



DrFirst.com, Inc.
MASTER SERVICES AGREEMENT

The terms and conditions of this Master Agreement (the "Agreement") are entered into by and between DrFirst.com, Inc. ("DrFirst"), a Delaware corporation having its principal place of business at 9420 Key West Ave, Suite 101, Rockville, Maryland 20850, and the County of Monterey, a political subdivision of the State of California, on behalf of its wholly owned and operated acute care facility Natividad Medical Center (the County of Monterey is hereinafter referred to as "NMC"), located at 1441 Constitution Blvd, Salinas CA 93906 (collectively, the "Parties") on July 1, 2017 (the "Effective Date").

RECITALS

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

WHEREAS, DrFirst and NMC previously entered into a Master Agreement dated May 27, 2010 ("2010 Agreement") for certain information technology services and products with a term effective of May 31, 2011 and expiring on June 30, 2017; and

WHEREAS, NMC and DrFirst agree to terminate the 2010 Agreement, replacing it with this Agreement for certain information technology services and products for NMC and NMC health care providers, with the termination date of the 2010 Agreement coinciding exactly with the effective date of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. GENERAL TERMS AND DEFINITIONS

The following terms shall have the meanings set forth below:

- 1.1 "**Application**" shall mean, collectively, all of the components of the software application as set forth in the attached Exhibits.
- 1.2 "**Application Documentation**" shall mean any written materials pertaining to the Application that DrFirst provides to NMC including but not limited to operating manuals, user guides, training course materials, computer-based training modules, software and Application specifications, and technical manuals.
- 1.3 "**Authorized End User**" shall mean any individual who is authorized to access the NMC Software. An Authorized End User may be an employee of NMC.

An Authorized End User may or may not be a licensed medical professional who is permitted to prescribe medications; however, all Authorized End Users who are able to prescribe medications to patients must also be properly registered with DrFirst.

- 1.4 "**Confidential Information**" as further discussed in Section 6 below, shall mean all non-public written or oral information, disclosed by either Party to the other, related to the operations, products, services, or intellectual property of either Party or a third party, whether or not identified or marked as confidential information. Confidential Information includes but is not limited to proprietary information such as business plans, technical data, specifications, presentations, business methods, product functionality, services, data, customer information, competitive analysis, databases, formats, methodologies, applications, developments, inventions, processes, designs, drawings, algorithms, formulas, or other engineering information. For purposes of this Agreement, Confidential Information does not include protected health information ("PHI") subject to HIPAA or medical information protected by the California Confidentiality of Medical Information Act.

- 1.5 "**NMC Software**" shall mean the software running on the NMC's computer network that permit access to the Application and shall include, without limitation, the Meditech interfaces and software applications provided for NMC's use by Meditech.
- 1.6 "**Term**" shall have the meaning set forth in Section 8.1.

2. LICENSES.

2.1 Access License. Subject to the terms and conditions contained in this Agreement, DrFirst hereby grants to NMC a non-exclusive, non-transferable (except as expressly permitted herein), right to access and use the features and functions of the Application during the Term solely through the 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 Authorized End Users have no right to sublicense the Application to any third party; (iii) NMC



shall ensure that each Authorized End User executes the End User Terms of Use in Section 8 of Exhibit A; and (iv) NMC acknowledges and agrees that any act or omission of its 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 breach by NMC hereunder.

2.3 Retained Rights; Ownership. As between DrFirst and NMC, DrFirst retains all right, title and interest in the Application and Application Documentation, 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. 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.

2.4 General Usage Restrictions. NMC shall not use the Application for any purposes not set forth herein, except with the prior written consent of DrFirst. NMC will not: (i) copy or duplicate the Application (except for one single copy solely for internal backup purposes); (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 acknowledges that this Agreement grants certain rights to access the Application, as hosted by DrFirst, but nothing herein may be construed to require physical and/or electronic delivery of a copy of the Application or to grant NMC any right to obtain such a copy by any means.

3. FEES AND EXPENSES; PAYMENTS.

3.1 Fees. In consideration for the rights granted to NMC and the services performed by DrFirst under this Agreement, NMC will pay to DrFirst, without offset or deduction, all fees required by the Pricing Exhibit. DrFirst will submit invoices to NMC with respect to such fees according to the relevant payment schedules indicated in the Pricing Exhibit C. The invoices shall set forth the annual license fees due and payable for the upcoming year. NMC shall certify the invoice as to conformity with this Agreement and shall promptly

submit such invoice to the County Auditor-Controller for payment within 15 days of receipt. The County Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.

3.2 Taxes. All amounts payable hereunder shall exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges. NMC will be responsible for payment of all such taxes (other than taxes based on DrFirst's income), fees, duties and charges, and any related penalties and interest, arising from the payment of any fees hereunder, the grant of license rights in the Application to NMC, or the delivery of related services. NMC 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 NMC's sole responsibility, and NMC 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. **IT IS UNDERSTOOD BY THE PARTIES THAT THIS SECTION 3.2 DOES NOT APPLY TO TAX EXEMPT ENTITIES.**

3.3 Intentionally omitted.

4. TREATMENT OF CONFIDENTIAL INFORMATION.

4.1 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 certain 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 (exception stated in Section 4.3 herein).

4.2 Mutual Confidentiality Obligations. Each Party agrees as follows, unless otherwise authorized by the disclosing Party in writing: (i) that such Party shall 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, subject to the California Public Records Act ("CPRA") (Cal. Gov't Code § 6250 et seq.); (iii) that such Party shall not create any derivative work from Confidential Information disclosed to said Party by the other Party; (iv) that such Party shall 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 said 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) that such Party shall 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 (exception stated in Section 4.3 herein). Each Party agrees to use at least the same care and precaution in protecting such Confidential Information as the Party uses to protect its own Confidential Information, and in no event less than reasonable care. Each Party acknowledges that due to the unique nature of the other Party's Confidential Information, the disclosing Party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing Party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

4.3 Confidentiality Exceptions. The provisions of Sections 4.1 and 4.2 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 already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure, as evidenced by contemporaneous written records; (iv) is independently developed by the recipient without access or reference to the Confidential Information disclosed by the other Party; (v) is approved for release or disclosure by the disclosing Party without restriction; or (vi) is subject to disclosure under the CPRA or Ralph M. Brown Act (Cal. Gov't Code § 54950 et seq.), such as, without limitation, this Agreement and any amendments hereto. 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, however, that the receiving Party upon receiving such subpoena or order shall (i) promptly inform the disclosing Party in writing unless instructed not to inform such Party by an applicable authority, (ii) cooperate with the disclosing Party in limiting disclosure of the disclosing Party's Confidential Information, and (iii) shall only disclose that Confidential Information necessary to comply with such subpoena or order.

4.4 California Public Records Act Indemnity. NMC is a public agency subject to the disclosure requirements of the CPRA. If NMC receives a CPRA request for public records (as defined by the CPRA) regarding the services provided pursuant to this Agreement, other than this Agreement or amendments to the Agreement, NMC will notify DrFirst of the request and confer with DrFirst regarding an appropriate response to said request. If DrFirst reasonably concludes that any records are DrFirst's Confidential Information, not subject to the CPRA,

and/or exempt from the CPRA, and DrFirst wishes to prevent disclosure of said records, DrFirst shall inform NMC of the legal basis for its conclusion, and may instruct NMC to withhold said records. If DrFirst fails to respond to NMC in writing prior to NMC's deadline for responding to the CPRA request, NMC may disclose the requested information under the CPRA without liability to NMC. DrFirst shall defend, indemnify and hold NMC harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney fees) that may result from denial of a CPRA request made at DrFirst's instruction.

4.5 No Publicity. During the term of this Agreement and at all times after the termination or expiration of this Agreement, DrFirst shall not make any media release or other public announcement relating to or referring to this Agreement without NMC's prior written consent. DrFirst shall acquire no right to use, and shall not use, without NMC's prior written consent, the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials, of NMC, its related or subsidiary companies, parent, employees, directors, shareholders, assigns, successors or licensees: (a) in any advertising, publicity, press release, NMC list, presentation or promotion; (b) to express or to imply any endorsement of DrFirst or DrFirst's software or services; or (c) in any manner other than expressly in accordance with this Agreement.

5. PATIENT DATA; HIPAA.

5.1 Protection of Confidential Patient Information Under Applicable Law. The Parties agree that they shall stay abreast of and comply with all applicable state and federal laws and regulations governing the electronic transmission, security and confidentiality of patient's protected health information ("Protected Health Information" or "PHI") including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act") as well as any implementing regulations and/or amendments thereto. The Parties shall execute a Business Associate Agreement ("BAA") attached hereto as Exhibit D. If a conflict arises between the general terms and conditions of the BAA and this Agreement, other attachment, exhibit, or schedule hereto, the BAA shall control. DrFirst further agrees to ensure that any of its employees, agents, or third parties with access to PHI shall comply with such laws and regulations, and, to the extent required by HIPAA or the BAA, shall execute a Business Associate Agreement with DrFirst. DrFirst will further comply with the provisions of Exhibit B and otherwise ensure the appropriate protection and handling of all data related to the business of NMC.



5.2 Limitations on Use of Medication History Information. NMC agrees that it will only use Medication History Information provided by the RcopiaAC system for the purpose of providing direct health care services to a NMC patient. NMC acknowledges that the Medication History Information provided hereunder may not be complete or accurate, and neither DrFirst, SureScripts nor any pharmacy or other entity providing information under the Medication History Service provides any representations or warranties with respect to the accuracy or completeness of the Medication History Information, and NMC releases and holds harmless DrFirst, SureScripts and any person or entity providing Medication History Information from any liability, cause of action, or claim related to the completeness or lack thereof of the Medication History Information. NMC is not required to release and hold harmless any party whose conduct is found to be willfully malicious or reckless or grossly negligent. NMC agrees to confirm the accuracy of the Medication History Information with the patient prior to providing any medical services based thereon and NMC agrees that NMC Providers shall use their professional judgment in the provision of care. NMC agrees to obtain patient consent prior to requesting any medication history for that patient. NMC acknowledges that the Medication History Service shall be used only for those patients from whom NMC has obtained the consent of the patient to access such patient's medication history. Other than in the course of treatment for the NMC's patient, NMC shall not provide the Medication History Information to any other person or entity for any reason whatsoever, or use the Medication History Information for any other purpose. NMC shall implement appropriate administrative, technical, and physical safeguards to prevent any use or disclosure of any data provided hereunder for any purpose not authorized by this Agreement. NMC shall not use any Medication History Information for any reason, whether in aggregated form or otherwise, except for the sole purpose of treating a NMC patient.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Representations and Warranties Generally. 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, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

6.2 Representations and Warranties of NMC. NMC further represents and warrants (i) that it has the right to disclose and provide to DrFirst any data provided

through its authorized use and access of the Application; and (ii) that it shall comply with all applicable laws and regulations, including, without limitation, any applicable provisions of HIPAA and/or the rules and regulations promulgated thereunder.

6.3 DrFirst's Representations and Warranties.

DrFirst represents and warrants that it has not been excluded, nor have any of its employees been excluded, from payment for Federal healthcare programs, nor do they appear on the List of Excluded Individuals/Entities of the Office of the Inspector General of the Department of Health and Human Services. 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 DrFirst or of any its officers, directors, or employers under Medicare, Medicaid, or any other state or federal program. DrFirst further represents and warrants (i) its performance under this Agreement and the Application shall at all times comply with all applicable federal, state, and local laws and regulations; (ii) during the term of this Agreement, the Application shall materially conform to the requirements of this Agreement and the Application Documentation; and (iii) the Application provided hereunder is and when delivered to NMC will be free from viruses, spyware, and other similar harmful and destructive code.

6.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BOTH PARTIES DISCLAIM 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, AND DATA ACCURACY. DRFIRST DOES NOT WARRANT THAT THE OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

6.5 Limitations and Exclusions of Liability. OTHER THAN EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OR DATA SECURITY OBLIGATIONS UNDER THIS AGREEMENT, OR FOR CLAIMS BASED UPON GROSS NEGLIGENCE OR WILLFUL OR MALICIOUS CONDUCT, NEITHER PARTY WILL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY 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 A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, (II) NMC'S OBLIGATIONS UNDER SECTION 2.4, (III) EITHER PARTY'S BREACH OF ITS REPRESENTATIONS AND WARRANTIES, (IV) EITHER PARTY'S BREACH OF ITS CONFIDENTIAL OR DATA SECURITY OBLIGATIONS UNDER THIS AGREEMENT, OR (V) FOR CLAIMS BASED UPON GROSS NEGLIGENCE OR WILLFUL OR MALICIOUS CONDUCT, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY IN ANY CAUSE OF ACTION BASED ON CONTRACT, TORT OR OTHERWISE IN CONNECTION WITH ANY PRODUCTS OR SERVICES FURNISHED PURSUANT TO THIS AGREEMENT INCLUDING ITS EXHIBITS SHALL BE LIMITED TO THE TOTAL FEES PAID BY NMC TO DRFIRST IN THE TWELVE (12) MONTHS PRECEDING THE CAUSE OF ACTION. DAMAGES FOR INFRINGEMENT SHALL BE CONSIDERED DIRECT 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.

6.6 Essential Basis of the Agreement. NMC acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 6 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 in this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

6.7 Support Services. In addition to any warranty obligations of DrFirst hereunder, DrFirst shall (i) provide the support services in Exhibit A and Exhibit B, and as further described in Schedule 2 of Exhibit B, and (ii) provide NMC with all new versions, releases, updates, enhancements of the Application at no additional charge.

7. INDEMNITY.

7.1 DrFirst's General Indemnity Obligations. DrFirst agrees to hold harmless, indemnify, and, at NMC's option, defend NMC and its affiliates and their respective employees, officers, directors, agents, and assigns from and against any third party claims, losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from: (i) DrFirst or its personnel's misuse of data in violation of Section 5; (ii) any breach

of DrFirst's Confidentiality obligations as contemplated by Section 4 of this Agreement; (iii) any non-compliance by DrFirst or its personnel with applicable law; and (iv) the grossly negligent acts or omissions or willful misconduct of DrFirst or its personnel.

7.2 DrFirst's Indemnity Obligations For Infringement Claims. DrFirst agrees to indemnify, defend and hold harmless NMC and its affiliates and their respective officers, agents, assigns, and employees 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 as of the Effective Date, or infringes or misappropriates, as applicable, such third party's copyrights, trademarks, trade secret rights, or other intellectual property 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 provided, that any settlements shall require prior approval by NMC. If such a claim is made or appears possible, then, in addition to defending the claim and paying any damages and attorneys' fees as required above, DrFirst shall, at DrFirst's option and in its sole discretion, either (a) immediately procure for NMC the right to continue to use the Application, the Application Documentation or the DrFirst Brand, as applicable, (b) immediately modify or replace the Application, the Application Documentation or the DrFirst Brand, without loss of material functionality or performance, 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 that are the subject of the infringement claim. DrFirst shall reimburse NMC for all product and service fees necessitated by any such infringement claim, including any costs associated with implementing either of the above alternatives. If DrFirst fails to provide one of the foregoing remedies within forty-five (45) days of notice of the claim, either Party may terminate this Agreement and DrFirst shall refund to NMC the prorated portion of all pre-paid fees for services not provided following the termination. This Section 7.2 shall not apply if the alleged infringement arises, in whole or in part, from: (i) unauthorized 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 NMC.

7.3 NMC's Indemnity Obligations: To the extent permitted by law, NMC agrees to hold harmless, indemnify, and at DrFirst's option, defend DrFirst from and against any third party claims, losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from: (i) use by an Authorized End User or third party end user that has not executed the Sample Terms of Use in Section 8 of Exhibit A; (ii) NMC or its personnel's misuse of data in violation of Section 5; (iii) any breach of its Confidentiality obligations as contemplated by Section 4 of this Agreement; (iv) any non-compliance by NMC or its personnel with applicable law; and (v) the grossly negligent acts or omissions or willful misconduct of NMC or its personnel.

7.4 Procedure. In all cases in which a Party seeks indemnification and/or defense hereunder, the indemnitee shall provide the indemnitor with prompt written notice of such claim, reasonable cooperation and assistance to the indemnitor in connection with such claims, and full control and authority to investigate, defend and settle such claims; provided, that settlements shall require either prior approval by the indemnitee or such settlement must forever and completely release the indemnitee from liability.

8. TERM AND TERMINATION.

8.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years ("Term"). Should the Parties agree to extend the Term beyond the initial three (3) year period they may do so by executing a written amendment to this Agreement which is signed by both Parties.

8.2 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, (unless breach is associated to PHI then termination may be immediate) 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.

8.3 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement immediately upon written notice to the other party in the event that either party (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.

8.4 Termination by Notice. After the initial Term of the Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to DrFirst at least sixty (60) days' prior to the anniversary of the Activation Date of the annual license ("Activation Date" defined in paragraph 5 of Exhibit A). Such notice shall set forth the effective date of termination. In the event of such termination, NMC will not be liable to pay any future license fees under this Agreement.

8.5 Termination for Non-Appropriation of County Funding. Notwithstanding any other provision of this Agreement, NMC shall not be obligated to DrFirst's hereunder during any of NMC's future fiscal years unless and until the Monterey County Board of Supervisors appropriates funds for this Agreement for NMC's budget for each such fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds for this Agreement were appropriated. NMC shall notify DrFirst in writing of any such non-allocation of funds at the earliest possible date.

8.6 Effect of Termination. Upon any termination or expiration of this Agreement: (i) NMC shall cease providing access or use of the Application to new Authorized End Users; (ii) NMC shall promptly pay all accrued and undisputed 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 Information as provided in Section 8.5 (iii) and (iv) above. Nothing herein shall require the return or destruction of any materials otherwise required to be kept by the respective Party to for the Party to comply with federal, state or local laws—it being understood that the retention of such materials will remain subject to the confidentiality obligations set forth in Section 4 above.

9. DISCLOSURE OF RECORDS AND AUDIT.



9.1 Records for Reimbursement. To the extent of applicability of 42 U.S.C. § 1395x(v)(1)(I) as amended from time-to-time, and regulations promulgated under such provision, DrFirst agrees that until the expiration of four (4) years after furnishing services and/or products under this Agreement, it shall make available, upon written request of the Secretary of the Department of Health and Human Services (the "Secretary"), or upon request of the Comptroller General of the United States, or any of their duly-authorized representatives, this Agreement and the books, documents, and records of DrFirst that are necessary to certify the nature and extent of the costs for which NMC seeks reimbursement.

9.2 Records of Subcontractors. DrFirst further agrees that if it carries out any of the duties of this Agreement through a subcontract with a value or cost of ten-thousand (\$10,000.00) dollars or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause that until the expiration of four (4) years after the furnishing of such services under such subcontract, the related organization shall make available, upon written request of the Secretary or Comptroller General, or any of their duly-authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

9.3 Survival. The terms of this Section 9 survive the termination, expiration, non-renewal, or rescission of this Agreement.

10. INSURANCE.

10.1 DrFirst has procured and will maintain the following insurance throughout the term of this Agreement, with the following minimum limits of liability:

(i) 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, products and completed operations, with a combined single limit for bodily injury and property damage of not less than \$1 million each occurrence / \$2 million aggregate;

(ii) 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 million per occurrence;

(iii) Workers' Compensation insurance, if DrFirst 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;

(iv) Employers' Liability - \$1 million each accident;

(v) Technology E&O - \$7 million

(vi) Professional Liability insurance, if required for the professional services being provided 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.

10.2 Intentionally Omitted

10.3 Required Notices. NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit.

10.4 Additional Insureds. Commercial general liability policy shall provide an endorsement naming the County of Monterey its officers, agents, and employees as an Additional Insured 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 DrFirst's insurance. DrFirst will not be driving onto county property or using a vehicle for any aspect of the scope of services; therefore, automobile additional insured language and primary and non-contributory language is not required. If this should change in the future, then DrFirst would provide the required insurance documents.

10.5 Proof of Insurance. Prior to the execution of this Agreement by NMC, DrFirst shall file certificates of insurance with NMC showing that the DrFirst has in effect the insurance required by this Agreement. DrFirst shall file a new or amended certificate of insurance within thirty (30) calendar days after any change is made in any insurance policy, which would lower the policy limits or otherwise diminish the coverage 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.

10.6 Annual Obligations. DrFirst shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, upon request by NMC, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. Failure by DrFirst to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate this Agreement immediately.

11. MISCELLANEOUS.

11.1 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. No shrink-wrap, click-wrap, click-through, click-accept, online terms or website terms shall modify any of the terms and conditions of this Agreement; however NMC agrees the End User Terms of Use in Section 8 of Exhibit A may modify the terms of this Agreement with respect to each user who executes an End User Terms of Use. Before modifying the End User Terms of Use in Section 8 of Exhibit A, DrFirst will first provide NMC thirty (30) days written notice and opportunity to review the modified terms. If NMC rejects the modified terms, then NMC will be able to terminate this Agreement at the time the modified terms become effective and receive a pro-rated refund of any pre-paid fees. Unless otherwise stated in the applicable attachment, exhibit, or schedule, in the event of a conflict between the general terms of conditions of this Agreement and an attachment, exhibit, or schedule hereto, this Agreement shall control.

11.2 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.

11.3 Notices. All notices required by or relating to this Agreement shall be in writing and shall be sent by means of United States, first-class 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.com, Inc.
ATTN: Legal
9420 Key West Ave., Suite 101
Rockville, Maryland 20850

And a courtesy email shall be sent to the following email address: dfnotice@drfirst.com

If to NMC: Natividad Medical Center
Attn: Contracts Department
1441 Constitution Blvd.
Salinas CA
93906

And a courtesy email shall be sent to the following email address: EntinaA@natividad.com.

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. Notwithstanding the foregoing, day-to-day communications and notifications under this Agreement (excluding notices of default, renewal, termination and indemnification, and communications regarding CPRA requests under section 4.4 of this Agreement) may be made through other means, including through email.

11.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by the Parties hereto.

11.5 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.

11.6 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.

11.7 Governing Law. 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. Under no circumstances, shall this Agreement or a part thereof be subject to the uniform computer information transaction act.

11.8 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.

11.9 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.

11.10 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.

11.11 Force Majeure. Neither Party shall be liable for failure to perform any of its obligations hereunder during the duration of the event if failure is caused by an event outside its reasonable control, including, but not limited to, an act of God, war, or natural disaster ("Force Majeure Event"). DrFirst acknowledges that NMC plans for the continuity of hospital operations during an emergency, especially sustained incidents, and that collaboration with DrFirst is necessary to maintain continuity of operations. During an emergency, DrFirst shall use its best efforts to provide NMC with all available items and services provided hereunder on a priority basis. In the event a Force Majeure Event continues for a period of twenty (20) business days, either party may terminate this Agreement by providing written notice to the other party with no further liability to the other party.

11.12 Subcontractors. DrFirst shall be and remain responsible to NMC for (a) the performance of all

services, including services performed or provided by DrFirst's subcontractors, and (b) the acts and omissions of DrFirst's subcontractors in connection with the performance or provision of any of the services.

11.13 Assignment. Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, to any affiliate, or in the event of a merger, acquisition, or sale of all or substantially all of its assets.

11.14. Medicare Access. If and to the extent required by the rules of the Medicare program, the language of Section 1861(v)(1)(I) of the Social Security Act is deemed incorporated herein by reference.

11.15 Survivability. The Parties recognize and agree that their obligations under Paragraphs 2.3, 2.4, 4, 5, 6, 7, 8.6, 9, and 11 of this Agreement and any Exhibits hereto shall survive the cancellation, termination or expiration of this Agreement.

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

DrFirst.com, Inc. ("DrFirst")

By: Edward C. Lee

Name: Edward C. Lee

Title: Chief Administrative Officer

Date: 8/10/2017

County of Monterey, on behalf of Natividad Medical Center ("NMC")

By: _____

Name: Gary R. Gray, DO

Title: CEO

Date: _____

AR
Dep. COO
8-16-17

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey

Agreement between DrFirst.com, Inc and
Natividad Medical Center



Schedule of Exhibits

Exhibit A: Rcopia AC Services

Exhibit B: EPCS Services

Exhibit C: Fee Structure

Exhibit D: BAA

Exhibit E: Data Security



Exhibit A
Rcopia AC Service Exhibit

1. Definitions:

- a. **"Application"** shall mean, collectively, all of the components of the Rcopia Acute Care ("RcopiaAC") software application or applications identified and described in Section 3, as applicable.
- b. **"DischargeRx"** is a module within the RcopiaAC service, as further defined in Section 3, which facilitates the electronic transmission of prescriptions to pharmacies at the time of a patient's discharge.
- c. **"Integrated Offering"** shall mean services provided to end users of the NMC Software by means of accessing and using the features and functions of the Application through the NMC Software as contemplated in this Agreement.
- d. **"Licensed Medical Professional"** shall mean a person who has the legal authority to sign prescriptions.
- e. **"Medication History Information"** shall mean any and all medication history data transmitted by DrFirst to NMC pursuant to the RcopiaAC service (as defined in this Exhibit) and the terms hereof.
- f. **"MedHx"** is a module within the RcopiaAC service, as further defined in Section 3, which provides a patient's Medication History Information 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.
- g. **"Middleware" or "RcopiaAC Middleware"** is a locally-installed application or software which resides on the NMC servers and enhances performance of the Integrated Offering as further described in this Exhibit.
- h. **"Rcopia Acute Care" or "RcopiaAC"** is a DrFirst service, further defined in Section 3, which consists of certain modules providing real-time medication history to assist with automating the hospital admissions and electronic prescription delivery services.
- i. **"Intended Query"** is a medication history information request for a care event that requires medication reconciliation, medication dispensing, medication ordering, or medication prescribing in either the acute care setting or the ambulatory setting at the contracted facility.

2. PATIENT DATA; HIPAA

- a. **Limitations on Use of Medication History Information.** NMC agrees that it will only use Medication History Information provided by the RcopiaAC system for the purpose of providing direct health care services to a NMC patient. NMC acknowledges that the Medication History Information provided hereunder may not be complete or accurate, and neither DrFirst, SureScripts nor any pharmacy or other entity providing information under the Medication History Service provides any representations or warranties with respect to the accuracy or completeness of the Medication History Information, and NMC releases and holds harmless DrFirst, SureScripts and any person or entity providing Medication History Information from any liability, cause of action, or claim related to the completeness or lack thereof of the Medication History Information; provided that NMC is not required to release and hold harmless any party whose conduct is found to be willfully malicious or reckless or grossly negligent. NMC agrees to confirm the accuracy of the Medication History Information with the patient prior to providing any medical services based thereon and NMC agrees that NMC Providers shall use their professional judgment in the provision of care. NMC agrees to obtain patient consent prior to requesting any medication history for that patient. NMC acknowledges that the Medication History Service shall be used only for those patients from whom NMC has obtained the consent of the patient to access such patient's medication history. Other than in the course of treatment for the NMC's patient, NMC shall not provide the Medication History Information to any other person or entity for any reason whatsoever, or use the Medication History Information for any other purpose. NMC shall implement appropriate administrative, technical, and physical safeguards to prevent any use or disclosure of any data provided hereunder for any purpose not authorized by this Agreement. NMC shall not use any Medication History Information for any reason, whether in aggregated form or otherwise, except for the sole purpose of treating a NMC patient.
- b. **Protection of Confidential Patient Information Under Applicable Law.** The Parties acknowledge and agree to comply with the terms of Section 4 (Treatment of Confidential Information), Section 5 (Patient Data; HIPAA), and Exhibit D (Data Security) of the Agreement.



- c. **Medication History Usage and Overage.** NMC has unlimited usage for Intended Queries as defined in Section 1. NMC is required to adhere to configuration settings that only allow for Intended Queries. DrFirst shall estimate NMC's total number of Intended Queries based upon the emergency department admissions, and total facility admissions, through sources such as the American Hospital Directory (AHD), which shall form the basis for the pricing set forth in Exhibit C Section 1 A (i). DrFirst shall provide to NMC on a monthly basis, the number of actual medication history requests by NMC. In the event that NMC's monthly actual usage exceeds one-hundred and twenty per cent (120%) of DrFirst's estimate, DrFirst shall have the ability to assess NMC's configuration settings for usage, to ensure that NMC's configuration settings allow only for Intended Queries. If as a result of DrFirst's assessment DrFirst finds that NMC's configuration settings or internal usage allow for usage beyond Intended Queries, then NMC shall permit DrFirst to assist NMC in correcting the configuration settings to allow only for Intended Queries and shall not otherwise alter the settings after the completion of such assessment. If NMC does not allow DrFirst to assist in correcting configuration settings, and/or change the configuration settings per DrFirst's assessment, then NMC agrees to pay DrFirst for all transactions over the one-hundred and twenty per cent (120%) estimated queries at a rate set forth in Exhibit C Section 1 A (i).
3. **Description of RcopiaAC Modules:** RcopiaAC includes three major components which integrate with the Meditech Hospital Information System through software interfaces created by Meditech and DrFirst:
- a. **RcopiaAC: MedHx:** a software service which queries multiple data sources in real time for patient medication history. MedHx retrieves ambulatory medications by querying the following data sources, including:
 - 1. Payers offering patient histories through Surescripts
 - 2. Payer patient histories hosted by DrFirst
 - 3. Retail pharmacy patient medication orders
 - 4. DrFirst Rcopia patient medication histories (see "Hospital-Affiliated Providers" below)
 - 5. Other sources as they become available
 - b. **RcopiaAC: DischargeRx:** Seamlessly 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 to retail and mail order pharmacies at the time of discharge from the hospital. It 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.
4. **RcopiaAC Middleware** is a locally-installed DrFirst application 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 the NMC's data-center.
5. **Implementation Requirements for RcopiaAC:**
- a. **DrFirst Responsibilities**
 - i. **Readiness Assessment and Report** –DrFirst's hospital services consultants ("Hospital Consultants") will offer NMC an MEDITECH experienced-based readiness assessment (the "Assessment"). The Assessment is designed to evaluate the condition of your hospital and the potential for Electronic Medication Management. The Assessment will help your organization achieve and speed up the goal of implementing electronic medication management. The Assessment is designed to evaluate the condition of NMC's current RXM build and the potential for Electronic Medication Management. The Assessment will guide your organization towards the goal of implementing electronic medication management. The outcomes provided in the Assessment will result in a better understanding of how to implement and improve your electronic medication management program.
 - ii. **Implementation tools** – DrFirst will provide an online registration system and documentation to NMC which is to be used by NMC to register NMC Authorized End Users on the RcopiaAC system.
 - iii. **Registration** – DrFirst will register NMC physicians entered into the DrFirst registration system on the pharmacy and mail order prescription networks.



- iv. Activation of Services – DrFirst will activate the Integrated Offering as scheduled and directed by the project plan and as set forth in Exhibit C(2)(B)(iii) (“Activation Date”).
- v. 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.
- vi. Provide ongoing system availability and support – DrFirst will provide system service level support and technical support services for the RcopiaAC System as outlined in Section 7 in this Exhibit A and Schedule 2 to Exhibit B.

b. NMC Responsibilities.

- i. Implementation Cooperation - NMC agrees to cooperate with the Meditech Implementation team to install the RcopiaAC modules. This includes:
 - 1. Following all instructions as provided to NMC Implementation Coordinator by the Meditech Implementation Coordinator.
 - 2. Installing the correct version and service release of the Meditech systems and modules in a timely manner as directed by the Meditech Implementation Coordinator.
 - 3. Making NMC personnel available to complete the installation in a timely manner.
 - 4. 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.
 - 5. 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 Authorized End Users who wish to use the DrFirst systems.
 - a. 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.
 - b. 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.
- ii. 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 Authorized End Users. NMC may change its point of contact in writing at any time.
- iii. Training – DrFirst shall provide training to certain NMC personnel on the proper use of DrFirst’s Applications. Afterwards, 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.
- iv. Support - Unless otherwise provided in this Section, 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 and 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. Tier 1 and Tier 2 support for the RcopiaAC System is further described in Schedule 2 to Exhibit B.

6. **Fees: Please see Exhibit C**

7. **Rcopia System Service Level Agreement**

7.1. **System Availability.**

- a. Access to DrFirst Servers. DrFirst will ensure that the DrFirst Application server(s) are available continuously 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 an average of ninety-nine and ninety-five one hundredths percent (99.95%) of the time, on an annual basis, excluding unavailability as a result of 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 unavailability as a result of planned downtime for routine maintenance. Routine maintenance will be performed outside of normal business hours and will not exceed twenty five (25) hours per month without prior notification to NMC or NMC's Authorized 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 the NMC's point of view, the failover to the Fax Service will be essentially transparent.

7.2. 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 AM, and 8:00 PM, 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 AM, and 8:00 PM, EST, and any time in excess of the 5.5 seconds period shall be defined as "Response Time Failure."

7.3. 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.

8. END USER TERMS OF USE

Natividad Medical Center ("NMC"), in accordance with a series of Agreements with DrFirst.com, Inc. ("DrFirst") provides you access to an online electronic prescription system ("EP System") that allows for electronic prescribing, review of medication history and other online tools and related services to assist physician practices, individual physicians, and other health care providers (such persons are collectively referred to as "End Users") to perform a variety of health care activities associated with electronic prescribing. The EP System is made available to End Users only under the applicable terms of use that must be agreed to by End Users in writing as set forth below (the "Agreement").

YOU ARE REQUESTED TO PLEASE READ THE TERMS CAREFULLY.

1. The EP System is licensed to you, not sold. Except for the limited license granted in this Agreement, DrFirst retains all right, title, and interest in the EP System and all proprietary rights in the EP System, including copyrights, patents, trademarks and trade secret rights.
2. NMC grants you a revocable, nontransferable, personal, nonexclusive license to use the EP System for your internal business purposes. You represent that You will only use the EP System as a properly credentialed Licensed Medical Professional or under the specific direction of a properly credentialed Licensed Medical Professional.
3. **Account Set Up.** In order to use most aspects of the EP System and services, you must register for and maintain an active personal user account. You agree to: (a) provide true, accurate, current, and complete information when registering to use the EP System and establishing your account ("Registration Information") and (b) maintain and promptly update the Registration Information to keep it true, accurate, current, and



complete. If you provide any information that is untrue, inaccurate, not current, or incomplete, or NMC has reasonable grounds to suspect your information is untrue, inaccurate, not current, or incomplete, NMC may suspend or terminate your account. You are entirely responsible for maintaining the confidentiality of any passwords and any usage and activities that occur in connection with your account. You agree not to allow others to access your account or utilize your password. Doing so will compromise the security of your account.

4. You agree not to use the EP System to: (a) violate any applicable local, state, federal or international law; (b) access any EP System user account other than your own; or (c) impersonate any person or entity, or otherwise misrepresent any affiliation with a person or entity. All use of the EP System must be in accordance with its then-current documentation, if any, provided with the EP System or made available on DrFirst's website.
5. You must hold the EP System and any related documentation in strict confidence for your own use only. You agree not to violate (a) any party's intellectual property rights to the EP System, (b) the confidentiality of any privacy rights, Protected Health Information subject to HIPAA or medical information protected by the California Confidentiality of Medical Information Act or any other personally identifiable information used in connection with the EP System; or (c) the confidentiality or proper use of any technical data relating to the EP System.
6. You understand that despite the best efforts of the EP System to provide accurate patient medical history information, the information is provided "as is", and You understand that whenever possible any practical patient medical history should be independently verified. THE EP SYSTEM IS PROVIDED ON AN "AS AVAILABLE," "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NMC AND ITS THIRD PARTY VENDOR(S) DISCLAIM ALL WARRANTIES WITH RESPECT TO THE APPLICATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. NMC DOES NOT WARRANT THAT THE EP SYSTEM WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE APPLICATION WILL BE CORRECTED.
7. Support. All questions and requests relating to EP System must be directed to NMC.
8. Termination. This Agreement and license will automatically terminate in the event you breach any of its terms. In the event of a claim of intellectual property infringement by any third party relating to the EP System, NMC may immediately terminate this Agreement.
9. Use of Medication History Information. You agree that you will only use Medication History Information provided by the EP system for the purpose of providing direct health care services to a patient. You acknowledge that the Medication History Information provided hereunder may not be complete or accurate, and neither DrFirst, SureScripts nor any pharmacy or other entity providing information under the EP System provides any representations or warranties with respect to the accuracy or completeness of the Medication History Information, and you agree to release and holds harmless DrFirst, SureScripts and any person or entity providing Medication History Information from any liability, cause of action, or claim related to the completeness or lack thereof of the Medication History Information provided that you are not required to release and hold harmless any party whose conduct is found to be willfully malicious or reckless or grossly negligent. You agree to confirm the accuracy of the Medication History Information with the patient prior to providing any medical services based thereon and to use your professional judgment in the provision of care. You agree to obtain patient consent prior to requesting any medication history for a patient and acknowledge that the Medication History Service shall be used only for those patients from whom you have obtained the consent of the patient to access such patient's medication history. Other than in the course of treatment for your patient, you shall not provide the Medication History Information to any other person or entity for any reason whatsoever, or use the Medication History Information for any other purpose.
10. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL NMC BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES (WHETHER IN CONTRACT, TORT



(INCLUDING NEGLIGENCE), OR OTHERWISE), WHICH INCLUDE, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF THE USE OR INABILITY TO USE THE EP SYSTEM, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NMC'S ENTIRE LIABILITY UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) IS LIMITED TO THE AMOUNT PAID BY YOU, IF ANY, FOR THE EP SYSTEM.

11. Indemnity. You will indemnify, defend, and hold harmless NMC and DrFirst from and against all damages, liabilities, costs, fines, sanctions, and expenses arising out of your breach of this Agreement or your acts or omissions in connection with this Agreement.
12. General. This Agreement will be construed, interpreted, and performed exclusively according to the laws of the State of California, without giving effect to any principles of conflicts of law. This Agreement constitutes the entire understanding and agreement between us and you with respect to the transactions contemplated in this Agreement and supersedes all prior or contemporaneous oral or written communications with respect to the subject matter of this Agreement, all of which are merged in this Agreement. This Agreement may not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement will remain valid and enforceable according to its terms. Any failure by us to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. The disclaimers and limitations of liability and your indemnity will survive any termination or expiration of this Agreement. This Agreement may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and your acceptance will be deemed binding between you and us. Neither you nor NMC will contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because it was accepted or signed in electronic form. Electronically maintained records when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES WILL REMAIN IN EFFECT.**



DrFirst

Exhibit B

DrFirst SOW: Rcopia AC EPCS Gold Services

1. Product Description

- a. **EPCS Gold:** EPCS Gold allows an acute physician to submit orders for scheduled drugs electronically to a pharmacy, which can accept electronic prescriptions for controlled substances.

2. Definitions; Interpretation.

- a. The terms and conditions of the Agreement (including all Exhibits and attachments thereto) shall continue to govern the rights and obligations between DrFirst and NMC for the products and services offered by DrFirst.
- b. In the event of a conflict between any terms and conditions of the Agreement and the provisions of this Exhibit, the terms and conditions of the Agreement control.
- c. Nothing contained herein shall be construed or implied to create an agency, partnership or employment relationship between DrFirst and NMC.
- d. The Parties hereto agree and acknowledge that DrFirst's obligations under state and federal regulations as well as under third party agreements may necessitate additional modifications to the Agreement and/or this Exhibit in order to allow for the distribution and marketing of the EPCS™ Gold Services, and the Parties hereby further agree to modify or amend the provisions as reasonably necessary to execute the Parties' above stated intent in accordance with Section 11.4 of the Agreement.

3. Obligations of DrFirst.

- a. DrFirst agrees to provide the EPCS Gold™ Services as an additional product and services offering which integrates with NMC Software to allow users of the Integrated Offering to register, identity-proof and enable for EPCS Gold, as well as sign and forward prescriptions for controlled substances electronically as further described in Schedule 1, annexed hereto.
- b. DrFirst shall provide distribution of the hard token on behalf of NMC.
- c. DrFirst shall provide Web based training tools and Tier 2 support services for the EPCS Gold Platform, as further described in Schedule 2 attached hereto.

4. Obligations of NMC.

- a. MEDITECH shall provide Tier 1 support service for the EPCS Gold™ Platform, as further described in Schedule 2 attached hereto.

5. Representations and Warranties of DrFirst.

- a. DrFirst represents and warrants that the EPCS Gold™ platform has been found to be in compliance with the relevant provisions of the Drug Enforcement Agency's Electronic Prescriptions of Controlled Substances Final Rule as codified in 21 CFR Parts 1300, 1304, 1306, and 1311 (the "DEA Regulations").

6. Limitation of Liability.

- a. DrFirst expressly disclaims any liability for any damages or costs occurring as a result of NMC's failure to obtain and/or maintain any necessary approvals or certifications required by the relevant provisions of the DEA Regulations applicable to NMC's status as an individual practitioner, institutional practitioner, or pharmacy (as applicable).

7. Payment

- a. Pricing shall be paid in accordance with Section 5 and Exhibit C of the Agreement.



DrFirst.

- b. NMC may purchase additional licenses through execution of an Amendment to this Agreement with a quote attached from DrFirst stating the number of licenses, applicable prices, and that no other terms of this Agreement are modified.



SCHEDULE 1

Token Warranty and IDP Management Fee

Token Warranty

A complimentary token shall be provided by DrFirst for each license purchased. Free replacement tokens shall be furnished for any reason within the first three months of issuance. No warranties exist for the token after 3 months of issuance.

IDP Management

1. Fee: \$25; this fee includes the cost of identity proofing services, replacement of token and switching services related to Token Management.
2. In the event a token is lost, stolen or damaged and a secondary back-up token (hard or soft) is not registered to the Authorized End User's EPCS account, the Authorized End User must undergo the identity-proofing process again and must pay the token management replacement fee specified in Schedule 1 regardless of whether or not the replacement token was issued by DrFirst.

Note: Tokens are used for two factor authentication, which is a requirement for electronic prescribing of controlled substances by the DEA.



DrFirst

SCHEDULE 2

Description of Support Services

- A. DrFirst shall correct any failure of the Application to perform in accordance with the requirements of this Agreement or applicable software specifications ("Defect"), and (ii) provide such services and repairs required to maintain the Application so that it operates properly and in accordance with the requirements of this Agreement.
- B. **First Tier Support.** NMC shall call MEDITECH for all support issues. MEDITECH will provide First Level Support to NMC and its users. First Level Support consists of the following:
- i. providing assistance to NMC physicians and staff and the routine end-user support of NMC physicians and staff, including, but not limited to password support, answering trainings questions related to the use of the system, assisting with registration issues, etc.;
 - ii. responding to questions from NMC and its users regarding Application, Integrated Offering or Application Documentation;
 - iii. responding to questions from NMC regarding the Integrated Offering usage;
 - iv. diagnosis of failures;
 - v. determining if the Defect is the result of a configuration problem;
 - vi. determining if the Defect is the result of user error;
 - vii. confirming that the Defect is caused by the Application;
 - viii. determining if a Defect is a known problem; and
 - ix. using every reasonable effort to reproduce the reported Defect.
- C. Defects reported by NMC to MEDITECH will be assigned a priority.
- D. **Second Tier Support.** In the event the Defect cannot be resolved under First Level Support, MEDITECH will contact DrFirst to provide Second Level Support. "Second Level Support" means responding to and solving significant Defects relating to the Application that cannot be resolved under First Level Support, such as bug fixes, updates and other serious performance issues, and recommending and distributing such fixes and methods to restore operations. DrFirst will respond to the Defect in accordance with the following Priority Levels

Priority 1 A Defect that renders the Application or any Exhibit completely inoperable or materially impairs operation of the Application. DrFirst will respond to Priority 1 Defects within thirty (30) minutes of MEDITECH's call for assistance to DrFirst within normal business hours and within one (1) hour outside of normal business hours. DrFirst will use best efforts to repair the Defect promptly.

Priority 2 A Defect that impairs features or aspects of the Application or any Exhibit but is less urgent than a Priority 1 and for which an impairment may be circumvented. DrFirst will respond to Priority 2 Defects within one (1) business day of MEDITECH's call for assistance to DrFirst whether or not the issue requires repair. If DrFirst determines the Defect needs to be repaired, DrFirst shall notify MEDITECH and communicate the appropriate timeframe for this fix.



DrFirst

Exhibit C Fee Structure

1. Pricing

A. RcopiaAC MedHx and DischargeRX

Service Type	July 1 st 2017 to June 30 th 2018	July 1 st 2018 to June 30 th 2019	July 1 st 2019 to June 30 th 2020
Rcopia AC	\$62,000	\$62,000	\$62,000

This price is based off Natividad's current rate at \$151,439,879

- i. **Overage Charges.** NMC has unlimited usage for Intended Queries. As per Section 2(c) of Exhibit A, if NMC's monthly usage of the MedHx Service for Intended Queries exceeds one-hundred and twenty per cent (120%) of the estimated queries by DrFirst, then DrFirst shall have the right to charge NMC at a rate of \$0.75 per overage after undergoing the process set forth in Section 2(c) of Exhibit A. These estimated Intended Queries are currently at 3,849 patients per month.

B. RcopiaAC EPCS Gold

Service Type	First Year License Fees (300 providers)	Second Year License Fees (300 providers)	Third Year License Fees (300 providers)
EPCS	\$21,000	\$21,000	\$21,000

EPCS is subject to additional terms in Exhibit B.

Additional costs for replacement tokens (ONLY if needed) as per Schedule 1 of this Agreement.....\$50.00

TOTAL COST OF THIS AGREEMENT SHALL NOT EXCEED \$249,000. Sales tax is not applicable to electronic software (ie; no tangible media) and therefore does not apply.

2. Payment

A. RcopiaAC Medhx

- i. Upon execution of this Agreement, NMC shall pay to DrFirst an initial payment for the license fee for the RcopiaAC MedHX and DischargeRx modules. The license fee will be invoiced upon the Activation Date (scheduled to be invoiced in June 2017).
- ii. Annual Renewal: NMC shall be invoiced on the anniversary of the Activation Date

B. RcopiaAC EPCS Gold

- i. If at any time during the Term the number of EPCS providers exceeds the number of providers specified above, NMC agrees to pay a prorated fee that applies to the new user count at a rate at least as favorable as the rates originally paid hereunder by NMC. Nothing in this section shall prohibit DrFirst from increasing the rate in the event of a renewal or extension of the Term; provided DrFirst shall give advanced notice of any rate increase at least ninety (90) days from the renewal date of the Term.
- ii. The Initial Payment for year one will be invoiced upon execution of the Agreement. The County Auditor-Controller shall pay the amount in accordance with Section 3 of the Agreement.
- iii. The term of the license begins on the date when the first provider writes a Narcotic Script ("Activation Date"). NMC shall be invoiced for further license fees on the anniversary of the Activation Date.
- iv. Token Fees as per Schedule 1 attached hereto this Agreement.

All Fees Stated. Except as set forth in this Exhibit, or as otherwise agreed pursuant to a valid modification of this Agreement, there are no other fees or costs to be paid by NMC under this Agreement.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") effective July 1, 2017 ("Effective Date"), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and DrFirst.com, Inc. ("Business Associate") (each a "Party" and collectively the "Parties").

RECITALS

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information ("PHI") that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the "Privacy Rule"), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the "Breach Notification Rule"), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the "Security Rule"), (collectively "HIPAA"), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

E. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI") shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

(a) "Breach" shall have the same meaning as "breach" as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

the PHI; the term "Breach" as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient's "medical information" as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a "breach of the security of the system" under Cal. Civil Code §1798.29.

(b) "California Confidentiality Laws" shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity's behalf. **PHI includes EPHI.**

(d) "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) Use PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45 C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached;

(f) Use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to a Services Agreement between the Parties, or with the prior written approval of Covered Entity.

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1. Responsibilities of Business Associate. With regard to its Use and/or Disclosure of PHI, Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within forty-eight (48) hours of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, attorney fees, and costs of mitigating the harm (which may include the costs of obtaining up to one year of credit monitoring services and identity theft insurance) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services ("Secretary") in a time and manner designated by the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule. In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI for purposes of determining whether Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable written request by Covered Entity;

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed; and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

(h) Disclose to its Subcontractors or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) If all or any portion of the PHI is maintained in a Designated Record Set:

(i) Upon ten (10) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; and

(ii) Upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(k) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(l) Unless prohibited by law, notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge; and

(m) Maintain policies and procedures materially in accordance with State Confidentiality Laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

3.2 Business Associate Acknowledgment.

(a) Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA and the HITECH Act. Business Associate shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy>.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) Provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) Notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI;

(c) Notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the Use or Disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; and

(d) Notify Business Associate of any restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

4. TERM AND TERMINATION

4.1 Term. This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

4.2 Termination. If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA and any underlying Services Agreement; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity.

4.3 Automatic Termination. This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (v) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This BAA may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA, the HITECH Act, or California Confidentiality Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

DrFirst.com, Inc.
Attn: Legal
9420 Key West Ave., Ste. 101
Rockville, MD 20878
Phone: _____
Fax: _____
Email: dfnotice@drfirst.com

If to Covered Entity, to:

Natividad Medical Center
Attn: Compliance/Privacy Officer
1441 Constitution Blvd.
Salinas, CA 93906
Phone: 831-755-4111
Fax: 831-755-6254

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Relationship of Parties. Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

5.7 Choice of Law; Interpretation. This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

5.8 Indemnification. Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

any claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a material violation of this BAA or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.

5.9 Applicability of Terms. This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

5.10 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual action, proceeding, regulatory or governmental orders or actions, that becomes known to it that may affect the interests of Covered Entity under this BAA or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual legal action or proceeding, except to the extent prohibited by law.

5.11 Audit or Investigations. Promptly, but no later than fifteen (15) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit, compliant review, or complaint investigation by the Secretary or other state or federal agency related to Business Associate's compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws.

[Signatures on the following page]

*Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16*

Exhibit D

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf as of the Effective Date.

BUSINESS ASSOCIATE

COVERED ENTITY

By: Edward C. Lee By: _____
Print Name EDWARD C. LEE Print Name: _____
Print Title Chief Administrative Officer Print Title: _____
Date: 8/10/2017 Date: _____

AB

ABereton
Dep. COO
8.16.17

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller 8/17/17
County of Monterey

Approved by the County of Monterey Board of Supervisors on 11/01/16
and revised on 12/09/16



DrFirst

Exhibit E Data Security

- **DrFirst's Internal Network.** DrFirst shall take all appropriate security precautions to prevent malicious or unauthorized access to NMC's systems and maintain the accuracy and integrity of NMC Data, including, but not limited to (i) appropriate protection barriers, firewalls, and logically secure areas and (ii) appropriate levels of internal controls for granting access to source code, data, graphics, audio/visual materials and the like used in performing the services, including the use of two factor identification systems to allow limited and controlled access to DrFirst's internal network for access to the NMC Data to ensure that NMC Data, including without limitation source code, data, graphics and other materials are protected from malicious or unauthorized access. For purposes of this Agreement, "NMC Data" means all data related to the business of NMC or Personal Information (as defined below) of or relating to its employees, customers, suppliers, or contractors (collectively, "NMC Data").
- **Ownership.** DrFirst acknowledges that NMC is the sole owner of all of NMC Data.
- **Data Security.** DrFirst will establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, corruption, loss or alteration of NMC Data and to prevent access, intrusion, alteration or other interference by any unauthorized third parties of the same, that are: (i) no less rigorous than those maintained by DrFirst for its own information or the information of its customers of a similar nature; and (ii) no less rigorous than the accepted practices in the industry. Without limiting the generality of the foregoing, DrFirst will: (a) house all equipment in environmental conditions at least equivalent to those recommended by the manufacturers; (b) house all equipment in physically secure premises protected at least by fire and flood protection and access controlled doors; and (c) utilize state-of-the-art virus and intrusion checking software and firewalls.
- **SSAE 16 Audit.** On an annual basis, DrFirst will provide a SSAE 16 Type II audit report, which shall include information on the physical, logical security, change management and backup/recovery of systems.
- **Breach of Data Security.** DrFirst agrees to notify NMC within forty-eight (48) hours of DrFirst's discovery of any breach of DrFirst's data security procedures that results in any actual or threatened loss, corruption, unauthorized disclosure, transmission, or alteration of the NMC Data. In such an instance, in addition to DrFirst's other obligations under this Agreement, or under any law or regulation, DrFirst agrees to remedy promptly any such breach and to fully cooperate with NMC in resolving such breach and mitigating any damage from such breach. Notification to NMC's personnel and customers will be at DrFirst's cost. Additionally, DrFirst agrees to indemnify NMC for any costs and expenses incurred by NMC arising out of such security breach, privacy breach or breach of privacy regulations, including the reasonable costs associated with two years of free credit monitoring for any NMC customers whose data was affected by the breach.
- **Encryption.** DrFirst shall provide encrypted communications for any communications that contain protected health information as requested by NMC between DrFirst and NMC as otherwise agreed upon by the Parties.
- **Security and Business Continuity Plan.** DrFirst will develop a draft security, business continuity and disaster recovery plan. The plan is incorporated with this reference. Such plan at a minimum will reflect appropriate and effective administrative, technical and physical safeguards, in compliance with all applicable laws, to preserve the integrity, confidentiality, and availability of and to prevent unauthorized or prohibited use of NMC Data. DrFirst will keep such plans current.
- **Data Privacy.** In the event the NMC Data consists of Personal Information, in whole or in part, DrFirst will comply with the following provisions:
 - **Definition.** "Personal Information" shall mean all information received by DrFirst in any tangible or intangible form that relates to or personally identifies any NMC employee, customer, agent, end user, or representative. Examples of Personal Information may include, but are not limited to individual names, addresses, phone numbers, email addresses, purchase history, employment information,



financial information, medical information, credit card numbers, social security numbers, and product service history.

- DrFirst represents and warrants that it has developed and continues to maintain a comprehensive written information security program ("WISP") that is consistent with industry standards, that reflects the size and type of DrFirst's business as well as the volume and nature of data, and that contains administrative, technical, and physical safeguards to ensure the security and confidentiality of NMC Data.
- DrFirst's WISP shall include, but shall not be limited to:
 - (a) Designating one or more employees to maintain the WISP;
 - (b) Identifying and assessing reasonably foreseeable internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing NMC Data, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to: (i) ongoing employee (including temporary and contract employee) training; (ii) employee compliance with policies and procedures; and (iii) means for detecting and preventing security system failures.
 - (c) Developing security policies for employees that take into account whether and how employees should be allowed to keep, access and transport records containing NMC Data outside of business premises.
 - (d) Imposing disciplinary measures for violations of the WISP.
 - (e) Preventing terminated employees from accessing records containing NMC Data by immediately terminating their physical and electronic access to such records, including deactivating their passwords and user names.
 - (f) Taking reasonable steps to verify that sub-contractors or service providers (collectively "sub-contractor(s)") with access to NMC Data have the capacity to protect such NMC Data, including (i) selecting and retaining sub-contractors that are capable of maintaining safeguards for NMC Data; and (ii) contractually requiring sub-contractors to maintain such safeguards. Prior to permitting sub-contractors to NMC Data, the person permitting such access shall obtain from the sub-contractor a written certification that such sub-contractor has a written, comprehensive information security program that is no less rigorous than the requirements of this Appendix.
 - (g) Limiting the amount of NMC Data collected to that reasonably necessary to accomplish the legitimate purpose for which it is collected; limiting the time such information is retained to that reasonably necessary to accomplish such purpose; and limiting access to those persons who are reasonably required to know such information in order to accomplish such purpose or to comply with state or federal record retention requirements.
 - (h) Identifying paper, electronic and other records, computing systems, and storage media, including laptops and portable devices used to store NMC Data, to determine which records contain NMC Data, except where the WISP provides for the handling of all records as if they all contained NMC Data.
 - (i) Reasonable restrictions upon physical access to records containing NMC Data, including a written procedure that sets forth the manner in which physical access to such records is restricted; and storage of such records and data in locked facilities, storage areas or containers.
 - (j) Regular monitoring to ensure that the WISP is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of NMC Data; and upgrading information safeguards as necessary to limit risks.



(k) Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing NMC Data.

(l) Documenting responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of NMC Data.

- DrFirst's WISP shall include the establishment and maintenance of a security system covering its computers, including any wireless system, that, at a minimum, shall have the following elements:

(a) Secure user authentication protocols including:

- (i) control of user IDs and other identifiers;
- (ii) a reasonably secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;
- (iii) control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
- (iv) restricting access to active users and active user accounts only; and
- (v) blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system;

(b) Secure access control measures that:

- (i) restrict access to records and files containing NMC Data to those who need such information to perform their job duties; and
- (ii) assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, that are reasonably designed to maintain the integrity of the security of the access controls;

(c) To the extent technically feasible, encryption of all transmitted records and files containing NMC Data that will travel across public networks, and encryption of all data to be transmitted wirelessly;

(d) Reasonable monitoring of systems, for unauthorized use of or access to NMC Data;

(e) Encryption of all NMC Data stored on laptops or other portable devices;

(f) For files containing NMC Data on a system that is connected to the Internet, there must be reasonably up-to-date firewall protection and operating system security patches, reasonably designed to maintain the integrity of the personal information;

(g) Reasonably up-to-date versions of system security agent software which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis; and

(h) Education and training of employees on the proper use of the computer security system and the importance of information security.



DrFirst.

- System Access. In the event the Services require DrFirst to access NMC's systems or network, NMC shall provide DrFirst access to NMC's systems and network as required under the following terms and conditions.
 - Access from External Networks. DrFirst agrees that no access from external networks, including the internet, will be permitted unless strong authentication and encryption is used for such access. DrFirst shall maintain an access control list for all access to the internal network from an external network and DrFirst agrees that any of its servers exposed to the internet that contain NMC Confidential Information or Personal Information run on a hardened operation system. In addition, any internet facing server must have a demilitarized zone ("DMZ") that sits between it and DrFirst's network. The DMZ must be separated by firewalls at each border.
 - Use of On-Site Hardware and Software. NMC may provide DrFirst personnel with access to computers, printers, data transmission lines, software, and similar items (collectively, "Hardware") so that DrFirst can better perform its obligations under the Agreement. DrFirst must use all Hardware provided to it solely as necessary for the provision of Services to NMC. DrFirst acknowledges that all such Hardware are owned by NMC. DrFirst shall not pledge as collateral or otherwise allow any liens or encumbrances upon NMC's Hardware. DrFirst further agrees to execute any license, sublicense or other agreement that may be needed to access software contained in the NMC's Hardware or other systems.
 - Viruses and Corrupted Data. DrFirst shall scan any material intended for electronic transmission to or on behalf of NMC in any format (i.e., e-mail, file transfer, diskette tape, etc.) for viruses and/or other malicious computer programs before transferring such material.
 - Policies. DrFirst shall review and make commercially reasonable efforts to comply with any further NMC Information Security policies as may be provided to DrFirst.