



# TRADING PARTNER AGREEMENT

Please read the entire agreement and provide your electronic signature of acceptance.

**THIS ELECTRONIC TRADING PARTNER AGREEMENT** ("Agreement") is by and between the entity executing this Agreement **SUBMITTER** and **GAINWELL TECHNOLOGIES LLC** ("Gainwell"). Submitter and Gainwell are collectively to be considered "the Parties."

**Whereas**, Gainwell performs certain claims processing and administrative services as the fiscal agent of the Colorado Department of Health Care Policy and Financing ("DHHS");

**Whereas**, Submitter provides certain services to members of the State of Colorado ("State") health plans;

**Whereas**, the Parties desire to exchange by and through electronic communications, certain claims and billing information that may contain identifiable financial and/or protected health information ("PHI") as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 Code of Federal Regulations Parts 160-164;

**Whereas**, the Parties desire to set forth in writing their understanding with respect to these communications and the covenant of confidentiality and nondisclosure of PHI or other Data.

**Now, therefore**, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

## 1. Definitions

Data - Any information provided and/or made available by either of the Parties to the other, and includes, but is not limited to enrollment and eligibility data, claims data, and PHI.

Health and Human Services ("HHS") Privacy Standard Regulation ("Privacy Standard") - 45 Code of Federal Regulations ("CFR") at Title 45, Parts 160 through 164.

Health and Human Services Security Standard Regulation ("Security Standard") - 45 Code of Federal Regulations at Title 45, Parts 160, 162 and 164.

HHS Standard Transaction Regulation - 45 CFR Parts 160 and 162.

Individual - The person who is the subject of the Data, as defined by 45 CFR § 164.501.

Proprietary Data - Information used or created by Gainwell in the conduct of its business activities that is not normally made available to Gainwell's customers, competitors, or third parties, the disclosure of which will or may impair Gainwell's competitive position or otherwise prejudice Gainwell's ongoing business, and which Submitter would not otherwise have access but for its contractual relationship with Gainwell.

## 2. Purpose

- A.** This Agreement authorizes the Parties to electronically exchange Data, including PHI, through a public or private telecommunications network using language and code sets authorized at 45 CFR § 160 et seq., in an efficient and cost-effective manner without limiting the obligations of

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each party as set forth in this Agreement or imposed by applicable law, solely for the purposes set forth herein, in accordance with the terms "Standard" and "Transactions" as defined at 45 CFR § 160.103 (hereinafter aggregated and referred to as "Standard Transactions"), the privacy standards described and referenced below, and requirements for non-standard transactions (if applicable). Any Data, Proprietary Data or PHI exchanged under this Agreement is to be used and exchanged solely as authorized by HIPAA and is further subject to the terms and conditions set forth in this Agreement. Submitter represents that it has the right to disclose the Data that it has made and will make available hereunder. Submitter acknowledges that coverage for any services furnished by Submitter and electronically exchanged through this Agreement is subject to the terms and conditions of the individual's benefit program, any participation agreement between Submitter and Gainwell, and Gainwell's policies and procedures.

### **3. Obligations of the Parties Effective Upon Execution of this Agreement by Submitter**

- A.** The Parties agree, in regard to any electronic Transactions between them:
1. They will exchange data electronically using only those Transaction types as selected by Submitter on the Submitter Enrollment Form.
  2. They will exchange data electronically using only those formats (versions) as specified on the Submitter Enrollment Form.
  3. They will not change any definition, data condition, or use of a data element or segment in a Standard Transaction they exchange electronically.
  4. They will not add any data elements or segments to the Maximum Defined Data Set.
  5. They will not use any code or data elements that are not in or are marked as "Not Used" in a Standard's implementation specification.
  6. They will not change the meaning or intent of a Standard's implementation specification.
  7. Gainwell will accept Transactions from Submitter according to the Submitter Enrollment Form but may subsequently deny a Transaction for further processing if the Transaction is not submitted using the data elements, formats or Transaction types set forth in the Submitter Enrollment Form. Gainwell may return a Submitter to a test status if Submitter repeatedly submits Transactions which do not meet the criteria set forth in a Submitter Enrollment Form or if Submitter repeatedly submits inaccurate or incomplete Transactions to Gainwell.
- B.** Submitter understands that Gainwell or others may request an exception from the Transaction and Code Set Regulations from DHHS. If an exception is granted, Submitter will participate fully with Gainwell in the testing, verification, and implementation of a modification to a Transaction affected by the change.
- C.** Gainwell understands that DHHS may modify the Transaction and Code Set Regulations. Gainwell will modify, test, verify, and implement all modifications or changes required by DHHS using a schedule mutually agreed upon by Submitter and Gainwell.
- D.** Neither Submitter nor Gainwell accepts responsibility for technical or operational difficulties that





arise out of third party service providers' business obligations and requirements that undermine Transaction exchange between Submitter and Gainwell.

- E.** Gainwell may publish data clarifications ("Companion Guides") to complement each Implementation Guide. HIPAA Implementation Guides are available at <https://x12.org/products/technical-reports>. Companion Guides are available on the [Electronic Data Interchange \(EDI\) Support web page](#).
- F.** Transactions are considered properly received only after accessibility is established at the designated machine of the receiving party. Once transmissions are properly received, the receiving party will promptly transmit an electronic acknowledgement that conclusively constitutes evidence of properly received transactions. Each Party will subject information to a virus check before transmission to the other Party.
- G.** Each Party will develop, implement, maintain, and use appropriate administrative, technical, and physical Data safeguards, in compliance with 42 U.S.C. § 1320d-2(d), 45 CFR § 164.530(c) and patient confidentiality provisions of applicable State statutes or regulations and any amendments to any of these statutes or regulations.
- H.** The Parties shall comply with the final version of the Privacy Standard and Security Standard. The Parties will adopt any necessary modifications to their practices for maintaining PHI or transmitting PHI electronically and shall provide any written assurances required under the final Security Standard to prevent unauthorized access to Data. If an unauthorized disclosure of PHI, or the discovery of unauthorized access to and/or tampering with the Data or Gainwell's Proprietary Data is discovered, the Submitter will immediately report to Gainwell, DHHS, and the State, using the most expeditious medium available, no later than twenty-four (24) hours after such discovery/disclosure is made, the following information: (i) the nature of the disclosure, (ii) PHI used or disclosed, (iii) the individual(s) who made and received the disclosure, (iv) any corrective action taken to prevent further disclosure(s) and mitigate the effect of the current disclosure(s), and (v) any such other information reasonably requested by Gainwell, DHHS or the State. The Parties will cooperate in the event of any litigation concerning unauthorized use, transfer, or disclosure of such Data or Proprietary Data. Failure to adhere to this section may constitute violation(s) of applicable federal and state laws and regulations and may constitute just cause for immediate termination of this Agreement.
- I.** The Data the Parties may exchange pursuant to this Agreement may change as a result of changes in law or regulation, or actions taken in accordance with the terms and conditions of certain health care benefits contracts. Gainwell's response to inquiries does not guarantee coverage. Further, acceptance by Gainwell of the Data Submitter sends electronically does not constitute guarantee of payment or reimbursement.

#### **4. Submitter Obligations**

- A.** Submitter may provide Data electronically, including the minimum necessary PHI (see 45 CFR § 164.502(b)) in accordance with the terms of the Agreement and the Companion Guide. Submitter is solely responsible to ensure that the Data it provides Gainwell is correct.
- B.** Submitter agrees to protect Gainwell's logon ID(s) and password(s) from compromise, release, or discovery by any unauthorized person, and shall not disclose logon ID(s) and password(s)





to any third party in any manner. A breach of this provision shall be considered material. In the event a breach occurs, Submitter must notify Gainwell immediately. Submitter acknowledges and agrees that only personnel it designates shall be permitted to use the logon ID(s) and password and only within the scope of the approved application. Submitter's use of logon ID(s) and password(s) constitutes an Electronic Signature that confirms Submitter's willingness to remain bound by these terms and conditions and ratify any transaction conducted electronically by Gainwell. In the event of logon ID(s) and/or password(s) are compromised, Submitter shall be responsible for such ramifications resulting from Submitter's failure to protect Gainwell logon ID(s) and password(s).

- C.** Submitter shall assume all its internal costs to transmit, access and receive Data electronically including, but not limited to, the costs of computers, terminals, connections, modems, and browsers that have the capability to use HIPAA mandated code-set Standard Transactions, and the costs of providing sufficient security measures to safeguard receipt and transmission of PHI in accordance with 42 USC § 1320d-2(d), 45 CFR § 164.530 and the implementing regulations issued by HHS to preserve the integrity and confidentiality of, and to prevent non-permitted use or violations of disclosure of PHI. Submitter acknowledges that any changes made to Data may impact any reimbursement it receives.
- D.** Submitter's use of a Gainwell system or process under this Agreement constitutes authorization and direction to Gainwell to use the PHI or other Data received to adjudicate and process health care claims Gainwell receives from Submitter. Submitter acknowledges the sensitive, confidential, and proprietary nature of this Data, and of Gainwell's proprietary electronic communications processes; therefore, Submitter agrees it shall use the same means it uses to protect its own confidential proprietary information- including commercially reasonable security measures, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of Proprietary Data.
- E.** Submitter may access, receive, and transmit only that Data in such format as described in the Companion Guide. No electronic communication will give rise to any obligation until it is accessible at the receiving party's computer as set forth in the Companion Guide. Submitter acknowledges that Gainwell may disclose the PHI it makes available to Gainwell concerning Individuals who are members of a plan to the plan sponsor or the group health plan consistent with HIPAA's requirements and the language set forth herein.
- F.** If any activity under this Agreement would cause any Submitter to be considered a "Business Associate" of any other Party under 45 CFR. § 160.103, the following restrictions will apply to all uses and disclosures of PHI. Submitter will: (i) Not use or further disclose PHI other than as permitted or required by this Agreement, or to comply with judicial process or any applicable statute or regulation; (ii) Notify Gainwell, DHHS, and the State in advance of any disclosure of PHI that the Business Associate is required to make under any judicial or regulatory directive; (iii) Use appropriate safeguards to prevent use or disclosure of PHI other than for the purposes required in this Agreement; (iv) Report to Gainwell, DHHS, and the State any use or disclosure of PHI not provided for in this Agreement of which Submitter becomes aware; (v) Ensure that any agents or subcontractors to whom Submitter discloses PHI received from another party, or created on behalf of another party, agrees to the same restrictions and conditions that apply to the protection of information under this Agreement; (vi) Make PHI available to individuals





as required by 45 CFR § 164.524; (vii) Make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526; (viii) Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528; (ix) Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or collected by Submitter on behalf of another party, available to the Secretary of HHS when called upon for purposes of determining Gainwell, DHHS' and the State's compliance with federal privacy standards; and (x) At termination of this Agreement, if feasible, return or destroy all PHI, or created or collected by Submitter on behalf of Gainwell, DHHS or the State, that Submitter still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, or if the PHI is still used to perform business functions, continue to treat all such PHI in accordance with the limits provided in this Agreement, and applicable law and regulation. In the event Submitter receives Data not intended for Submitter, Submitter will immediately notify Gainwell and delete the Data from its operating system.

- G.** Submitter shall maintain, in accordance with their document retention policies and applicable law and regulation, and for a minimum of six (6) years, true and correct copies of any source documents from which they reproduce Data. Gainwell reserves the right to audit those records and security methods of Submitter necessary to ensure compliance with this Agreement, to ensure that adequate security precautions have been made to prevent unauthorized disclosure or, to verify the accuracy and authenticity of the underlying Data provided hereunder.
- H.** Submitter shall notify Gainwell immediately in writing of any existing or subsequent suspension or revocation of Submitter's license or certificate, or exclusion of participation in the Medicare, Medicaid, or any other federal program.
- I.** Submitter will indemnify and hold harmless Gainwell, SHHS, the State, and/or their respective officers, directors, employees, and representatives for and against any expenses, charges, or damages for any and all unauthorized access events which may occur that are attributable to the acts or omissions of Submitter or its designees. Additionally, each of the Parties acknowledge that by entering into and performing its obligations under this Agreement Gainwell will not assume and should not be exposed to the business and operational risks associated with Submitter's business, and Submitter therefore agrees, to indemnify and defend Gainwell from any and all losses arising out of, under or in connection with any third party claim relating to the conduct of Submitter's business, including the use by Submitter or its designees of the services. Submitter accepts all responsibilities for complying with applicable State and Federal laws and regulations including the Health Insurance Portability and Accountability Act (HIPAA) as they relate to Submitter activities under this Agreement. Submitter accepts responsibility for complying with future state and federal regulations by the mandated legislative date(s) or as communicated by Gainwell. Further, Submitter shall be responsible to reimburse and indemnify Gainwell for any and all liquidated damages, actual damages or charges paid or required to be paid by Gainwell to DHHS and/or the State or any third party as a result of Submitter's failure to perform or inadequacy in performing any of its services or Submitter's failure to meet its other obligations hereunder.



## 5. Term and Termination

- A.** The term of this Agreement shall commence upon receipt of Submitter's electronic signature. Submitter agrees that its ability to transmit, receive or otherwise electronically access Data will cease if Submitter or Gainwell terminates this Agreement.
- B.** Either party may terminate this Agreement without cause upon sixty- (60) days prior written notice. Should DHHS or the State require Gainwell to sever the connection, Submitter will comply with the cancellation terms herein.
- C.** This Agreement may immediately be terminated in the event of a material breach. A material breach shall include, but not be limited to, breach of any substantive term(s) of this Agreement, fraud, abuse, and/or failure to protect PHI. The terminating party may rescind notice of termination if the other party successfully cures the breach complained of to the terminating party's satisfaction. Each party may also temporarily suspend electronic communications under this Agreement to protect computer or data systems in cases of emergencies, or to perform maintenance. Each party agrees to minimize the frequency and duration of these temporary suspensions. This Agreement shall automatically terminate in the event there is no electronic transaction activity for six (6) consecutive months.

## 6. LIMITATION OF LIABILITY

GAINWELL'S LIABILITY TO SUBMITTER FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION THAT IMPOSES LIABILITY, WHETHER IN CONTRACT, EQUITY, NEGLIGENCE, INTENDED CONDUCT, TORT, OR OTHERWISE, WILL BE LIMITED TO AND WILL NOT EXCEED, IN THE AGGREGATE FOR ALL CLAIMS, ACTIONS, AND CAUSES OF ACTION OF EVERY KIND AND NATURE, THE SUM OF TEN THOUSAND DOLLARS (\$10,000.00). IN NO EVENT WILL THE MEASURE OF DAMAGES PAYABLE BY GAINWELL INCLUDE, NOR WILL GAINWELL BE LIABLE FOR ANY AMOUNTS FOR LOSS OF INCOME, PROFIT, OR SAVINGS OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY PARTY, INCLUDING THIRD PARTIES, EVEN IF GAINWELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE, AND ALL SUCH DAMAGES ARE EXPRESSLY DISCLAIMED. NO CLAIM, DEMAND, OR CAUSE OF ACTION THAT AROSE OUT OF AN EVENT OR EVENTS THAT OCCURRED MORE THAN TWO (2) YEARS PRIOR TO THE FILING SUIT ALLEGING A CLAIM OR CAUSE OF ACTION MAY BE ASSERTED AGAINST GAINWELL. THE PROVISIONS OF THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON.

## 7. Miscellaneous

- A.** Neither Party shall be liable to the other Party for damages caused by circumstances beyond its control, including, without limitation: "hackers" who gain access to the system or Data despite a Party's compliant security measures, a major disaster, epidemic, the complete or partial destruction of its facilities, riot, civil insurrection, war, or similar causes.
- B.** This Agreement shall be interpreted consistently with all applicable federal and state privacy laws. This Agreement will automatically amend to comply with any final regulation or amendment adopted by HHS concerning the subject matter of this Agreement upon the effective date of the final regulation or amendment. In the event of a conflict between applicable laws, the more



stringent law shall be applied. This Agreement and all disputes arising from or relating in any way to the subject matter of this Agreement shall be governed by and construed in accordance with Colorado law, exclusive of conflicts of law principles. The exclusive jurisdiction for any legal proceeding regarding this Agreement shall be in the courts of the State of Colorado and the parties hereby expressly submit to such jurisdiction.

- C.** Unless otherwise prohibited by statute, the parties agree that this Agreement shall not be affected by any state's enactment or adoption of the Uniform Computer Information Transaction Act, Electronic Signature or any other similar state or federal law. Each party agrees to comply with all other applicable state and federal laws in carrying out its responsibilities under this Agreement.
- D.** This Agreement is entered into solely between, and may be enforced only by, Submitter and Gainwell. This Agreement shall not be deemed to create any rights in third parties or to create any obligations of Submitter or Gainwell to any third party.
- E.** No warranties, express or implied, are provided by Gainwell under this Agreement.
- F.** This Agreement shall be binding on the Parties and their respective successors and assigns, but neither party may either assign or further subcontract its obligations under this Agreement to any other entity without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement, without the other party's consent, to any purchaser of all or substantially all of such party's assets, or to any successor by way of merger, consolidation, or similar transaction, or to a parent, affiliate, or subsidiary. Nothing in this Agreement will place Gainwell and Submitter in a relationship whereby either (1) is principal or agent of the other for any purpose; or (2) has the authority to bind the other in any way.
- G.** No course of dealing or failure of either party to strictly enforce any term, right or condition of the Agreement shall be construed as a waiver of such term, right or condition.
- H.** If any provisions of this Agreement shall be deemed invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing those invalid or unenforceable provision(s), and the rights and obligations of each party shall be construed and enforced accordingly.
- I.** Gainwell reserves the right to amend the Companion Guides and/or this Agreement from time to time, the continued provision of Data and Transactions constitutes the acceptance of any such modified terms.
- J.** This Agreement, the Companion Guides, and any manuals, exhibits, applications and attachments hereto or thereto, each of which is incorporated herein, shall constitute the entire Agreement between the Parties with respect to its subject matter and there are no oral or written representation, understandings or agreement to this Agreement which are not fully expressed herein.

Revised April 2023

