

REDWOOD MEDNET, INC.

ELECTRONIC HEALTH INFORMATION SHARING
PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (“Agreement”) is entered into as of the Effective Date shown below (“Effective Date”), by and between REDWOOD MEDNET, INC., a California nonprofit public benefit corporation (“RMN”), and the Participant named below (“Contracting Participant”).

Introduction. RMN operates an on-line clinical messaging service through which RMN makes health information available in electronic form to health care providers for use in treating their patients (“On-Line Services”). This Agreement states the terms and conditions upon which the Contracting Participant will participate in the On-Line Services.

1. Definitions. This Agreement uses a number of capitalized terms that are defined in the Protocol. All terms used in this Agreement shall be defined to be consistent with the definitions shown in the Protocol.

2. Protocol. RMN has developed a Protocol that describes the On-Line Services in detail, and important terms and conditions regarding their operation and use. The Protocol is incorporated by reference into this Agreement. By entering into this Agreement, the Participant agrees to be legally bound by the Protocol and comply with all the policies and procedures included in the Protocol.

3. Amendments to Agreement and Protocol.

3.1 Amendments Required by Law. RMN may amend or restate this Agreement and/or the Protocol upon notice to the Contracting Participant at any time that RMN determines that such change is required to comply with applicable laws and regulations. Such changes shall become effective as of the dates and times described in RMN’s notice(s) thereof.

3.2 Other Amendments; Participant’s Right to Terminate. RMN may amend or restate this Agreement and/or the Protocol at any time that RMN determines it is desirable to do so; provided, that RMN shall notify the Contracting Participant of any such change at least forty five (45) days prior to the implementation of the change. If the Contracting Participant objects to a change made pursuant to this Section 3.2 (Other Amendments; Participant’s Right to Terminate), the Contracting Participant may terminate this Agreement by giving RMN written notice within fifteen (15) days following RMN’s notice of the change. Such a termination shall be effective as of the effective date of the change to which the Contracting Participant objects. If the Contracting Participant does not object to the change within the fifteen (15) day period, the change shall take effect as of the effective date described in RMN’s notice.

4. Term and Termination.

4.1 Term. The term of this Agreement (“Term”) shall commence on the Effective Date, and shall continue through and until the termination of this Agreement pursuant to this Section 4 (Term and Termination).

4.2 Termination Upon Cessation of Business. RMN may terminate this Agreement by notice to the Contracting Participant at any time that RMN ceases to provide On-Line Services in which the Participant participates hereunder.

4.3 Termination Upon Material Breach. Either RMN or the Contracting Participant (the “Terminating Party”) may terminate this Agreement upon the failure of the other party (the “Breaching Party”) to perform a material responsibility arising out of this Agreement, and that failure continues uncured for a period of sixty (60) days after the Terminating Party has given the Breaching Party notice of that failure and requests that it be cured. Without limiting the generality of the foregoing, either party may terminate this Agreement upon a failure by the other party to correct a Serious Breach of Confidentiality or Security within sixty (60) days following notice thereof from the other.

4.4 Effect of Termination. If this Agreement terminates, the Contracting Participant shall cease to be a Participant in RMN’s health information exchange, and thereupon neither the Contracting Participant nor its Authorized Users shall have any rights to use On-Line Services.

4.5 Survival of Provisions. The following provisions of this Agreement shall survive any termination hereof: Section 5 (Responsibility for Conduct of Participant and Authorized Users), Section 10 (Protected Health Information), Section 13.3 (Limitation on Liability) and Section 14.2 (Indemnification).

5. Responsibility for Conduct of Authorized Users. The Contracting Participant shall be solely responsible, with respect to the use of the On-Line Services and/or Patient Data used or disclosed in connection therewith, for all acts and omissions of the Contracting Participant and/or its Authorized Users, and any other individuals who may access or use the On-Line Services either through the Contracting Participant or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from the Contracting Participant or any of its Authorized Users.

6. Data Recipient’s Rights and Obligations. If the Contracting Participant is registered with RMN to act as a Data Recipient, the Contracting Participant may use On-Line Services for the Permitted Uses described in the Protocol. The Contracting Participant shall not use the On-Line Services or any Patient Data received through the use thereof for any Prohibited Use described in the Protocol, and shall not use the On-Line Services for any purpose or in any manner that is prohibited by applicable federal and state laws and regulations.

7. Data Provider’s Rights and Obligations.

7.1 Use of On-Line Services. If the Contracting Participant is registered with RMN to act as a Data Provider, the Contracting Participant shall use the On-Line Services to provide the Patient Data that the Contracting Participant has registered with RMN to provide. The Contracting Participant shall, in accordance with the requirements set forth in the Protocol, use reasonable and appropriate efforts to assure that all data it provides is accurate, free from serious error, reasonably complete, and provided in a timely manner.

7.2 License. The Contracting Participant grants to RMN a perpetual, fully-paid, worldwide, non-exclusive, royalty-free right and license (i) to license and/or otherwise permit

others to access through the On-Line Services and use all Patient Data provided by the Contracting Participant in accordance with the Protocol, and (ii) to use such Patient Data to carry out RMN's duties under the Protocol and Participation Agreements, as described in the Protocol.

8. Technology License Agreement. In order to obtain the software and/or hardware required to use the On-Line Services, the Participant shall enter into a Technology License Agreement in such form as is required by RMN.

9. Rights in On-Line Services. RMN retains all ownership and other rights to the On-Line Services and all the components thereof. The Contracting Participant shall not obtain any rights to the On-Line Services or any of the components thereof except for the limited rights expressly granted by this Agreement.

10. Protected Health Information.

10.1 Compliance with Protocol and Applicable Laws and Regulations. RMN and the Contracting Participant shall comply with the standards for the confidentiality, security, and use of Patient Data, including without limitation protected health information described in HIPAA, as provided in the Protocol. Without limiting the foregoing, RMN and the Contracting Participant shall comply with the requirements for the privacy, security and use of patient health information imposed under HIPAA and under the laws of the State of California, regardless of whether or not the Contracting Participant is a "covered entity" under HIPAA.

10.2 Reporting of Serious Breaches. RMN and the Contracting Participant shall report to the other any Serious Breach of Confidentiality or Security with respect to Protected Health Information of which RMN or the Contracting Participant becomes aware.

11. Agreements with Other Participants. RMN shall restrict access to the On-Line Services and Patient Data to Participants, and Authorized Users of Participants, that have entered into a Participation Agreement with RMN that complies with the Protocol's requirements for Participation Agreements.

12. Fees and Other Charges. The Contracting Participant shall pay Service Fees to RMN as described in the Protocol.

13. Disclaimers, Exclusions of Warranties and Limitations of Liability.

13.1 Generally. The Contracting Participant hereby acknowledges and accepts the disclosures, disclaimers and exclusions of warranties set forth in the Protocol.

13.2 Patient Care. The Contracting Participant and its Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for their respective patients and clients resulting from or in any way related to the use of the On-Line Services or Patient Data. Neither the Contracting Participant nor any Authorized User shall have any recourse against, and shall waive, any claims against RMN for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the On-Line Services or Patient Data.

13.3 Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of RMN, and RMN’s officers, directors, employees, and other agents, to the Contracting Participant and the Participant’s Authorized Users, regardless of theory of liability, shall be limited to the aggregate of Service Fees actually paid by the Contracting Participant in accordance with this Agreement for the six (6) month period preceding the event first giving rise to the claim.

14. Insurance and Indemnification.

14.1 Insurance. The Contracting Participant shall comply with the insurance requirements set forth in the Protocol.

14.2 Indemnification.

14.2.1 Generally. RMN and the Contracting Participant (each, an “Indemnifying Party”) each shall hold the other and, if the Participant is the Indemnifying Party, the other Participants (the “Indemnified Party”), free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, members, agents, staff, or employees, including the Indemnifying Party’s failure to comply with or perform its obligations under this Agreement.

14.2.2 Specific Indemnities.

(a) Notwithstanding Section 14.2.1 (Generally), RMN and the Participant (each, an “Indemnifying Party”) each shall hold the other (the “Indemnified Party”) free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of any Serious Breach of Confidentiality or Security arising out of the act or omission of the Indemnifying Party or any of the Indemnifying Party's Authorized Users, members, agents, staff, or employees; and

(b) Notwithstanding Section 14.2.1 (Generally), a Data Provider shall hold RMN free of and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys' fees, net of the proceeds of insurance, arising out of Data Provider’s provision of any Patient Data that is inaccurate, incomplete, or defamatory.

15. General Provisions.

15.1 Applicable Law. The interpretation of Participation Agreements and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of California. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action shall be exclusively in Mendocino County, in the State of California.

15.2 Non-Assignability. No rights of the Participant under this Agreement may be assigned or transferred by the Contracting Participant, either voluntarily or by operation of law, without the prior written consent of RMN, which it may withhold in its sole discretion.

15.3 Third-Party Beneficiaries. There shall be no third-party beneficiaries of any Participation Agreement.

15.4 Supervening Circumstances. Neither the Contracting Participant nor RMN shall be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section 15.4 (Supervening Circumstances) shall not apply to obligations imposed under applicable laws and regulations or obligations to pay money.

15.5 Severability. Any provision of this Agreement that shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision of that Agreement, and such other provisions shall remain in full force and effect.

15.6 Notices. Any and all notices required or permitted under this Agreement shall be sent by United States mail, overnight delivery service, or facsimile transmission to the address provided by RMN and the Contracting Participant to the other. If a party has supplied the other with an electronic mail address, the other party may give notice by email message addressed to such address; provided that if the other party receives notice that the email message was not delivered, it shall give the notice by United States mail, overnight delivery service, or facsimile.

15.7 Waiver. No provision of the terms and conditions of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

15.8 Complete Understanding. This Agreement and the Protocol together contain the entire understanding of the parties, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement. All modifications or amendments to this Agreement shall be in writing and signed by all parties.

REDWOOD MEDNET, INC.
ELECTRONIC HEALTH INFORMATION EXCHANGE
PARTICIPATION AGREEMENT

Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Execution Date set forth below.

Execution Date: _____, 200_

“RMN”

“Participant”

REDWOOD MEDNET, a California nonprofit
public benefit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____