

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is entered into effective \_\_\_\_\_, 2013, by and between Premier, Inc. ("Premier") and \_\_\_\_\_ ("Evaluator"), with reference to the following facts:

A. Premier and/or Evaluator are reviewing the following potential relationship or transaction (the "Proposal"):

\_\_\_\_\_

\_\_\_\_\_

B. In connection with such review, Premier and/or Evaluator will be receiving certain confidential and/or proprietary information of the other.

C. The purpose of this Agreement is to set forth the parties' duties and obligations with respect to maintaining the confidentiality of the other party's confidential and proprietary information.

NOW, THEREFORE, the parties agree as follows:

**1. Confidential Information.** For the purposes of this Agreement, confidential information ("Confidential Information") shall mean (i) all information marked confidential, restricted or proprietary; and (ii) any other information that is treated as confidential by the disclosing party and would reasonably be understood to be confidential, whether or not so marked, including but not limited to information relating to the business of the disclosing party, including financial information, account information, business partner and customer information, information regarding business plans and operations, and proprietary software, tools and methodologies owned by or licensed to the disclosing party, regardless of the form in which any are presented.

**2. Protection of Confidential Information.** Evaluator and Premier acknowledge that they may disclose Confidential Information to each other in connection with a review of the Proposal. If Evaluator or Premier receives Confidential Information, it shall: (a) maintain the Confidential Information in strict confidence; (b) use at least the same degree of care in maintaining the secrecy of the Confidential Information as it uses in maintaining the secrecy of its own proprietary, secret, or confidential information, but in no event less than a reasonable degree of care; (c) use Confidential Information only in connection with its good faith review of the Proposal; (d) make no disclosure of any Confidential Information to any outside consultant or third party without first obtaining the prior written consent of the other party and such consultant's or third party's written agreement to abide by the terms of this Agreement with respect to maintaining the confidentiality of Confidential Information; and (e) return to the disclosing party or, if permitted by the disclosing party, destroy all documents, copies, notes, or other materials containing any portion of the Confidential Information upon request by the other party. To

the extent Evaluator's services involve the use or disclosure of protected health information (as defined at 45 C.F.R. 164.501), Evaluator shall comply with the business associate provisions contained in 45 C.F.R. Part 164. In the event Evaluator is operated by a state, federal or municipal agency and therefore subject to applicable open records laws which may require Evaluator to release Confidential Information of Premier, Evaluator agrees to promptly notify Premier of any request under such laws for the release of such information. Further, Evaluator shall cooperate in good faith with Premier and use its best efforts to assist Premier in preventing the release of such information to the extent consistent with applicable law.

**3. Proposal.** Neither party shall disclose the terms of the Proposal to any other person or entity outside its organization and affiliates except as required by law or legal process (in which case reasonable notice shall be given by the receiving party to the disclosing party to enable the disclosing party to obtain a protective order or take other appropriate action). For purposes of this provision, an affiliate is an entity in which the respective party maintains an ownership position in and the disclosure is required so that the disclosing party may adequately evaluate the Proposal. Neither party shall make any public announcement concerning the Proposal unless such party receives prior written approval from the other party.

**4. Limitation on Obligation.** Neither party shall have any obligation concerning any portion of the Confidential Information which: (a) was known to it before receipt, directly or indirectly, from the disclosing party without obligation of confidentiality; (b) is lawfully obtained, directly or indirectly, by it from a non-party which was under no obligation of confidentiality; (c) is or becomes publicly available other than as a result of an act or failure to act by the receiving party; (d) is required to be disclosed by the receiving party by applicable law or legal process; or (e) is developed by the receiving party independent of the Confidential Information disclosed by the disclosing party. The receiving party shall not disclose any portion of the Confidential Information to any person except those of its employees and affiliates having a need to know such portion to accomplish the purposes contemplated by this Agreement.

**5. Governing Law.** This Agreement is executed and shall be construed and enforced in accordance with the laws of the State of North Carolina.

**6. Remedies.** In the event of a breach by either party of a covenant contained in this Agreement, the aggrieved party shall be entitled to injunctive relief in addition to any available legal remedies since the parties acknowledge that legal remedies alone may be insufficient to address the damage which could be sustained. The prevailing party in any action to enforce this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other relief granted.

**7. Waiver.** The waiver of any right or remedy by either party with respect to any occurrence or event on one occasion or several occasions shall not be deemed to be a waiver of such right or remedy with respect to such occurrence or event on any other occasion.

**8. Accomplishing the Proposal.** In the event that the Proposal is accomplished, the confidentiality rights and obligations of the parties may be set forth in the definitive agreement(s) executed by the parties with respect to the Proposal. If no such definitive agreement is entered into or the confidentiality rights and obligations of the parties are not addressed in such definitive agreement, the confidentiality obligations contained in this Agreement with respect to a given item of Confidential Information shall remain in full force and effect until such item of Confidential Information falls within one of the exceptions described in Section 4.

**9. Indemnification.** Evaluator agrees to defend, indemnify, and hold harmless Premier and its directors, officers, agents, employees, subsidiaries, and affiliates, and the officers, directors, and agents of such subsidiaries and affiliates, from and against any claim, action, proceeding, liability, loss, damage, cost or expense (including, without limitation, attorneys' fees), arising out of any act or failure to act by Evaluator resulting in a claim for injury or damages to any person or persons relating to the unauthorized access to, or the disclosure, loss, destruction or use of Confidential Information, or other violation of this Agreement.

**10. Severability.** Every provision and subsection of this Agreement is severable from each other provision or subsection of this Agreement. If any part of the covenants, provisions or subsections contained in this Agreement is determined by a court of competent jurisdiction or by any arbitration panel to which a dispute is submitted to be invalid, illegal or incapable of being enforced, the validity of the other provisions and subsections of this Agreement shall not be impaired. If any provision or subsection of this Agreement shall be deemed invalid as to its scope, then notwithstanding such invalidity, that provision or subsection shall be deemed valid to the fullest extent permitted by law, and the parties agree that, if any court or panel makes such a determination, it shall have the power to reduce the duration, scope or area of such provisions or subsections and to delete specific words and phrases by "blue penciling" and, in its reduced or blue-penciled form, such provisions and subsections shall then be enforceable as allowed by law.

**11. Entire Agreement; Amendment.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous written or oral agreements of the parties concerning such subject matter. No amendment to this Agreement shall be effective unless set forth in writing and signed by both parties.

**12. No Warranties or Obligation to Enter Into Transaction.** All Confidential Information provided by either party hereunder is provided without any representation or warranty. A party shall not have any liability to the other party for that party's reliance on any Confidential Information disclosed to it. Neither party shall have an obligation to enter into any business relationship or transaction with the other party by virtue of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth in the Preamble above.

PREMIER

\_\_\_\_\_

By: \_\_\_\_\_

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

Title \_\_\_\_\_

EVALUATOR

\_\_\_\_\_

By: \_\_\_\_\_

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

Title \_\_\_\_\_