



THIS SERVICE AGREEMENT dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

BETWEEN \_\_\_\_\_ (the "Customer")

*Clinic or Hospital Name*

*Address*

*Clinic Phone Number*

*City*

*State*

*zip*

- AND -

McAllister Software Systems, Inc  
#5 Sugar Creek Road  
Piedmont, Missouri 63957

(the "Service Provider")

**NOTE TO SUBSCRIBER:**

CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT.

1. USE of this Service (the "Service") consists of the right of a Subscriber of the Service (*"the Customer"*) to electronically transmit and store computer data using either a private data communications network, or the Internet into a location maintained by **MSS DATA VAULT** and to retrieve this data should this be required. **MSS DATA VAULT** makes the Service available to *"the Customer"* during the period *"the Customer"* maintains a paid subscription to the Service. *"The Customer"* must be a current licensed user of **MSS DATA VAULT'S** software, for Services where software is required to provision access.

2. These terms and any additional Operating Rules published by **MSS DATA VAULT** from time to time constitute the entire and only agreement (collectively, the "Agreement") between **MSS DATA VAULT** and *"the Customer"* (including Subscriber's designated users) with respect to the Service and supersede all other communications and agreements with regard to the subject matter hereof. Upon notice published over the Service, **MSS DATA VAULT** may modify this Agreement, the Operating Rules or prices, and may discontinue or revise any or all other aspects of the Service at its sole discretion and without advance notice. Unless otherwise agreed, *"the Customer's"* right to use the Service or to designate users is not transferable and is subject to any limits established by **MSS DATA VAULT**.

3. Subscriber shall pay in advance any registration or service fees and other charges incurred by *"the Customer"* or *"the Customer's"* designated users at the rates in effect for the billing period in which those charges are incurred. For situations where credit card payment is utilized, *"the Customer"* shall maintain a current authorization for **MSS DATA VAULT** to debit *"the Customer's"* credit card account for such amounts. In addition, *"the Customer"* shall provide **MSS DATA VAULT** with a current street address and Internet e-mail address for future communications and shall notify **MSS DATA VAULT** of any change of the address. *"The Customer"* shall pay all applicable taxes related to use of the Service by *"the Customer"* or *"the Customer's"* designated users. For situations where *"the Customer's"* credit card issuing financial institution has been notified of a payment dispute, *the Customer* agrees that proof of Service usage by *"the Customer"* constitutes *"the Customer's"* authorization to submit payment request to Credit Card issuing financial institution. **MSS DATA VAULT** may, in addition, at its sole discretion and without notice to *"the Customer"*, (a) suspend its performance under this Agreement and deny *"the Customer"* and (or) *"the Customer's"* designated users' access to and use of the Service until *"the Customer"* is back in good standing, or (b) terminate this Agreement and *"the Customer"* and (or) *"the Customer's"* designated users' access to and the use of the Service. Further, **MSS DATA VAULT** may cancel the Service to *"the Customer"* without cause upon thirty days (30) prior written notice. *"The Customer"* must provide **MSS DATA VAULT** with written notice of *"the Customer's"* intent to terminate use of the Service. At the time of cancellation, the *"the Customer's"* access to any of *"the Customer's"* data stored by the Service may be permanently terminated. **MSS DATA VAULT** will not provide a refund for any unused portion of the Services paid in advance by *"the Customer"*.

4. No bailment or similar obligation is created between “*the Customer*” (and/or “*the Customer’s* designated users) and **MSS DATA VAULT** with respect to “*the Customer’s*” stored data. “*The Customer*” is solely responsible for maintaining the confidentiality of passwords, including restricting the use of the password by “*the Customer’s*” designated users. “*The Customer*” shall be responsible for all use of the Service accessed through “*the Customer’s*” password. **MSS DATA VAULT** SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO “*THE CUSTOMER*”, or “*THE CUSTOMER’S*” DESIGNATED USERS, OR OTHER USERS OF THE SERVICE TO MONITOR, SUPERVISE OR OVERSEE THE CONTENTS OF FILES STORED ON THE SERVICE. **MSS DATA VAULT** IS NOT RESPONSIBLE FOR PROVIDING “*THE CUSTOMER*” WITH PASSWORDS IN THE EVENT OF A FORGOTTEN PASSWORD. WITHOUT THE CORRECT PASSWORD, “*THE CUSTOMERS*” DATA WILL REMAIN ENCRYPTED AND INACCESSIBLE.

5. “*The Customer*” shall not use the Service for storage, possession or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law, including without limitation, stolen materials, obscene materials or child pornography. “*THE CUSTOMER’S*” BACKUP FILES MAINTAINED BY **MSS DATA VAULT** ARE SUBJECT TO EXAMINATION BY LAW ENFORCEMENT OFFICIALS OR OTHERS WITHOUT “*THE CUSTOMER’S*” CONSENT UPON PRESENTATION TO “*THE CUSTOMER*” OR **MSS DATA VAULT** OF A SEARCH WARRANT OR SUBPOENA.

6. “*The Customer*” agrees to indemnify **MSS DATA VAULT** against liability for use of “*the Customer’s*” account which liability is a direct result of “*the Customer’s*” misuse or negligent use of its account(s).

7. **MSS DATA VAULT** may make copies of all files stored as part of the back up and recovery of servers utilized in connection with some of the Services. **MSS DATA VAULT** is not obligated to archive such copies and will utilize them only for backup purposes. They will not be accessible to “*the Customer*”.

8. “*The Customer*” is responsible for and must provide all telephone and other equipment and services necessary to access the Service. “*The Customer*” should maintain a primary electronic file of all materials stored in the Service. “*The Customer*” should not utilize the service as a substitute for primary electronic file maintenance. The Customer will be responsible for working with **MSS Data Vault** to insure that **MSS Data Vault** can gain remote access to the clinical data and install the “**MSS Data Vault**” utility. The Customer must maintain all appropriate hardware, software and connection requirements for the Service to operate. Failure to deliver any service for reasons of hardware, software or connection requirements will not be the responsibility of **MSS Data Vault**.

9. “*THE CUSTOMER*” EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT “*THE CUSTOMER’S* SOLE RISK. NEITHER **MSS DATA VAULT** NOR ANY OF ITS LICENSORS, EMPLOYEES, OR AGENTS WARRANTS THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR **MSS DATA VAULT** OR ANY OF ITS LICENSORS, EMPLOYEES OR AGENTS MAKES ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS MADE AVAILABLE ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. NEITHER **MSS DATA VAULT** NOR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICE OR INABILITY TO USE THE SERVICE OR OUT OF ANY BREACH OF ANY WARRANTY. IN NO EVENT WILL **MSS DATA VAULT’S** LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY SUBSCRIBER, IF ANY, FOR THE SERVICE FOR THE TWELVE-MONTH PERIOD PRECEDING THE EVENT FORMING THE BASIS OF THE CLAIM.

10. The provisions of paragraphs 4, 6, 7, and 9 are for the benefit of “*the Customer*” and its respective Suppliers, Licensors, Employees, and Agents; and each shall have the right to assert and enforce such provisions directly on its own behalf.

11. This agreement is, and shall be governed by and construed in accordance with the law of the State of Missouri applicable to agreements made and performed in Missouri.

12. Notwithstanding any acknowledgment of “*the Customer*” purchase order by **MSS DATA VAULT**, any provision or condition in any purchase order, voucher, letter or other memorandum of “*the Customer*” which is in any way inconsistent with, or adds to, the provisions of this agreement is null and void. Neither the course of conduct between parties nor trade practice shall act to modify the provisions of this Agreement. If any provision of this Agreement is determined to be invalid,

all other provisions shall remain in full force and effect. The provisions of paragraph 9 and 12 and all obligations of and restrictions on "*the Customer*" and its designated users shall survive any termination of this Agreement.

13. Service is normally available to you "*the Customer*" when it is within the operating range of our system but may be available outside of that area by other prearranged conditions or agreements. Service is subject to transmission limitation, reduction in transmission speed, or interruption caused by weather, your equipment, terrain, obstructions such as trees or buildings, or other conditions. Service may be limited in some areas where high speed connectivity is not available or may be temporarily limited or interrupted due to system capacity limitations, system repairs or modifications, or in response to suspected fraud, abuse, misuse of the network, hacking or malicious viruses or violations of our Acceptable Use Policy. Interruption may also result from nonpayment of charges by you. We may block access to MSS Data Vault if, in our sole discretion, we are experiencing excessive billing, collection, fraud problems or other misuse of our system. We may, but do not have an obligation to, refuse to transmit any information to the Service and may screen and delete extracted information prior to posting data or information on MSS Data Vault system as permitted by law. MSS Data Vault system may be incompatible with another carrier's network.

14. Account Access and Unauthorized Use. Any person able to provide information we deem sufficient to identify you and the Account is authorized by you to receive information about and make changes to your Account, including adding new Service. You are responsible for safeguarding your system access information (such as your user name, password or account number) and failure to do so may result in expense to you. If your user name or password is stolen or Service is fraudulently used, you must immediately notify us and provide us with such documentation and information as we may request (including affidavits and police reports). You will remain responsible for all charges incurred before you notify us. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe. Failure to reasonably cooperate may result in your liability for all fraudulent usage.

15. Use of Service. Reproduction, retransmission, dissemination or resale of Service is prohibited without prior written contractual arrangements and/or approvals from MSS Data Vault. You are responsible for your connection compatibility with our Service and that your connection meets federal standards. You are responsible for the purchase and maintenance of any additional hardware, software and/or Internet access from your PC required to use the Service. Except as provided otherwise by law, you have no property rights to any Identifier, including, without limitation, any IP address, any email address or any other identifier, provisioned by us, or our agents, and you agree we may change any such Identifier at any time with or without prior notice to you. In the event we are required by law to transfer any Identifier to you on termination of this Agreement, we may charge you a fee.

## Data Vault – Pricing

### EZ Version Monthly/Yearly Pricing \*(prices subject to change)

<u>Storage</u>	<u>Monthly</u>	<u>Yearly</u>
Bronze Service Plan (Up to 5 GB)	\$24.95/month	\$275/year
Silver Service Plan (5-10 GB)	\$44.95/month	\$495/year
Gold Service Plan (10-15 GB)	\$59.95/month	\$649/year
Platinum Service Plan (15-20 GB)	\$79.95/month	\$869/year

**Note:** Yearly price incentive not valid with any other promotion.

**ONE TIME LICENSE FEE of \$10.00 will be charged on your first payment for service.**

Please call for additional Custom Plans that require more than 20 GB's of storage

### Enterprise Version Monthly/Yearly Pricing \*(prices subject to change)

<u>Storage</u>	<u>Monthly</u>	<u>Yearly</u>
Bronze Service Plan (Up to 5 GB)	\$24.95/month	\$275/year
Silver Service Plan (5-10 GB)	\$44.95/month	\$495/year
Gold Service Plan (10-15 GB)	\$49.95/month	\$549.45/year
Platinum Service Plan (15-20 GB)	\$54.95/month	\$604.45/year

**Additional plans over 20GB are available at a rate of \$44.95 base + \$1.00 per GB over 10GB**

**Note:** Yearly price incentive not valid with any other promotion.

**ONE TIME LICENSE FEE of \$99.00 will be charged on your first payment for service.**

**This backup is intended for all files as well as MS Exchange, SQL, Oracle, and Lotus Notes.**

**\*ONE TIME INSTALLATION FEE of \$79.95 applied on your first payment of service for both EZ and Enterprise version.**

**Archive Pricing (optional)** \*Archived data on the CD or DVD is in an encrypted format

<u>Hard Copy</u>	<u>Fee</u>	<u>Hard Copy</u>	<u>Fee</u>
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CD*	\$59.95/one time	DVD*	\$79.95/one time
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*Price includes shipping. If the archive will not fit on a single disc, the cost is 50% of the single disc cost per additional disc.*

