



CLINICAL MESSAGE SERVICE AGREEMENT

DECEMBER 31, 2006

DISCUSSION DRAFT FOR REDWOOD HEALTH INFORMATION COLLABORATIVE

REDWOOD MEDNET

CLINICAL MESSAGE SERVICE AGREEMENT

THIS CLINICAL MESSAGE SERVICE AGREEMENT (the “Agreement”) contains the terms and conditions on which REDWOOD MEDNET, a California nonprofit public benefit corporation (“Redwood MedNet”), offers its online clinical message service (the “Services”) to physicians and physician groups.

PLEASE READ THIS AGREEMENT CAREFULLY. It is a legally binding contract. By signing this Agreement and using the Services, you agree to be bound by the terms and conditions of this Agreement. If you do not wish to be bound by this Agreement, you are not authorized to use the Services and/or any of their components.

NOTE: For purposes of this Agreement, the term “you” includes each Physician and each of that Physician’s Authorized Users. Each Physician is responsible for ensuring that the Physician’s Authorized Users comply with this Agreement. If you are registering on behalf of a Group, you represent and warrant that you have the authority to enter into this Agreement on behalf of the Group and to legally bind all your Authorized Users to comply with this Agreement.

1. Description of Services. The Services shall consist of the following:

1.1 Arrangements with Contractors and Participants. Redwood MedNet shall seek to enter into agreements with one or more providers of clinical information (each, a “Contractor”), pursuant to which Contractors make clinical information relating to specific patients available through Redwood MedNet’s clinical message services to Physician and other physicians and physician groups contracting with Redwood MedNet (collectively with Physician, “Participants”).

1.2 Clinical Message Service. Redwood MedNet shall make available for use by Participants an online internet-based electronic clinical message service through which Participants may receive clinical information provided by Contractors and/or other Participants through that service (“Clinical Information”) and send messages to other Participants.

2. Program Manual. Redwood MedNet may adopt a Program Manual that describes the Services and Redwood MedNet’s procedures, policies and rules concerning Participants’ use of the Services and Clinical Information (the “Program Manual”). Physician and Authorized Users shall comply with all the terms and conditions of the Program Manual, which, as in effect from time to time, is incorporated into this Agreement. In the event of any conflict between the terms and conditions set forth in this Agreement and those set forth in the Program Manual, the terms and conditions of the Program Manual shall control.

3. Authorized Users Only. Only Authorized Users may use the Services and Clinical Information. “Authorized Users” are (a) the licensed physician or organized physician group that signs this Agreement (“Physician”) and (b) all other licensed physicians or non-physician staff members authorized to use the Services on behalf of that Physician.

4. Requirements for Use of Services. You and your Authorized Users may use the Services and Clinical Information only if you and every one of your Authorized Users complies with the following:

4.1 Insurance. You shall maintain reasonable and customary levels of malpractice and related liability insurance coverage for you and all your Authorized Users, including but not limited to coverage for electronic message for patient encounter and treatment situations.

4.2 Compliance with Laws and Regulations, Agreement and Program Manual. You and each of your Authorized Users shall use the Services and Clinical Information only in a manner that complies and is consistent with all applicable professional and ethical standards and requirements, local, state, and national laws and regulations, this Agreement and the Program Manual. Such laws and regulations include without limitation the California Confidentiality of Medical Information Act (California Civil Code §§ 56 – 56.37) and the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E (“HIPAA”).

4.3 Provider-Patient Relationship. You and your Authorized Users may use the Services and Clinical Information only pursuant to an established provider-patient relationship and related to the treatment of your patients. You are solely responsible for all clinical decision-making and other matters arising out of that provider-patient relationship. You shall indemnify, defend and hold harmless Redwood MedNet, each Contractor and each other Participant, and their respective officers, directors, employees, agents, licensors, suppliers and affiliates, from and against all losses, liability, expenses, damages and costs, including reasonable attorney’s fees, arising out of or related to any breach of this Agreement, your or your Authorized Users’ relationship with a patient, or any negligent or wrongful action or omission, by you or your Authorized Users related to your or their use of the Services or Clinical Information.

4.4 Patient Consent; Use of Information. With each and every use of the Services and Clinical Information, (a) you represent and warrant that, prior to any access to Clinical Information through the Services by you or any of your Authorized Users, you have obtained a currently-effective consent from the patient as required by applicable law, and (b) you represent and warrant that such access is for treatment, payment, or health care operations with respect to the patient.

4.5 Appropriate Safeguards; Training. You shall use appropriate administrative, physical and technical safeguards to assure that only you and your Authorized Users access through the Services such Clinical Information for which you and each Authorized User is legally authorized to access and use. You shall provide training for all your Authorized Users in the use of the Services and compliance with the terms and conditions of this Agreement and the Program Manual.

4.6 E-Mail Addresses. You shall provide a currently-effective e-mail address for the Physician and each other Authorized User, and inform Redwood MedNet of any changes thereto. You hereby grant Redwood MedNet permission to communicate with you and Authorized Users using such e-mail addresses.

- 4.7 Privacy Policy. You and each of your Authorized Users shall comply with Redwood MedNet's Privacy Policy, which shall be set forth in the Program Manual.
5. Costs. You shall be solely responsible for all costs incurred by you and any of your Authorized Users to connect to and use the Services and Clinical Information, including but not limited to obtaining and maintaining all telephone, computer and other equipment necessary to do so.
6. Performance of Services. Redwood MedNet reserves complete and sole discretion with respect to the operation of the Services. Redwood MedNet may, among other things withdraw, suspend or discontinue any functionality or feature. You are responsible for developing and maintaining procedures to protect your information, including all Clinical Information you may receive through use of the Services. Except as provided for under this Agreement or applicable law, Redwood MedNet is not responsible for maintaining data arising from use of the Services. Redwood MedNet shall handle and maintain data in accordance with its internal operating procedures. Redwood MedNet shall not be not responsible for transmission errors or corruption or compromise of data carried over local or interchange telecommunication carriers.
7. Duration of Agreement. The term of his Agreement shall commence upon the date you first access or use the Services and shall continue unless terminated either by you or by Redwood MedNet. Either you or Redwood MedNet may terminate this Agreement and your right, and your Authorized Users' rights, to use the Services at any time, with or without cause, upon notice. Redwood MedNet also reserves the right to terminate or suspend your use the Services for any reason, without prior notice, but Redwood MedNet shall confirm such termination or suspension by subsequent notice. This Agreement and all rights granted to you and Authorized Users hereunder shall terminate without notice in the event you or any one of your Authorized Users fails to comply with the terms and conditions of this Agreement, or the rules for use of the Services promulgated by Redwood MedNet from time to time.
8. Changes to this Agreement. Redwood MedNet may amend or otherwise modify this Agreement or the Program Manual at any time upon not less than ten (10) days prior notice to you. Your continued use of Services following the effective date of any such change shall be deemed acceptance of such change. If you object to any such change, you may terminate this Agreement and your and your Authorized Users' rights to access and use the Services as described in Section 7 (Duration of Agreement).
9. Survival. The provisions of Section 4.1 (Insurance), Section 4.3 (Provider-Patient Relationship), Section 4.7 (Privacy Policy), and any liabilities or payment obligations that have accrued prior to termination, shall survive any termination of this Agreement.
10. Notices. Redwood MedNet may deliver notice to you, and/or to you on behalf of your Authorized Users, under this Agreement by means of electronic mail to the e-mail address you have provided to Redwood MedNet or by written communication delivered by first class U. S. mail or express courier to your address on record in Redwood MedNet's account information. You may give notice to Redwood MedNet at any time via electronic mail to Redwood MedNet or by letter delivered by first class postage prepaid U. S. mail or overnight courier to: Redwood

MedNet, [*Insert Street Address, City, State and Zip Code*], Attention: [*Insert appropriate title*],
Electronic Mail: _____.

11. Business Associate Agreement. If Redwood MedNet determines that, pursuant to its provision of the Services to Physician, it is acting as a business associate of Physician (as defined by HIPAA), Redwood MedNet shall issue to Physician a business associate agreement that complies with the applicable requirements of HIPAA.

12. Disclaimer; Limitation of Liability. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER REDWOOD MEDNET NOR ANY CONTRACTOR MAKES ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THIS AGREEMENT, THE PROGRAM MANUAL, THE SERVICES OR CLINICAL INFORMATION, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER REDWOOD MEDNET NOR ANY CONTRACTOR SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PROGRAM MANUAL, THE SERVICES OR CLINICAL INFORMATION, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

13. Severability. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be reformed, if reasonably possible, only to the extent necessary to make it enforceable.

14. Entire Agreement. This Agreement, together with any rules referred to herein, represents the complete agreement between you and Redwood MedNet concerning the subject matter hereof, and it replaces all prior oral or written communications concerning such subject matter.

15. Assignment. You may not assign, transfer or delegate this Agreement or any part of it without Redwood MedNet's prior written consent. Notwithstanding the foregoing, this Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assignees of the parties.

16. Waiver. Failure to exercise or delay in exercising any right hereunder, or failure to insist upon or enforce strict performance of any provision of this Agreement, shall not be considered waiver thereof, which can only be made by signed writing. No single waiver shall be considered a continuing or permanent waiver.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice of law rules that may give a contrary result.

Signature Page Follows

REDWOOD MEDNET
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the following date:
_____, 200_.

“Redwood MedNet”

“Physician”

REDWOOD MEDNET, a California nonprofit
public benefit corporation.

[INSERT NAME OF PHYSICIAN], a
_____.

[Insert Name]
[Insert Title]

[Insert Name]
[Insert Title]