



## MASTER AGREEMENT

This Master Agreement Terms and Conditions (the "Master Agreement") is by and between DrFirst.com, Inc., a Delaware corporation having its principal place of business at 9420 Key West Ave, Suite 230, Rockville, Maryland, 20850 ("DrFirst") and the County of Monterey ("County"), on behalf of Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County and a Meditech Partner Hospital having a principal place of business at 1441 Constitution Blvd., Salinas, CA 93906.

### RECITALS

WHEREAS, DrFirst is in the business of providing electronic medication history, electronic prescribing and related information technology services and products to health care providers and facilities;

WHEREAS, DrFirst has entered into an Application Services Distribution Agreement ("ASDA") with Meditech, Inc. ("Meditech") that permits DrFirst to provide its Services and Products to Meditech Partner Hospitals; and

WHEREAS, COMPANY is a Meditech Partner Hospital and seeks to contract with DrFirst to provide certain information technology Services and Products to Company and Company health care providers,

### GENERAL TERMS AND CONDITIONS

1. Master Agreement. The Agreement of the parties consists of this Master Agreement (including the introduction and Recitals set forth above and these General Terms and Conditions) and all Exhibits, Attachments and Addenda (collectively "Attachments") attached hereto or subsequently signed by the parties. This Master Agreement and all applicable Attachments are hereinafter collectively referred to as the "Agreement." In the event of a conflict between the General Terms and Conditions and any Attachment, this Master Agreement shall take precedence unless the Attachments specifically designate that they will govern. The following terms shall have the definitions assigned to them below throughout the Master Agreement:

1.1 "Application" shall mean, collectively, all of the software application or applications identified and described in Exhibit A.

1.2 "Authorized End User" shall mean any individual who is authorized to access the Integrated Offering pursuant to this Master Agreement. An Authorized End User may be an employee of NMC or a Customer of NMC as defined below. All Authorized End Users must be properly registered with DrFirst.

1.3 "NMC Software" shall mean the software running on NMC's computer network that permit access to the Application and shall include the Meditech interfaces and software applications provided for NMC's use by Meditech.

1.4 "Confidential Information" shall mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.

1.5 "Customer" shall mean a corporate entity, a professional association ("PA"), an individual healthcare provider or other business organization that has a contractual relationship with NMC and to who NMC makes available the Integrated Offering licensed hereunder. Each Customer will be required to agree to the Terms of Use as exemplified in Exhibit E and the Business Associate Agreement as exemplified in Exhibit F before becoming an Authorized End User.

1.6 "Integrated Offering" shall mean services provided to end users of NMC Software by means of accessing and using the features and functions of the Application through NMC Software as contemplated in this Agreement.

1.7 "Term" shall have the meaning set forth in Section 9.1.

1.8 "Licensed Provider" shall mean NMC's Authorized End user that has the legal authority to sign prescriptions.

1.9 "Government" or "Governmental" shall mean any local, state, or federal governmental authority.

1.10 "Medication History Information" means any and all medication history data transmitted by DrFirst to NMC pursuant to the ReopiaAC service (as defined in Exhibit A) and the terms hereof.

**1.11 "Medication History Service (MedHx)"** means the provision of a patient's medication history data to NMC for use by a NMC physician, designated clinician, or other duly licensed or non-licensed NMC health care provider providing healthcare services to a patient at the point of care. MedHx is a module within the Roopia Acute Care Product that retrieves ambulatory medications by querying one or more of data sources.

**1.12 "Roopia Acute Care (RoopiaAC)"** is a DrFirst product that provides real-time medication history to assist with automating the hospital admissions process and an electronic prescription delivery service.

**1.13 "Effective date"** shall mean May 31, 2011.

## **2. LICENSES.**

**2.1 Access License.** Subject to the terms and conditions contained in this Agreement, DrFirst hereby grants to NMC (i) a non-exclusive, non-transferable, right to access the features and functions of the Application during the Term solely through NMC Software and solely as contemplated in this Agreement;

**2.2 Application Distribution Rights.** Subject to the terms and conditions herein, NMC shall be permitted to distribute access to the Application to Authorized End Users and NMC may permit its Authorized End Users to exercise NMC's rights under Section 2.1, provided that (i) NMC may not distribute, sublicense, or otherwise convey any rights in the Application, except access as contemplated in this Agreement; (ii) NMC shall ensure that any Authorized End User, or the Customer through which such Authorized End User accesses or otherwise obtains the Integrated Offering, shall have no right to sublicense the Integrated Offering, including the Application as integrated therein, to any third party; and (iii) NMC shall require any such Authorized End User to enter into a contractual arrangement with NMC, that expressly makes DrFirst an intended third party beneficiary with rights to enforce the agreement if necessary, and which arrangement in any event provides no less protections for DrFirst's Confidential Information and the Application, as are provided by the terms hereof. A form of such agreement is supplied as Exhibit E and failure to execute the agreement in the proper form with each and every Authorized End User will constitute a material breach of this Agreement. It is contemplated that this End User agreement will be made part of the registration process and executed electronically or on paper. NMC acknowledges and agrees that any act or omission of its Customers or Authorized End Users in connection with use of, or access to, the Application, which act or omission would constitute a breach of this Agreement if undertaken by NMC, shall be considered a material breach by NMC hereunder.

**2.3 Retained Rights; Ownership.** Notwithstanding Sections 2.1, and 2.2, DrFirst hereby retains the right to use, and to grant third parties the right to use, the Application for any and all purposes whatsoever. As between DrFirst and NMC, DrFirst retains all right, title and interest in the Application, including all copies thereof in any form or medium, whether now known or existing or hereafter developed, and further including all copyrights, patents, trade secrets, trademarks or trade names therein.

**2.4 General Usage Restrictions.** NMC shall not use the Application for any purposes other than the provision of the Integrated Offering, except with the prior written consent of DrFirst. NMC will not (i) copy or duplicate the Application; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Application is compiled or interpreted, and NMC acknowledges that nothing in this Agreement will be construed to grant NMC any right to obtain or use such source code; (iii) modify the Application, or create any derivative product from any of the foregoing, except with the prior written consent of DrFirst; (iv) act as a service bureau of the Application or otherwise run the Application for any unlicensed third party or, (v) except as contemplated in Section 2.2 and otherwise expressly permitted in this Agreement, assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, NMC's rights under the licenses granted in Sections 2.1 and 2.2. NMC will ensure that its use of the Application complies with all applicable laws, statutes, regulations or rules promulgated by governing authorities having jurisdiction over the Parties or the Application. NMC acknowledges that this Agreement grants certain rights to access the Application, as hosted by DrFirst, but nothing herein may be construed to require delivery of a copy of the Application or to grant NMC any right to obtain such a copy.

## **3. DRFIRST OBLIGATIONS.**

**3.1 Provision of Access to Licensed Technology.** Within a mutually agreeable time frame after the Effective Date, Meditech, DrFirst, and NMC will meet and establish a project plan for the installation of the interface to the Licensed DrFirst Application on NMC's computer system. It will be the responsibility of Meditech and DrFirst to specify to NMC procedures according to which NMC may establish and obtain access to, and use of, the Licensed Application, including, without limitation, provision of any access codes, passwords, technical specifications,

connectivity standards or protocols, or any other relevant instructions and procedures (collectively, the "Specifications"), to the limited extent any of the foregoing may be necessary to enable NMC to provide access to the features and functions of the Application for use by Authorized End Users as contemplated herein.

**3.2 Configuration of the Application.** Throughout the Term, DrFirst shall adapt and configure the Application as may be necessary from time to time to enable NMC to access, operate and interact with the Application on the Application Server for purposes of providing the Integrated Offering. Unless otherwise provided for in Exhibit C, all other maintenance and support for the Integrated Offering shall be provided directly by Meditech.

**3.3 Hosting of the Application Server.**

(a) DrFirst shall, at its own expense, maintain the Application on one or more of its own network computer servers (any such servers, collectively, the "Application Server"). DrFirst shall bear sole responsibility for the operation and maintenance of the Application Server hardware, its operating system and/or its platform software, and any third-party application software associated with, or necessary for, the operation and functioning of the Application Server, including functions associated with access to the Integrated Offering in accordance with this Agreement.

(b) For the sake of clarity, the Application Server shall always remain the responsibility of DrFirst first, provided that DrFirst shall be permitted to enter into an arrangement with one or more third parties for the performance of DrFirst's obligations under paragraph (a) of this Section 3.3, whereby any such third party may install the Application, own, operate or maintain the Application Server, or undertake to manage the Application Server with respect to access to the Integrated Offering, provided that DrFirst shall ensure that any such third party shall be contractually bound to provide substantially the same level of protection with respect to NMC's Confidential Information as is provided by the terms of this Agreement.

**3.4 Maintenance of Service Level.** DrFirst will undertake commercially reasonable measures to ensure that the operation and function of the Application and the Application Server are available pursuant to the Service Level Agreement terms and conditions as set forth in Exhibit D, provided that, notwithstanding the foregoing, DrFirst will have no obligation under this Section 3.4 to the extent any lack of availability that arises, in whole or in part, from (a) any use of the Application by NMC or any End User that is outside of or in violation of the terms and conditions set forth herein, or; (b) any failure by NMC to comply with this Agreement.

**3.5 Training.** Meditech will be responsible for providing training materials and training support to NMC, unless otherwise provided in Exhibit C.

**4. NMC OBLIGATIONS.**

**4.1 Maintenance of NMC Software.** NMC will, at its expense, bear sole responsibility for the design, development, maintenance and management of NMC Software, including without limitation, development of its features, functions and technology, and any adaptation and/or reconfiguration thereof as may be necessary for purposes of providing access to, and use of, the Application and interaction with the Application Server in accordance with the Specifications.

**4.2 Maintenance and Technical Support.** Meditech will provide NMC with all maintenance and technical support services as may be required by Authorized End Users, with respect to provision and use of the Integrated Offering. Unless otherwise provided for in Exhibit C, nothing in this Agreement shall be construed to grant NMC, any Customers or any Authorized End Users any right whatsoever to receive maintenance or technical support services from DrFirst. This paragraph does not rule out the possibility of a future amendment to the contract that could allow DrFirst to perform support and maintenance services for its standard fees and costs so long as such amendment was approved by NMC and Meditech.

**5. FEES AND EXPENSES; PAYMENTS.**

**5.1 Fees.** In consideration for the rights granted to NMC and the services performed by DrFirst under this Agreement, County of Monterey will pay to DrFirst all fees required by Exhibit B. DrFirst shall submit to County of Monterey Contract Administrator or his or her designee an invoice on a form acceptable to County of Monterey. If not otherwise specified, DrFirst may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by DrFirst for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. County of Monterey Contract Administrator or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

**5.2 Taxes.** All amounts payable hereunder shall exclude all applicable sales, use and other taxes and all applicable export and import fees, and customs duties. County of Monterey will be responsible for payment of all such taxes (other than taxes based on DrFirst's income), fees, and customs duties, arising from the payment of any fees hereunder, the grant of license rights in the Application to County of Monterey, or the delivery of related services. County of Monterey will make all payments required hereunder to DrFirst free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on any payments hereunder to DrFirst will be County of Monterey sole responsibility, and County of Monterey will provide DrFirst with official receipts issued by the appropriate taxing authority, or such other evidence as DrFirst may reasonably request, to establish that such taxes have been paid.

## **6. TREATMENT OF CONFIDENTIAL INFORMATION.**

**6.1 Ownership of Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

**6.2 Mutual Confidentiality Obligations.** Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access for purposes of performing such Party's obligations hereunder and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy, pursuant to Section 9.3, all Confidential Information disclosed by the other Party in its possession upon termination or expiration of this Agreement.

**6.3 Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Sections 6.1 and 6.2 shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient without access or reference to the Confidential Information disclosed by the other Party; (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the obligations of Section 6.2 either party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed in response to an order of a court or other governmental body or as otherwise required by law, provided that the Party making the disclosure pursuant to the order or law shall first have given notice to the other Party and made a reasonable effort either to obtain a protective order or similar protection for the Confidential Information or to assist the disclosing Party in obtaining the foregoing.

**6.5 Confidential Patient Information.** The parties agree that they shall stay abreast with, and comply with, all applicable state and federal laws and regulations governing the electronic transmission, security and confidentiality of patient information including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations and the California Confidentiality of Medical Information Act. The parties further agree to undertake reasonable efforts to ensure that any of their employees, agents, or third parties with access to confidential patient information complies with such laws and regulations. In that regard, it is understood that part of these efforts may include having to execute a Business Associate Agreement (BAA) with DrFirst. A form copy of a BAA is attached hereto as Exhibit F. Notwithstanding the foregoing, either party may disclose confidential patient information if required to do so by a lawful judicial or governmental order, provided that in the event either party receives notice of any such order it shall immediately notify the other party of such order.

## **7. REPRESENTATIONS AND WARRANTIES.**

### **7.1 Representations.**

(a) Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (iii) that this Agreement, after it has been approved by the Monterey County Board of Supervisors, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

(b) NMC further represents and warrants (i) that it has the right to disclose and provide to DrFirst any data provided through use and access of the Application, and (ii) that NMC's use of and access to the Application, as provision of Integrated Offering to Customers and Authorized End Users complies with applicable laws and regulations, including, without limitation, any applicable provisions of the Health Insurance Portability and Accountability Act of 1996 and/or the rules and regulations promulgated thereunder.

(c) DrFirst further represents that it has not been sanctioned, excluded or debarred under Medicare, Medicaid, or any other state or federal program. DrFirst agrees to report immediately, with relevant factual detail, to NMC any sanction, exclusion or debarment of Dr. First or of any its officers, directors, or employers under Medicare, Medicaid, or any other state or federal program.

**7.2 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DRFIRST DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, TITLE AND/OR NON-INFRINGEMENT. DRFIRST DOES NOT WARRANT THAT THE APPLICATION WILL MEET NMC'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

**7.3 Limitations and Exclusions of Liability.** EXCEPT WITH RESPECT TO RIGHTS AND OBLIGATIONS ARISING OR RECOGNIZED UNDER SECTIONS 2.4, 6 AND/OR 8, IN NO EVENT WILL DRFIRST BE LIABLE TO NMC FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF DRFIRST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. EXCEPT WITH RESPECT TO RIGHTS AND OBLIGATIONS ARISING OR RECOGNIZED UNDER SECTIONS 2.4, 6 AND/OR 8, THE CUMULATIVE LIABILITY OF DRFIRST TO NMC FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES PAID TO DRFIRST BY NMC UNDER SECTION 5.1 DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**7.4 Essential Basis of the Agreement.** NMC acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions of this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

## **8. INDEMNITY.**

**8.1 DrFirst's Indemnity Obligations.** DrFirst shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the DrFirst's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "DrFirst's performance" includes DrFirst's action or inaction and the action or inaction of DrFirst's officers, employees, agents and subcontractors.

**8.2 DrFirst's Indemnity Obligations re Third Party Claims of Patent Infringement, Copyright, Trade Secrets Misappropriation.** DrFirst agrees to indemnify, defend and hold harmless NMC from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Application, the Application Documentation or the DrFirst Brand, as applicable, infringes such third party's U.S. patents issued as of the Effective Date, or infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America,

provided that NMC promptly notifies DrFirst in writing of the claim, cooperates with DrFirst, and allows DrFirst sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, NMC agrees to permit DrFirst, at DrFirst's sole discretion, to enable it to continue to use the Application, the Application Documentation or the DrFirst Brand, as applicable, or to modify or replace any such infringing material to make it non-infringing. If DrFirst determines that none of these alternatives is reasonably available, NMC shall, upon written request from DrFirst, cease use of, and, if applicable, return, such materials as are the subject of the infringement claim. This Section 8.2 shall not apply if the alleged infringement arises, in whole or in part, from (i) modification of the Application, the Application Documentation or the DrFirst Brand by NMC, (ii) combination, operation or use of the Application with other software, hardware or technology not provided by DrFirst, if such infringement would have been avoided by use of the Application alone, or (iii) use of a superseded or altered release of the Application or the Application Documentation, if such infringement would have been avoided by the use of a then-current release of the Application or the Application Documentation, as applicable, and if such then-current release has been made available to Company. IN NO EVENT SHALL DRFIRST'S LIABILITY UNDER THIS SECTION 10 EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES PAID BY COMPANY UNDER SECTION 7.1 DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. THIS SECTION STATES DRFIRST'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

**8.3 NMC's Indemnity Obligations.** NMC shall indemnify, defend, and hold harmless DrFirst, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with NMC's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of DrFirst. "NMC's performance" includes NMC's action or inaction and the action or inaction of NMC's officers, employees, agents and subcontractors.

## **9. TERM AND TERMINATION.**

**9.1 Term.** The term of this Agreement shall commence on the Effective Date and shall continue until May 31, 2013 ("Term"), unless earlier terminated in accordance with this Section 9.

**9.2 Termination for Breach.** Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party; specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement shall terminate in the event that such cure is not made within such thirty (30)-day period or such longer period as separately agreed upon by the Parties.

**9.3 Termination Upon Bankruptcy or Insolvency.** DrFirst may, at its option, terminate this Agreement immediately upon written notice to NMC in the event that NMC (i) becomes insolvent or unable to pay its debts when due; (ii) files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (iii) discontinues its business; or in the event that (iv) a receiver is appointed or there is an assignment for the benefit of NMC's creditors.

**9.4 Termination Upon Change of Control.** If NMC is no longer a Meditech Partner Hospital, DrFirst will have grounds to terminate this Agreement without notice; however, nothing would prevent NMC from immediately entering a new agreement with DrFirst for similar services as a non-Meditech partner hospital.

**9.5 Effect of Termination.** Upon any termination or expiration of this Agreement, (i) NMC shall cease providing access or use of the Application, including any access or use through the Integrated Offering, to new Customers or Authorized End Users; (ii) NMC shall promptly pay all accrued and outstanding amounts due under this Agreement; (iii) each Party shall delete any Confidential Information provided by the other Party from computer storage or any other media including, but not limited to, online and off-line libraries; (iv) each Party shall return to the other Party or, at the other Party's option, destroy, all physical copies of any Confidential Information provided by the other Party; and (v) each Party shall at the request of the other Party, attest in writing as to the deletion and destruction of Confidential Material as provided in Sections 9.5 (iii) and (iv) above.

**9.6 Funding Out.** In the unlikely event that the Monterey County Board of Supervisors fails to provide funding for this Agreement in any fiscal year, the County may terminate this agreement upon 60 days' written notice.

**10. MISCELLANEOUS.**

**10.1 Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein.

**10.2 Independent Contractors.** In making and performing this Agreement, NMC and DrFirst act and shall act at all times as independent contractors, and nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between them. At no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

**10.3 Notices.** All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid, or reputable commercial carrier to the Parties to the Agreement and addressed, if to NMC, to the address set forth on the Cover Page, and if to DrFirst, as follows:

If to DrFirst: DrFirst, Inc.  
9420 Key West Ave.  
Suite 340  
Rockville, Maryland 20850

with a copy to: Gill, Sippel and Gallagher  
98 Church Street  
Rockville, MD 20850  
Attention : Joseph Gallagher, Esq.

If to NMC: The address on the Cover Page or addressed to such other address as that Party may have given by written notice in accordance with this provision.

All notices required by or relating to this Agreement may also be communicated by facsimile, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices shall be effective on the date indicated in such confirmation. In the event that either Party delivers any notice hereunder by means of facsimile transmission in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

**10.4 Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by the Party against whom enforcement of such amendment or modification is sought.

**10.5 Assignment; Delegation.** Either Party may assign any of its rights or delegate any of its duties hereunder upon the prior written consent of the other Party, such consent shall not be reasonably withheld; provided, however, that either Party may assign any of its rights or delegate any of its duties hereunder to a successor entity in the event of a merger, acquisition or sale of all or substantially all of the Party's assets.

**10.6 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

**10.7 Waiver.** No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

**10.8 Governing Law.** SUBJECT TO THE FINAL SENTENCE OF THIS PARAGRAPH, THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. UNDER NO CIRCUMSTANCES, SHALL THIS AGREEMENT OR A PART THEREOF BE SUBJECT TO THE UNIFORM COMPUTER INFORMATION TRANSACTION ACT.

**10.9 U.S. Government End-Users.** Each of the Application Documentation and the software components that constitute the Application is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Application and the Application Documentation with only those rights set forth therein.

**10.10 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.

**10.11 Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

**10.12 Force Majeure.** Neither party shall be liable for failure to perform any of its obligations hereunder if such failure is caused by an event outside its reasonable control, including, but not limited to, an act of God, shortage of materials, personnel or supplies, war, or natural disaster.

**10.13 Survivability.** The parties recognize and agree that their obligations under Paragraphs 2, 5, 6, 7, 8, and 10.8 of this Agreement and any Attachments hereto shall survive the cancellation, termination or expiration of this Agreement.

**10.14 Insurance Coverage Requirements:**

Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval). Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the DRFIRST shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

**10.16 Other Insurance Requirements** All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State



of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date DRFIRST completes its performance of services under this Agreement.

10.17 Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for DrFirst and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

*Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of DrFirst's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.*

10.18 Prior to the execution of this Agreement by the County, DrFirst shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the DrFirst has in effect the insurance required by this Agreement. DrFirst shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

10.19 DrFirst shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify DrFirst shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by DrFirst to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

11. **PRESS RELEASE.** Subject to review and approval by the other, each Party is granted the right to issue a press release announcing this Agreement.

By signing below, the parties agree to the terms and conditions and their respective obligations as described in this Master Agreement.

DrFirst.com, Inc.

*Edward Lee*

Edward Lee  
Chief Operations Officer

5/19/10

Date

APPROVED AS TO FORM AND LEGALITY

*Jay Jacob*

DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY

NATIVIDAD MEDICAL CENTER

*Henry Garcia*

Name: Henry Garcia  
Title: CEO

5/27/10

Date

Reviewed as to fiscal provisions

*[Signature]*

Auditor-Controller  
County of Monterey

5-27-10

**SCHEDULE OF EXHIBITS**

**Exhibit A – Service Description**

**Exhibit B – Payment and Billing Schedule**

**Exhibit C – Special Terms**

**Exhibit D – Rcopia System Service Level Agreement**

**Exhibit E – Eprescribing System Terms of Use for Hospital Providers**

**Exhibit F – Business Associate Agreement (for HIPAA Compliance)**

**Master Agreement**  
**Exhibit A**  
**Service Description:**

**1.0 Software List and Description of Modules:**

RcopiaAC includes three major components which integrate with the Meditech Hospital Information System through software interfaces created by Meditech and DrFirst:

- Medication history service (RcopiaAC: MedHx)
- Electronic delivery of outpatient medications to retail and mail order pharmacies at the time of discharge (RcopiaAC: DischargeRx)
- Rcopia Middleware

**1.1 RcopiaAC: MedHx**

RcopiaAC: MedHx provides a software service which queries multiple data sources in real time for patient medication history. RcopiaAC: MedHx retrieves ambulatory medications by querying the following data sources, including:

- Payers offering patient histories through RxHub
- Payer patient histories hosted by DrFirst
- Retail pharmacy patient medication orders
- DrFirst Rcopia patient medication histories (see "Hospital-Affiliated Providers" below)
- Other sources as they become available

The RcopiaAC: MedHx service is integrated into the NMC Meditech hospital information system.

**1.2 RcopiaAC: DischargeRx**

RcopiaAC: DischargeRx accepts electronic prescriptions created by the Meditech system and electronically transmits the orders through the electronic prescription delivery network to either the hospital pharmacy or non-hospital retail pharmacy. RcopiaAC: DischargeRx also provides a service which can be used to automatically check for formulary compliance, plan design, and clinical issues (such as interactions, dosage ranges, etc.) within the Meditech system.

**1.3 Rcopia Middleware**

Rcopia Middleware is locally installed DrFirst applications that enhances performance of the Integrated offering and is used to store program API's, formulary files and other infrequently used programs. Rcopia Middleware requires a minimally-configured Windows XP or 2003 Server with 4GB RAM and 250GB hard disk to be installed in NMC's data-center.

**2.0 Implementation Requirements:**

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**2.1. DrFirst Responsibilities**

- a. Implementation tools – DrFirst will provide registration tools and documentation to NMC which is to be used by NMC to register NMC End Users on the RcopiaAC system.
  - b. Registration – DrFirst will register NMC physicians entered into the DrFirst registration system on the pharmacy and mail order prescription networks.
  - c. Activation of Services – DrFirst will activate the Integrated Offering as scheduled and directed by the project plan.
  - d. Implementation and Initial "go-live" assistance – DrFirst will have personnel on standby to assist Meditech installation personnel and NMC during the implementation of the Integrated Offering at NMC's facility.
-

- e. Provide ongoing system availability and support -- DrFirst will provide system service level support and technical support services as outlined in Exhibit D.

2.2 NMC Responsibilities.

- a. Implementation Cooperation - NMC agrees to cooperate with the Meditech Implementation team to install the RcopiaAC modules. This includes:
  - i. Following all instructions as provided to NMC Implementation Coordinator by the Meditech Implementation Coordinator.
  - ii. Installing the correct version and service release of the Meditech systems and modules in a timely manner as directed by the Meditech Implementation Coordinator.
  - iii. Making NMC personnel available to complete the installation in a timely manner.
  - iv. Having systems and personnel trained and ready to implement the RcopiaAC system at the designated time as communicated to NMC by the Meditech Implementation Coordinator.
- b. Registration of End Users - If required for the installation of the Application, NMC agrees to properly complete and submit to DrFirst an initial database of registration information for all End Users who wish to use the DrFirst systems.
  - i. NMC agrees to review the initial registration of providers and staff, correct any errors identified through the review process and acknowledge to DrFirst that the data entered is correct.
  - ii. NMC agrees to maintain the physician and staff registration data in the RcopiaAC system including adding new providers and staff and deactivating providers and staff who are no longer using the RcopiaAC system.
- c. Point of Contact - NMC agrees to assign a single point of contact to work with the Meditech Implementation Coordinator and DrFirst in the implementation, deployment and support of NMC End Users.
- d. Training - NMC agrees to train all providers and staff who wish to use the DrFirst systems. DrFirst and NMC understand that the Meditech Implementation team will provide training for the RcopiaAC modules.
- e. Support - Unless otherwise provided in Exhibit C, NMC agrees to call Meditech for first-tier support of NMC physicians and staff. First-tier support is defined as providing assistance to NMC physicians and staff in the routine end-user support of NMC physicians and staff. Examples of routine end-user support include (but are not limited to) such issues such as password support, answering training questions related to the use of the system, assisting with registration issues, etc. Should additional support be required, NMC recognizes that Meditech technicians will seek the assistance of DrFirst to resolve any issues of a more technical nature.

**Exhibit B**  
**Payment and Billing Schedule**

1. Payment is to be made to DrFirst based on the net patient revenues of NMC in accordance with the schedule below:

Hospital Net Patient Revenue	First Year License Fee	Second Year and beyond License Fee
\$113,603,880	\$51,122	\$45,422

a. Material Change in Net Patient Revenue - During the course of this Agreement, should NMC's Net Patient Revenue materially change over the previous year, DrFirst shall have the right to adjust the License Fee using the then Net Patient Revenue factor as used by DrFirst to calculate Meditech client License Fees. Additionally, should DrFirst's cost of obtaining medication history data increase by 5% or more over the previous year, DrFirst shall have the right to adjust NMC's License Fee accordingly based on a new Net Patient Revenue Factor. The current factor is .00045 for the first year and .00040 for the second year and beyond.

2. Payment Terms. NMC will pay to DrFirst:

a. Fees for products and services:

- i. 50% due upon contract execution and purchase order issuance
- ii. 40% upon installation and purchase order issuance
- iii. 10% due 30 days after go-live and purchase order issuance
- iv. Actual travel expenses for NMC pre-approved travel by DrFirst employees will be paid by NMC in accordance with the County of Monterey Travel Policy to DrFirst.
- v. Travel expenses will be billed separately in accordance with the County of Monterey Travel Policy by DrFirst to NMC.

b. Billing. Fees are due per the County of Monterey Professional Services Agreement.

3. DrFirst will agree to a discount using the 2009 pricing terms (Exhibit B, Section 1) and the new Net Patient Revenue number (as of 6/30/2009) contingent on contract execution by May 31, 2010. Below is a representation of the 2009 and 2010 pricing.

2009 Pricing

Hospital Net Patient Revenue	First Year License Fee	Second Year and beyond License Fee
\$105,059,582	\$47,277	\$42,024
(NPR as of 6/30/2008)	(Based on .00045)	(Based on .00040)

2010 Pricing

Hospital Net Patient Revenue	First Year License Fee	Second Year and beyond License Fee
\$113,603,880	\$55,665	\$49,986
(NPR as of 6/30/2009)	(Based on .00049)	(Based on .00044)

2010 Pricing Including Discount as represented in Exhibit B, Section 1

Hospital Net Patient Revenue	First Year License Fee	Second Year and beyond License Fee
\$113,603,880	\$51,122	\$45,442
(NPR as of 6/30/2009)	(Based on .00045)	(Based on .00040)

Hospital NPR	Discount of First Year License Fee	Discount of Second Year and Beyond
\$113,603,880	\$4,543	\$4,544

Exhibit C

Special Terms

DrFirst and NMC recognize that the fully integrated DrFirst Medication History / Meditech system may not be available at the time of contract signing. Should NMC require a solution to be implemented prior to the time that the Integrated Offering is available, upon NMC request DrFirst agrees that as a temporary measure, DrFirst will install a standalone solution RcopiaAC: MedHx module and DischargeRx for NMC. NMC agrees to replace the standalone solution when the integrated solution is available and is installed on NMC's systems. Should the temporary RcopiaAC: MedHx and DischargeRx modules be installed, the following Installation and Support terms will apply until replaced by the Integrated Offering and the associated Integrated Offering support related thereto. The same Payment and Billing Schedule, as outlined in Exhibit B, applies to the installation of the temporary standalone RcopiaAC:MedHx and DischargeRx module.

**1. Installation.**

- a) Within a mutually agreeable time frame after the Effective Date, DrFirst and NMC will meet and establish a project plan for the installation of the interface to the Licensed DrFirst Application on NMC's computer system. It will be the responsibility of DrFirst to specify to NMC procedures according to which NMC may establish and obtain access to, and use of, the Licensed Application, including, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant instructions and procedures (collectively, the "Specifications"), to the limited extent any of the foregoing may be necessary to enable NMC to provide access to the features and functions of the Application for use by Authorized End Users as contemplated herein.
- b) **Configuration of the Application.** Throughout the Term, DrFirst shall adapt and configure the Application as may be necessary from time to time for the purpose of providing the temporary RcopiaAC: MedHx module. All maintenance and support for the temporary RcopiaAC: MedHx module shall be provided directly by DrFirst as outlined herein.

**2. Support.**

- a) **First Level Support.** NMC shall maintain First Level Support (as described below) to its authorized end-users. DrFirst shall provide to NMC adequate technical support documentation and user guides in connection with the temporary RcopiaAC: MedHx module. "**First Level Support**" means responding to and solving basic NMC end-user problems relating to Application Services

First Level Support consists of the following:

- responding to questions from the end-users regarding Application Documentation; responding to questions from the end-users regarding the Offering usage;
- determining if the failure is the result of user error or simple configuration problem; and
- using every reasonable effort to reproduce the reported problem.

Notwithstanding the foregoing, where there is any NMC-reported issue related to the Application, DrFirst will cooperate with NMC and with NMC's authorized end-users in the diagnosis and resolution of such issue.

- b) **Second Level Support.** DrFirst shall maintain Second Level Support (as described below) to NMC's Point of Contact. "**Second Level Support**" means responding to and solving significant issues relating to the Application Services that cannot be resolved under First Level Support,

Second Level Support consists of the following:

- diagnosis of failures;
- confirming that the failure is caused by the Application or NMC Products
- determining if a problem is a known problem;
- making available bug fixes, updates and other serious performance fixes relating to the Application;

- recommending and distributing such fixes and methods to NMC's end-user system.

DrFirst will provide telephone support twenty-four (24) hours/ seven (7) days per week. Company Point of Contact may access DrFirst telephone support by calling the DrFirst toll-free telephone line 888-271-9898. DrFirst will provide "live" telephone support from the normal business hours of 6:00, a.m., to 10:00, p.m., EST, Monday through Friday, except holidays. DrFirst will provide pager support outside of hours listed above. Only authorized Point of Contact of the NMC support organization trained in the Applications will call DrFirst for support issues. NMC end-user may bypass the normal procedures if it is deemed by NMC end-user that the support issue is urgent.

#### Escalation -

- System anomaly reporting -NMC's and staff may report issues/problems with the Applications at any time using the system listed above. Alternatively, NMC may, after proper registration of its primary contact email account with DrFirst, submit issues in writing (email) to support@DrFirst.com by the authorized contact. DrFirst shall prioritize anomaly repair above all other development work.
- System Severity Level 1. In the event that NMC determines that an anomaly materially effects the operation of the Application, DrFirst will respond to the issue report within thirty (30) minutes during the normal business hours outlined above, and within one (1) hour outside of normal business hours, and DrFirst will use best efforts to repair and install a patch promptly. For purposes of this Exhibit, material anomalies are defects that prevent NMC's authorized end-users from using the system or where business operations cannot reasonably continue (including, but not limited to, a situation where the DrFirst Server is not responding).
- System Severity Level 2. For anomalies that are less urgent where an impairment may be circumvented, DrFirst will respond to NMC within one (1) business day whether or not the issue reported constitutes an item that requires repair. If DrFirst determines that the reported anomaly is an anomaly that needs to be repaired, DrFirst will also communicate the time in which it reasonably believes the repair will be implemented into system, which timeframe shall be no longer than five (5) days. If in the opinion of DrFirst, DrFirst does not believe that the anomaly reported requires repair, DrFirst will respond with an explanation and approach to alleviate the issue to NMC within two (2) business days.
- Updates. As part of any Updates provided by DrFirst to NMC, DrFirst will provide NMC with technical support personnel at no additional charge up to one (1) hours of live support to cover topics relating to the Updates, such as enhancements, errata, procedure changes as it relates to installation or maintenance and other related information exchange. The live support process shall consist of teleconferences or webcasts and associated presentation materials, and will be conducted between DrFirst and NMC technical support personnel at a mutually agreed upon time.

### 3. Policy and Procedure Revision.

DrFirst reserves the right to modify these policies and procedures from time to time. NMC will be notified in writing at least ninety (90) day in advance of any revision. If NMC objects to any revision, DrFirst and NMC shall use good faith efforts to resolve any objections.

**Exhibit D**  
**Rcopia System Service Level Agreement**

**1. System Availability.**

a. Access to DrFirst Servers. DrFirst will ensure that the DrFirst Application server(s) are available for use by NMC or NMC's authorized end-users twenty-four (24) hours a day, seven (7) days per week. DrFirst servers will be available to NMC or NMC's authorized end-users ninety-nine and ninety-five one hundredths percent (99.95%) of the time on an annual basis, excluding planned downtime for routine maintenance. Notwithstanding the foregoing, in no event shall unplanned downtime exceed one (1) hour per month or twelve (12) hours annually. DrFirst will monitor and report downtime on DrFirst servers and system availability report will be available upon request. Routine maintenance will be performed outside of normal business hours and will not exceed ten (10) hours per month without prior notification to NMC or NMC's authorized end-users. DrFirst may announce up to four (4) weekend outages per year for system maintenance and upgrade. Weekend outages may occur during the hours of 12:00 am through 8:00 am EST. DrFirst will provide NMC with twenty-one (21) days advanced written notice of such planned weekend outages. The lack of key functionality for NMC or NMC's authorized end-users (e.g., access to patient medication information, creating a new prescription, renewing an existing prescription) shall be considered unscheduled downtime.

b. Access to connections to Prescription Benefit Managers ("PBMs") and Retail Pharmacies. DrFirst will ensure that the connections to PBMs and to retail pharmacies will be available for use by NMC's authorized end-users twenty-four (24) hours a day, seven (7) days per week. These connections will be available to NMC's authorized end-users ninety-eight percent (98%) of the time on an annual basis, excluding planned downtime for routine maintenance. Routine maintenance will be performed outside of normal business hours and will not exceed twenty (20) hours per month without prior notification to NMC or NMC's end-users. In the event any third party provider of electronic transmission of prescription services to DrFirst is down, DrFirst will reroute prescriptions through the Fax Service. DrFirst shall ensure that, from NMC's point of view, the fallover to the Fax Service will be essentially transparent.

2. **Response Time.** "Response Time" means the time elapsed between a request for a web page being received by the DrFirst servers and returning that web page. Response Time excludes any of the following: network or Internet latency; patient database queries; PBM queries including medication history and patient eligibility information; report writer queries; and pharmacy searches. DrFirst shall maintain a Response Time of two and half (2.5) seconds or less between the hours of 7:00, a.m., and 8:00, p.m., EST, and any time in excess of the two and half (2.5) seconds period shall be defined as "Response Time Failure." For PBM queries including medication history and patient eligibility, DrFirst shall maintain a Response Time of five and one half (5.5) seconds or less between the hours of 7:00, a.m., and 8:00, p.m., EST, and any time in excess of the 5.5 seconds period shall be defined as "Response Time Failure."

3. **Other Terms.** The foregoing system parameters exclude technical malfunctions in systems owned or controlled by NMC or any other catastrophic circumstances reasonably beyond the control of DrFirst or its services providers.



**EXHIBIT E**  
**Sample EPRESCRIBING SYSTEM TERMS OF USE FOR HOSPITAL PROVIDERS**

NMC ("we," or "us"), in accordance with a series of Agreements with DrFirst.com, Inc. ("DrFirst") provides online services (collectively, "HPL System" or the "Services") for electronic prescribing and other online tools and related services to assist physician practices, individual physicians, and other health care providers who are granted access to the HPL System ("End Users") to perform a variety of health care activities associated with electronic prescribing. The HPL System is provided to End Users only under the applicable terms of use below (the "Terms").

PLEASE READ THE TERMS CAREFULLY. BY CLICKING ON THE "ACCEPT" BUTTON BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS, UNDERSTAND THEM, AND AGREE TO BE BOUND BY THEM. IF YOU DO NOT AGREE TO ANY OF THE TERMS BELOW, WE ARE UNWILLING TO GRANT YOU ACCESS TO HPL SYSTEM, THE SITE, OR ANY RELATED TOOLS OR SERVICES, AND, IF YOU ARE IN THE PROCESS OF REGISTERING, YOU SHOULD CLICK ON THE "DO NOT ACCEPT" BUTTON TO DISCONTINUE THE REGISTRATION PROCESS.

**I. TERMS APPLICABLE TO END USERS**

**A. End User Requirements**

By agreeing to these Terms as an End User, you represent that you are a licensed medical professional with the right to prescribe medicine. You must continue to be such a licensed medical professional during such time as you access HPL System as a registered End User. In the event that you cease to be a licensed medical professional with the right to prescribe medicine, these Terms will automatically terminate and you agree to notify us immediately.

**B. Access to Services**

For so long as these Terms remain in effect and you remain a registered End User, we will make HPL System available to you for use with your medical patients only. You may access HPL System by using the software that we may specifically identify within the Site as available for download or use ("PDA Software"). Subject to these Terms and during such time as you remain a registered End User, we also grant you a limited, non-exclusive, nontransferable license to access and make use of online features of HPL System, and to download, install and operate any PDA Software for the purpose of accessing HPL System.

**C. General Restrictions on Use**

If you are an End User, then the licenses granted to you by these Terms will remain in force only for so long as these Terms remain in effect or until your registration is cancelled or terminated. You may not resell or sublicense access to HPL System or any of the rights granted to you herein to any third party. You may not use any PDA Software except in connection with your personal use of HPL System as authorized by these Terms. You agree not to reproduce, duplicate, copy, sell, resell or exploit any part of HPL System or PDA Software. You further agree not to combine or integrate HPL System and/or any PDA Software with software or technology not provided by us, or modify, further develop or create any derivative product based on the foregoing. You may not decompile, disassemble, reverse engineer or otherwise attempt to obtain or access the source code from which any component of the Site, Services and/or PDA Software is compiled or interpreted, and nothing in these Terms may be construed to grant any right to obtain or use such source code. You agree not to use HPL System or PDA Software to: (a) ~~violate any local, state, national or international law;~~ (b) ~~access any HPL System subscription account other than your own;~~ or (c) impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity.

**D. Securing and Maintaining Patient Consent**

NMC and End User agree that they will secure a written consent from all patients permitting and authorizing the End User to access such patients' medication history. NMC further agrees that it will maintain the patient written consent on file at all times. Further, NMC and End User agrees that we or our authorized agents or business partners (such as DrFirst) shall have the right to conduct one or more audits to ensure that End User is compliant with its obligation to secure and maintain written consents from all patients, provided that the cost of such audit shall be born by the entity conducting the audit.

**II. ADDITIONAL GENERAL TERMS**

**A. No Warranties**

HPL SYSTEM, THE SITE, THE PDA SOFTWARE AND ALL INFORMATION, CONTENT, MATERIALS AND SERVICES RELATED TO THE FOREGOING ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, NMC AND ITS AFFILIATES AND ALL THIRD PARTY PROVIDERS OF SOFTWARE OR HARDWARE ("THIRD PARTY PROVIDERS") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, SYSTEM INTEGRATION AND ACCURACY OF DATA. NMC ITS AFFILIATES AND THIRD PARTY PROVIDERS DO NOT WARRANT THAT USE OF HPL SYSTEM BY REGISTERED END USERS WILL BE UNINTERRUPTED OR ERROR-FREE. THE SUBMISSION OF ANY INFORMATION THROUGH THE NMC SERVICE AND/OR SITE AND THE DOWNLOAD, INSTALLATION AND USE OF PDA SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT FROM SUCH ACTIVITIES OR FROM RELIANCE UPON HPL SYSTEM. NMC IS NOT THE PROVIDER OF, AND MAKES NO WARRANTIES WITH RESPECT TO, ALL THIRD-PARTY SOFTWARE AND THIRD-PARTY OFFERINGS.

**B. Limitation Of Liability**

USE OF THE HPL SYSTEM, THE SITE AND ANY PDA SOFTWARE IS AT YOUR OWN RISK. IN NO EVENT SHALL NMC, ITS AFFILIATES OR THIRD PARTY PROVIDERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS OR DAMAGES ARISING DUE TO PHYSICAL INJURY, LOSS OF LIFE, OR BUSINESS INTERRUPTION OR FROM LOSS OR INACCURACY OF INFORMATION, TO THE EXTENT ANY OF THE FOREGOING ARISES IN CONNECTION WITH THESE TERMS OR YOUR USE OR INABILITY TO USE HPL SYSTEM, THE SITE AND/OR THE PDA SOFTWARE, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND EVEN IF NMC WAS ADVISED THAT SUCH DAMAGES WERE LIKELY OR POSSIBLE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF NMC TO YOU FOR ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THESE TERMS, EXCEED THE TOTAL FEES PAID TO NMC BY YOU DURING THE PRECEDING 12-MONTH PERIOD AND IN NO EVENT WILL ANY THIRD PARTY PROVIDERS HAVE ANY LIABILITY TO YOU WHATSOEVER. YOU ACKNOWLEDGE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL TERM BETWEEN YOU AND NMC RELATING TO THE PROVISION OF HPL SYSTEM TO YOU AND NMC WOULD NOT PROVIDE HPL SYSTEM TO YOU WITHOUT THIS LIMITATION.

**C. Indemnification**

YOU AGREE TO INDEMNIFY, HOLD HARMLESS AND, AT COMPANY'S OPTION, DEFEND COMPANY (INCLUDING ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, SUPPLIERS AND ANY THIRD-PARTY INFORMATION PROVIDERS TO THE SITE OR SERVICE) AND ANY THIRD PARTY PROVIDERS FROM AND AGAINST ALL LOSSES, EXPENSES, DAMAGES, COSTS AND LIABILITIES, INCLUDING REASONABLE ATTORNEYS' FEES, RESULTING FROM ANY VIOLATION OF THESE TERMS OR ANY ACTIVITY RELATED TO YOUR ACCOUNT (INCLUDING ANY NEGLIGENCE OR WRONGFUL CONDUCT, AND INCLUDING YOUR FAILURE TO ENSURE THAT YOUR REGISTERED END USERS ARE LICENSED MEDICAL PROFESSIONALS WITH THE RIGHT TO PRESCRIBE MEDICINE) BY YOU OR ANY OTHER PERSON ACCESSING HPL SYSTEM USING YOUR ACCOUNT.

**D. Duration of Terms**

These Terms will become effective and binding when you have acknowledged your acceptance of all the terms and conditions herein by following the instructions set forth on the Site. Ordinarily, we will require you to indicate your agreement by selecting a particular checkbox and/or clicking a particular button during the process of registering for MPL System. Once in effect, these Terms will continue in operation until terminated by either you or us.

**E. Termination**

You may terminate these Terms at any time and for any reason by providing notice to us in the manner specified on the Site or by choosing to cancel your access to HPL System using the tools provided for that purpose within the

Site. We may terminate these Terms without notice or, at our option, temporarily suspend your access to **HPL System** and/or the Site, in the event that you breach these Terms. Notwithstanding the foregoing, we also reserve the right to terminate these Terms at any time and for any reason by providing notice to you in accordance with these Terms. After termination of these Terms for any reason, you understand and acknowledge that we will have no further obligation to provide **HPL System**. Upon termination, all licenses and other rights granted to you by these Terms will immediately cease, and you agree to promptly remove the PDA Software and any copies thereof from your computers and storage media.

#### **F. Account Information**

**NMC** reserves the right to share certain account or other information with governmental organizations or other third parties when it believes in good faith that the law or legal process requires it, or when it is necessary to do so to protect the rights or property of **NMC** or others. A password and/or unique user I.D. will be provided to you. You are responsible for maintaining the confidentiality of such passwords and/or user I.D., and you agree that you will be responsible for all use of any such password and/or user I.D., including any access to, or use of, **HPL System** by unauthorized persons. In the event that your password and/or user I.D. is lost or stolen, please notify **NMC** immediately so that a new password or user I.D. may be issued promptly.

#### **G. Modifications to Terms**

We may change these Terms from time to time. We will notify you of any such changes via e-mail (if you have provided a valid email address) and/or by posting notice of the changes on the Site. Except as may otherwise be required in the Privacy Policy, any such changes will become effective when notice is received or when posted on the Site, whichever first occurs. If you object to any such changes, your sole recourse will be to terminate these Terms. Continued use of **HPL System**, the Site and/or any PDA Software following notice of any such changes will indicate your acknowledgement of such changes and agreement to be bound by the revised Terms, inclusive of such changes. In addition, certain areas of **HPL System** may be subject to additional terms of use. By using such areas, or any part thereof, you agree to be bound by the additional terms of use applicable to such areas. In the event that any of the additional terms of use governing such area conflict with these Terms, the additional terms will govern.

#### **H. Modifications to Services**

We reserve the right to modify or discontinue **HPL System** with or without notice to you. We will not be liable to you or any third party should we exercise our right to modify or discontinue **HPL System**. If you object to any such changes, your sole recourse will be to terminate these Terms. Continued use of **HPL System** following notice of any such changes will indicate your acknowledgement of such changes and satisfaction with **HPL System** as so modified.

#### **I. Representations and Warranties**

You represent and warrant that all information that you provide to us will be true, accurate, complete and current, and that you have the right to provide such information to us in connection with your use of **HPL System**.

**J. Data Aggregation.** **NMC** and Third Party Providers may aggregate data derived through End User use of the System and use the aggregated data for any lawful purpose.

#### **K. General Terms**

You shall comply with all laws, rules and regulations now or hereafter promulgated by any government authority or agency that are applicable to your use of **HPL System**, the Site, the PDA Software or the transactions contemplated in these Terms. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations hereunder or to exceed the scope of these Terms is void. These Terms will be subject to and construed in accordance with the laws of the State of Maryland, excluding conflict of law principles. You consent to jurisdiction and venue exclusively in the State of Maryland. These Terms constitute the entire agreement between you and **NMC** with regard to the matters described herein and govern your use of **HPL System**, the Site and the PDA Software, superseding any prior agreements between you and **NMC** with respect thereto (except as described in section I.C above). The failure of **NMC** to exercise or enforce any right or provision of these terms shall not constitute a waiver of such right or provision. If any provision of these terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms shall remain in full force and effect. You agree that regardless of any statute

or law to the contrary, any claim or cause of action arising out of or related to use of HPL System or the Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**L. Intended Third Party Beneficiary of These Terms Of Use**

It is expressly understood that DrFirst is an intended third party beneficiary of these terms of use and that DrFirst may enforce these terms directly against End Users that threaten or impair (a) any intellectual property rights in the HPL System, (b) the confidentiality of any privacy rights or personal data used in connection with the HPL System; or (c) the confidentiality or proper use of any technical data relating to the HPL System.

End User:

\_\_\_\_\_  
Name of End User

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date