



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-13725, Amendment No. 1

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Chris Lopez to:

a. Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute amendment No. 1 to the agreement (A-13725) with DrFirst.com Inc. (DrFirst) for the Controlled Substance Utilization Review and Evaluation System (CURES), which gives access to California's Prescription Drug Monitoring Program (PDMP), adding \$18,060 for a revised total agreement amount not to exceed \$267,060, with no changes to the term of the Agreement of July 1, 2017 through June 30, 2020.

b. Approve the NMC Chief Executive Officer's recommendation to accept non-standard indemnification provisions within the amendment.

PASSED AND ADOPTED on this 27th day of August 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

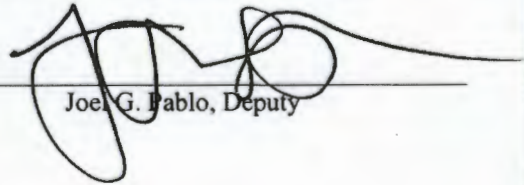
NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting August 27, 2019.

Dated: August 28, 2019
File ID: A 19-324
Agenda Item No.: 33

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Joe G. Pablo, Deputy

AMENDMENT NO. 1 TO THE MASTER AGREEMENT FOR PDMP ACCESS

This Amendment No. 1 (the "Amendment") is hereby made a part of a certain Master Agreement dated July 1, 2017 (the "Agreement"), by and between DrFirst.com, Inc., a Delaware corporation having its principal place of business at 9420 Key West Avenue, Suite 101, Rockville, Maryland 20850 ("DrFirst") and Natividad Medical Center ("NMC"), having its principal place of business at 1441 Constitution Blvd Salinas, CA 93906 ("Company") (collectively, the "Parties").

WHEREAS, DrFirst and Company entered into a Master Agreement effective on July 1, 2017 for certain technology services as defined in the Agreement; and

WHEREAS, DrFirst offers a platform for the provision of the electronic prescribing ("Rcopia"); and

WHEREAS, DrFirst offers Authorized End Users access to state PDMP through Rcopia with PDMP Access; and

WHEREAS, Company wishes to add PDMP Access to the Rcopia Application for its Authorized End Users and to further enhance the Application(s) described in the Agreement, as amended;

NOW THEREFORE, the Parties agree as follows:

1. Definitions.

- a. The definition of 'Application' set forth in section 1.1 of the Agreement shall be amended to include PDMP Access. All Terms included within the Agreement shall apply to PDMP Access Application, including but not limited to the license grants and limitations set forth in Section 2 of the Agreement.
- b. "Authorized End User(s)" shall have the same definition as described in the Agreement, limited to health care practitioners that are validly licensed to practice in accordance with the terms of their licensure and have been properly authenticated to the PDMP, as may be required by applicable law.
- c. "Administrator(s)" shall mean an individual or individual(s) designated by Company to access the Application, who has properly authenticated to the PDMP and is authorized to access the PDMP where required by state law, to facilitate the provision of PDMP Data to Authorized End Users, or to perform administrative or technical functions in connection with the Application.
- d. "PDMP" shall mean the prescription monitoring program(s) that collect prescription drug dispensing information from prescribers and/or dispensers in accordance with applicable state law.
- e. "PDMP Data" shall include prescription history information maintained by and accessed through the PDMP.

2. DrFirst PDMP Access Obligations

- a. DrFirst shall provide Company and its Authorized End Users and Administrators with access to PDMP Data through Company's access to the Rcopia Application.
- b. DrFirst shall provide Company with training materials and will assist Company in completing all necessary onboarding processes.
- c. DrFirst shall require each Administrator and Authorized End User to agree to the applicable click through Terms of Use, which may be modified from time to time by DrFirst. A sample Terms of Use has been provided as Exhibit 2 of this Amendment. The PDMP Access Terms of Use will be amended and in addition to any previously executed Terms of Use agreed to by Authorized End Users for their access to Rcopia.

3. Company PDMP Access Obligations

- a. Company acknowledges that in order to access the PDMP Data, it must have an active license and access to the DrFirst Rcopia Application.
- b. Company represents and warrants that, as applicable, it has effectuated credentialing and identity validation processes that adhere to all applicable state and federal laws and rules regarding access to PDMP information.
- c. Company agrees to provide DrFirst proof of its state-issued authorization to access PDMP Data, if such authorization is required by applicable law.
- d. Company agrees to coordinate with DrFirst to assist in the completion of all necessary approval documentation required for Company to gain access to the PDMP.
- e. Company agrees that it shall not sublicense, transfer, sell, disclose, export or otherwise permit access to or use of PDMP Data acquired through the Application.
- f. To the extent that the Appriss network is the source of the PDMP data, Company represents and warrants that it is not currently under formal investigation, indictment, or prosecution and has not been convicted, disciplined, or sanctioned within the preceding five (5) years by any governmental entity or self-regulation program for violation of any government laws or regulations under or related to health care, drugs, or criminal acts.
- g. To the extent that the Appriss network is the source of the PDMP data, Company agrees, and Company agrees to contractually obligate its Customers and Authorized PDMP End Users, to indemnify, hold harmless, and defend DrFirst, the National Association of Boards of Pharmacy, Appriss, and each of their respective officers, directors, employees, members, contractors and affiliates from and against any losses, liabilities, costs (including reasonable attorneys' fees), or damages resulting from any third-party claim in which any above-named party is named as a result of any access or use of the Application by Company or its Authorized PDMP End Users or Administrators.
- h. To the extent that the CURES network is the source of the PDMP data, Company agrees that it shall be the responsibility of Company and Company Authorized End Users, which may consist of healthcare practitioners and/or pharmacists, to verify through the CURES portal that their CURES account profiles are current, which shall include, at a minimum, completion of the annual update, and that they possess active CURES account. The failure of healthcare practitioners and pharmacist to complete the annual update or maintain an active CURES account status will result in rejection of their queries.
- i. Company shall pay the fees set forth in Exhibit 1, in accordance with the terms of the Agreement.

4. Miscellaneous Terms for all Services.

- a. **Payment.** Company shall pay DrFirst in accordance with the pricing terms set forth in the Agreement and in Exhibit 1 of this Amendment.
- b. **Applicability of Master Agreement.** All Sections of the Agreement shall apply to the provision of the Application. To the extent any provision of the Agreement conflicts with this Amendment, the Terms of this Amendment shall control.
- c. **Term and Termination.** Company shall engage DrFirst to provide the Application concurrent with the Term of the Agreement executed on July 1, 2017 (Effective Date), and may terminate this Amendment separate from other contracted services, subject to the termination provision of the Agreement. In the event that DrFirst no longer maintains access to the PDMP, DrFirst may terminate the PDMP Access portions of this Amendment at any time with ninety (90) days' advance written notice to Company.
- d. **Third Party Beneficiaries.** The National Association of Boards of Pharmacy shall be third party beneficiaries to this Amendment.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned Parties acting as duly-authorized agents of their organization intend to bound their organization to the foregoing terms:

County of Monterey on behalf of

Natividad Medical Center ("Company")

By: 

Name: Gary R. Gray

Title: Chief Executive Officer

Date: 8/30/19

DrFirst.com, Inc.

By: 

Name: David Samuels

Title: Chief Financial Officer

Date: 8/1/19


Monterey County Deputy Auditor/Controller

Date: 8-15-19

approved as to form

Monterey County Deputy County Counsel

Date: 8/5/19

Exhibit 1: Pricing Schedule

1. Payment Terms:

- a. The 1st Year initial payment will be invoiced after execution. 2nd and 3rd Year payments will be invoiced at the applicable anniversary of this addendum's effective date.
- b. The fees indicated on this Exhibit are in addition to the Rcopia AC annual license fees and onboarding fees that are already included within the Agreement.

2. Annual License Fee:

- a. For PDMP Access:

Bed Count	1 st Year Fee	2 nd Year Fee	3 rd Year Fee
172	\$6,020	\$6,020	\$6,020

3. Service Maintenance Fee:

- a. For PDMP Access: Company will pay an annual Service License Fee due under Section 2(a) of this Exhibit. The Service License Fee will be due to DrFirst after execution of the Amendment as per the payment provisions in the Agreement Section 3.1, and then due annually on the anniversary of execution thereafter, for renewal years 2 and 3.
- b. In the event Company's bed count increases materially, or DrFirst's cost of obtaining PDMP Data increases, DrFirst shall have the right to increase the Service Maintenance Fee accordingly. Any such adjustment shall become binding by a written amendment signed by both parties.
- c. Service Hosting Fee:
Company will pay an annual service hosting fee of \$0, also due upon execution and on the anniversaries for the second and third year renewals, to DrFirst which will cover grant of access through the third party hosting service that DrFirst has contracted with in the State where Company is obtaining access.
- d. In the event Company's bed count increases materially, or DrFirst's cost of obtaining PDMP Data increases, DrFirst shall have the right to increase the Service Hosting Fee accordingly. If bed count does not exceed ___ then total amount will not exceed ___. Beyond ___ bed count, the Parties will agree to such adjustment by a written amendment signed by both Parties.

Exhibit 2:

PDMP Access Authorized End User Terms of Use

Through your use of DrFirst's Application, you may have access to prescription drug monitoring program (PDMP) data made available to you through your state, a third-party provider, and DrFirst. The following Terms apply specifically to your access and use of PDMP Data through PDMP Access:

- 1) I agree that I shall only access or use DrFirst PDMP Access in accordance with applicable state and federal laws and regulations, and that I am solely responsible for ensuring my access of the PDMP is authorized by the state in which I practice.
- 2) I shall not engage in unlawful, objectionable, or malicious conduct or activities in accessing PDMP Data, including but not limited to, the transmission or distribution of viruses, computer worms, Trojan horses, malicious code, denial of service attacks, unsolicited commercial e-mail, the unauthorized entry to any other machine accessible via DrFirst PDMP Access, the unauthorized submission or transmission of data or material protected by a proprietary right of a third party, or the submission of otherwise objectionable information, material, or communications.
- 3) I agree that I will not decompile, disassemble, deconstruct, or reverse-engineer any PDMP Data that is retrieved through the DrFirst application with PDMP Access.

By clicking this box, you understand that, in addition to these PDMP Access Terms of Use, you are subject to all applicable federal and state laws for the electronic prescribing of controlled substances and access to your state's laws and regulations regarding access and use of prescription drug monitoring program data.