6385 or [gcabay@markelcorp.com](mailto:gcabay@markelcorp.com).

## **BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is executed by the affiliated underwriting manager for Essex Insurance Company, Evanston Insurance Company, Markel American Insurance Company and Markel Insurance Company ("Business Associate") in favor of its insured health care providers and hospitals (the "Provider").

### **RECITALS**

WHEREAS, the Business Associate provides professional liability insurance to the Provider pursuant to a policy of insurance (the "Business Arrangement"), and in connection with the Business Arrangement the Provider discloses to the Business Associate certain individually identifiable protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA");

WHEREAS, the parties desire to comply with the HIPAA standards for privacy of PHI of patients of the Provider, and to set forth the terms and conditions pursuant to which the parties will handle PHI that Business Associate receives in the course of performing its services for or on behalf of the Provider under the Business Arrangement.

NOW THEREFORE, for and in consideration of the recitals above, the benefits to Business Associate under the Business Arrangement and the mutual covenants and conditions herein contained, Business Associate agrees as follows:

### **ARTICLE 1 – DEFINITIONS**

Terms used, but not otherwise defined in this Agreement shall have the same meaning as set forth in the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rules"), 45 CFR parts 160-164, as promulgated by the United States Department of Health and Human Services ("HHS"), as amended from time to time.

### **ARTICLE II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Provider any use or disclosure of the PHI, of which it becomes aware, and otherwise not provided for by this Agreement.
- e. Business Associate shall require its agents and subcontractors that receive PHI from Business Associate or Provider to agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to make available and provide right of access to PHI held by the Business Associate that does not merely duplicate the information maintained by the Provider, to Provider at its request, or as directed by Provider, to an Individual. Business Associate shall provide access within reasonable time and manner as specified by Provider.

- g. Business Associate agrees to incorporate all amendments or corrections to PHI when notified by the Provider in writing that such information is inaccurate or incomplete. 45 CFR § 164.526
- h. Business Associate agrees to make available to the Secretary of HHS (or its designee) all internal practices, books, and records relating to the use and/or disclosure of PHI received from the Provider, for purposes of determining the Provider's compliance with the Privacy Rules, subject to attorney-client and other applicable legal privileges.
- i. Business Associate agrees to provide an accounting of such disclosures of PHI to Provider or, as directed by Provider, to an Individual in accordance with 45 CFR § 164.528, as amended from time to time. Business associate shall provide such accounting within a reasonable time and manner as specified by the Provider.

## **2.1 PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

- a. Business Associate, its agents and employees, may use or disclose PHI as necessary to perform its duties under the Business Arrangement and only as allowed by the terms of the Business Arrangement, this Agreement, or as required or allowed by law.
- b. Business Associate may also use and/or disclose PHI as necessary for the proper management and administration of Business Associate, and to carry out the legal responsibilities of Business Associate.
- c. Business Associate agrees that it will not use or disclose PHI in a manner that violates or would violate the Privacy Rules, or the minimum necessary policies and procedures of the Provider that are communicated to Business Associate.
- d. Business Associate may use PHI to report violations of the law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

## **ARTICLE III - OBLIGATIONS OF THE PROVIDER**

- a. Provider shall notify Business Associate of any limitation(s) in the Provider's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Provider shall notify Business Associate, in writing and in a timely manner, of any restrictions or other arrangement to which the Provider has agreed with an individual in accordance with 45 CFR § 164.522, to the extent that such changes may effect Business Associate's use or disclosure of PHI hereunder; provided however, that the Provider will not agree to, and Business Associate will not be required to comply with, any restriction that is inconsistent with the purpose or terms of the Business Arrangement.

### **3.1 PERMISSIBLE REQUESTS BY PROVIDER**

Provider shall not request Business Associate to use and/or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Provider; provided however, that the Business Associate will use or disclose PHI for management and administrative activities of the Business Associate as outlined in Article 2.1.

## **ARTICLE IV – TERM AND TERMINATION**

### **4.1 TERM AND TERMINATION**

The effective date of this Agreement is April 14, 2003, and this Agreement shall remain in effect for the entire term of the Business Arrangement, or until terminated as set forth herein. This Agreement will automatically terminate without further action of the parties upon the termination or expiration of the Business Arrangement, subject to the following:

The Provider acknowledges and agrees that, due to the nature of the Business Arrangement, the Business Associate must have the ability to receive PHI from the Provider for as long as the Business Arrangement is in place, and that the Business Associate must have the ability to receive PHI from the Provider for the duration of any defense obligations arising under the Business Arrangement. Thus, the Provider acknowledges and agrees that termination of this Agreement is not feasible as long as the Business Arrangement is in place, or as long as Business Associate has any defense obligations arising under the Business Arrangement. Accordingly, any other provision in this Agreement notwithstanding, the parties agree that (a) any notice of termination of this Agreement will also serve as notice of termination of the Business Arrangement, (b) the termination of this Agreement will under no circumstances be effective until the termination of the Business Arrangement is effective, and (c) this Agreement may not be terminated and will remain in effect as long as Business Associate has any defense obligations arising under the Business Arrangement.

### **4.2 TERMINATION FOR MATERIAL BREACH**

Subject to Section 4.1, upon Provider's knowledge of a material breach by Business Associate, Provider shall either:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Business Arrangement if Business Associate does not cure the breach or end the violation within a reasonable time specified by the Provider;
- b. Immediately terminate this Agreement and the Business Arrangement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, Provider shall report the violation to the Secretary of HHS.

### **4.3 RETURN/DESTRUCTION OF PHI**

Except as provided in section 4.4, upon termination of the Business Arrangement (and any ongoing defense obligations, if applicable), for any reason, Business Associate will, if feasible, return or destroy PHI received from, or created or received by it on behalf of the Provider that Business Associate maintains in any form, including any backup tapes. Business Associate shall retain no copies of such information. Business Associate further agrees to use its best efforts to recover PHI in the possession of subcontractors or agents.

### **4.4 NO FEASIBLE OR PRACTICAL RETURN/DESTRUCTION OF PHI**

Business Associate has determined that returning or destroying PHI is infeasible for ongoing defense obligations (if applicable), state regulatory requirements imposed upon professional liability insurers, such as reporting, review, and audit requirements, and carrying out any necessary business responsibility of the Business Associate. This serves as Business Associate's notification to Provider of the conditions that make return or destruction infeasible.

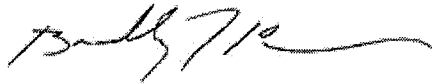
Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

#### ARTICLE V – MISCELLANEOUS

- a. Regulatory References – A reference in this Agreement to a section of the Privacy Rule means the section as in effect or as amended.
- b. Amendment – The parties recognize that this Agreement may need to be modified from time to time and agree to take such action as is necessary to amend this Agreement for Provider to comply with federal and state law including, but not limited to the requirements of the Privacy Rule and HIPAA.
- c. Survival – The respective rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement.
- d. Choice of Law – This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
- e. Notices – All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the party's regular business address. All notices and other communications shall be sent by overnight courier or sent by registered or certified mail, return receipt requested.
- f. Interpretation – Any ambiguity in this Agreement shall be resolved to permit Provider to comply with HIPAA and the Privacy Rules.

BUSINESS ASSOCIATE:

Signed:



Bradley J. Kiscaden  
Vice President and Chief Administrative Officer

Authorized Signatory  
Essex Insurance Company  
Evanston Insurance Company  
Markel American Insurance Company  
Markel Insurance Company

Address for Notice:

Markel Midwest  
Legal Department  
Ten Parkway North  
Deerfield, IL 60015

**AMENDMENT #1**

**BUSINESS ASSOCIATE AGREEMENT**

THE BUSINESS ASSOCIATE AGREEMENT (“Agreement”), previously executed by the affiliated underwriting manager for Essex Insurance Company, Evanston Insurance Company, Markel American Insurance Company, and Markel Insurance Company (“Business Associate”) for its insured health care providers and hospitals (the “Provider”), which was effective April 14, 2003 is hereby amended.

**RECITALS**

WHEREAS, the Business Associate and Provider desire to amend the Agreement in accordance with ARTICLE V paragraph b. of the Agreement;

WHEREAS, the parties desire to comply with the Health Information Technology for Economic and Clinical Health Act, as adopted under the American Recovery and Reinvestment Act of 2009, codified at 42 U.S.C. § 17921-17954 (“HITECH Act”), which imposes new requirements on Business Associates with respect to privacy security, and breach notification, effective February 17, 2010;

WHEREAS, all terms and conditions of the Agreement remain unchanged and shall continue in full force and effect, except as is otherwise expressly provided in this AMENDMENT #1;

NOW THEREFORE, for and in consideration of the recitals above, the benefits to Business Associate under the Business Arrangement and the mutual covenants and conditions herein contained, Business Associate agrees to comply with the requirements of the HITECH Act applicable to Business Associate, effective February 17, 2010.

**BUSINESS ASSOCIATE:**

Signed:



Bradley J. Kiscaden  
Vice President and Chief Administrative Officer

Authorized Signatory  
Essex Insurance Company  
Evanston Insurance Company  
Markel American Insurance Company  
Markel Insurance Company

**Address for Notice:**

**Markel Midwest, Inc.  
Legal Department  
Ten Parkway North  
Deerfield, IL 60015**