



BUSINESS ASSOCIATE AGREEMENT
FOR SUBCONTRACTOR

Redwood MedNet, Inc.

BUSINESS ASSOCIATE CONTRACT
FOR SUBCONTRACTOR

Redwood MedNet, Inc., a California nonprofit public benefit corporation (“Redwood MedNet”), and [*Name of Subcontractor*], a [*form of organization of Subcontractor, e.g. a California corporation*] (“Business Associate”), hereby agree to the following terms and conditions of this Business Associate Contract (the “Business Associate Contract”).

Recitals

A. Redwood MedNet has entered into a variety of agreements (collectively, “Redwood MedNet Services Agreements”) with a number of health care providers, health plans and other parties that are “covered entities” (as defined in HIPAA) (each, a “Covered Entity”). Pursuant to the Redwood MedNet Services Agreements, Redwood MedNet provides or arranges for the provision to Covered Entities of certain services (collectively, “Redwood MedNet’s Services”), that may include the creation, receipt, maintenance and/or transmission of “protected health information” (as defined in HIPAA), on behalf of those Covered Entities, for a function or activity regulated by HIPAA. Redwood MedNet therefore may act as the “business associate” (as defined in HIPAA) of some or all Covered Entities.

B. Redwood MedNet and Business Associate have entered into a Services Agreement, dated as of the Effective Date of this Business Associate Contract (the “[*Name of Subcontractor*] Services Agreement”), and may in the future enter into additional agreements or arrangements (collectively with the [*Name of Subcontractor*] Services Agreement, the “Subcontracting Arrangements”), pursuant to which Redwood MedNet has delegated to Business Associate one (1) or more functions, activities or services included in Redwood MedNet’s Services. Business Associate therefore may act as the “subcontractor” (as defined in HIPAA) of Business Associate. Pursuant to HIPAA, if and to the extent that Business Associate, in the role as such a “subcontractor” of Redwood MedNet, creates, receives, maintains, or transmits protected health information on behalf of Redwood MedNet, Business Associate shall act as such a “business associate” (as defined in HIPAA).

C. Pursuant to HIPAA, if and to the extent that Business Associate acts as a business associate by reason of its role as a subcontractor of Redwood MedNet, Redwood MedNet and Business Associate are required by HIPAA to enter into a “business associate contract” (as defined in HIPAA).

D. Redwood MedNet and Business Associate accordingly have agreed to enter into the following terms and conditions of this Business Associate Contract.

Agreement

In consideration of the foregoing recitals and the promises set forth herein, the parties agree as follows:

1. Definitions. For the purposes of this Business Associate Contract, the term “HIPAA” means the Privacy Rule and the Security Rule promulgated under the Health Insurance Portability and Accountability Act of 1996 (45 C.F.R. Parts 160 and 164), as in effect from time to time. All terms used in this Business Associate Contract not specifically defined otherwise shall have the same definitions as given to them under HIPAA; provided, however, that the term “PHI” shall refer only to protected health information that Business Associate creates, receives, maintains or transmits on behalf of Redwood MedNet.

2. Obligations of Business Associate.

(a) Compliance with Regulatory Obligations of a Business Associate. Without limiting any other provision of this Business Associate Contract, Business Associate shall perform and comply with all the applicable obligations and requirements imposed upon business associates pursuant to HIPAA [*Reference: 45 C.F.R. § 164.314(a)(2)(i)(A)*].

(b) Permitted Use and Disclosure of PHI. Business Associate shall use and disclose PHI only as necessary to perform Business Associate’s obligations, functions, activities and/or services under the [*Name of Subcontractor*] Services Agreement, or as otherwise permitted or required by this Business Associate Contract, or as otherwise permitted by HIPAA or required by law. Business Associate shall comply with the provisions of 45 C.F.R. § 164.502(b) with respect to the minimum necessary use and disclosure of PHI. Except as expressly permitted by this Business Associate Contract, Business Associate shall not use or disclose PHI in any manner that would violate the requirements of HIPAA if done by the Covered Entity on whose behalf Redwood MedNet or Business Associate creates, receives, maintains or transmits that PHI [*Reference: 45 C.F.R. §§ 164.502(a)(3) & 164.504(e)(2)(i) & 45 C.F.R. § 164.504(e)(2)(ii)(A)*].

(c) Specified Permitted Uses of PHI. Without limiting the generality of Section 2(b) (Permitted Use and Disclosure of PHI), Business Associate may use PHI as follows, if necessary:

(i) For the proper management and administration of Business Associate [*Reference: 45 C.F.R. § 164.504(e)(2)(i)(A) & 45 C.F.R. § 164.504(e)(4)(i)(A)*].

(ii) To carry out the legal responsibilities of Business Associate [*Reference: 45 C.F.R. § 164.504(e)(4)(i)(B)*].

(iii) To provide data aggregation services relating to the health care operations of a Covered Entity if and to the extent provided by the [*Name of Subcontractor*] Services Agreement [*Reference: 45 C.F.R. § 164.504(e)(2)(i)(B)*].

(d) Specified Permitted Disclosures of PHI. Without limiting the generality of Section 2(b) (Permitted Use and Disclosure of PHI), Business Associate may disclose PHI as follows:

(i) For the proper management and administration of Business Associate [*Reference: 45 C.F.R. § 164.504(e)(2)(i)(A)*] or to carry out the legal responsibilities of Business Associate [*Reference: 45 C.F.R. § 164.504(e)(4)(i)(B)*] if:

(A) If the disclosure is required by law [*Reference: 45 C.F.R. § 164.504(e)(4)(ii)(A)*]; or

(B) If Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person [*Reference: 45 C.F.R. § 164.504(e)(4)(ii)(B)(1)*], and if the person promptly notifies Business Associate of any instances in which it is aware in which the confidentiality of the information has been breached [*Reference: 45 C.F.R. § 164.504(e)(4)(ii)(B)(ii)*].

(ii) To a business associate that is a subcontractor of Business Associate to allow that subcontractor to create, receive, maintain or transmit PHI on Business Associate's behalf, if Business Associate obtains satisfactory assurances that such business associate will appropriately safeguard that information [*Reference: 45 C.F.R. § 164.308(b)(2)*].

(e) Safeguards. Business Associate shall use appropriate safeguards and comply, where applicable, with 45 C.F.R. §§ 164.302 through 164.316 with respect to electronic PHI, to prevent use or disclosure of the information other than as provided for by this Business Associate Contract [*Reference: 45 C.F.R. §§ 45 C.F.R. § 164.314(a)(2)(i)(A) & 164.504(e)(2)(ii)(B)*]. Without limiting the generality of the foregoing, Business Associate shall appropriately safeguard electronic PHI by implementing administrative safeguards in accordance with 45 C.F.R. § 164.308 [*Reference: 45 C.F.R. § 164.308(b)(1)*].

(f) Reporting Unauthorized Uses and Disclosures. Business Associate shall report to Redwood MedNet, within **[five (5)]** business days, any use or disclosure of PHI not permitted by this Business Associate Contract of which Business Associate becomes aware, including without limitation any security incident involving electronic PHI and any breach of unsecured PHI as required by 45 C.F.R. § 164.410 [*Reference: 45 C.F.R. §§ 164.314(a)(2)(C) & 164.504(e)(2)(ii)(C)*]. Without limiting the generality of the foregoing:

(i) Notwithstanding anything to the contrary in this Section 2(f) (Reporting Unauthorized Uses and Disclosures), Business Associate shall report to Redwood MedNet on a regular and periodic basis the ongoing existence and occurrence of Unsuccessful Security Incidents (as defined below). The parties agree that this section satisfies any notices necessary by Business Associate to Redwood MedNet of the ongoing existence and occurrence of unsuccessful Security Incidents, for which no additional notice shall be required. For purposes of this Business Associate Contract, the term "Unsuccessful Security Incident" shall mean any security incident that does not result in any unauthorized access, use or disclosure of electronic PHI.

(ii) Business Associate shall report the information described below to the Covered Entity and to Business Associate within **[five (5)]** business days following discovery of a breach of unsecured PHI, except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of Business Associate necessitate additional time. Under such circumstances, Business Associate shall notify the Covered Entity and Redwood MedNet as soon as possible and without unreasonable delay, but in

no event later than thirty (30) calendar days from the date of discovery of the breach. Such notice shall include:

(A) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during the breach;

(B) The date of the breach;

(C) The date of the discovery of the breach;

(D) A description of the types of unsecured PHI that were involved;
and

(E) Any other details necessary to complete an assessment of the risk of harm to the individual.

(g) Arrangements with Subcontractors. Business Associate shall enter into a business associate contract that complies with HIPAA's requirements for such contracts with any subcontractor of Business Associate that creates, receives, maintains, or transmits protected health information on behalf of Business Associate, pursuant to which that subcontractor shall agree to comply with the applicable requirements of HIPAA [*Reference: 45 C.F.R. § 164.314(a)(2)(i)(B)*] and agree to the same restrictions and conditions that apply to Business Associate with respect to that information pursuant to this Business Associate Contract [*Reference: 45 C.F.R. § 164.504(e)(2)(ii)(D)*].

(h) Individuals' Access to PHI. If and to the extent that Business Associate maintains PHI in a designated record set, Business Associate shall upon request by Redwood MedNet or a Covered Entity make that PHI available to Redwood MedNet or that Covered Entity within **[fifteen (15)]** business days as and to the extent required for the Covered Entity's compliance with its obligations to provide individuals with access to and copies of PHI pursuant to 45 C.F.R. § 164.524. If Business Associate receives an individual's request for access to PHI, Business Associate shall forward that request to Redwood MedNet and the applicable Covered Entity within **[fifteen (15)]** business days. The applicable Covered Entity shall be responsible for making all determinations regarding the granting or denial of an individual's request, and for notifying individuals thereof, and neither Business Associate nor Redwood MedNet shall make any such determinations or notifications [*Reference: 45 C.F.R. §§ 164.502(a)(4)(ii) & 164.504(e)(2)(ii)(E)*].

(i) Amendments to PHI. If and to the extent that Business Associate maintains PHI in a designated record set, Business Associate shall upon request by Redwood MedNet or a Covered Entity make that PHI available to Redwood MedNet or that Covered Entity within **[fifteen (15)]** business days for amendment, and shall promptly incorporate any amendments to PHI directed by the Covered Entity, as and to the extent required for the Covered Entity's compliance with 45 C.F.R. § 164.526. If Business Associate receives an individual's request for an amendment to PHI, Business Associate shall forward that request to Redwood MedNet and the applicable Covered Entity within **[fifteen (15)]** business days. The applicable Covered Entity shall be responsible for making all determinations regarding the granting or denial of an

individual's request, and for notifying individuals thereof, and neither Business Associate nor Redwood MedNet shall make any such determinations or make any such amendments except as directed by the Covered Entity [*Reference: 45 C.F.R. § 164.504(e)(2)(ii)(F)*].

(j) Accountings of Disclosures. Business Associate shall document disclosures of PHI as required to provide a Covered Entity with information sufficient to respond to any request by an individual for an accounting of disclosures in compliance with 45 C.F.R. § 164.528, and shall provide such information to Redwood MedNet or the applicable Covered Entity upon request within **[fifteen (15)]** business days. If Business Associate receives an individual's request for an accounting of disclosures, Business Associate shall forward that request to Redwood MedNet and the applicable Covered Entity within **[fifteen (15)]** business days. The Covered Entity shall be responsible for providing all accountings of disclosures to individuals, and neither Business Associate nor Redwood MedNet shall provide any such accountings to individuals directly [*Reference: 45 C.F.R. § 164.504(e)(2)(ii)(G)*].

(k) Other Obligations. To the extent that Business Associate is, pursuant to the [*Name of Subcontractor*] Services Agreement or this Business Associate Contract, responsible to carry out an obligation of Redwood MedNet or a Covered Entity under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Redwood MedNet or the Covered Entity, as the case may be, in the performance of that obligation [*Reference: 45 C.F.R. § 164.504(e)(2)(ii)(H)*].

(l) Books and Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Redwood MedNet and/or a Covered Entity, available to the U.S. Secretary of Health & Human Services for purposes of determining a Covered Entity's, Redwood MedNet's or Business Associate's compliance under HIPAA [*Reference: 45 C.F.R. § 164.504(e)(2)(ii)(I)*]. Without limiting the generality of the foregoing, Business Associate shall disclose PHI when required by the U.S. Secretary of Health & Human Services under Subpart C of 45 C.F.R. Part 160 to investigate or determine Business Associate's compliance with HIPAA [*Reference: 45 C.F.R. § 164.502(a)(4)(i)*].

3. Redwood MedNet's Obligations.

(a) Notice of Change in Privacy Practices. Redwood MedNet shall notify Business Associate of any limitation(s) in a Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, if and to the extent that Redwood MedNet receives notice of such limitation from the Covered Entity and such limitation may affect Business Associate's use or disclosure of PHI.

(b) Notice of Change in Permissions. Redwood MedNet shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, if and to the extent that Redwood MedNet receives notice of such changes from a Covered Entity and such changes may affect Business Associate's use or disclosure of PHI.

(c) Notice of Change in Use. Redwood MedNet shall notify Business Associate of any restriction to the use or disclosure of PHI that a Covered Entity has agreed to in accordance

with 45 C.F.R. §164.522, if and to the extent that Redwood MedNet receives notice of such changes from the Covered Entity and such restriction may affect Business Associate's use or disclosure of PHI.

(d) Appropriate Requests. Redwood MedNet shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA if done by Redwood MedNet or a Covered Entity.

4. Term and Termination.

(a) Term. Subject to the other provisions of this Section 4 (Term and Termination), the term of this Business Associate Contract shall be coextensive with that of the [*Name of Subcontractor*] Services Agreement.

(b) Termination. If Redwood MedNet knows of a pattern of activity or practice by Business Associate that constitutes a material breach or violation of Business Associate's obligations under HIPAA or this Business Associate Contract, and after taking reasonable steps to cure that breach have been unsuccessful, Redwood MedNet may terminate this Business Associate Contract and the [*Name of Subcontractor*] Services Agreement, if feasible, subject to and in accordance with the terms and conditions of Section ___ of the [*Name of Subcontractor*] Services Agreement [*Reference: 45 C.F.R. §§ 164.504(e)(1)(ii) & 164.504(e)(2)(iii)*].

(c) Conduct Upon Termination. Upon termination or expiration of this Business Associate Contract, or upon termination or expiration of Redwood MedNet's applicable contract with a Covered Entity, Business Associate shall, at Redwood MedNet's written direction, either destroy or return to Redwood MedNet or the appropriate Covered Entity all PHI in Business Associate's possession and/or in the possession of any subcontractor of Business Associate, and shall not retain any copies of such PHI; provided, however, that Business Associate and/or its subcontractor may retain PHI as and to the extent necessary, and only for so long as necessary, for Business Associate or that subcontractor to continue its proper management and administration or to carry out its legal responsibilities. In the event that return or destruction of PHI is not feasible, Business Associate shall provide to Redwood MedNet notification of the conditions that make return or destruction of the PHI not feasible, and Business Associate shall extend the protections of this Business Associate Contract, including without limitation Section 2(e) (Safeguards), to such PHI that is not returned or destroyed, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for as long as Business Associate or any subcontractor of Business Associate maintains such PHI. If PHI is to be destroyed pursuant to this Section 4(c), Business Associate shall certify in writing to Redwood MedNet that such PHI has been destroyed [*Reference: 45 C.F.R. § 164.504(e)(2)(ii)(J)*].

5. Relationship to Services Agreement. In the event that a provision of this Business Associate Contract is contrary to a provision of the [*Name of Subcontractor*] Services Agreement pertaining to Business Associate's performance of its obligations as a business associate, the provisions of this Business Associate Contract shall control.

6. Amendment. The parties agree to take such action from time to time as is necessary to amend this Agreement for Redwood MedNet and Business Associate to comply with HIPAA or other applicable law. The parties agree that this Agreement may only be modified by mutual written amendment, signed by both parties, effective on the date set forth in the amendment.

7. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

8. No Third Party Beneficiaries. Unless otherwise set forth herein, nothing contained herein is intended nor shall be construed to create rights running to the benefit of third parties.

9. Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition. To be effective, a waiver must be in writing, signed and dated by the parties to this Agreement.

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Any photocopy of this executed Agreement may be used as if it were the original.

11. Governing Law. Notwithstanding any other provision to the contrary, this Agreement shall be governed and construed in accordance with the laws of the State of California.

Signature Page Follows

Redwood MedNet, Inc.

BUSINESS ASSOCIATE CONTRACT
FOR SUBCONTRACTOR

Signature Page

In witness whereof, Redwood MedNet and Business Associate have entered into this Agreement as of _____, 201_.

“Redwood MedNet”

“Business Associate”

Redwood MedNet, Inc., a California nonprofit public benefit corporation

[Name of Business Associate], [form of Business Associate’s organization, e.g., a California corporation]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____