

## GAG CLAUSE SAMPLE – YELLOW HIGHLIGHTS

The Parties acknowledge and agree that [PARTY] will provide such Confidential Information under the following terms and conditions:

1. Confidential Information. “Confidential Information” means, collectively all information or materials (whether tangible or intangible) which [PARTY] provide to Receiving Party pursuant to the terms of this Agreement that [PARTY] considers to be confidential and/or proprietary, has been subject to reasonable measures to protect its confidentiality or requires protection by law. Confidential Information includes, but is not limited to, patient identifiable health or claim information, health information or claim information that is not patient identifiable or group identifiable, provider identifiable information, provider tax identification numbers, actuarial data and reports, reimbursement rates, allowed amounts, fee schedules, reimbursement or payment methodologies, provider manuals, specifications, documentation, working papers, benefit design concepts, customer information, research and technical information, processes, procedures and formulae, pharmacy benefit-related data, including maximum allowable cost (MAC) information and/or other allowed amounts information, specialty drug pricing and SAS70 reports, SSAE16 reports and/or similar reports, and information obtained from and/or about the Association and its programs. Confidential Information shall not include medical and pharmacy claim information that been de-identified pursuant to the HIPAA Privacy Rule, 45 C.F.R. Part 164. Any Confidential Information provided by a [PARTY] vendor shall be subject to the protections of this Agreement.

Information that is available to the general public (other than as a result of a disclosure by Receiving Party), or information which becomes available to Receiving Party from a source other than [PARTY], its affiliates, or subsidiaries (provided that such source is not bound by a confidentiality agreement or other obligation of secrecy) or information which is independently developed by Receiving Party or any of its Representatives without use of Confidential Information or information which is lawfully known by the Receiving Party without any obligation of confidentiality or other restriction on use or disclosure, prior to the disclosure of the information by the Disclosing Party shall not be considered to be Confidential Information.

2. General Restrictions and Non-Disclosure. Confidential Information shall not be:
  - 2.1. used or disclosed for any reason other than the stated Purpose;
  - 2.2. used or released in any manner, method or format that could be construed as competing with [PARTY] or a service provided by [PARTY];
  - 2.3. reverse engineered, reverse assembled, disassembled, decompiled, deaggregated (if provided in an aggregate form), or otherwise used in any manner that attempts to discover proprietary information not expressly provided pursuant to this Agreement;
  - 2.4. disclosed in any manner or method, including but not limited to, verbal disclosure to any individual or entity not a party to this Agreement except for those of Receiving Party’s Representatives who have a legitimate “need to know” the information for the Purpose and who are bound by obligations of confidentiality no less restrictive than the terms of this Agreement;
  - 2.5. sold, resold or otherwise commercialized in violation of the California Consumer Privacy Act;

- 2.6. used in support of a consumer engagement tool (health cost transparency tool, quality tool, etc.); or
- 2.7. combined with any other information unrelated to Plan except as necessary to perform the Purpose, and as long as the aggregated or de-identified Confidential Information is restricted to member, administrative, and/or clinical data without any ability to derive provider discounts.