



DRFIRST FACILITY MASTER SERVICES AGREEMENT

This Facility Master Services Agreement (“MSA”) is entered by and between DrFirst.com, Inc. (“DrFirst”) and the entity identified on the last page of this MSA, including its affiliates and subsidiaries (referred to collectively, as “County”), as of December 17, 2019 (the “Effective Date”). This MSA is intended to operate together with one or more product addendums (each, an “PA”) and, statements of work (each, an “SOW”). This MSA, any PAs, SOWs, and any exhibits incorporated therein are hereinafter referred to, collectively, as “the Agreement.” In the event of a conflict between this MSA and a PA the terms of the PA shall govern. Notwithstanding the foregoing, the terms of a PA will only apply to that PA and no PA will constitute an amendment to the terms of this MSA.

- I. DrFirst Services. DrFirst provides software applications, platforms, and services for electronic prescribing, medication management, secure texting, and related products (“the Applications”) for use by Authorized End Users. As used herein, the term Authorized End User means an individual who (i) has registered with DrFirst as a user of an Application; (ii) is authorized by virtue of such individual’s relationship to, or permissions from, County to access DrFirst Applications pursuant to the PA; and (iii) has executed the terms of use agreement applicable to the Application. Access to Applications provided by DrFirst shall be subject to the terms of this Agreement.
- II. County Obligations for all Applications. County shall identify an individual employee or representative, who shall register with DrFirst as the “Application Administrator”, to administer each Application described in a PA. After the initial registration, County shall be responsible for granting and revoking access to the Application through its administrative features. County shall obtain consents or authorizations from patients to allow County to use and disclose patient information and records through the Applications. County shall ensure that County’s use of the Application, and access by Authorized End Users, complies with applicable laws and regulations. To the extent applicable, County shall ensure that its Authorized End Users use the most up to date version of the Applications and will be responsible for any failure to do so. County’s Authorized End Users must execute DrFirst’s terms of use, as updated from time to time, prior to use of any Application. Detailed County obligations are established in the PA. The parties agree to abide by the terms of the Business Associate Agreement attached hereto as Exhibit A and incorporated herein.
- III. Ownership of Software, Products and Intellectual Property. Subject only to the limited rights expressly granted to County in an PA, DrFirst has sole and exclusive rights to the DrFirst Brand, the Application, the software associated with the Application, including interface software, and all related materials, including all copies thereof in any form or medium, whether now known or existing or hereafter developed, and including all copyrights, patents, trade secrets, trademarks, trade names and intellectual property rights associated therewith. All goodwill arising in or from the DrFirst Brand shall inure solely to DrFirst’s benefit. County shall not: (i) attempt to de-compile, reverse assemble, reverse engineer, or attempt to gain access to the source code of any software furnished by DrFirst; (ii) import, add, modify or create derivative works of any such software or user materials; (iii) delete data in any such software database by any method other than direct data entry through the Application, or through a DrFirst developed interface; or (iv) remove any proprietary notices, labels, or marks from any software or user materials provided by DrFirst. The software, user materials, and other rights granted herein may not be transferred, leased, assigned, or sublicensed without DrFirst’s prior written consent, except to a successor in interest. In the event of any unauthorized transfer, County’s rights under the Agreement shall automatically terminate.
- IV. Confidentiality. During the performance of this Agreement, each party may have access to certain confidential information of the other party or third parties (“Confidential Information”). Both parties agree that all Confidential Information is proprietary to, and shall remain the sole property of, the disclosing party or such third party, as applicable. Except as required by applicable law, each party receiving Confidential Information shall (i) use the Confidential Information only for the purposes described herein; (ii) not reproduce the Confidential Information except as minimally necessary to use under this Agreement; (iii) hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iv) not create any derivative work from Confidential Information ; (v) 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 are under an obligation of confidentiality with respect to the Confidential Information; and (vi) to the extent not prohibited by law, return or destroy all Confidential Information in its possession upon termination or expiration of the Agreement. Confidential Information does not include information that is: (i) publicly available or in the public domain, through no fault of the recipient; (ii) already in the recipient’s possession free of any confidentiality obligations with respect thereto at the time of disclosure; (iii) independently developed by the recipient without access or reference to the Confidential Information disclosed by the other Party; (iv) approved for release or disclosure by the disclosing Party without restriction.



- V. Compliance With Privacy Laws. The parties agree to comply with all applicable state and federal laws and regulations governing the protection of protected health information, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, all implementing laws and regulations related thereto, and the Business Associate Agreement attached hereto as Exhibit A and incorporated by reference.
- VI. Data Handling. DrFirst may de-identify any and all protected health information and other data provided to it by County. De-identified data may be used for any lawful purpose; provided, however, that the use does not identify County or the Authorized End User. County shall allow DrFirst and Surescripts, without notice, the ability to access, inspect, and review all records related to information and Medication History Information provided by or through the Surescripts network through the Application.
- VII. Use of Medication History Information. County agrees that it will only use medication history information provided by an Application ("Medication History Information") for the purpose of providing direct health care services to a County patient. Certain services are provided over a network operated by Surescripts, LLC ("Surescripts"). County 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. County 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. County is not required to release and hold harmless any party whose conduct is found to be willfully malicious or reckless or grossly negligent. County agrees to confirm the accuracy of the Medication History Information with the patient prior to providing any medical services based thereon and County agrees that its Authorized End Users shall use their professional judgment in the provision of care. County acknowledges that the Medication History Service shall be used only for those patients from whom County has obtained prior consent of the patient to access such patient's medication history. Other than in the course of treatment for the County's patient, County 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. County 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. County shall not use any Medication History Information for any reason, whether in aggregated form or otherwise, except for the sole purpose of treating a County patient.
- VIII. Influencing of Providers and Conflict of Interest. County shall not use any means, program, or device to influence or attempt to influence the decision of an Authorized End User to write a prescription for a certain medication or to send the prescription to a certain pharmacy. Information related to formulary and benefit plan design and information from payers or other reputable sources providing clinical information shall be exempt from this prohibition, so long as the Authorized End User can still access all pharmaceuticals and the Authorized End User or patient is not prohibited from selecting a pharmacy. DrFirst shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of County in an attempt to secure favorable treatment regarding this MSA. County, by written notice, may immediately terminate this MSA if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of County with respect to the proposal and award process. DrFirst shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from DrFirst. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, County is entitled to pursue any available legal remedies. DrFirst shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and County. DrFirst shall make a reasonable effort to prevent employees, DrFirst, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by County and such conflict may constitute grounds for termination of the MSA. This provision shall not be construed to prohibit employment of persons with whom DrFirst's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.
- IX. Availability of Data Sources. County acknowledges and agrees that any pharmacy, pharmacy benefit manager, payer or plan may elect not to receive prior authorizations from County or County's Authorized End Users. County acknowledges and agrees that any pharmacy benefit manager, pharmacy, payer, or other source of data may be added or deleted at any time without prior notice to County.



- X. Audit Rights. County shall allow DrFirst, without notice, the ability to access, inspect, and review all records related to the services provided by DrFirst through its application. County, shall have the right to request to review and audit all records, books, paper, documents related to the Services provided under this MSA, no more than once annually. DrFirst will keep a record of such books and records for up to a period of two years after final payment under this MSA.
- XI. WARRANTIES AND DISCLAIMERS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DRFIRST DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. DRFIRST DOES NOT WARRANT THAT THE APPLICATION WILL MEETCOUNTY'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED OR ERROR-FREE.
- XII. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY, ITS AGENTS OR REPRESENTATIVES BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER ON ACCOUNT OF ANY LOSS OR CLAIM CAUSED BY THE FAILURE OF COUNTY OR ANY OF ITS EMPLOYEES, AGENTS, PROVIDERS OR REPRESENTATIVES TO PERFORM ANY OBLIGATIONS UNDER THIS AGREEMENT. THE CUMULATIVE LIABILITY OF DRFIRST TO COUNTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED ONE HUNDRED AND EIGHTY THOUSAND DOLLARS (\$180,000). THE FOREGOING LIMITATIONS WILL NOT APPLY TO AMOUNTS ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- XIII. Indemnification and Insurance. DrFirst agrees to hold harmless, indemnify, and, at County's option, defend County from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from: (i) misuse of data by DrFirst in violation of Section V; (ii) any breach by DrFirst of Confidentiality obligations in Section IV; and (iii) an Infringement Claim which, for this purpose, means a claim by any third party that an Application, infringes that third party's U.S. patents issued as of the effective date of the applicable PA, or infringes or misappropriates such third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America. DrFirst's duty to indemnify County under this section does not apply to the extent any claim, actions, or liability of any kind arises out of the acts or omissions of County, its officers, agents, or employees. A party claiming indemnification must promptly notify the indemnifying party, in writing, of a potential claim and must cooperate with the indemnifying party at the indemnifying party's expense. The indemnifying party will not settle any third-party claim against the indemnified party unless such settlement completely and forever releases the indemnified party from all liability with respect to such claim or unless the indemnified party consents to such settlement. Except with respect to Infringement Claims, the indemnified party will have the right, at its option, to defend itself against any such claim, through counsel reasonably acceptable to the indemnifying party or to participate with the indemnifying party in the defense thereof through counsel of its own choice. With respect to Infringement Claims, County will give DrFirst sole control of the defense and settlement of such claim; provided that DrFirst may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. DrFirst may, in its sole discretion, (i) acquire for County the right to continue use of the Application; (ii) modify or replace any infringing Application to make it non-infringing; or (iii) direct County to cease use of, and, if applicable, return, such materials as are the subject of the Infringement Claim. DrFirst shall reimburse County for all product and service fees necessitated by any such Infringement Claim. DrFirst shall not be obligated to indemnify County for an Infringement Claim if the alleged infringement arises, in whole or in part, from: (i) modification of the Application by County; (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, if such infringement would have been avoided by the use of a then-current release of the Application and if such then-current release has been made available to County. DrFirst agrees to provide insurance in accordance with the requirements set forth in Exhibit B, as attached hereto and incorporated herein.
- XIV. Term and Termination. This MSA will be effective from the Effective Date in accordance with the PA; provided, however that either Party may terminate the MSA as provided herein. Either party may terminate the MSA or any PA if the other party has breached the MSA or PA and failed to cure such breach within thirty (30) days of written notice setting forth, in reasonable detail, the nature of the breach and the action necessary to cure. This Agreement also may be terminated by either



party immediately upon written notice in the event that the other party makes a general assignment for the benefit of creditors or files a voluntary petition in bankruptcy or for reorganization or rearrangement under the bankruptcy laws, or if a petition for involuntary bankruptcy is filed against the other party and is not dismissed within thirty (30) calendar days after the filing, or if a receiver or trustee is appointed for all or any part of the property or assets of such other party. Upon termination, payment will be made to DrFirst for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice DrFirst shall promptly discontinue services. The termination or expiration of this MSA will also terminate all outstanding PA's upon the date of expiration or termination.

XV. Notices. All notices given pursuant to the Agreement shall be in writing and delivered either personally, via a nationally recognized overnight carrier, or by certified mail, return receipt requested, postage prepaid to the addresses set forth on the signature page of this MSA or an PA. Either party may change its address by specifying such change in a written notice given to the other in the aforesaid manner. A copy of any notice directed to DrFirst shall be sent to the attention of the DrFirst.com, Inc., Legal Department, 9420 Key West Avenue, Suite 101, Rockville, MD 20850, with a courtesy e-mail to: dfnotice@drfirst.com

XVI. Miscellaneous. This MSA may not be modified except by a written agreement signed by authorized representatives of each party. No waiver of rights hereunder shall be binding unless contained in a writing signed by an authorized representative of the party waiving its rights. The non-enforcement of any provision in a particular instance shall not constitute a waiver of such provision on any other occasion. No rights or obligations of a party may be assigned in whole or in part by either party without the prior written consent of the other. DrFirst may assign this Agreement, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that DrFirst provides County with ten (10) days' prior written notice of such assignment and County has the right to terminate this Agreement, if required by applicable law. Neither party shall be liable for failure to perform any of its obligations hereunder if such failure is caused by an event outside its reasonable control, including, but not limited to, an act of God, shortage of materials, personnel or supplies, war, or natural disaster. If any provision of this MSA is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent so declared, so that all remaining provisions of this MSA shall be valid and enforceable to the fullest extent permitted by applicable law. This MSA shall be governed by and interpreted in accordance with the laws of the state of California, without regard to conflicts of law principles thereof. The parties acknowledge and agree that this MSA was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this MSA will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this MSA is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District. Under no circumstances, shall the Agreement or any part thereof be subject to the Uniform Computer Information Transaction Act. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements. DrFirst certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). DrFirst further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State. The parties recognize and agree that their obligations under sections III, IV, VI, VII, XII, and XIII above shall survive the cancellation, termination or expiration of this MSA.

IN WITNESS WHEREOF, the Parties hereto have duly executed this MSA.

DrFirst.com, Inc. (DrFirst)

By: _____

Name/Title: _____

Date: _____

**County of San Bernardino on behalf of Arrowhead
Regional Medical Center**

By: _____

Name/Title: _____

Date: _____



EXHIBIT A DRFIRST FACILITY MASTER SERVICES AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the Facility Master Services Agreement (MSA) by and between DrFirst.com, Inc. (hereinafter Business Associate) and the County of San Bernardino Arrowhead Regional Medical Center (hereinafter Covered Entity). This Agreement is effective as of the effective date of the MSA.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the MSA, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the MSA in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

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

A. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
6. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
7. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
8. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
9. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
10. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).



B. Obligations and Activities of BA

1. Permitted Uses and Disclosures

BA may use or disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. The BA may de-identify PHI received or created pursuant to the MSA consistent with 45 C.F.R. § 164.514. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

2. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached MSA or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

3. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI. Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

4. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the substantially similar restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

5. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than five (5) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
 - a) Date the Breach or suspected Breach occurred;
 - b) Date the Breach or suspected Breach was discovered;
 - c) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
 - d) Number of potentially affected Individual(s) with contact information; and
 - e) Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than seven (7) calendar days of discovery of the Breach or suspected Breach to determine the following:



- a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
- b) The unauthorized person who had access to the PHI;
- c) Whether the PHI was actually acquired or viewed; and
- d) The extent to which the risk to PHI has been mitigated.

iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.

- a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
- b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.

iv. Make available to governing State and Federal agencies in a time and manner designated by governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall, within five (5) business days, forward such request to CE.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, within five (5) business days from the receipt of notice.

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

9. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE within five (5) business days of the request. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

10. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE will provide BA an opportunity to cure the breach or end the violation within thirty (30) days after the receipt of written notice from CE.

11. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

12. Breach by the CE



Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services for twelve (12) months.

15. Direct Liability

To the extent caused by BA, BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

16. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications. BA's duty to indemnify Company under this section does not apply to the extent any claim, actions, or liability of any kind arises out of the acts or omissions of CE, its officers, agents, or employees.

17. Judicial or Administrative Proceedings

CE may terminate the MSA, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

18. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the MSA for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

19. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

C. Obligations of CE

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
 - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
 - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.



iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

D. General Provisions

1. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

3. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the MSA or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the MSA or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). To the extent applicable, BA will comply with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records..

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality of a patient's PHI shall survive the termination of the MSA or this Agreement.



EXHIBIT A DRFIRST FACILITY MASTER SERVICES AGREEMENT
BUSINESS ASSOCIATE AGREEMENT
ADDENDUM 1 CLOUD SERVICES

This Business Associate Addendum for Cloud Services is in addition to and made a part of the Business Associate Agreement (BAA) entered into between the parties for the purpose of establishing terms and conditions applicable to the provision of hosted cloud computing services from Business Associate (BA) to the Covered Entity (CE). Capitalized terms shall have the same meaning as provided in the BAA.

1. DEFINITIONS

- a) **“Software as a Service (SaaS)”** – The software delivery method that provides CE access to BA’s software and its functions remotely as a Web-based service accessible from various CE devices through a thin client interface. CE does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **“Data”** - means any information, formulae, algorithms, or other content that CE or CE’s employees, agents and end users upload, create or modify using the SaaS. Data also includes user identification information, PHI, and metadata which may contain Data or from which the Data may be ascertainable. Data does not include data which has been de-identified in accordance with the MSA and the BAA.
- c) **“Data Breach”** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of BAA terms and/or applicable state or federal law.

2. SaaS and DATA AVAILABILITY: Unless otherwise stated in a Product Addendum (PA)):

- a) BA will ensure that the BA servers are available for use by CE or CE’s Authorized End Users twenty-four (24) hours a day, seven (7) days per week. DrFirst servers will be available to CE or CE’s Authorized End Users ninety-nine and ninety-five one hundredths percent (99.9%) of the time on an annual basis, excluding planned downtime for routine maintenance. Notwithstanding the foregoing, in no event shall unplanned downtime exceed one (1) hour per month or twelve (12) hours annually. BA will monitor and report downtime on BA 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 CE or CE’s Authorized End Users. BA may announce up to four (4) weekend outages per year for system maintenance and upgrade. Weekend outages may occur during the hours of 10:00 pm through 6:00 am EST. BA will provide CE with twenty-one (21) days advanced written notice of such planned weekend outages.
- b) To the extent necessary for the Application, BA will ensure that the connections to PBMs and to retail pharmacies will be available for use by CE’s authorized end-users twenty-four (24) hours a day, seven (7) days per week. These connections will be available to CE’s authorized end-users ninety-eight percent (98%) of the time on an annual basis, excluding planned downtime for routine maintenance. Routine maintenance will be performed outside of normal business hours and will not exceed twenty (20) hours per month without prior notification to CE or CE’s end-users. In the event any third party provider of electronic transmission of prescription services to BA is down, BA will reroute prescriptions through the fax service. BA shall ensure that, from the CE’s point of view, the failover to the fax service will be essentially transparent.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), CE shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the PA.
- d) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, CE may terminate the contract for material breach.
- e) BA reserves the right to modify these policies and procedures in its discretion. CE will be notified in writing at least ninety (90) day in advance of any revision.

3. DATA SECURITY:

- a) In addition to the provisions set forth in the BAA, BA shall certify to CE:
 - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS;
 - 2) Compliance with the following:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
 - ii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results shall be made available to CE upon CE’s request, no more than once annually.
- b) BA shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Addendum to secure such Data from Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt CE’s access to its Data.



- c) Solely in the case of a security breach or confirmed security incident, BA shall share SaaS security logs related to the services provided under this Addendum and CE Data, upon CE request and at no cost to CE.
 - d) BA assumes responsibility for the security and confidentiality of the Data under its control.
 - e) No Data shall be copied, modified, destroyed or deleted by BA other than for normal operation or maintenance of SaaS during the Addendum period without prior written notice to and written approval by CE.
 - f) BA shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill BA's obligations under this Agreement. BA will ensure that, prior to being granted access to Data, staff who perform SaaS work have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum and the associated BAA; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.
4. **ENCRYPTION:** BA warrants that all Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.
5. **DATA LOCATION:** All Data will be stored on servers located solely within the Continental United States.
6. **RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of CE, and BA has a limited, non-exclusive license to access and use the Data as provided to BA solely for performing its obligations under the BAA. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by BA or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.
7. **TRANSITION PERIOD:**
- a) For ninety (90) days prior to the expiration date of the BAA, or upon notice of termination of the BAA, BA shall assist CE in extracting and/or transitioning all Data in the format determined by CE ("Transition Period").
 - b) The Transition Period may be modified in the PA or as agreed upon in writing by the parties in an amendment.
 - c) During the Transition Period, SaaS and Data access shall continue to be made available to CE without alteration.
 - d) BA agrees to compensate CE for damages or losses CE incurs as a result of BA's failure to comply with this section.
 - e) Unless otherwise stated in the PA, the BA shall permanently destroy or render inaccessible any portion of the Data in BA's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, BA shall issue a written statement to CE confirming the destruction or inaccessibility of CE's Data. Notwithstanding the foregoing, BA may retain such Data where destruction would be infeasible, and for regulatory and compliance purposes as required by applicable law. DrFirst will retain such data in compliance with the requirements of the BAA and this Exhibit A.
 - f) CE, at its option, may purchase additional transition services as agreed upon in the PA.
8. **DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the SOW:
- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, BA shall notify CE by the fastest means available and also in writing. BA shall provide such notification within twenty-four (24) hours after BA reasonably believes there has been such a disaster or catastrophic failure. In the notification, BA shall inform CE of:
 - 1) The scale and quantity of the Data loss;
 - 2) Actions BA has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - b) Corrective actions BA has taken or will take to prevent future Data loss. If BA fails to respond immediately and remedy the failure, CE may exercise its options for assessing damages or other remedies.
 - c) BA shall restore continuity of SaaS, restore Data, restore accessibility of Data, and repair SaaS as needed to meet the Data and SaaS Availability requirements under this Addendum or an SOW. Failure to do so may result in CE exercising its options for assessing damages or other remedies.
 - d) BA shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with CE. CE and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. BA shall cooperate fully with CE, its agents and law enforcement.
9. **EXAMINATION AND AUDIT:** Unless otherwise stated in the SOW:
- a) Upon advance written request, BA agrees to provide CE with a summary of its most recent SOC II Audit Report findings.
 - b) In the event of a security breach, or a confirmed security incident, CE may request that BA test the controls in place, BA will provide a summary of the results of the requested tests to the CE upon request.



- c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, BA will at its expense have an independent, industry-recognized, third party perform an information security audit. The audit results shall be shared with CE within seven (7) days of BA's receipt of such results. Upon BA receiving the results of the audit, BA will provide CE with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Addendum.
10. **DISCOVERY:** To extent permitted by applicable law, BA shall promptly notify CE upon receipt of any requests by a government agency which in any way might reasonably require access to CE's Data or CE's use of the SaaS. . BA shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at BA without first notifying CE unless prohibited by law from providing such notification. As permitted by applicable law, BA will make commercially reasonable efforts to provide its intended responses to CE with adequate time for CE to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. BA shall not respond to legal requests directed at CE unless authorized in writing to do so by CE.
11. **Insurance Requirements:** BA shall, at its own expense, secure and maintain for the term of this contract, Technology Errors and Omissions(Cyber)Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as any regulatory fines and penalties.
12. **Data Separation:** Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain BA's records, information or data for reasons or activities that are not directly related to CE's business.



EXHIBIT B DRFIRST FACILITY MASTER SERVICES AGREEMENT

INSURANCE REQUIREMENTS

DrFirst agrees to maintain insurance set forth in accordance with the requirements herein.

Without in anyway affecting the indemnity herein provided, DrFirst shall secure and maintain throughout the MSA term the following types of insurance with limits as shown:

- i. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of DrFirst and all risks to such persons under this MSA. If DrFirst has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - ii. Commercial/General Liability Insurance – DrFirst shall carry General Liability Insurance covering operations performed by or on behalf of DrFirst providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.
 - iii. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.
 - iv. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim
- or**
- v. Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.



If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the Effective Date of the MSA.

Additional Insured – All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy.

Waiver of Subrogation Rights – DrFirst shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit DrFirst and DrFirst’s employees or agents from waiving the right of subrogation prior to a loss or claim. DrFirst hereby waives all rights of subrogation against the County.

Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

Proof of Coverage – DrFirst shall furnish Certificates of Insurance to the County Department administering the MSA evidencing the insurance coverage upon request. DrFirst shall maintain such insurance from the time DrFirst commences performance of services hereunder until the completion of such services.

Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.

Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

Rcopia AC Service Product Addendum

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. “**Authorized End User**” shall mean any individual who is authorized to access the Integrated Offering pursuant to this Master Agreement. An Authorized End User may be an employee of the County or a Customer of the County as defined below. 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 and agree to Sample Terms of Use (In this Exhibit) before using the Integrated Offering.
- c. “**County Software**” shall mean the software running on the County’s computer network that permit access to the Application and shall include, without limitation, the Meditech interfaces and software applications provided for County’s use by Meditech.
- d. “**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.
- e. “**Integrated Offering**” shall mean services provided to end users of the County Software by means of accessing and using the features and functions of the Application through the County Software as contemplated in this Agreement.
- f. “**Licensed Medical Professional**” shall mean a person who has the legal authority to sign prescriptions.
- g. “**Medication History Information**” shall mean any and all medication history data transmitted by DrFirst to County pursuant to the RcopiaAC service (as defined in this Addendum) and the terms hereof.
- h. “**MedHx**” is a module within the RcopiaAC service, as further defined in Section 3, which provides a patient’s Medication History Information to County for use by a County physician, designated clinician, or other duly licensed or non-licensed County health care provider providing healthcare services to a patient at the point of care.
- i. “**Middleware**” or “**RcopiaAC Middleware**” is a locally-installed application or software which resides on the County servers and enhances performance of the Integrated Offering as further described in this Exhibit.
- j. “**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.
- k. “**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. **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 protected patient 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 further agree to undertake reasonable efforts to ensure that any of their employees, agents, or third parties with access to PHI shall comply with such laws and regulations, which may include having to execute a Business Associate Agreement (BAA) with DrFirst with substantially similar terms to the BAA attached to and incorporated into the MSA. Notwithstanding the foregoing, either Party may disclose PHI if required to do so by a lawful judicial or governmental order, provided that in the event either Party receives notice of any such order it shall immediately notify the other Party of such order.
- b. **Medication History Usage and Overage.** County has unlimited usage for Intended Queries as defined in Section 1. County is required to adhere to configuration settings that only allow for Intended Queries. DrFirst shall estimate County’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 6.2 (a). DrFirst shall provide to County on a monthly basis, the number of actual medication history requests by County. In the event that County’s monthly actual usage exceeds one-hundred and twenty per cent (120%) of DrFirst’s estimate, DrFirst shall have the ability to assess County’s

configuration settings for usage, to ensure that County's configuration settings allow only for Intended Queries. If as a result of DrFirst's assessment DrFirst finds that County's configuration settings or internal usage allow for usage beyond Intended Queries, then County shall permit DrFirst to assist County 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 County does not permit DrFirst assess to County's configuration, or does not allow DrFirst to assist in correcting configuration settings, or changes the configuration settings after DrFirst's assessment, then County agrees to pay DrFirst for all transactions over the one-hundred and twenty per cent (120%) estimated queries at a rate set forth in Section 6.2 (a).

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 third party data aggregators (e.g. 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 an Intel Dual Core Processor 3.0 GHz minimum, 12 GB ECC DDR2 SDRAM memory minimum, 16 GB preferred, Gigabit Ethernet, hot redundant power supplies, Hard Drive (For O.S. and Formulary database): C : 60GB, Data Drive: 100GB free space minimum, Microsoft Windows Server 2008 R2 or higher (64-bit OS required), Internet access for daily updates from the DrFirst Web Server, to be installed in the County'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 County a 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 County'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. Additionally, the InGroup services team will assess County's medication reconciliation workflow and offer actionable recommendations for improvement as follows:
 1. Facilitate medication reconciliation goals and objectives discussion with organizational stakeholders
 2. Observe medication history interviews in priority patient access and transitions of care locations. This service requires an onsite visit to the facility location from the InGroup services team member(s) assigned to deliver the services, and applicable travel costs would be incurred will be handled in accordance with section 6.1 b of this exhibit.
 3. Evaluate medication history interview training and education programs. This service can be performed onsite at facility location by an InGroup services team member, and any applicable travel costs that would be incurred will be handled in accordance with section 6.1 b of this exhibit.
 4. Assess metrics and policy compliance auditing

5. Deliver Medication Reconciliation Assessment Findings Report
 6. Conduct executive-level presentation to include: Findings and recommendations overview - Industry comparison observations - Next steps decision facilitation
 7. Perform next steps follow up evaluation.
- ii. Implementation tools – DrFirst will provide an online registration system and documentation to County which is to be used by County to register County End Users on the RcopiaAC system.
 - iii. Registration – DrFirst will register County 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 (Activation Date).
 - v. Implementation and Initial “go-live” assistance – DrFirst will have personnel on standby to assist Meditech installation personnel and County 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 as outlined in Schedule 1.
- b. County Responsibilities.
- i. Implementation Cooperation - County agrees to reasonably cooperate with the Meditech Implementation team to install the RcopiaAC modules. This includes:
 1. Following all instructions as provided to County 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 County 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 County by the Meditech Implementation Coordinator.
 5. Registration of End Users - If required for the installation of the Application, County agrees to properly complete and submit to DrFirst an initial database of registration information for all End Users who wish to use the DrFirst systems.
 - a. County 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. County 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 - County agrees to assign a single point of contact to work with the Meditech Implementation Coordinator and DrFirst in the implementation, deployment and support of County End Users.
 - iii. Training - County agrees to train all providers and staff who wish to use the DrFirst systems. DrFirst and County understands that the Meditech Implementation team will provide training for the RcopiaAC modules.
 - iv. Support - Unless otherwise provided in this Section, County agrees to call Meditech for first-tier support of County physicians and staff. First-tier support is defined as providing assistance to County physicians and staff in the routine end-user support of County 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, County recognizes that Meditech technicians will seek the assistance of DrFirst to resolve any issues of a more technical nature.
- a. **Acceptance Testing.** Upon the first successful installation and implementation of the Application for County or for one Customer, County shall have twenty (20) days (Testing Period) to test the Application to ensure that it conforms in all material respects to the user Application Documentation and the warranties and descriptions contained herein (collectively “Acceptance Criteria”). County must provide notice of non-conformance with description of issues within the Testing Period. The Application is deemed accepted by County upon the expiration of the Testing Period. In the event County notifies DrFirst within the foregoing Testing Period that the Application failed to conform to the Acceptance Criteria, DrFirst shall have fourteen (14) days from receipt of such notice to cure said failures at no cost to County. Upon expiration of the foregoing fourteen (14) day period, or upon DrFirst’s certification in writing to County that all corrections have been made, whichever is earlier, County shall have fourteen (14) days to re-test the Application to ensure that the Application conforms

to the Acceptance Criteria ("Re-testing Period"). In the event the Application fails to conform to the Acceptance Criteria during the Re-testing Period, County shall have the option to: (a) extend to DrFirst additional cure and testing period(s) as set forth above; or (b) terminate this Agreement if any error is solely from the DrFirst Application, in which case DrFirst shall promptly refund to County all sums paid by County under this Agreement. County's election to extend additional cure and testing period(s) as provided in Section 5(c) above shall not bar County from terminating this Agreement pursuant to Section 5(c) above in the event DrFirst fails to correct all non-conformities in any additional cure periods allotted.

6. Fees:

6.1 PAYMENT TERMS AND CONDITIONS. County will pay to DrFirst:

- a. **Fee Structure: RcopiaAC: MedHx and DischargeRx:**
- b. **Travel Expenses:** Actual out-of-pocket travel expenses for County pre-approved travel by DrFirst employees will be paid by County to DrFirst. Travel expenses will be billed separately by DrFirst to County in compliance with County Travel Policy.
- c. **Billing.** DrFirst will invoice County on a yearly basis and County agrees to remit full payment of each invoice no later than sixty (60) days from the date of receipt of the invoice.

6.2 SCHEDULE OF FEES

- a. **Invoicing Upon Renewal.** Annual renewal shall be invoiced at the anniversary of the Activation Date.

Description of Service:	# of Beds	2019 License Fees	2020 License Fees	2021 License Fees	b. Overage Charges. As section 2 (b), if
per Annual Rcopia AC License	456	\$125,555	\$125,555	\$125,555	

County's monthly usage of the MedHx Service exceeds one-hundred and twenty per cent (120%) of the estimated queries by DrFirst and not based on Intended Queries, DrFirst shall have the right to charge to County at a rate of \$0.75 for all overages. DrFirst shall have such right only after undergoing the process set forth in section 2 (b).

- c. Should DrFirst's cost of obtaining Medication History increase by more than 5% at any time during the Term, DrFirst shall have the right to increase the license fees.

7. Term and Termination. Subject to the termination provisions of the MSA, the term of this Product Addendum begins upon signature of this PA and shall continue for an initial term of three (3) years.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the day and year set forth below.

DrFirst.com, Inc. ("DrFirst")

By: _____

Name: Edward C. Lee

Title: Chief Administrative Officer

Date: _____

**County of San Bernardino on behalf of
Arrowhead Regional Medical Center ("County")**

By: _____

Name: _____

Title: _____

Date: _____



PRODUCT ADDENDUM SMARTSTRINGS SERVICES

I. OVERVIEW.

This Product Addendum (“PA”) is entered into by and between DrFirst.com, Inc. (“DrFirst”) and the entity identified on the signature page of this PA, including its affiliates and subsidiaries (referred to, collectively, as “County”). This PA is incorporated into a certain Master Services Agreement (“MSA”) entered into by the undersigned parties. In the event of a conflict between this PA and the MSA, the terms of this PA shall govern. Unless otherwise defined herein, capitalized terms used in this PA shall have the meanings used in the MSA.

II. **SMARTSTRINGS SERVICES.** SmartStrings is a software service that provides statistically relevant and complete drug strings presented within the e-prescribing workflow which uses predictive analytics to support clinical decision-making.

III. DRFIRST OBLIGATIONS.

- a. **Provision of Access to Licensed Technology.** Within a mutually agreeable time frame after the Effective Date, DrFirst, and County will meet and establish a project plan for the installation of the Product on the County’s computer system. DrFirst shall specify to the County procedures according to which County may establish and obtain access to, and use of, the Product, including, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant instructions and procedures (collectively, the “Specifications”), to the limited extent any of the foregoing may be necessary to enable County to provide access to the features and functions of the Application for use by Authorized End Users as contemplated herein.
- b. **Updates to the Product.** DrFirst’s SmartStrings is provided to Customer on a subscription basis. DrFirst shall regularly provide County with any updates, modifications, alterations, or changes to the Product, unless and until County provides written notification requesting termination of this Addendum. In the event that County has obtained rightful access to Product on a non-subscription basis, County is not eligible for free updates, modifications, alterations, or changes to the Product.
- c. **Maintenance and Technical Support.** DrFirst will provide the County with all second-tier maintenance and technical support services as may be required with respect to provision and use of County Software.

IV. COUNTY OBLIGATIONS.

- a. **Maintenance of the County Software.** County will, at its expense, bear sole responsibility for the design, development, maintenance and management of the County Software, including without limitation, development of its features, functions and technology.
- b. **Representations and Warranties.** County represents and warrants that County shall obtain all necessary permissions from its customers in order to transmit the necessary data to DrFirst.

V. **PRICING AND PAYMENT.** Under the terms of this PA and the underlying Agreement, County shall pay DrFirst the following Applicable Fees for the SmartStrings Services.

Fee Schedule

Year	Hospital(s)	Description	Total Fees
Year 1	County of San Bernardino on Behalf of Arrowhead Regional Medical Center	Annual SmartStings License Fees	\$6,000
Year 2	County of San Bernardino on Behalf of Arrowhead Regional Medical Center	Annual SmartStings License Fees	\$6,000
Year 3	County of San Bernardino on Behalf of Arrowhead Regional Medical Center	Annual SmartStings License Fees	\$6,000



- a. DrFirst considers the SmartStrings to be database license(s) for each specific RXM/AOM Drug Database in the current MEDITECH version 5.6 SR7 pp35. The pricing above is specific to those MEDITECH RXM Drug Database(s) that are registered by County.
- b. DrFirst will invoice County for the Total Fees and County agrees to remit full payment of the invoice no later than sixty (60) days from the date of receipt of the invoice.
- c. DrFirst may increase the annual fees paid under this agreement under the following circumstances:
 - i. On an annual basis for any reason by three percent (3%); or
 - ii. In the event that there is an increase in the number of RXM/AOM Drug Databases
- d. County acknowledges that the per RXM/AOM Drug Database model provided above is a subscription model for which DrFirst has estimated the utilization of a site. In the event a site exceeds this utilization, DrFirst shall have the right, but shall not be required, to submit invoices to County for this additional utilization on a per database basis.

VI. DISCLAIMER.

- a. **COUNTY SPECIFICALLY ACKNOWLEDGES AND ACCEPTS THAT THE DATA PROVIDED BY DRFIRST MAY CONTAIN ERRORS, INCORRECT INFORMATION AND/OR MISSING INFORMATION AND THAT THE SMARTSTRINGS SERVICE MAY NOT BE ABLE TO PROCESS ALL SIGS.**
- b. **COUNTY FURTHER WARRANTS THAT ALL TREATMENT DECISIONS ARE BASED ENTIRELY UPON COUNTY END USERS' OR THEIR AGENTS' PROFESSIONAL MEDICAL JUDGMENTS AND THE SMARTSTRINGS SERVICE IS MERELY PROVIDED AS A TOOL FOR COUNTY END USERS.**

VII. TERM AND TERMINATION. Subject to the termination provisions of the MSA, the term of this Product Addendum begins upon signature of this PA and shall continue for an initial term of three (3) years.

IN WITNESS WHEREOF, the parties have caused their duly authorized representative to execute this Addendum.

DrFirst.com, Inc.

Company: County of San Bernardino on behalf of
Arrowhead Regional Medical Center

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



**PRODUCT ADDENDUM
FOR RCOPIA (AMBULATORY)**

I. Overview.

This Product Addendum (“PA”) is entered into by and between DrFirst.com, Inc. (“DrFirst”) and the entity identified on the signature page of this PA, including its affiliates and subsidiaries (referred to, collectively, as “County”). This PA is incorporated into a certain Master Services Agreement (“MSA”) entered into by the undersigned parties. In the event of a conflict between this PA and the MSA, the terms of this PA shall govern solely for the services provided under this PA. Unless otherwise defined herein, capitalized terms used in this PA shall have the meanings used in the MSA.

II. Rcopia Ambulatory License. Subject to the terms of this PA, the MSA, and applicable law, DrFirst grants to County the number of licenses shown on the accompanying Pricing Addendum to access DrFirst’s Rcopia Application (“Rcopia”). Rcopia is DrFirst’s web-based electronic prescription writing application and service which allows a person who has the legal authority to sign prescriptions (a “Licensed Medical Professional”), working in the ambulatory environment, to enter and send prescriptions electronically to a US pharmacy. Only a Licensed Medical Professional who is an Authorized End User (as defined in the MSA) may send prescriptions through Rcopia. Rcopia provides clinical and formulary alerts as prescriptions are written. Rcopia also provides health plan eligibility verification, formulary lookup, and medication history. Included with the prescription data entry system is DrFirst’s service of monitoring the prescription network to ensure delivery of all prescriptions. DrFirst’s service ensures that if a failed prescription is not delivered to the appropriate pharmacy on a timely basis, the user will be notified.

III. County Obligations. County is required to provide DrFirst with the proper data and server access in order for DrFirst to be able to provide the Application interface services. Company agrees to remain, and to cause all of its Authorized End Users to remain, bound by any and all obligations and restrictions set forth in any Business Associate Agreement (“BAA”) and Terms of Use (“TOU”) available at <https://www.drfirst.com/rcopia-terms-of-use/>.

IV. Pricing and Payment. Under the terms of this PA and underlying Agreement, County shall pay DrFirst the following Applicable Fees for the Rcopia application.

Applicable Fees

Select Applicable	Cost Rate	Description	Item Number	Annual Cost
	\$375	per provider (Rcopia Web Ambulatory)	57	\$21,375

Fee Schedule

Time	Description	Total Fees
Year 1 Fees	Web Ambulatory License	\$21,375
Year 2 Fees	Web Ambulatory License	\$21,375
Year 3 Fees	Web Ambulatory License	\$21,375

DrFirst will invoice County on a yearly basis and County agrees to remit full payment of each invoice no later than sixty (60) days from the date the invoice is received.

V. Term and Termination. Subject to the termination provisions of the MSA, the term of this Product Addendum begins upon signature of this PA and shall continue for a term of three (3) years.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the day and year set forth below.

DrFirst.com, Inc.

By: _____



Printed Name:_____

By:_____

Title:_____

Printed Name: _____

Date:_____

Title: _____

County of San Bernardino on behalf of Arrowhead Regional
Medical Center (County)

Date: _____