

Gainwell Technologies LLC - West Virginia

PROVIDER TRADING PARTNER AGREEMENT

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

This Electronic Trading Partner Agreement (hereinafter "Agreement") is made by and between Gainwell Technologies LLC ("Gainwell"), acting on behalf of the State of West Virginia, **Birth to Three (BTT)**, and the party named at the bottom of this document, a licensed health care provider.

WHEREAS, Gainwell performs certain claims processing and administrative services; and,

WHEREAS, Provider renders certain professional health care services ("Services") to members of employer groups and individuals, and submits documentation of those Services to Gainwell; and,

WHEREAS, Provider and Gainwell (collectively, 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, now or as later amended; and,

WHEREAS, the Parties agree to safeguard any and all PHI or other data received, transmitted or accessed electronically to or from each other in accordance with HIPAA, and 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:

I. DEFINITIONS.

Companion Guides. - aka 'Guide' here within the TPA. Companion Guide will be created to help assist submitters in their submission of claims to Gainwell.

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

Electronic Data Interchange ("EDI") Companion Guide. - A technical user's manual provided to Provider to assist Provider in preparing and completing electronic data interchange. Gainwell reserves the right to revise and update the EDI Companion Guide ("Guide") in its sole discretion.

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

Health and Human Services ("HHS") Security Standard Regulation. - 45 Code of Federal Regulations ("CFR") 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. Provider would not otherwise have access but for its contractual relationship with Gainwell.

II. INTRODUCTION.

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 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. Provider acknowledges that coverage for any services furnished by Provider and electronically exchanged through this Agreement is subject to the terms and conditions of the individual's benefit program, any participation agreement between Provider and Gainwell, and Gainwell's policies and procedures.

III. TERM, TERMINATION and SUSPENSION.

The term of this Agreement shall commence upon its execution. Provider agrees that its ability to transmit, receive or otherwise electronically access Data will cease if Provider or Gainwell terminates this Agreement.

Either party may terminate this Agreement without cause upon thirty (30) days prior written notice or immediately by either party for cause. Should BTT require Gainwell to sever the connection, Provider will comply with the cancellation terms herein.

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.

Any ambiguity in any term or condition of this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA.

IV. GAINWELL OBLIGATIONS.

A. ID(s) and Password(s) - Upon execution of this Agreement, Gainwell will assist in establishing Provider logon ID(s) and password(s) to allow Provider to authenticate its identity and transmit data electronically. Gainwell shall retain title to all logon ID(s) and password(s) and reserves the right to change any logon ID or password at any time, for any reason, or if required to do so by law, regulation, or court order.

B. Data - The Data the Parties may exchange pursuant to this Agreement may change as a result of changes in law or regulation, or actions taken by an employer group in accordance with the terms and conditions of certain health care benefits contracts, or changes made to those contracts. Gainwell's response to inquiries does not guarantee coverage. Acceptance by Gainwell of the Data Provider sends electronically does not constitute guarantee of reimbursement.

V. PROVIDER OBLIGATIONS and AUTHORIZATIONS.

A. Provision of Data - Provider may provide Gainwell Data electronically, including the minimum necessary PHI (see 45 CFR § 164.502(b)) in accordance with the terms of the Agreement and the Guide. Provider is solely responsible to ensure that the Data it provides Gainwell is correct.

B. Logon ID and Password - Provider 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, Provider must notify Gainwell immediately. Provider acknowledges and agrees that only Provider personnel it designates shall be permitted to use the logon ID(s) and password and only within the scope of the approved application. Provider's use of logon ID(s) and password(s) constitutes an Electronic Signature that confirms Provider'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, Provider shall be responsible for such ramifications resulting from Provider's failure to protect Gainwell logon ID(s) and password(s).

C. Provider's Costs - Provider 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. Provider acknowledges that any changes made to Data may impact any reimbursement it receives.

D. Authorization to Use Data - Provider'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 from the Provider to adjudicate and process health care claims Gainwell receives from Provider. Provider 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.

E. Testing - Prior to the initial data transmission for each type of transaction, Provider will test and cooperate with Gainwell in testing Provider's operating system to ensure the accuracy, timeliness, completeness, compatibility, and confidentiality of each data transmission.

F. Limited Access - Provider will not obtain access by any means to data or Gainwell's operating system for any purpose. In the event Provider receives data not intended for Provider, Provider will immediately notify Gainwell and delete the data from its operating system.

G. Notice of License Impairment - Provider shall notify Gainwell immediately in writing of any existing or subsequent suspension or revocation of Provider's license or certificate, or exclusion of participation in the Medicare, Medicaid, or any other federal program.

VI. INDEMNIFICATION

Provider will indemnify and hold harmless Gainwell, the State of West Virginia, 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 Provider. 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 Provider's business, and Provider 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 Provider business, including the use by Provider of the services. Provider 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 Provider activities under this Agreement. Provider accepts responsibility for complying with future state and federal regulations by the mandated legislative date(s) or as communicated by Gainwell. Further, Provider 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 the State or any third party as a result of Provider's failure to perform or inadequacy in performing any of the services described herein (including without limitation, degradation of response times, inaccurate routing, lost or distorted messages) or Provider's failure to meet its other obligations hereunder.

VII. CONFIDENTIALITY.

Each party agrees that during the term of this Agreement, such party shall use the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of both (i) written information received from the other party which is marked or identified as confidential, and (ii) oral or visual information identified as confidential at the time of disclosure which is summarized in writing and provided to the other party in such written form promptly after such oral or visual disclosure ("Confidential Information"). The foregoing shall not prevent either party from disclosing Confidential Information which belongs to such party or is (i) already known by the recipient party without an obligation of confidentiality other than under this Agreement, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party without a duty of confidentiality, (iv) independently developed by the recipient party without the use of or reliance upon the other party's Confidential Information, (v) approved by the other party for disclosure, or (vi) required to be disclosed pursuant to a requirement of governmental agency or law so long as the disclosing party provides the other party with the notice of such requirement and an opportunity to seek appropriate legal protections prior to any such disclosure. Each party represents that it has the right to disclose information that it has made and will make available to the other hereunder. In recognition of this important requirement, each party shall provide commercially reasonable security measures to prevent the disclosure and to protect the confidentiality of Confidential Information.

VIII. LIMITATION OF LIABILITY.

GAINWELL'S LIABILITY TO THE PROVIDER 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.

IX. COMPLIANCE WITH PRIVACY STANDARDS.

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, or any amendments to any of these statutes or regulations.

Each party shall execute Trading Partner, and/or Business Associate Agreements, acceptable to Gainwell, with subcontractors or agents that provide services involving maintenance, use or disclosure of PHI, ensuring that any subcontractors or agents to whom it provides PHI agree in writing to those restrictions that, with respect to such PHI, apply to that individual subcontractor or agent. Each party agrees that it will not maintain, use, make available or further disclose PHI other than as permitted or required by this Agreement or as required by law.

If any activity under this Agreement would cause any Provider 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. The Business Associate 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 the other Party 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 the other parties any use or disclosure of PHI not provided for in this Agreement of which the Business Associate becomes aware; (v) Ensure that any agents or subcontractors to whom the Business Associate 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 the Business Associate on behalf of another Party, available to the Secretary of HHS when called upon for purposes of determining the other Party's compliance with federal privacy standards; and (x) At termination of this Agreement, if feasible, return or destroy all PHI received from another Party, or created or collected by the Business Associate on behalf of the other Party, that the Business Associate 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.

X. SYSTEMS AND PERSONNEL SECURITY/UNAUTHORIZED DISCLOSURES.

The Parties shall comply with the final version of the data security standard promulgated by HHS (final version found at 45 CFR Part 160, 162, and 164, published February 20, 2003, 68 Federal Register, Pages 8334-8381, the "Security Standard"). On or before the required compliance date of the final 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 disclosing party will immediately report to the other party, 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 the non-disclosing party. The Parties will cooperate in the event of any litigation concerning unauthorized use, transfer or disclosure of such 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.

XI. COMPLIANCE WITH STANDARD TRANSACTIONS.

When required, the Parties shall comply with each applicable regulation when performing "Standard Transactions." The Parties will not enter into any Trading Partner Agreement related to this Agreement that: changes any definition, data condition or use of a data element or segment, nor adds any data elements or segments to the maximum defined data set as proscribed in the HHS Transaction Standard Regulation, and as further proscribed by Gainwell. (See 45 CFR § 162.915(b)). The Parties further agree that they will neither use any code or data elements marked "not used" or which are not found in the HHS Transaction Standard's implementation specifications, nor change the meaning or intent of any of the HHS Transaction Standard implementation specifications. (See 45 CFR § 162.9 15(c) and (d)).

XII. AUTOMATIC AMENDMENT FOR REGULATORY CHANGE.

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.

XIII. NOTICES.

Any notice relating to this Agreement shall be in writing and transmitted by either (i) U.S. Mail, first class, postage prepaid; or (ii) facsimile transmission to the addresses/telephone numbers in this section below. Notices or communications shall be deemed given (a) in the case of transmittal by U.S. mail, on the date of receipt by the addressee and (b) in the case of facsimile transmission, on the date the facsimile is sent.

**Central Reimbursement Office
Gainwell Technologies LLC
P.O. box 29134
Shawnee Mission, KS 66201-9134
EDI@gainwelltechnologies.com**

**Phone: 866.639.2916 Option 4
FAX: 913.888.6683**

XIV. RECORDS AND AUDIT.

The Provider shall maintain, in accordance with their document retention policies and applicable law and regulation, and for a minimum of five (5) 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 Provider 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 services underlying any EDI transaction.

XV. SURVIVAL OF PROVISIONS.

Any provision of this Agreement, which requires or reasonably contemplates the performance or existence of obligations by either party after the termination of the Agreement shall survive such termination.

XVI. ASSIGNMENT/NO AGENCY.

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 Provider 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.

XVII. GOVERNING LAW/VENUE.

The laws of the State of West Virginia shall govern the construction, interpretation and performance of this Agreement and all transactions under it, except to the extent federal law preempts them.

XVIII. WAIVER OF RIGHTS.

The failure of a party to enforce a provision of this Agreement shall not constitute a waiver with respect to that, or any other, provision of this Agreement.

XIX. SEVERABILITY.

If any provisions of this Agreement shall be deemed by a court of competent jurisdiction to be 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.

XX. MODIFICATION.

Gainwell reserves the right to amend the EDI Companion Guides, Application, and Forms from time to time. Gainwell may amend this Agreement upon thirty (30) days written notice.

XXI. RELATIONSHIP OF GAINWELL TO STATE OF West Virginia, Birth to Three

This Agreement constitutes a contract between Provider and Gainwell. Gainwell is an independent corporation operating under a service agreement for the State of West Virginia, BTT as the Fiscal Agent. Provider has not entered into this Agreement based upon representations by any person other than Gainwell, and no person, entity or organization other than Gainwell can be held accountable or liable to Provider for any of Gainwell's obligations to Provider under this Agreement.

XXII. ENTIRE AGREEMENT.

This Agreement, including any manuals, guides, exhibits and documents referred to in this Agreement or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the Parties with respect to its subject matter and there are no oral or written representations, understanding or agreements to this Agreement which are not fully expressed herein. The Parties agree that any other terms or conditions included in any forms utilized or exchanged by the Parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by an authorized representative of the Parties which expressly refers to this Agreement.

Any signature below that is transmitted by facsimile or other electronic means shall be binding and effective as the original.

Trading Partner

Name: _____

Title: _____

Payee Name: _____

Payee ID: _____

Electronic Signature: _____ Date: _____

Provider EDI Contact

Name: _____

Title: _____

Telephone: _____

E-Mail: _____

Registration:

First Name _____

Last Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____