

## **Program Term Sheet: Front End Insights**

McKesson Corporation, on behalf of itself and its subsidiaries and affiliates (“McKesson”) has engaged Retail Insights, LLC (“Retail Insights”) to provide data analysis and reporting services to pharmacies about over-the-counter, front-end and other non-prescription sales (“Data Services”), and to make such analyses available to participating pharmacies through access to the McKesson Corporation Insights Portal (“Portal”). Health Mart Systems, Inc. (“Health Mart”), a McKesson subsidiary, wishes to make such Data Services, Portal access and other services (collectively, the “Front End Insights Program”) available to its franchise members.

**By signing this Program Term Sheet, which you will do by electronically checking a box to indicate your acceptance of the terms contained herein, you acknowledge and agree that you have carefully read, and fully understand all of the terms and conditions herein, and enter into the Front End Insights Program on behalf of the Pharmacy you represent freely, knowingly, and without coercion, intending to be legally bound thereby.**

### **1. PHARMACY OBLIGATIONS**

Pharmacy will allow data collection and analysis to support the Front End Insights Program. Pharmacy shall execute a Data Authorization Agreement with its Data Vendor and take any other actions necessary to authorize McKesson and Retail Insights to collect and aggregate Pharmacy’s point-of-sale data and deliver it to McKesson and Retail Insights. All data provided by Pharmacy or its Data Vendor shall be de-identified information and shall not include Protected Health Information subject to the Health Insurance Portability and Protection Act. Pharmacy authorizes McKesson to provide its Data Vendor with documentation of Pharmacy’s agreement to be bound under this Program Term Sheet in order to evidence Pharmacy’s participation in the Front End Insights Program.

### **2. FRONT END INSIGHTS PROGRAM**

The Front End Insights Program is provided by McKesson and its third party vendors. The Portal is operated by a third-party vendor to enable Pharmacy to access certain data, analyses, reports and other services related to Pharmacy’s product purchasing, ordering and sales. Access and use of the Portal is subject to the terms and conditions of the Franchise Agreement between Pharmacy and Health Mart and this Program Term Sheet.

### **3. DATA AUTHORIZATION**

Pharmacy acknowledges and agrees that participation in the Front End Insights Program requires McKesson and Retail Insights to obtain certain data from Pharmacy’s point of sale system (“POS Vendor”). Pharmacy hereby authorizes its POS Vendor to send all requested data to McKesson and Retail Insights for use in the Front End Insights Program (“Delivered Data”). Pharmacy shall promptly advise McKesson in writing of the existence of any restrictions upon the use or disclosure of any Delivered Data. McKesson shall be permitted, even after the expiration or termination of this Program Term Sheet, to use the Delivered Data, including any metadata or data arising or derived from the Delivered Data, as well as any de-identified or aggregated data, for the uses described in this Program Term Sheet or other uses, including for sale to third-parties. Pharmacy hereby grants to McKesson the right to create derivative works and/or compilations based on the Delivered Data.

### **4. PORTAL ACCESS**

Upon completion of any registration requirements and acceptance of Pharmacy’s enrollment by McKesson, Pharmacy will be provided access to the Portal. Pharmacy may not permit any person other than Pharmacy’s authorized employees and representatives to access the Portal. Pharmacy shall immediately notify McKesson in the event of any unauthorized access to the Portal or any other breach of security that is known or becomes known to Pharmacy. Pharmacy will be liable to McKesson and its vendors for any use or misuse of Pharmacy’s access to and activity in the Portal by anyone using its unique access information.

### **5. FEE**

McKesson will charge Pharmacy a monthly fee of \$25 for one (1) Pharmacy location, plus \$15 for each additional Pharmacy location (“Fee”) participating in the Front End Insights Program. Upon thirty (30) days prior notice to Pharmacy, the Fee may be increased to an amount McKesson determines in its

discretion. McKesson will issue Pharmacy an invoice for Pharmacy's participation of the Front End Insights Program, which invoice must be paid within thirty (30) days. Pharmacy will be required to pay any applicable taxes associated with the Fee. McKesson has no obligation to provide the Front End Insights Program to Pharmacy in the event the Fee is not paid, and may immediately restrict Pharmacy's access to the Portal in the event that the Fee is not paid in accordance with this Agreement.

## **6. LICENSE AND RESTRICTIONS**

Subject to acceptance of Pharmacy's application to access the Portal, and Pharmacy's compliance with this Program Term Sheet and the Franchise Agreement, McKesson hereby grants to Pharmacy a limited, non-transferable, nonexclusive, license to use, access and display the Portal solely for Pharmacy's internal business purposes and subject to the terms and conditions of this Program Term Sheet. Pharmacy may not use any robot, spider or other automatic device or manual process to monitor or copy the Portal or any content contained on or available through the Portal. Pharmacy may not copy, market, distribute, export, translate, reverse engineer, transmit, merge, modify, transfer, adapt, loan, rent, lease, assign, share, redistribute, host, hyper-link to, frame, store, or permit access to all or part of the Portal by any person other than Pharmacy's authorized employees and representatives. McKesson retains the right, but is not obligated, to store and monitor any activity and content on any system operated by McKesson, including without limitation the Portal, and the right to disclose such activity and content to third parties, including without limitation law enforcement officers. Pharmacy's employees and representatives must comply with all Portal access policies.

## **7. OWNERSHIP; CONFIDENTIALITY**

The Portal may consist of software, graphics, images, text, data or other materials, all of which are proprietary to McKesson or its vendors and which are protected by copyright, trademark and other intellectual property laws. Pharmacy may not directly or indirectly use, reproduce or display any trademarks associated with the Portal unless otherwise expressly permitted pursuant to a written license agreement between Pharmacy and McKesson. Pharmacy acquires no right, title or interest in the Portal or any copyrighted works, trademarks or any other intellectual property, or any individual software, graphics, images, text, data or other materials components, except the limited license granted in Section 6. Pharmacy must maintain the confidential nature of all Confidential Information, defined below, during the term of this Program Term Sheet and at all times after the termination of this Program Term Sheet and may not use such Confidential Information for Pharmacy's benefit (except as expressly permitted under this Program Term Sheet), or for the benefit of any third party. Pharmacy must exercise the same degree of care and protection with respect to the Confidential Information as used to maintain the confidentiality of information that Pharmacy deems confidential. Pharmacy will use at least a reasonable degree of care and protection and will only disclose the Confidential Information to Pharmacy's employees on a need-to-know basis. "Confidential Information" includes, without limitation, the Portal and any other information regarded as confidential and proprietary by McKesson or its vendors that is reasonably protected as such, regardless of whether such information is identified as confidential or proprietary in writing. Notwithstanding the above, nothing in this Program Term Sheet restricts Pharmacy's right to disclose or use any information that it can reasonably document (i) was already known to Pharmacy at the time of McKesson's disclosure to Pharmacy, as evidenced by written documents in Pharmacy's possession, without an obligation of confidentiality, (ii) was generally available to the public or becomes publicly known through no wrongful act by Pharmacy, (iii) was received by Pharmacy from a third party who had a legal right to provide it to Pharmacy, or (iv) was developed by Pharmacy independently of the Confidential Information Pharmacy receives from McKesson. In the event Pharmacy is required to disclose Confidential Information pursuant to a valid request from a court of competent jurisdiction, Pharmacy must notify McKesson before providing any Confidential Information in order to enable McKesson to seek an appropriate protective order and cooperate with McKesson in seeking to obtain such an order. Any such disclosure must be limited to the specific information required and Pharmacy must use reasonable efforts to obtain confidential treatment of any Confidential Information required to be disclosed. Pharmacy's obligations as to Confidential Information shall continue until such time as such Confidential Information is no longer maintained as confidential by McKesson.

## 8. REPRESENTATIONS & COVENANTS

Pharmacy represents, warrants and covenants that: (i) it has the authority to enter into this Program Term Sheet; (iii) it operates in accordance with state and/or federal laws and regulations and holds all necessary licenses required to operate lawfully; (iv) it will use the Portal only for lawful purposes and in accordance with all local, state, federal, and international laws, regulations and ordinances, including without limitation HIPAA. Pharmacy further warrants and covenants that (i) it will not interfere with a third party's use and enjoyment of the Portal; ii) it will not interfere with or disrupt McKesson's or its vendors' security measures; (iii) it will not interfere with or disrupt networks connected to the Portal, and will comply with all regulations, policies and procedures of such networks; (iv) it will comply with United States law regarding the transmission of technical data exported from the United States and all applicable laws and regulations regarding use of consumer data; (v) it will not make copies of any aspect of the Portal, including the web pages, or any underlying software related to the Portal, and in no event will it be used by Pharmacy for purposes of distribution to the public by sale or other transfer of ownership, or by rental, lease or lending; and, (vi) Pharmacy may not publicly display any aspect of the Portal or any underlying software related to the Portal or Front End Insights.

## 9. DISCLAIMERS & LIMITATIONS

- (a) The Portal is only a venue to enable Pharmacy to access the content and services of the Front End Insight Program. Neither McKesson nor its vendors are a party to, nor is McKesson or its vendors otherwise involved in, any transactions entered into by Pharmacy and any third party. Furthermore, neither McKesson nor its vendors shall be liable for any dispute that arises between Pharmacy and any consumer or third party. Some parts of the content and services of the Front End Insights Program are provided or supported by third party vendors. McKesson does not endorse, warrant or guarantee the products or services available through the third-party vendors that are available or linked from the Portal, and McKesson is not an agent or broker or otherwise responsible for the activities or policies of those third-party vendors. If Pharmacy elects to use content or services provided by third-party vendors on the Portal, Pharmacy is subject to their terms and conditions and privacy policy.
- (b) THE CONTENT ON THE PORTAL AND THE FRONT END INSIGHTS PROGRAM IS TO BE USED FOR INFORMATIONAL PURPOSES ONLY. MCKESSON OR ITS VENDORS SHALL USE COMMERCIALY REASONABLE EFFORTS TO ENSURE THE ACCURACY OF THE CONTENT, BUT NEITHER MCKESSON NOR ITS VENDORS GUARANTEES THE SEQUENCE, ACCURACY, OR COMPLETENESS OF THE CONTENT AND SHALL NOT BE LIABLE IN ANY WAY TO PHARMACY OR ANYONE ELSE TO WHOM THE CONTENT MAY BE FURNISHED, FOR ANY DELAYS, INACCURACIES, UNAVAILABILITY, ERRORS OR OMISSIONS IN THE CONTENT. ALL CONTENT IS RELIED UPON AT PHARMACY'S OWN RISK AND SOLE DISCRETION. THE PORTAL ANY CONTENT AND SERVICES PROVIDED, AND ANY RESPONSES, MATERIALS OR INFORMATION PROVIDED, RECEIVED, ACCESSED, PROCESSED, UPLOADED OR DOWNLOADED ON, THROUGH, TO OR FROM THE PORTAL, AND ACCESS TO THE SAME, ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER MCKESSON NOR ITS VENDORS MAKES ANY REPRESENTATION, WARRANTY OR CONDITION THAT THE PORTAL WILL BE AVAILABLE AT ANY GIVEN TIME, THAT IT WILL OPERATE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED OR THAT PHARMACY WILL BE ABLE TO USE THE PORTAL CORRECTLY.
- (c) Neither McKesson nor its vendors shall have any liability for any claim based upon the use or combination of the Portal and/or Front End Insights Program with other information or content not provided by or approved by McKesson or its vendors. Pharmacy will have no right or authority, at any time, to make any representation or commitment on behalf of McKesson or its vendors, or to make any representations or warranties, guarantees or commitments to any third party, including any consumer,

with respect to the Portal or the Front End Insights program, except as expressly authorized by McKesson or its vendors in writing. Pharmacy is solely responsible for ensuring that its use of consumer data is lawful, including without limitation any data that Pharmacy may otherwise have or collect outside the scope of the Front End Insights Program.

**10. LIMITATION OF LIABILITY**

IN NO EVENT SHALL MCKESSON, ITS VENDORS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, BE LIABLE TO PHARMACY OR ANY THIRD PARTY, FOR ANY (i) PUNITIVE, EXEMPLARY, AGGRAVATED, ECONOMIC, SPECIAL, INDIRECT, DIRECT, OR CONSEQUENTIAL DAMAGES, (ii) ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF INFORMATION, LOSS OF DATA, BUSINESS INTERRUPTION OR LOSS OF EXPECTED SAVINGS, (iii) ANY DAMAGES WHATSOEVER RELATING TO PHARMACY'S USE OF THE PORTAL OR FRONT END INSIGHTS PROGRAM OR INTERRUPTION, DELAYS, ERRORS, OMISSIONS, OR PENALTIES IN ANY WAY RELATED TO THIS PROGRAM TERM SHEET, WHETHER ARISING FROM CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, EVEN IF MCKESSON OR ITS VENDORS HAVE BEEN ADVISED AS TO THE POSSIBILITY OF THOSE DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE. IN ANY EVENT, THE MAXIMUM TOTAL AGGREGATE LIABILITY OF MCKESSON AND ITS VENDORS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, FOR ANY CLAIM OR DAMAGE WHATSOEVER, INCLUDING CLAIMS FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE SHALL BE AN AWARD FOR DIRECT, PROVABLE DAMAGES NOT TO EXCEED ONE THOUSAND DOLLARS (\$1,000), WHICH SHALL BE PHARMACY'S SOLE REMEDY EVEN IT IF SHOULD FAIL OF ITS ESSENTIAL PURPOSE.

**11. INDEMNITY**

Pharmacy is solely responsible for the access to, selection and use of the Portal and all items, statements or other content transmitted, posted, received or created on the Portal. Pharmacy agrees to defend, indemnify and hold harmless McKesson its vendors and affiliates, and their respective directors, officers, employees and agents, from and against any and all damages, losses, claims, liabilities, costs and expenses (including legal fees and costs) awarded against or incurred by any of them in connection with: (i) Pharmacy's breach of this Program Term Sheet or any of Pharmacy's representations, warranties or covenants in this Program Term Sheet; (ii) Pharmacy's, or Pharmacy's employee's or representative's, use, misuse or operation of the Portal or Front End Insights; (iii) Pharmacy's violation of any applicable law, including without limitation any privacy or data security law or regulation; and (iv) Pharmacy's use or misuse of any data. Notwithstanding the foregoing, McKesson, its vendors and affiliates reserve the right to participate reasonably in the defense of any such claim subject to Pharmacy's indemnification obligation.

**12. TERM AND TERMINATION**

This Program Term Sheet commences as of the latter of (i) Pharmacy's acceptance of this Program Term Sheet, which may be done through an electronic "opt in"; or (ii) McKesson granting Pharmacy access to the Portal. This Program Term Sheet may be terminated without cause by either party upon thirty (30) day's prior written notice. Without limiting any other rights or remedies available to McKesson, this Program Term Sheet shall immediately terminate if any of the following occurs: (i) bankruptcy or insolvency proceedings are taken by or against Pharmacy or if a receiver, trustee or other similar person is appointed over Pharmacy's assets; (ii) Pharmacy fails to immediately observe or perform any of its obligations under this Program Term Sheet; or (iii) Pharmacy's franchise relationship with Health Mart terminates.

**13. MISCELLANEOUS**

(a) Any provision of this Program Term Sheet that is illegal, invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability and will be modified to the minimum extent necessary to make such provision legal, valid and enforceable while maintaining the intentions of the parties. Should such modification prove to be impractical or impermissible, the offending provision will be severed from the balance of this Program Term Sheet, without affecting the remaining provisions of this Program Term Sheet or affecting the legality, validity or enforceability of such provision in any other jurisdiction.

- (b) McKesson has no obligation to perform under this Program Term Sheet to the extent and for the period that McKesson or its vendors are prevented from doing so by any cause beyond its reasonable control, including the inability to use or the failure of any third-party telecommunications carrier or other services.
- (c) Pharmacy may not assign this Program Term Sheet without the prior written consent of McKesson. McKesson may assign this Program Term Sheet without Pharmacy's prior written consent. This Program Term Sheet shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (d) The parties acknowledge that each is an independent contractor and neither is the agent, representative, partner, fiduciary or trustee of the other party and neither party has the authority to act as or represent itself as an agent of the other party.
- (e) Any notice, demand or other communication required or permitted to be given or made under this Program Term Sheet must be in writing and will be sufficiently given, made and deemed received if delivered by U.S. mail or electronic mail ("e-mail") to Pharmacy's current e-mail address reflected in its Portal registration or to McKesson at healthmartoperations@mckesson.com during normal business hours on a "Business Day", meaning any day except Saturday, Sunday or a statutory holiday.
- (f) This Program Term Sheet and any Exhibit, Addendum or Program Term Sheet relating thereto may be executed in hard copy or electronically, in compliance with the provisions of the federal Electronic Signatures in Global and National Commerce Act ("E-SIGN" Act, 15 U.S.C. § 7001 et seq.) or any applicable successor statutes or regulations then in effect that control the manner and means by which a person is bound to a written agreement. If executed in hard copy, this Program Term Sheet and any Exhibit, Addendum or Program Term Sheet relating thereto may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

## **DATA DELIVERY AUTHORIZATION**

The undersigned hereby executes this DATA DELIVERY AUTHORIZATION (this “**Authorization**”) on behalf of the pharmacy identified above (“**Pharmacy**”). This Authorization is effective as of the date Pharmacy executes this Authorization (the “**Authorization Effective Date**”).

Pharmacy and the Point of Sale System Vendor identified above (“**POS Vendor**”) are parties to a certain software license agreement or lease agreement pursuant to which Pharmacy is granted the right to utilize one of POS Vendor’s pharmacy point of sale systems (the “**Agreement**”). In connection with the Agreement, Pharmacy provides POS Vendor with a variety of confidential information about its business operations. Pharmacy hereby authorizes POS Vendor the right to disclose certain data in accordance with the terms set forth below:

1. Pharmacy expressly authorizes and directs POS Vendor to send the data specified on Exhibit 1 to this Authorization, as such Exhibit may be updated from time to time upon notice to Pharmacy (collectively, the “**Delivered Data**”) to McKesson Corporation (“**McKesson**”) for use by McKesson in providing services to Pharmacy under the Frond End Insights Program and other uses specified in the Program Term Sheet. In no event shall Protected Health Information (as such term is defined in the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) be included in the Delivered Data.

2. Pharmacy represents and warrants that it has obtained all patient consents or authorizations, where required, that are necessary in order to authorize POS Vendor to send the Delivered Data to McKesson.

3. IN NO EVENT WILL MCKESSON BE LIABLE TO PHARMACY, POS VENDOR OR ANY THIRD PARTY FOR DAMAGES OF ANY NATURE ARISING FROM OR IN CONNECTION WITH THIS DATA DELIVERY AUTHORIZATION, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR OTHER INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

**EXHIBIT 1**

**DATA FIELDS**

<b>POS Data Elements</b>		
<b>TRANSACTION DETAILS</b>		
<b>Minimum Data Set</b>	<b>DATA ELEMENTS</b>	<b>DEFINITION</b>
<b>TRANSACTION</b>		
Y	Receipt Number (Transaction Number)	Transaction identifier
Y	Transaction time	Transaction time
Y	Sales Date (Transaction Date)	Actual date of sale
Y	Retail Price (Item Price)	Sale amount charged
Y	Units Sold (Quantity Sold)	Total quantity sold
Y	Discount Amount	Amount of any discounts
Y	Payment Type	Method / form of payment (type credit card, cash, check, EBT, etc)
<b>PRODUCTS</b>		
Y	UPC Number	Universal Product Code
Y	Item Description	Name / statement of product
<b>STORE</b>		
Y	Store Number (NCPDP)	Unique store identifier
<b>Coupon</b>		
Y	Coupon Number	Identifies the Coupon UPC or number
Y	Coupon Amount	Identifies the amount of the coupon