



Business Associate Agreement

By and Between

“Company”

And

Premier Access Insurance Company
“Premier”

Effective Date: _____



This Business Associate Agreement ("BAA") is entered into this _____ day of _____, 20____, by and between _____ ("Business Associate") and Premier Access Insurance Company and its affiliates (collectively, "Premier Access"). It shall become effective the date of execution.

In consideration for the promises and the mutual covenants and undertaking set forth in this BAA, including the Business Associate's access to and/or use of Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, for those purposes allowed by Privacy Rule, Security Standards, Transaction Standards under HIPAA and under the Health Information Technology for Economic & Clinical Health a HITECH Act ("HITECH") as well as any applicable state or federal law consistent with the terms of this BAA, Business Associate and Premier Access agree as follows:

1. DEFINITIONS. As used in this BAA:

- 1.1. "Breach" has the same meaning as this term has in §13400 of HITECH, and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.
- 1.2. "Designated Record Set" shall mean a group of records maintained by or for Premier Access that is (i) the health records and billing records about individuals maintained by or for Premier Access, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Premier Access to make decisions about individuals. As used herein, the term "Record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Premier Access.
- 1.3. "Electronic Protected Health Information" means Protected Health Information supplied by Premier Access and transmitted by or maintained in electronic media by either party.
- 1.4. "HIPAA" shall mean the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act, Public Law 104-191, and any amendments thereto.
- 1.5. "HIPAA Transaction" shall mean Transactions as defined in 45 C.F.R. § 160.103 of the Transaction Standards.
- 1.6. "HITECH Act" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (42 U.S.C. §§ 17921 – 53).
- 1.7. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.8. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, as amended by the HITECH Act and as may otherwise be amended from time to time.
- 1.9. "Protected Health Information" (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 from or on behalf of Premier Access.
- 1.10. "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- 1.11. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.12. "Security Standards" shall mean the Security Standards at 45 C.F.R. Parts 160, 162, and 164, as they exist now or as they may be amended.
- 1.13. "Transaction Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. 160 and 162, as they exist now or as they may be amended.
- 1.14. "Services Agreement" shall mean any agreement (or other arrangement) under which Business Associate performs a function or activity on Premier Access' behalf involving the use, disclosure, maintenance, or creation of Protected Health Information.
- 1.15. Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

Terms used, but not otherwise defined, in this BAA (or the Services Agreement) shall have the same meaning as those terms in 45 C.F.R. §§ 160.103 and 164.501.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

- 2.1. Business Associate agrees that it shall not use or further disclose Protected Health Information other than as permitted or required by this BAA or as Required by Law.
- 2.2. Business Associate shall develop, implement, maintain and use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this BAA.
- 2.3. Business Associate shall develop, implement, maintain written policies and procedures regarding appropriate administrative, technical and physical safeguards for compliance with the HITECH Act, applicable provisions of the Security Standards and any other applicable implementing regulations issued by the Department of Health and the Human Services as they relate to the preservation of the integrity, confidentiality, and availability of electronic Protected Health Information.
- 2.4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach or any other use or disclosure of Protected Health Information in violation of the requirements of this BAA.
- 2.5. **Notification Pursuant to an Incident or Breach.**
 - 2.5.1. Breach Notification. Business Associate shall report any “Breach” of Unsecured Protected Health Information following discovery. Business Associate shall make such report without unreasonable delay and in any event within five (5) days. Business Associate shall cooperate with Premier Access in investigating the breach and in meeting Premier Access’ obligations under the breach notification provisions of HIPAA (45 C.F.R. Part 164 Subpart D).
 - 2.5.2. Privacy Incident Notification. With respect to any incident not subject to reporting under the Breach Notification provision of Section 2.5 of this BAA, Business Associate shall promptly report to Premier Access any Breach or other use or disclosure of Protected Health Information of which it becomes aware that is not permitted or required by this BAA. Business Associate shall make such report as soon as administratively feasible and within a timeframe adequate to allow the Premier Access to meet its reporting obligation with respect to applicable state and federal reporting requirements.
 - 2.5.3. Security Incident Notification. With respect to any incident not subject to reporting under Breach Notification and/or Privacy Incident provision(s) of Section 2.5 of this BAA, Business Associate shall report to Premier Access any successful (a) unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate’s information system, of which Business Associate becomes aware. Business Associate shall, upon Premier Access’ request, report to Premier Access any attempted, but unsuccessful (a) unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information or (b) unauthorized interference with system operations in Business Associate’s information systems, of which Business Associate becomes aware. Business Associate shall make such report as soon as administratively feasible and within a timeframe adequate to allow the Premier Access to meet its reporting obligation with respect to applicable state and federal reporting requirements.
 - 2.5.4. Report Contents. To the extent that any information described below is not available to be included in the Security Incident report, the report must include an explanation of why such information is not available to Business Associate. If any such information later becomes available, the information will be provided to Premier Access as soon as reasonably practicable after it becomes available.

Each Breach/Incident report will include the following elements (as applicable):

- i. Identification of each individual whose Protected Health Information is known to have been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during the incident;
- ii. Identification of the nature of the non-permitted access, use, or disclosure and the date of the incident and the date of discovery;
- iii. Identification of the Protected Health Information accessed, used, or disclosed;
- iv. Identification of who made the non-permitted access, use, or received the non-permitted disclosure;
- v. Identification of any corrective action Business Associate has taken or will take to prevent similar Security Incidents in the future;

- vi. Identification of any actions Business Associate has taken or will take to mitigate any harmful effects of the Security Incident;
 - vii. An appraisal of whether Business Associate believes its current security measures are adequate given the outcome, scope and nature of the attempt. If existing security measures are not adequate, the Business Associate plans for implementation, which will address the security inadequacies.
 - viii. Provide other such information, as Premier Access may reasonably request, in meeting the Premier Access' obligations under the breach notification provisions of HIPAA as well as any other applicable state and/or federal breach notification provisions.
- 2.6. If Business Associate is a subcontracting Business Associate to the Premier Access, Business Associate agrees to comply with and be bound by any restrictions and conditions that apply to Premier Access under any business associate agreement that Premier Access maintains with any entity relating to any Protected Health Information.
- 2.7. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to Protected Health Information, including Electronic Protected Health Information. To the extent that a subcontractor or other agent of Business Associate creates, receives, maintains or transmits Electronic Protected Health Information on behalf of Business Associate, Business Associate will ensure that the subcontractor or agent agrees to comply with the applicable requirements of the Security Standards by entering into an agreement that complies with 45 CFR §164.314.
- 2.8. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to Premier Access, or at the request of Premier Access to the Secretary, in a time and manner designated by Premier Access or the Secretary, for purposes of the Secretary determining Premier Access' compliance with the Privacy Rule and Security Rule.
- 2.9. Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Premier Access to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity (or person) who received the Protected Health Information, as well as the address of such entity (or person) if known; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose/basis of disclosure (including an explanation).
- 2.10. Business Associate agrees to provide to Premier Access or an Individual, in a time and manner designated by Premier Access, information collected in accordance documentation of disclosure requirements of this BAA (and 45 C.F.R. § 164.528), to permit Premier Access to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- 2.11. To the extent reasonably necessary for Premier Access to comply with 45 CFR §164.524(c)(2), if Business Associate maintains PHI in an electronic format for any Individual, Business Associate agrees to provide, at the request of an Individual, and in the time and manner designated by the Individual, a copy of such information in the electronic format designated by the Individual to that Individual or, if clearly, conspicuously and specifically directed by the Individual to transmit an electronic copy of that information directly to an entity or person designated by the Individual. If electronic information described in the preceding sentence is not readily producible in the form and format requested by the Individual, it will be provided in a readable electronic form and format as agreed to by Business Associate and the individual, or, if no agreement is reached in a hard copy format. If a request described in this Section is made by the Individual to Premier Access instead of Business Associate, Business Associate shall promptly provide Premier Access with the information in a Designated Record Set as necessary for Premier Access to comply with an Individual's request for access pursuant to 45 C.F.R. § 164.524.
- 2.12. Upon direction from Premier Access, Business Associate shall amend records in a Designated Record Set as necessary for Premier Access to comply with an Individual's amendment request pursuant to 45 C.F.R. § 164.526, or, in the alternative, Business Associate shall allow Premier Access access to records in a Designated Record Set as necessary for Premier Access to comply with an Individual's amendment request pursuant to 45 C.F.R. § 164.526.
- 2.13. Business Associate shall comply with any limitation in Premier Access's Notice of Privacy Practices as such Notice may be updated from time to time. Business Associate shall comply with any restriction request or confidential communications request to which Premier Access agrees, provided that Premier Access makes Business Associate aware of such request.

- 2.14. To the extent that Premier Access delegates to Business Associate any obligation imposed on Premier Access by the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Premier Access in the performance of such delegated obligation.
- 2.15. Business Associate shall encrypt Electronic Protected Health Information prior to saving it on portable media. In other circumstances, Business Associate shall encrypt Electronic Protected Health Information whenever reasonably practicable.
- 2.16. Upon request, Business Associate shall provide Premier Access with a list of personnel who are authorized to receive Protected Health Information pursuant to this BAA.
- 2.17. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of Protected Health Information, Business Associate shall notify Premier Access of the request as soon as reasonably practicable, but in any event within two (2) business days of receipt of such request. Business Associate shall consult Premier Access on its response to request.
- 2.18. Business Associate, and its agents and subcontractors, if any, are prohibited from directly or indirectly receiving any remuneration in exchange for any of Premier Access' PHI.
- 2.19. Business Associate, and its agents and subcontractors, if any, are prohibited from use or disclosure of Genetic Information (as defined in 29 C.F.R. §1635.3(c), except as permitted by 45 C.F.R. § 164.502(a)(5)(i).

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- 3.1. **General Use.** Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Premier Access, provided that such use or disclosure would not violate (i) the Privacy Rule, the HITECH Act or (ii) the minimum necessary as set forth by 45 C.F.R. § 164.502(b) if done by Premier Access.
- 3.2. **Specific Use and Disclosure.**
 - 3.2.1. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out its legal responsibilities.
 - 3.2.2. Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for its proper management and administration, provided that such disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that: (i) it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the entity (or person), and (ii) the person (or entity) will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - 3.2.3. Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services to Premier Access as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), to the extent Business Associate performs such services.
 - 3.2.4. Business Associate may use Protected Health Information to report violations of law to appropriate state and/or federal authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. OBLIGATIONS OF PREMIER ACCESS.

- 4.1. Premier Access shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Premier Access in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. (Premier Access' HIPAA Notice of Privacy Practices may be subject to change from time to time.)
- 4.2. Premier Access shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

- 4.3. Premier Access shall notify Business Associate of any restriction(s) to the use or disclosure of Protected Health Information that Premier Access has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction(s) may affect Business Associate's use or disclosure of Protected Health Information.
- 4.4. Premier Access shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Premier Access, except as specifically permissible by this BAA and the Privacy Rule.

5. TERM AND TERMINATION.

- 5.1. Term. The Term of this BAA shall be effective as of the date it is executed, and shall terminate upon (i) termination of the Services Agreement and (ii) when all of the Protected Health Information provided by Premier Access to Business Associate, or created or received by Business Associate on behalf of Premier Access, is destroyed, returned or protections in accordance with the terms of this BAA.
- 5.2. Premier Access' Termination for Breach. Upon a material breach of the terms of this BAA by Business Associate, Premier Access shall, at its option: (i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA (and the Service Agreement) if Business Associate does not cure the breach or end the violation within the time specified by Premier Access; or (ii) Immediately terminate this BAA (and the Services Agreement) if Business Associate has breached a material term of this BAA and cure is not possible.
- 5.3. Other Circumstances Allowing for Immediate Termination. Notwithstanding anything to the contrary in this BAA, Premier Access may terminate this BAA immediately upon written notice to Business Associate, without any term of notice and/or judicial intervention being required, and without liability for such termination, in the event that Business Associate: (i) is named as a defendant in a criminal proceeding for a violation of any information privacy and protection law; or (ii) is found to have (or stipulates that it has) violated any privacy, security or confidentiality protection requirements under any applicable information privacy and protection law in any administrative or civil proceeding in which Business Associate has been joined.
- 5.4. Conditions of Termination. Upon termination of this BAA, for any reason, Business Associate shall return to Premier Access (or destroy) all Protected Health Information. In the event that return (or destruction) of the Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. (This provision shall apply to Protected Health Information that is in the possession of Business Associate's subcontractors (or agents).
- 5.5. The termination provisions of this Section 5 shall supersede and replace any contrary provision that may appear in said underlying Services Agreement.

6. MISCELLANEOUS.

- 6.1. Amendment. The parties agree to amend this BAA, as appropriate, to conform to any new or revised legislation, rules and regulations to which Premier Access is subject now or in the future including, without limitation, the Privacy Rule, Security Standards or Transactions Standards (collectively "HIPAA") as well as any other applicable state or federal law. Premier Access may amend this BAA to reflect change to applicable law by providing Business Associate notice of an amendment to this BAA at least thirty (30) days prior to the amendment's effective date, Business Associate may reject the terms of the amendment by providing written notice of rejection to Premier Access' Legal Department within thirty (30) days of receiving the amendment. If Business Associate fails to provide such notice, Business Associate will be deemed to have agreed to the amendment and the amendment will be binding on Business Associate without signature or other action by Business Associate. If Business Associate rejects the terms of the amendment, Premier Access may terminate this BAA and the Services Agreement in accordance with the termination provision of Section 5 of this BAA. Otherwise, no provision of this BAA may be modified except by a written document signed by a duly authorized representative of the parties.
- 6.2. Assignment. No party may assign or transfer any or all of its rights and/or obligations under this BAA or any part of it, nor any benefit or interest in or under it, to any third party without the prior written consent of the other party.



- 6.3. Survival. The respective rights and obligations of Business Associate under the Conditions of Termination provision shall survive the termination of this BAA.
- 6.4. Interpretation. Any ambiguity in this BAA shall be resolved to permit Premier Access to comply with the Privacy Rule, Security Standards, Transaction Standards, and HITECH Act.
- 6.5. Indemnification. The indemnification provisions contained within the Services Agreement shall also apply to this Business Associate Agreement.
- 6.6. Third Party Rights. The terms of this BAA are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and Premier Access.
- 6.7. Entire Agreement. The BAA constitutes the entire agreement of the parties with respect to the parties' compliance with federal and/or state health information confidentiality laws and regulations, as well as the parties' obligations under the business associate provisions of 45 C.F.R. parts 160 and 164. This BAA supersedes all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the parties with respect to the parties' compliance with federal and/or state health information confidentiality laws and regulations.
- 6.8. Conflict. In the event of a conflict between the terms of the Services Agreement and this BAA, this BAA will control.
- 6.9. Electronic Transactions. Business Associate hereby represents and warrants that, to the extent that it is electronically transmitting any of the HIPAA Transactions for Premier Access, the format and structure of such transmissions shall be in compliance with the Transaction Standards.
- 6.10. Minimum Necessary. Business Associate shall, if practicable, use, disclose, or request Protected Health Information in a limited data set, as that term is defined in 45 C.F.R. § 164.514(e)(2). Otherwise, Business Associate shall request from Premier Access or a third party only the minimum amount of information necessary to perform services under this BAA. Business Associate shall develop, implement, maintain and use policies and procedures to limit uses and disclosures of Protected Health Information to the minimum necessary to perform services under this BAA. Business Associate shall determine what constitutes the minimum necessary Protected Health Information to accomplish the intended purpose of any disclosure and shall not rely on a request from a third party being for the minimum necessary, except as allowed Privacy Rule pursuant to the HITECH Act.
- 6.11. Notice. All notices required under this BAA shall be in writing and shall be deemed to have been given on the next day by fax or other electronic means or upon personal delivery, or in ten (10) days upon delivery in the mail, first class, with postage prepaid. Notices shall be sent to the attention of the Privacy Office. Either Party may at any time change its address for notification purposes by mailing a notice to the other stating the change and setting forth the new address.
- Up-to-date information regarding Premier Access' Privacy Program may be obtained at:
<https://www.premierlife.com/wp-content/uploads/HIPAA-PrivacyNoticPremier.pdf>
- 6.12. Owner of Protected Health Information. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any Protected Health Information used or disclosed, created or maintained by or to Business Associate pursuant to the terms of this BAA.
- 6.13. Irreparable Harm. Business Associate acknowledges and agrees that any use, disclosure or maintenance of any Protected Health Information in a manner inconsistent with this BAA may give rise to irreparable injury to Premier Access for which damages would not be an adequate remedy. Accordingly, in addition to any other legal remedies, which may be available at law or in equity, Premier Access shall be entitled to equitable or injunctive relief against the unauthorized use or disclosure of Protected Health Information or failure to maintain the security of Protected Health Information, as required by this BAA.



SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be executed in duplicate and signed by their respective officers duly authorized to do so as of the date given below.

Dated at: _____

This ____ day of _____, 20____

Company: _____

By: _____

Name: _____

Title: _____

Dated at: _____

This ____ day of _____, 20____

Premier Access Insurance Company

By: _____

Name: Tim Carney

Title: Head of Sales