



REDWOOD MEDNET, INC.

ELECTRONIC HEALTH INFORMATION EXCHANGE
PARTICIPATION AGREEMENT

(2008.12.15)

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REDWOOD MEDNET, INC.

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PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date set forth on the signature page hereof (“Effective Date”), by and between REDWOOD MEDNET, INC., a California nonprofit public benefit corporation (“Redwood MedNet”), and the participant named on the Signature Page (“Participant”), with reference to the following facts:

A. Redwood MedNet is organized and operated for the purpose of facilitating the secure and appropriate sharing of electronic health files and clinical data among health care providers and other participants in Northern California for treatment, payment, operations, public health and research-related purposes, in an atmosphere of transparency and mutual trust. Redwood MedNet may in the future participate in other regional and national electronic health information exchanges, such as the proposed Nationwide Health Information Network (“NHIN”).

B. The Participant wishes to participate in the electronic health information exchange facilitated by Redwood MedNet, in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION of the recitals, covenants, conditions and promises herein contained, and for other valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Redwood MedNet and the Participant hereby agree as follows:

1. Definitions. The meanings of all terms used in this Agreement shall be consistent with the defined terms set forth in this Section 1 (Definitions).

“Authorized User” means an individual, *i.e.*, a natural person, who is authorized by a Participant to use the Services on behalf of that Participant, including without limitation, an employee of the Participant and/or a credentialed member of the Participant’s medical staff. If the Participant is an individual, *e.g.*, a physician, then that individual is both a Participant and an Authorized User.

“Data Provider” means a Participant that is registered to provide information electronically for use through the Services.

“Data Recipient” means a Participant that is registered to use the Services to obtain health information electronically.

“Effective Date” means the start of the Participation Agreement as defined on the signature page

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 CFR Parts 160 and 164.

“Operations Committee” means the committee described in Section 10.3 (Operations Committee).

“Participant” means a party that has entered into a Participation Agreement with Redwood MedNet to act as a Data Provider and/or as a Data Recipient.

“Participation Agreement” means a legally binding written agreement pursuant to which a Participant has agreed to act as a Data Provider and/or as a Data Recipient in accordance with terms and conditions that are not inconsistent with the terms and conditions of this Agreement. This Agreement is a Participation Agreement.

“Patient Data” means electronic health, demographic and related information provided by a Data Provider to Data Recipients pursuant to Section 6.2 (Provision of Data).

“Policies and Procedures” means those policies and procedures adopted by Redwood MedNet to describe in detail the Services and the System and the terms and conditions pursuant to which they shall be operated.

“Services” means the Redwood MedNet electronic health information delivery and aggregation services and/or software described in the Policies and Procedures.

“System” means Redwood MedNet’s electronic health information exchange infrastructure, as described in the Policies and Procedures.

2. Amendments to Agreement and Policies and Procedures.

2.1 Amendments Required by Law. Redwood MedNet may amend, or repeal and replace, this Agreement or the Policies and Procedures upon notice to the Participant at any time that Redwood MedNet determines that such change is required to comply with applicable laws and regulations.

2.2 Other Amendments. Redwood MedNet may amend, or repeal and replace, this Agreement or the Policies and Procedures at any time that Redwood MedNet determines it is desirable to do so; provided, that Redwood MedNet shall notify the Participant of any material changes to this Agreement or the Policies and Procedures at least forty five (45) days prior to the implementation of the change.

2.3 Termination Based on Objection to Change. If a change to this Agreement or the Policies and Procedures, other than a change made pursuant to Section 2.1 (Amendments Required by Law) affects a material right or obligation of the Participant, and the Participant objects to that change, the Participant may terminate this Agreement by giving Redwood MedNet written notice within fifteen (15) days following Redwood MedNet’s notice of the change. Such termination of this Agreement shall be effective as of the effective date of the change to which the Participant objects; provided, however, that following receipt of the Participant’s notice of its objection to the change, Redwood MedNet may decide in its discretion to refrain from implementing the change to which the Participant has objected, in which event this Agreement shall not be terminated and shall continue in force and effect.

3. Term and Termination.

3.1 Term. The term of this Agreement (the “Term”) shall commence on the date on which Redwood MedNet gives notice thereof to the Participant (the “Effective Date”), and shall continue through and until the termination of this Agreement pursuant to this Section 3 (Term and Termination).

3.2 Termination Upon Cessation of Business. Redwood MedNet may terminate this Agreement by notice to the Participant at any time that Redwood MedNet ceases to provide the Services.

3.3 Termination Upon Anniversary. Either Redwood MedNet or the Participant may terminate this Agreement at any time without cause effective as of the next anniversary of the Effective Date, by giving not less than forty five (45) days prior notice to the other.

3.4 Termination Upon Material Breach. Either Redwood MedNet or the 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 requested that the Breaching Party cure that failure. 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.

3.5 Effect of Termination. Upon any termination of this Agreement, the Participant shall cease to be a Participant in Redwood MedNet’s health information exchange and thereupon and thereafter neither the Participant nor its Authorized Users shall have any rights to use the System or the Services. Certain provisions of this Agreement shall continue to apply to the former Participant and its Authorized Users following that termination, as described in Section 3.6 (Survival of Provisions).

3.6 Survival of Provisions. The following provisions of this Agreement shall survive any termination hereof: Section 4.4 (Responsibility for Conduct of Participant and Authorized Users), Section 8 (Protected Health Information), Section 12 (Proprietary Information), Section 13.8 (Limitation on Liability) and Section 14.2 (Indemnification).

4. Authorized Users.

4.1 Identification of Authorized Users. The Participant shall provide Redwood MedNet with a list identifying all that Participant’s Authorized Users, in accordance with the requirements described in the Policies and Procedures. The Participant shall restrict access to the System and, if applicable, use of the Services, only to the Authorized Users that the Participant has so identified to Redwood MedNet. The Participant shall inform Redwood MedNet in writing within two (2) business days whenever an Authorized User is added or removed.

4.2 Certification of Authorized Users. The Participant shall certify to Redwood MedNet that each of the Participant’s Authorized Users:

- a) Has completed a training program conducted by the Participant as described in the Policies and Procedures;
- b) Will be permitted by the Participant to use the Services and the System only as reasonably necessary for the performance of the Participant’s activities as described in the Policies and Procedures;
- c) Has agreed not to disclose to any other person any passwords and/or other security measures issued to the Authorized User pursuant to Section 4.3 (Passwords and Other Security Mechanisms); and
- d) Has acknowledged in writing that the Authorized User’s failure to comply with this Agreement and the Policies and Procedures may result in the withdrawal of privileges to use the Services and the System and may constitute cause for disciplinary action by Participant.

4.3 Passwords and Other Security Mechanisms. Redwood MedNet shall issue a user name and password and/or other security measures, as described in the Policies and Procedures, to each Authorized User that shall permit the Authorized User to access the System and use the Services. Redwood MedNet shall provide each such user name and password and/or other security measures to the Participant and the Participant shall be responsible to communicate that information to the appropriate Authorized User. When the Participant informs Redwood MedNet of the removal of any Authorized User, Redwood MedNet shall de-activate the user name and password and/or other security measures of such individual.

4.4 Responsibility for Conduct of Participant and Authorized Users. The Participant shall be solely responsible for all acts and omissions of the Participant and/or the Participant’s Authorized Users, and all other individuals who access the System and/or use the Services either through that Participant or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from that Participant or any of that Participant’s Authorized Users, with respect to the System, the Services and/or any confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of that Participant.

4.5 Termination of Authorized Users. The Participant shall require that all of its Authorized Users use the System and the Services only in accordance with this Agreement and the Policies and Procedures, including without limitation the provisions thereof governing the confidentiality, privacy and security of protected health information. The Participant shall discipline appropriately any of its Authorized Users who fail to act in accordance with this Agreement or the Policies and Procedures in accordance with that Participant’s disciplinary policies and procedures.

5. Data Recipient’s Rights and Obligations. If the Participant is registered with Redwood MedNet to act as a Data Recipient, the terms of this Section 5 (Data Recipient’s Rights and Obligations) shall apply.

5.1 Grant of Rights. A Data Recipient may use the System and the Services for the permitted uses described in Section 5.2 (Permitted Uses), subject to the Data Recipient’s full compliance with this Agreement and the Policies and Procedures. Redwood MedNet retains all

ownership and other rights to the System, the Services and all the components thereof. A Data Recipient shall not obtain any rights to the System except for the limited rights to use the System expressly granted by this Agreement.

5.2 Permitted Uses. A Data Recipient may use the System and the Services for which that Data Recipient has registered only for the permitted purposes described in the Policies and Procedures.

5.3 Prohibited Uses. A Data Recipient shall not use or permit the use of the System or the Services for any prohibited use described in the Policies and Procedures. Without limiting the foregoing, a Data Recipient shall not use the System or the Services for any purpose or in any manner that is prohibited by applicable federal and state laws and regulations.

6. Data Provider's Rights and Obligations.

6.1 Grant of Rights. A Data Provider may use the System for the purposes of complying with the obligations described in this Section 6 (Data Provider's Rights and Obligations), subject to the Data Provider's full compliance with this Agreement and the Policies and Procedures. Redwood MedNet retains all ownership and other rights to the System, the Services and all the components thereof. A Data Provider shall not obtain any rights to the System except for the limited rights to use the System expressly granted by this Agreement.

6.2 Provision of Data. A Data Provider shall provide through the System the patient data that the Data Provider has registered with Redwood MedNet to provide. Without limiting Section 9.1 (Compliance with Laws and Regulations), a Data Provider shall not use the system to make any disclosure of patient data through the System that is unauthorized or unlawful.

6.3 Measures to Assure Accuracy of Data. A Data Provider shall, in accordance with the Policies and Procedures, use reasonable and appropriate efforts to assure that all data it provides to the System is accurate, free from serious error, reasonably complete, and provided in a timely manner.

6.4 License. Subject to Section 6.5 (Limitations on Use of Patient Data), a Data Provider grants to Redwood MedNet a perpetual, fully-paid, worldwide, non-exclusive, royalty-free right and license (i) to license and/or otherwise permit others to access through the System and/or the NHIN and use all Patient Data provided by the Data Provider in accordance with the terms and conditions of this Agreement and the Policies and Procedures, and (ii) to use such Patient Data to carry out Redwood MedNet's duties under Participation Agreements and the Policies and Procedures, including without limitation system administration, testing, problem identification and resolution, management of the System, data aggregation activities as permitted by applicable state and federal laws and regulations, including without limitation, those promulgated under HIPAA, and otherwise as Redwood MedNet determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations. Subject to the foregoing, a Data Provider retains all other ownership rights it has to the Patient Data it provides pursuant to this Agreement.

6.5 Limitations on Use of Patient Data. Notwithstanding Section 6.4 (License), Patient Data provided by a Data Provider shall not be used for any of purpose that is prohibited by applicable laws and regulations.

7. Technology License Agreement. If Redwood MedNet determines that it is necessary in order to obtain and or use the software and/or hardware required to use the System, the Participant shall enter into one or more Technology License Agreement(s) in such form(s) as Redwood MedNet requires.

8. Protected Health Information.

8.1 Compliance with Policies and Procedures. Redwood MedNet and the Participant shall comply with the standards for the confidentiality, security, and use of patient health information, including without limitation protected health information described in HIPAA, as provided in the Policies and Procedures. The Participant shall comply with such standards regardless of whether or not the Participant is a “covered entity” under HIPAA.

8.2 Legal Requirements. Without limiting Section 8.1 (Compliance with Policies and Procedures), Redwood MedNet and the 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.

8.3 Reporting of Serious Breaches. Redwood MedNet and the Participant shall report to the other any serious use or disclosure of Protected Health Information not provided for by this Agreement or the Policies and Procedures of which Redwood MedNet or that Participant becomes aware, and any security incident concerning electronic Protected Health Information (in either event, a “Serious Breach of Confidentiality or Security”). A “Serious Breach of Confidentiality or Security” is one that adversely affects (a) the viability of the System or the Services, (b) Redwood MedNet’s program of electronic health information exchange; (c) the trust among Participants or (d) Redwood MedNet’s or other Participants’ legal liability.

9. Other Obligations of the Participant.

9.1 Compliance with Laws and Regulations. Without limiting any other provision of this Agreement requiring compliance with applicable laws and regulations, the Participant shall perform its roles and responsibilities hereunder in all respects in compliance with applicable federal, state, and local laws, ordinances and regulations.

9.2 System Security. The Participant shall implement reasonable and appropriate security measures to limit unauthorized use of equipment through which access to the System and the Services may be gained, and to prevent unauthorized use or disclosure of Protected Health Information and other Patient Data.

9.3 Participant’s Equipment. Except to the extent provided by the Technology License Agreement, the Participant shall be responsible for procuring all equipment and software necessary for it to access the System, use the Services, and provide to Redwood MedNet all information required to be provided by the Participant (“Participant’s Required Hardware and Software”). The Participant’s Required Hardware and Software shall conform to Redwood MedNet’s then-current specifications, as set forth in the Policies and Procedures. As part of the

Participant's obligation to provide Participant's Required Hardware and Software, the Participant shall be responsible for ensuring that all that Participant's computers to be used to interface with the System are properly configured, including but not limited to the operating system, web browser, and Internet connectivity.

9.4 Malicious Software, Viruses, and Other Threats. The Participant shall use reasonable efforts to ensure that its connection to and use of the System, including without limitation the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including without limitation malicious software or "malware," viruses, worms, and Trojan Horses) which will disrupt the proper operation of the System or any part thereof or any hardware or software used by Redwood MedNet or other Participants in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the System or any part thereof or any hardware, software or data used by Redwood MedNet or any other Participant in connection therewith, to be destroyed, damaged, or rendered inoperable.

9.5 Training. The Participant shall provide appropriate and adequate training to all of the Participant's personnel, including without limitation Authorized Users, in the use of the System and the Services, the requirements of this Agreement and the Policies and Procedures, the requirements of applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including without limitation requirements imposed under HIPAA.

10. Redwood MedNet's Operations and Responsibilities.

10.1 Compliance with Terms and Conditions. Redwood MedNet shall require that access to the System and the Services shall be limited to Participants and their Authorized Users, and that each Participant shall enter into a Participation Agreement with Redwood MedNet that provides with respect to that Participant as is provided in the following provisions of this Agreement: Section 3.4 (Termination Upon Material Breach), Section 3.6 (Survival of Provisions), Section 4 (Authorized Users), Section 5 (Data Recipient's Rights and Obligations), Section 6 (Data Provider's Rights and Obligations), Section 8 (Protected Health Information), Section 9 (Other Obligations of the Participant), Section 13 (Disclaimers, Exclusions of Warranties and Limitations of Liability), Section 14 (Insurance and Indemnification).

10.2 Maintenance of System. Redwood MedNet shall maintain the functionality of the System and the Services as described in the Policies and Procedures, and shall provide such service, security, and other updates as Redwood MedNet determines are appropriate from time to time.

10.3 Operations Committee.

10.3.1 Organization. Redwood MedNet shall form and maintain the Operations Committee, which shall act, as more specifically described in the Policies and Procedures, as a resource to Redwood MedNet and its Board of Directors in the administration of Redwood MedNet's program of electronic health information exchange, including the development of the

Policies and Procedures and the amendment, repeal or replacement of Participation Agreements and/or the Policies and Procedures.

10.3.2 Powers. The powers of the Operations Committee shall be advisory only, and no action considered by the Operations Committee shall be taken or not taken except with the approval of Redwood MedNet, acting either through its Board of Directors, management or staff.

11. Fees and Other Charges.

11.1 Service Fees. As payment for use of the System and the Services, the Participant shall pay to Redwood MedNet Service Fees as described in the Policies and Procedures.

11.2 Other Charges. The Participant also shall pay Redwood MedNet's charges for all goods or services that Redwood MedNet provides at the Participant's request that are not specified in the Policies and Procedures in accordance with Redwood MedNet's then-current Fee Schedule ("Miscellaneous Charges"). The Fee Schedule is subject to change at any time.

11.3 Payment. The Participant shall pay all Service Fees and any Miscellaneous Charges within thirty (30) days following the date of invoice by Redwood MedNet sent to that Participant's address as shown in Redwood MedNet's records or e-mailed in accordance with the Participant's instructions.

11.4 Late Charges. Service Fees and Miscellaneous Charges not paid to Redwood MedNet on or before the due date for those fees and charges are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of one and one-half percent (1 1/2%) per month on the outstanding balance, or the highest amount permitted by law, whichever is lower.

11.5 Suspension of Service. Failure to pay Service Fees and Miscellaneous Charges within thirty (30) days following the due date for those fees and charges may result in termination of the Participant's access to the System and/or use of the Services on ten (10) days prior notice. A reconnection fee may be assessed to re-establish connection after termination due to non-payment, in accordance with Redwood MedNet's then-current Fee Schedule.

11.6 Taxes. All Service Fees and Miscellaneous Charges shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and the Participant shall pay any tax (excluding taxes on Redwood MedNet's net income) that Redwood MedNet may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services provided under this Agreement.

11.7 Other Charges and Expenses. The Participant shall be solely responsible for any other charges or expenses the Participant may incur to access the System and use the Services, including without limitation, telephone and equipment charges, and fees charged by third-party vendors of products and services.

12. Proprietary Information.

12.1 Scope of Proprietary Information. In the performance of their respective responsibilities pursuant to this Agreement, Redwood MedNet and Participants may come into possession of certain Proprietary Information of the others. For the purposes hereof, “Proprietary Information” means all trade secrets, business plans, marketing plans, know-how, data, contracts, documents, scientific and medical concepts, member and customer lists, costs, financial information, profits and billings, and referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives, and agreements, whether written or verbal, that are confidential in nature; provided, however, that “Proprietary Information” does not include Patient Data or any information that:

- (a) Is in the public domain;
- (b) Is already known or obtained by any other party other than in the course of the other party’s performance pursuant to this Agreement;
- (c) Is independently developed by any other party; and/or
- (d) Becomes known from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of this Agreement, or any other confidentiality or nondisclosure agreement by such other party.

12.2 Nondisclosure of Proprietary Information. Redwood MedNet and the Participant each (i) shall keep and maintain in strict confidence all Proprietary Information received from the other, or from any of the other’s employees, accountants, attorneys, consultants, or other agents and representatives, in connection with the performance of their respective obligations under this Agreement; (ii) shall not use, reproduce, distribute or disclose any such Proprietary Information except as permitted by this Agreement; and (iii) shall prevent its employees, accountants, attorneys, consultants, and other agents and representatives from making any such use, reproduction, distribution, or disclosure.

12.3 Equitable Remedies. All Proprietary Information represents a unique intellectual product of the party disclosing such Proprietary Information (the “Disclosing Party”). The unauthorized disclosure of said Proprietary Information would have a detrimental impact on the Disclosing Party. The damages resulting from said detrimental impact would be difficult to ascertain but would result in irreparable loss. It would require a multiplicity of actions at law and in equity in order to seek redress against the receiving party in the event of such an unauthorized disclosure. The Disclosing Party shall be entitled to equitable relief in preventing a breach of this Section 12 (Proprietary Information) and such equitable relief is in addition to any other rights or remedies available to the Disclosing Party.

12.4 Notice of Disclosure. Notwithstanding any other provision hereof, nothing in this Section 12 (Proprietary Information) shall prohibit or be deemed to prohibit a party hereto from disclosing any Proprietary Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted

hereunder; provided, however, that a party that has been requested or becomes legally compelled to make a disclosure otherwise prohibited hereunder by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction shall provide the other party with notice thereof within five (5) calendar days, or, if sooner, at least three (3) business days before such disclosure will be made so that the other party may seek a protective order or other appropriate remedy. In no event shall a party be deemed to be liable hereunder for compliance with any such subpoena or order of any court, administrative agency or other governmental body of competent jurisdiction.

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

13.1 Carrier Lines. By using the System and the Services, the Participant acknowledges that access to the System is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices (collectively, “carrier lines”) owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers, all of which are beyond Redwood MedNet’s control. Redwood MedNet assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Participant’s risk and is subject to all applicable local, state, national, and international laws.

13.2 No Warranties. Access to the System, use of the Services, and the information obtained by a Data Recipient pursuant to the use of those services are provided “as is” and “as available” without any warranty of any kind, expressed or implied, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. The Participant is solely responsible for any and all acts or omissions taken or made in reliance on the System or the information in the System, including inaccurate or incomplete information. It is expressly agreed that in no event shall Redwood MedNet be liable for any special, indirect, consequential, or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if Redwood MedNet has been apprised of the possibility or likelihood of such damages occurring. Redwood MedNet disclaims any and all liability for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers or the System.

13.3 Other Participants. By using the System and the Services, the Participant acknowledges that other Participants have access to the System and Services. Such other Participants shall have agreed to comply with the terms and conditions of this Agreement and the Policies and Procedures concerning use of the information made available through the System and the Services; however, the actions of such other parties are beyond the control of Redwood MedNet. Accordingly, Redwood MedNet does not assume any liability for or relating to any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on the System resulting from any Participant’s actions or failures to act.

13.4 Participant's Actions. The Participant shall be solely responsible for any damage to a computer system, loss of data, and any damage to the System caused by that Participant or any person using a user ID assigned to the Participant or a member of the Participant's workforce.

13.5 Unauthorized Access; Lost or Corrupt Data. Redwood MedNet is not responsible for unauthorized access to the Participant's transmission facilities or equipment by individuals or entities using the System or for unauthorized access to, or alteration, theft, or destruction of the participant's data files, programs, procedures, or information through the System, whether by accident, fraudulent means or devices, or any other method. The Participant is solely responsible for validating the accuracy of all output and reports and protecting that Participant's data and programs from loss by implementing appropriate security measures, including routine backup procedures. The Participant waives any damages occasioned by lost or corrupt data, incorrect reports, or incorrect data files resulting from programming error, operator error, equipment or software malfunction, security violations, or the use of third-party software. Redwood MedNet is not responsible for the content of any information transmitted or received through the System or the Services. The Data Provider is solely responsible for the content of all Patient Data that the Data Provider makes available pursuant to this Agreement.

13.6 Inaccurate Data. All data to which access is made through the System and/or the Services originates from Data Providers, and not from Redwood MedNet. All such data is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in the patient's health condition, the passage of time and other factors. Without limiting any other provision of this Agreement, Redwood MedNet shall have no responsibility for or liability related to the accuracy, content, currency, completeness, content, or delivery of any data either provided by a Data Provider, or used by a Data Recipient.

13.7 Patient Care. Without limiting any other provision hereof, the Participant and that Participant's 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 System or the Services or the data made available thereby. Neither the Participant nor any Authorized User shall have any recourse against, and shall waive, any claims against Redwood MedNet for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of the System and/or the Services or the data made available thereby.

13.8 Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, to the maximum extent permitted by applicable laws, the aggregate liability of Redwood MedNet, and Redwood MedNet's officers, directors, employees, and other agents, to the Participant and the Participant's Authorized Users, regardless of theory of liability, shall be limited to the aggregate of Service Fees actually paid by that 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 Participant shall obtain and maintain insurance coverage for general and professional liability with coverage limits that are reasonable and customary for a

party engaged in the activities of the Participant in Northern California, and as may be described more specifically in the Policies and Procedures. If any policy of such insurance is issued on a “claims made” basis, then upon the termination of any such policy, the Participant shall procure extended reporting (“tail”) coverage for such policy for the longest extended reporting period that is commercially available.

14.2 Indemnification.

14.2.1 Indemnification, Generally. Redwood MedNet and the Participant (each, an “Indemnifying Party”) each shall indemnify and hold the other and, if the Participant is the Indemnifying Party, the other Participants (each, 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. Without limiting the generality of Section 14.2.1 (Indemnification, Generally), acts or omissions giving rise to the obligation to indemnify and hold harmless pursuant to Section 14.2.1 (Indemnification, Generally) shall include, but not be limited to, (a) acts or omissions that result in a Serious Breach of Confidentiality or Security or (b) a Data Provider's provision of any Patient Data through the Services or System that is inaccurate, incomplete or defamatory.

14.3 Rules for Indemnification. Any indemnification made pursuant to this Agreement shall include payment of all costs associated with defending the claim or cause of action involved, whether or not such claims or causes of action are meritorious, including reasonable attorneys' fees and any settlement by or judgment against the party to be indemnified. A party seeking to be indemnified pursuant to this Section 14.2 (Indemnification) shall make a demand for indemnification upon the Indemnifying Party promptly and within a period of time within which the Indemnifying Party is not prejudiced by lack of notice. Upon receipt of such notice, the Indemnifying Party shall, at its sole cost and expense, retain legal counsel and defend the party to be indemnified. The Indemnifying Party shall be responsible for, and have control of, such claim and any litigation arising therefrom, but may not settle such litigation without the express consent of the party(ies) to be indemnified, which consent shall not be unreasonably withheld, conditioned or delayed. The indemnification obligations of the parties shall not, as to third parties, be a waiver of any defense or immunity otherwise available, and the indemnifying party, in indemnifying the indemnified party, shall be entitled to assert in any action every defense or immunity that the indemnified party could assert on its own behalf.

15. General Provisions.

15.1 Applicable Law. The interpretation of Participation Agreements and the resolution of any disputes arising under Participation Agreements 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 Participant, either voluntarily or by operation of law, without the prior written consent of Redwood MedNet, 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 Participant nor Redwood MedNet 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 a Participation 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 the Participant. If the Participant has supplied Redwood MedNet with an electronic mail address, Redwood MedNet may give notice by email message addressed to such address; provided that if Redwood MedNet 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 contains 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
ELECTRONIC HEALTH INFORMATION EXCHANGE
PARTICIPATION AGREEMENT

Signature Page

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

Effective Date: _____, 200_

“Redwood MedNet”

“Participant”

REDWOOD MEDNET, INC., a California
nonprofit public benefit corporation

[Insert name of Participant]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____