



Empowering Healthcare

Technical Support Agreement
Fax: 888-633-4763
Mail: Product Sales & Support
1145 Sanctuary Parkway
Suite 200
Alpharetta, GA 30009

This Technical Support Agreement ("Agreement") is entered into by and between McKesson Technologies Inc. ("McKesson") and the customer identified below ("Customer"). This Agreement shall be effective upon the date accepted by McKesson, as evidenced by McKesson's receipt of an executed unmodified Agreement. This Agreement cannot be deferred or postdated for a later start date under any circumstances.

Customer Information:

PRACTICE NAME: CUSTOMER NO:
STREET ADDRESS: CITY, STATE ZIP:
SHIPPING ADDRESS: CITY, STATE ZIP:
PRIMARY CONTACT: PHONE:
FAX: EMAIL:

PRODUCT (PLEASE CHECK ONE): [ ] MEDISOFT [ ] LYTEC
VERSION #: (e.g., MEDISOFT V16 OR LYTEC 2010)

Contract Information:

Please check Agreement period:

Table with 3 columns: STANDARD SUPPORT, SAVINGS, and rows for 1 MONTH, 6 MONTH, 12 MONTH, and 24 Month (Available with the newest product version).

By checking the box below you are agreeing that this contract will automatically renew for the remaining coverage time frame on the product version \*\* illustrated on the next page, unless Customer notifies McKesson by registered mail, or fax, at least 30 days prior to such anniversary date that they elect not to renew this agreement. Upon receipt by McKesson of such written notice, Customer will receive faxed confirmation of request for termination.

[ ] Automatic Renewal

DISCOUNTED SERVICES	1 MONTH	6 MONTH	12 MONTH	24 MONTH
Product Registration Info	\$100(PO)	Free	Free	Free
File Repair	\$100(PO) diagnostic	Free(1 <sup>st</sup> -O)	Free(1 <sup>st</sup> -O)	Free(2 <sup>nd</sup> -O)
	\$299(PO) File Repair	\$299	Free(1 <sup>st</sup> -O)	Free(1 <sup>st</sup> -O)
EHR Templates	\$299	\$299	Free(1 <sup>st</sup> -O)	Free(2 <sup>nd</sup> -O)

- PO = Per Occurrence
- 1<sup>st</sup>-O = Applies up to First Occurrence
- 2<sup>nd</sup>-O = Applies up to Second Occurrence

McKesson shall provide standard technical support services (“Standard Support”) to Customer by answering questions and providing assistance specifically regarding the operation of Customer’s registered copy of Medisoft or Lytec and applicable add-on products such as Lytec Scheduler, Office Hours, Direct Modules, Lab Connect, or Communications Manager.

\*\*Technical support is limited to providing assistance for the current version and one previous version of all related products.

Standard Support provided may include, but is not limited to, troubleshooting of an issue and providing resolution when available. It does not include network configuration, operating system issues, or computer hardware problems. Technical Support personnel may recommend that the Customer contact an independent specialist in computers or networking outside McKesson if the issue warrants. If it is determined that data corruption is causing the problem, a technical support person may suggest that file repair be done at an additional charge beyond the normal pricing listed above. Data conversion in connection with upgraded software (like product to like product) also is available for an additional charge.

Training for the Medisoft or Lytec application ***is not*** covered under Standard Support. McKesson does offer training services which may be obtained for an additional fee by contacting McKesson’s Sales department at 800-333-4747.

Customer understands that McKesson’s sole obligation under this Agreement is to provide the technical support services described above. McKesson shall use commercially reasonable efforts to correct the problem Customer may be experiencing, but does not guarantee that any support provided under this Agreement will be sufficient to do so. McKesson cannot guarantee that any issue resolution will be completed in a set amount of time. McKesson shall provide the technical support services described within this Agreement during McKesson’s Technical Support Center business hours, which are Monday-Friday, 8:00 a.m. to 8:00 p.m. Eastern Standard Time, except holidays. Customer understands that McKesson will keep Customer’s data, to which it has access during problem resolution, secure and confidential in accordance with McKesson’s obligations under the Health Insurance Portability & Accountability Act. By signing this Agreement, the parties agree to comply with the terms and conditions of the Business Associate Agreement attached hereto. McKesson’s technical support staff will provide services consistent with the standard of care generally accepted within the industry for such services. IN NO EVENT SHALL MCKESSON BE RESPONSIBLE FOR DAMAGES OF ANY NATURE, EXCLUDING THOSE CAUSED BY MCKESSON’S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT INCLUDING,

WITHOUT LIMITATION, ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

It is understood that this Agreement is non-refundable and non-transferable, and any disputes relating to the services provided herein must be sent in writing to McKesson within 30 days from the date of the alleged breach by McKesson. McKesson will have 30 days from receipt of any dispute letter to investigate and reply to Customer with its findings. All such findings and/or conclusions will be considered final.

McKesson shall have the right to immediately terminate this Agreement if Customer breaches any of the terms or conditions of this Agreement including, but not limited to, non-payment of any fees owed to McKesson by Customer under this Agreement, or any other agreement between the parties. Customer must remain in good standing at all times, with all outstanding invoices paid in full in a timely fashion. Upon termination, Customer shall not be entitled to any refund for the remaining period of the Agreement.

By signing below Customer acknowledges and agrees to these conditions and authorizes McKesson to charge Customer's credit card for the services described above, including the purchase of Interactive Training CDs if Customer has checked the "Approved" box on the previous page.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

CREDIT CARD NUMBER: \_\_\_\_\_ EXP. DATE: (MM/YYYY) \_\_\_\_\_

TYPE:  VISA  MASTERCARD  AMEX

\_\_\_\_\_  
CARDHOLDER SIGNATURE

\_\_\_\_\_  
PRINT CARDHOLDER NAME  
(AS IT APPEARS ON CREDIT CARD)

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**To be filled out by McKesson:**

Date received:

Received by:

Time received:

Information Verified:

Customer Number:

Automatic Renewal Customer:

**Yes**

**No**

## BUSINESS ASSOCIATE AGREEMENT

### DEFINITIONS

“**Breach**” shall have the same meaning given to such term in 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

“**Designated Record Set**” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

“**Electronic Health Record**” shall have same meaning given to such term in 42 U.S.C. § 17921(5).

“**Electronic Protected Health Information**” or “**Electronic PHI**” shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that McKesson creates, receives, maintains or transmits from or on behalf of Customer.

“**Individual**” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created or received by McKesson from or on behalf of Customer.

“**Required by Law**” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

“**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

“**Security Incident**” shall have the meaning given to such term in 45 C.F.R. § 164.304, but shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by McKesson and (b) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks.

“**Security Rule**” shall mean the Security Standards at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and C.

“**Unsecured PHI**” shall have the same meaning given to such term under 42 U.S.C. § 17931(h), and guidance promulgated thereunder.

Capitalized Terms. Capitalized terms used in this BAA and not otherwise defined herein shall have the meanings set forth in the Privacy Rule, the Security Rule, and the HITECH Act, which definitions are incorporated in this BAA by reference.

## **SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Uses and Disclosures of PHI Pursuant to Agreement. Except as otherwise limited in this BAA, McKesson may use or disclose PHI to perform functions, activities or services for, or on behalf of, Customer as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Customer.

2.2 Permitted Uses of PHI by McKesson. Except as otherwise limited in this BAA, McKesson may use PHI for the proper management and administration of McKesson or to carry out the legal responsibilities of McKesson.

2.3 Permitted Disclosures of PHI by McKesson. Except as otherwise limited in this BAA, McKesson may disclose PHI for the proper management and administration of McKesson, provided that the disclosures are Required by Law, or McKesson obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon McKesson pursuant to this BAA), and that the person agrees to notify McKesson of any instances of which it is aware in which the confidentiality of the information has been breached. McKesson may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

2.4 Data Aggregation. Except as otherwise limited in this BAA, McKesson may use PHI to provide Data Aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including use of PHI for statistical compilations, reports, research and all other purposes allowed under applicable law.

2.5 De-identified Data. McKesson may create de-identified PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data for any purpose.

2.6 Disclosure Pursuant to Authorization. Without limiting the generality of the foregoing, McKesson reserves the right at its sole discretion to disclose an Individual's PHI in response to and in accordance with a valid authorization executed by such individual that meets the requirements set forth in the Privacy Rule.

## **SECTION 3: OBLIGATIONS OF MCKESSON**

3.1 Appropriate Safeguards.

3.1.1 Privacy of PHI. McKesson will develop, implement, maintain, and use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Agreement and this BAA. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and this BAA, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this BAA.

3.1.2 Security of PHI. McKesson will develop, implement, maintain, and use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, as required by the Security Rule.

Commencing on February 17, 2010, McKesson will comply with the provisions of 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 relating to implementation of administrative, physical and technical safeguards with respect to Electronic PHI in the same manner that such provisions apply to a HIPAA covered entity. McKesson will also comply with any additional security requirements contained in the HITECH Act that are applicable to a business associate.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. McKesson will report to Customer any use or disclosure of PHI not provided for by the Agreement of which it becomes aware. McKesson will report to Customer any Security Incident of which it becomes aware. McKesson will notify Customer of any Breach of Unsecured PHI as soon as practicable, and no later than 30 days after discovery of such Breach. McKesson's notification to Customer of a Breach will include: (a) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by McKesson to have been, accessed, acquired or disclosed during the Breach; and (b) any particulars regarding the Breach that Customer would need to include in its notification, as such particulars are identified in 42 U.S.C. § 17932 and 45 C.F.R. § 164.404.

3.3 McKesson's Agents. McKesson will ensure that any agent or subcontractor to whom it provides PHI received from, or created or received by McKesson on behalf of Customer, agrees to restrictions and conditions that are substantially similar to those that apply through this BAA to McKesson with respect to such PHI. McKesson will ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect such information.

3.4 Access to PHI. The parties do not intend for McKesson to maintain any PHI in a Designated Record Set for Customer. To the extent McKesson possesses PHI in a Designated Record Set, McKesson agrees to make such information available to Customer pursuant to 45 C.F.R. § 164.524 and 42 U.S.C. § 17935(e)(1), as applicable, within ten business days of McKesson's receipt of a written request from Customer; provided, however, that McKesson is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Customer. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to McKesson, or inquires about his or her right to access, McKesson will direct the Individual to Customer.

3.5 Amendment of PHI. The parties do not intend for McKesson to maintain any PHI in a Designated Record Set for Customer. To the extent McKesson possesses PHI in a Designated Record Set, McKesson agrees to make such information available to Customer for amendment pursuant to 45 C.F.R. § 164.526 within 20 business days of McKesson's receipt of a written request from Customer. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to McKesson, or inquires about his or her right to amendment, McKesson will direct the Individual to Customer.

3.6 Documentation of Disclosures. McKesson agrees to document such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and 42 U.S.C. § 17935(c), as applicable. McKesson will document, at a minimum, the following information ("Disclosure Information"): (a) the date of the disclosure; (b) the name and, if known, the address of the recipient of the PHI; (c) a brief description of the PHI disclosed; (d) the purpose of the disclosure that

includes an explanation of the basis for such disclosure; and (e) any additional information required under the HITECH Act and any implementing regulations.

3.7 Accounting of Disclosures. McKesson agrees to provide to Customer, within 20 business days of McKesson's receipt of a written request from Customer, information collected in accordance with Section 3.6 of this BAA, to permit Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and 42 U.S.C. § 17935(c), as applicable.

3.8 Governmental Access to Records. McKesson will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by McKesson on behalf of, Customer available to the Secretary for purposes of the Secretary determining Customer's compliance with the Privacy Rule and the Security Rule.

3.9 Mitigation. To the extent practicable, McKesson will cooperate with Customer's efforts to mitigate a harmful effect that is known to McKesson of a use or disclosure of PHI not provided for in this BAA.

3.10 Minimum Necessary. McKesson will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 42 U.S.C. § 17935(b) and regulations promulgated thereunder.

3.11 Limitation on Marketing. McKesson may use and disclose PHI for marketing purposes only as expressly directed by Customer, and in accordance with 42 U.S.C. § 17936(a). McKesson will not use or disclose PHI for fundraising purposes.

3.12 Limitation on Sale of Electronic Health Records and PHI. McKesson will comply with the prohibition on the sale of Electronic Health Records and PHI set forth in 42 U.S.C. § 17935(d).

3.13 HITECH Act Applicability. McKesson acknowledges that enactment of the HITECH Act amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, McKesson under the Privacy Rule and Security Rule. To the extent not referenced or incorporated herein, requirements applicable to McKesson under the HITECH Act are hereby incorporated by reference into this BAA. McKesson agrees to comply with applicable requirements imposed under the HITECH Act, as of the effective date of each such requirement.

#### **SECTION 4: OBLIGATIONS OF CUSTOMER**

4.1 Notice of Privacy Practices. Customer will notify McKesson of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect McKesson's use or disclosure of PHI. Customer will provide such notice no later than 15 days prior to the effective date of the limitation.

4.2 Notification of Changes Regarding Individual Permission. Customer will notify McKesson of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect McKesson's use or disclosure of PHI. Customer will provide such notice no later than 15 days prior to the effective date of the change. Customer will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing McKesson with PHI.

4.3 Notification of Restrictions to Use or Disclosure of PHI. Customer will notify McKesson of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. § 164.522 or 42 U.S.C. § 17935(a), to the extent that such restriction may affect McKesson's use or disclosure of PHI. Customer will provide such notice no later than 15 days prior to the effective date of the restriction. If McKesson reasonably believes that any restriction agreed to by Customer pursuant to this Section may materially impair McKesson's ability to perform its obligations under the Agreement or this BAA, the parties will mutually agree upon any necessary modification of McKesson's obligations under such agreements.

4.4 Permissible Requests by Customer. Customer will not request McKesson to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HITECH Act if done by Customer, except as permitted pursuant to the provisions of Sections 2.2, 2.3, 2.4, 2.5 and 2.6 of this BAA.

## **SECTION 5: TERM AND TERMINATION**

5.1 Term. The term of this BAA will commence as of the Effective Date, and will terminate when all of the PHI provided by Customer to McKesson, or created or received by McKesson on behalf of Customer, is destroyed or returned to Customer or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 5.3.

5.2 Termination for Cause. Upon either party's knowledge of a material breach by the other party of this BAA, such party will provide written notice to the breaching party detailing the nature of the breach and providing an opportunity to cure the breach within 30 business days. Upon the expiration of such 30 day cure period, the non-breaching party may terminate this BAA and, at its election, the Agreement, if cure is not possible.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Agreement or this BAA for any reason, McKesson will return or destroy all PHI received from Customer, or created or received by McKesson on behalf of Customer, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of McKesson.

5.3.2 If it is infeasible for McKesson to return or destroy the PHI upon termination of the Agreement or this BAA, McKesson will: (a) extend the protections of this BAA to such PHI; (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as McKesson maintains such PHI; and (c) never disclose such PHI to another McKesson client or third party unless such information has been de-identified in accordance with the standards set forth in 45 C.F.R. § 164.514(b).

## **SECTION 6: SURVIVAL**

The respective rights and obligations of McKesson under Section 5.3 of this BAA will survive the termination of the BAA and the Agreement.

## **SECTION 7: EFFECT OF BAA**

In the event of any inconsistency between the provisions of this BAA and the Agreement, the provisions of the BAA will control. In the event of inconsistency between the provisions of this BAA and

mandatory provisions of the Privacy Rule, the Security Rule or the HITECH Act, as amended, or their interpretation by any court or regulatory agency with authority over McKesson or Customer, such interpretation will control; provided, however, that if any relevant provision of the Privacy Rule, the Security Rule or the HITECH Act is amended in a manner that changes the obligations of McKesson or Customer that are embodied in terms of this BAA, then the parties agree to negotiate in good faith appropriate non-financial terms or amendments to this BAA to give effect to such revised obligations. Where provisions of the BAA are different from those mandated in the Privacy Rule, the Security Rule, or the HITECH Act, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of the BAA will control.

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